ORIGINAL CIVIL.

Before Mr. Justice West.

1881
April 4,29,30.

FATMABIBI, PLAINTIFF, *v.* THE ADVOCATE GENERAL OF BOMBAY AND SHAIK HUSSAN ROGAY, DEFENDANTS.*

Mahomedan law—Wakf—power of revocation—Reservation of rents and profits to donor for life—Ultimate dedication of property to charity with intervening private interests—Rule against perpetuities how far applicable in a colony subject to English law—Charities, what are—Trust for maintenance of idol, for benefit of poor, for building tanks—Dedication by minor—Subsequent ratification—Estoppel.

A *wakf* must be certain as to the property appropriated, unconditional, and not subject to an option. It must have a final object which cannot fail, and this object must be expressly set forth.

When a *wakf* is created, the reservation, in the deed of settlement, of the annual profits of the property to the donor for life does not invalidate the deed. If, however, there is a provision for the sale of the *corpus* of the property and an appropriation of the proceeds to the donor, the settlement is invalid.

If the condition of an ultimate dedication to a pious and unfailing purpose be satisfied, a *wakf* is not rendered invalid by an intermediate settlement on the founder's children and their descendants. The benefits these successively take, may constitute a perpetuity in the sense of the English law; but, according to the Mahomedan law, that does not vitiate the settlement, provided the ultimate charitable object be clearly designated.

The rule against perpetuities extends to a colony in which English law is enforced only so far as it is adapted to the circumstances of the community. The case of "charities useful and beneficial" to the community is an exception to this rule. It is for the Courts to pronounce whether any particular object of bounty falls within this class. In order to decide this question they must, in general, apply the standard of customary law and common opinion amongst the community to which the parties interested belong. Objects which the English law would possibly regard as superstitious uses are allowable and commendable according to Mahomedan law. A trust for the benefit of the poor, for aiding pilgrimages and marriages, and for the support of wells and temples, is a charity amongst Mahomedans. The law and opinion of Mahomedans regard such a trust as a charity; and, granting there is a charity, the objection to a perpetuity fails according to the principles of the English law.

Where the proposed object of the endowment is one which is directly contrary to the public law of the State, the above rule does not apply.

By an indenture of voluntary settlement, dated 16th March, 1866, F, a Mahomedan girl of the age of fourteen, conveyed certain immoveable property in the island of Bombay to trustees upon trust.—(1) During her lifetime to pay the rents and profits to her for her sole and separate use without power of anticipation. (2) After

*Suit No. 46 of 1881.

her death to pay the rents and profits to her children and descendants as she might by deed or will appoint. In default of appointment the trustees were to pay life allowances to such descendants at their discretion. The rents and profits only were to be thus distributed among such descendants for ever, the *corpus* of the property being kept intact. (3) In case there should be no such descendants, or in the event of failure of such descendants, the rents and profits were to be expended on charitable purposes, such as expenses of poor pilgrims going to Mecca, building mosques, funeral and marriage expenses of poor people, sinking wells or tanks, or in such other manner as the trustees should think fit. Shortly after the execution of the settlement the trustees took possession of the property, and for fifteen years continued to pay the rents and profits to the settlor. The settlor was married in 1866 to H, and there was issue of the marriage only one son, who died in 1872 an infant under the age of five years. H died in 1872, and the settlor remained a widow. In 1881 she became desirous of revoking the above settlement, and under section 527 of the Civil Procedure Code (Act X of 1877), she stated a case for the opinion of the Court, contending that she could lawfully revoke the trusts declared by the said indenture; that, if she could not revoke, then that the trust therein declared in favour of charity was void for remoteness; and generally that she was, under the circumstances, entitled to have the property reconveyed to her by the surviving trustee.

Held that the settlement was irrevocable. The dedication having been once made could not be recalled. The interposed private-interest, which might or might not endure, did not avoid the ultimate charitable trust. According to Mahomedan law the latter gave effect to the former. Should the intermediate purposes of the dedication fail, the final trust for charity did not fail with them. It was but accelerated, being itself regarded as the principal object in virtue of which effect was given to the intervening disposition. Charitable grants being thus tenderly regarded, it would be inconsistent that a power of revocation should be recognized in the grantor.

Held, also, that although the dedication by a girl of fourteen was not to be upheld without inquiry, yet the transaction never having been questioned by her husband during his life, and she having for fifteen years confirmed her own act by a continued acceptance of the profits of the estate from the trustees, could not with reason contend that the dedication was invalid on account either of its ceremonial defects or of a want of an accompanying volition.

CASE stated under section 527 of the Civil Procedure Code (Act X of 1877).

1. The plaintiff, Fatmabibi, is a Mahomedan lady of the age of about twenty-nine years. She belongs and always has belonged to the Sunni division or sect of the Mahomedan community.

2. Prior to the 16th of November, 1866, the said Fatmabibi (hereinafter referred to as the plaintiff) was the owner of the several immoveable properties in the island of Bombay particularly described in the schedule to the indenture or deed of settle-

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ment in the next succeeding paragraph hereof referred to. The said properties are now of the aggregate value of Rs. 3,00,000 or thereabouts. The plaintiff on the said 16th of November had agreed to marry one Haji Mahomed Ebrahim bin Haji Abdul Cadur Jetaykar.

3. By an indenture bearing date the said 16th November, 1866, and made between the plaintiff of the one part and Mahomed Ali bin Mahomed Ameen Rogay, the defendant Shaik Hussan, Ameenabibi and Khudizabibi, therein called the trustess, of the other part, the plaintiff—after a recital that she was possessed of the hereditaments and premises in the schedule to the said indenture described, and that she was desirous of settling the same upon the trusts hereinafter declared—granted and conveyed the same to the said trustees to hold the said premises, subject to the payment of the rents and taxes payable in respect of the same, upon the following trusts, viz. :—

1. Upon trust, during the life-time of the plaintiff, to pay the rents and profits of the said premises to the plaintiff for her sole and separate use, without power of anticipation.

2. Upon trust, after the death of the plaintiff, to pay the *rents and profits* of the said premises to such one or more exclusively of the others or other of the children or grandchildren or other the descendants of the plaintiff at such age or time, or respective ages or times if more than one, in such shares and with such future and executory or other trusts for the benefit of the said children or grandchildren or other descendants, or some or one of them, with such provisions for their maintenance and education either at the discretion of the trustees or trustee for the time being of the said indenture or of any other person or persons, and upon such conditions, with such restrictions and in such manner *as the plaintiff should by deed or will appoint*, and, in default of any such direction or appointment and so far as no such direction or appointment should extend, upon trust to pay the said rents and profits to and amongst the children or grandchildren and other descendants of the plaintiff for and during the term of their natural lives or the life of any of them, in such shares and proportions and in such manner for their maintenance or education or otherwise as the said trustees or trustee for the time being should think fit. Provided always, and it was by the said indenture agreed and declared that its object was to make such a settlement of the said premises that the *rents and profits* thereof should alone be divisible amongst the children, grandchildren and other *descendants of the plaintiff for ever.*

3. In the event of there being no children, grandchildren or other descendants of the plaintiff, or, there being such, in the event of such child or other descendants dying without leaving any child or children, upon trust to stand possessed of the said premises and of the rents and profits thereof in trust for the said Mahomed

Ali bin Mahomed Ameen Rogay and his heirs to be devoted by him and them to charitable uses, according to the law of Mahomedans, either in paying the expenses of poor and indigent pilgrims going to Mecca, establishing charitable institutions, in donations to and building mosques, in payment of the funeral expenses or marriage expenses of poor people, in sinking wells or constructing tanks, or in such other manner as the said Mahomed Ali bin Mahomed Ameen Rogay, his heirs, executors or assigns should think fit.

4. The indenture contained a covenant on the part of the said Mahomed Ali bin Mahomed Ameen Rogay with the plaintiff that the said Mahomed Ali bin Mahomed Ameen Rogay, his heirs, executors, administrators or assigns would devote the said premises to such charitable uses accordingly; and it also contained various provisoes, declarations, and agreements which it is unnecessary to refer to in detail, but reference is to be made to the said indenture as though it had been set out in full in this case.

5. There was no consideration for the execution, by plaintiff, of the said indenture, and the trusts thereby created were entirely voluntary. The said indenture was duly registered.

6. The plaintiff was married on the 19th of November, 1866, to the said Haji Mahomed Ebrahim bin Haji Abdul Cadur Jetaykar, and had issue of the said marriage one son who died on the 30th of September, 1872, an infant under the age of five years.

7. Soon after the execution of the said indenturet, he trustees took possession of the said trust premises; and the trustees or trustee of the said indenture, for the time being, have ever since collected the rents and profits thereof, and paid the same over to the plaintiff.

8. On or about the 31st of March, 1869, the said Mahomed Ali bin Mahomed Ameen Rogay and the said Khudizabibi retired from the said trust; and by indenture of that date the said Haji Mahomed Ebrahim bin Haji Abdul Cadur Jetaykar and one Ganesh Sadashiv Desai were duly appointed trustees in their place.

9. The said Haji Mahomed Ebrahim bin Haji Abdul Cadur died on the 16th of March, 1872. The plaintiff was not since remarried, and is childless—never having had a child, save her said son who died in his infancy.

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10. The said Ganesh Sadashiv Desai died on the 27th of March, 1872, and the said Ameenabibi died on the 18th of March, 1872. The defendant, Shaik Hussan Rogay, is the sole surviving trustee of the said trust premises.

11. The plaintiff is desirous of revoking the settlement contained in the said indenture of the 16th of November, 1866, and of dealing with the properties comprised therein as her own.

12. The plaintiff contends that she can lawfully revoke the trusts declared by the said indenture: if she cannot revoke the same that the trust therein declared in favour of charity is void for remoteness; and generally she contends that she is, under the circumstances stated in this case, entitled to have the premises, in the schedule to the said indenture described, re-conveyed to her by the defendant, Shaik Hussan Rogay.

13. The Advocate General of Bombay joins in stating the present case as representing the said charity if validly created.

14. The questions for the opinion of this Honourable Court are—

(1) Whether the plaintiff is at liberty to revoke the trusts declared by the said indenture of the 16th November, 1866?

(2) Whether the trusts thereby declared are legal and valid trusts, or whether any and which of such trusts are or is legal and valid?

(3) Whether the trusts thereby declared or any and which of such trusts are or is void?

(4) Whether the plaintiff is entitled to have the said premises re-conveyed to her by the defendant, Shaik Hussan Rogay?

15. In the event of this Honourable Court deciding that the said trusts are revocable or void, or that the plaintiff is entitled to have the said premises re-conveyed to her, the defendant, Shaik Hussan Rogay, is to re-convey the said premises to the plaintiff, or according to her directions, and at the cost of the plaintiff.

Farran for the plaintiff.

Marriott (Advocate General) for the first defendant.

B. Tyabji for the second defendant.

Farran for the plaintiff.—It is agreed that if the Court pronounces the deed of the 16th November, 1866, void, the trustee under the settlement shall re-convey the property. The form of the deed is not exclusively either English or Mahomedan. I contend that, under both Mahomedan and English law, the deed is invalid. The restraint on anticipation is English, and would not be valid according to Mahomedan law. The power of appointment is essentially according to English form, and is contrary to the Mahomedan law of *wakf*. The creation of a *wakf* excludes the further exercise of a volition by the donor. The trust must be constituted definitely as to its objects at once. The provision as to perpetuity would be invalid by English law. The ultimate trust for charity would also be invalid according to English law; it is founded on Mahomedan law.

The *cypres* doctrine does not apply to cases of trust-deeds. Under English law the trusts in favour of the children would be void (Watson's Compendium of Equity, Vol. II, p. 748; *In re Sayer's Trusts* (1); *Company of Pewterers* v. *The Governors of Christ's Hospital*(2)), and the succeeding trusts would fail: *Fowler* v. *Fowler*(3); *Tagore* v. *Tagore*(4).

Then, is this trust revocable according to Mahomedan law? As to the nature of *wakf*,—Baillie on Mahomedan Law, pp. 549, 550. The settlor (Fatmabibi) was only fourteen years of age at the date of the deed. Perpetuity is essential to a *wakf*. Limitation, therefore, to a particular time is unlawful. There must be an unfailing object. Here it is Mahomed Ali Rogay and his heirs only who are to distribute the funds to the poor: Baillie on Mahomedan Law, p. 567; Hedaya II, 334.

The trust is not one that the law will recognize; *Abdul Gayne Kasam* v. *Hussen Miya*(5); *Bibee Kuneez Fatima* v. *Bibee Saheba Jan*(6); *Jeewun Doss Sahoo* v. *Shah Kuber-ood-deen*(7). The *Tagore Case*(8) shows that the Courts will not allow a perpetuity to be created in favour of an individual.

(1) L. R. 6 Eq. 319.
(2) 1 Vern. 161.
(3) 33 Bea. 616.
(4) 9 Beng. L. R. 377; L. R. Ind. Ap., Sup. Vol., p. 47.
(5) 10 Bom. H. C. Rep. 7.
(6) 8 Calc. W. R. 313.
(7) 2 Moore's Ind. Ap. 390.
(8) 9 Beng. L. R. 377; L. R. I. Ind. Ap., Sup. Vol. 47.

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WEST, J., referred to *Yeap Cheah Neo* v. *Ong Cheng Neo*[1].

B. Tyabji for the second defendant.—It is argued that the family gift fails by reason of the doctrine against perpetuities, and, therefore, the ultimate limitations also fail. Here there has been an actual delivery of the property, and it has been managed according to the deed since 1866 : Baillie on Mahomedan Law, p. 567. When property has once been made *wakf*, it cannot be recovered : Baillie, p. 425 ; Hedaya II, 337-338 ; *Delroos Banoo Begum* v. *Nawab Syud Ashgur*[2]. In *The Advocate General* v. *Fatima*[3] it was held that the founder of a *wakf* must follow the provisions of his own trust-deed.

Marriott, Advocate General, did not address the Court.

WEST, J.—This, which is the first case stated in this Court under section 527 of the Code of Civil Procedure, has arisen on a trust-deed executed by the plaintiff, Fatmabibi, on 16th November, 1866, which she now desires to revoke.

The plaintiff is a Sunni Mahomedan, and at the time mentioned she possessed property valued at about three lakhs of rupees. She was very young, being now only twenty-nine or thirty years of age, and was engaged to be married. These circumstances, however, have not been seriously relied on as affecting the validity of the deed of trust. The husband, who is now dead, did not question it during his life, and the plaintiff herself allowed the trustees to take possession of the property embraced in the settlement, and has ever since received the profits of the property from them. This was in accordance with one of the provisions of the trust which she now relies on as a ground for its invalidity.

The trust-deed is of 16th November, 1866. Its principal provisions, as to the disposal of the property made over to the trustees, are these :—

"(1) The trustees are to pay to the plaintiff, during her life, the profits arising from the property, without anticipation.

" (2) Afterwards they are to pay the profits to the plaintiff's children and descendants as she may by deed or will appoint. In default of appointment the trustees are to pay life allowances at

(1) L. R. 6 P. C. 381. (2) 15 Beng. L. R. 167 at 190.

(3) 9 Bom. H. C. Rep. 19.

their discretion. The profits alone are to be thus distributed, the *corpus* of the property being kept intact.

"(3) Should there be no descendants, or a failure of descendants of the plaintiff, the profits are to be expended on charitable purposes, such as pilgrimages, temples, marriages, and wells."

The transaction was quite gratuitous; and it is not asserted that the trustees, of whom only one—Shaik Husan—now survives, have at the plaintiff's request incurred expense or responsibility.

The questions, then, are—

(1) Whether the trusts were or were not validly created by the indenture of 16th November, 1866?

(2) Whether any power of revocation remains to the plaintiff?

Mr. Farran dwelt on the fact that the indenture follows, in part at least, English precedents. A provision against alienation or anticipation, he contended, would have no place in a deed of *wakf* under the Mahomedan law. The power of appointment reserved to the plaintiff was, he urged, inconsistent with *wakf*, which entirely excludes the further exercise of a volition on the part of the donor. Such a power, constituting a kind of condition or suspensive clause, prevented an effective disposal in *wakf* by which the trust must, it was argued, be definitely settled forthwith as to all its objects. In spite, therefore, of the ultimate destination of the property to charitable objects, which might by itself be effectual under the Mahomedan law, the deed could not, as a whole, be given effect to according to that law.

Under the English law, again, it was urged that the attempt to create a perpetuity of interest in the rents and profits of the trust property was essentially invalid; nor could the defect be supplied by resort to any connective or complementary arrangement,—the *cyprés* doctrine being inapplicable to settlements. The trusts in favour of the remoter issue must fail, and with them must fail the subsequent trusts in favour of the specified charities.

If the English law is to be applied to the case, there can be no doubt that the attempted creation of a perpetuity in favour of the family must fail. So, too, apparently, must the charity if regarded as resting on a trust of lands not taking effect forthwith

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in possession[1]; so that the question—of whether the settlement in favour of the charity could take effect by way of quasi-remainder or executory interest by means of the trust after an intermediate estate involving a perpetuity disapproved by the law[2]—could hardly arise. Possibly the trust might be given effect to by construing it as creating an equitable estate tail which could be dealt with by successive holders, and so saved from a withdrawal *extra commercium*, which would vitiate the whole of the proposed settlement. Or, again, alternative contingencies being provided for, each supported by the legal estate conveyed to the trustees, the equitable interest on the one or the other event must become vested in possession immediately on the plaintiff's death, which is not too remote a period for the constitution of an equitable interest. But these questions, too, would be speculative in the presence of the statutory provisions as to grants in mortmain.

As to the ultimate trust for constructing wells and aiding marriages and pilgrimages, the case of *Yeap Cheah Neo* v. *Ong Cheng Neo*[3] shows that the rule against perpetuities extends to a colony where the English law is enforced only so far as that law is adapted to the circumstances of the community, because it is regarded as having its foundation in principles of general application. But it is subject to exception in the case of "charities" liberally construed as objects "useful and beneficial" to the community. But useful and beneficial in what sense? The Courts have to pronounce whether any particular object of a bounty falls within the definition; but they must, in general, apply the standard of customary law and common opinion amongst the community to which the parties interested belong. Objects which the English law would possibly regard as superstitious uses, are allowable and commendable according to the Hindu law (*Khusálchand* v. *Mahadevgiri*[4], and not less so according to the Mahomedan law. A trust for the maintenance of an idol, it has been held, is one for a public charitable purpose amongst Hindus (*Manohar Ganesh* v. *Keshavram*[5]) claiming protection under section 539 of the Code of Civil Procedure; and, unless an arbitrary

(1) See Stat. 9 Geo. II, c. 36, sec. 1.
(2) See Fearne. Cont. Rem. 468, 470, 403 ss. *Tagore Case*, L. R. Ind. Ap. Sup. Vol. at p. 71, 72.
(3) L. R. 6 P. C. 381.
(4) 12 Bom. H. C. Rep. 214.
(5) Printed Judgments (Bombay) for 1878, p. 252.

criterion is to be employed, it seems impossible to say that a trust for the benefit of the poor, for aiding pilgrimages and marriages[1] and for the support of wells and temples is not, amongst Mahomedans, a charity within the definition even according to the principles of the English law. These contain within themselves the requisite correction for the varying circumstances of a community having customs and a religion different from those of the English nation in England; and allowance, as the case I have referred to shows, is to be made even for Englishmen and, *a fortiori*, for Asiatics in circumstances in which particular English laws from their specially local or historical character become obviously inapplicable. An exception, no doubt, arises in a case in which the proposed object of the endowment is one which is directly contrary to the public law of the State, even in a wide sense [2]; but the general principle of the public law of British India is that of supporting the private customary law of each of the principal classes, except where it has been distinctly superseded by a statutory rule[3]. The law and the opinion of the Mahomedans undoubtedly regard a trust, such as the one in question, as a charity; and, granting there is a charity, the objection to a perpetuity fails according the principles of the English law.

According to the Mahomedan law there can be no doubt that the proposed application of the fund is a highly commendable charity. Mr. Badrudin contended that, so far from the interposed private interests, which might or might not endure, avoiding the ultimate charitable trust, the latter gave effect to the former. And this appears to be the true construction of the Mahomedan law[4]. A *wakf* must be certain as to the property appropriated, unconditional, and not subject to an option. It must, too, have a final object which cannot fail; and this object, it seems, must, according to the better opinion, be expressly set forth[5]. In the deed now in question it is set forth; and the reserve to the plaintiff,

(1) Comp. the definition of "charitable purposes" in Stat. 43 Eliz., cap. 4.

(2) *Thrupp* v. *Collett*, 26 Beav. 125; *Rex* v. *Lady Portington*, 1 Salk. 162; Lewin on Trusts, ch. VI.

(3) Charter of Supreme Court of Bombay, sec. 29, 41; 2 Moo. I. A. at p. 423.

(4) *Phate Saheb Bibi* v. *Damodar Premji*, I. L. R. 3 Bom. 84.

(5) Baillie's M. L. 567; 10 Bom. H. C. Rep. 7.

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for her life, of the annual profits does not invalidate it[1], as such a consequence arises only when there is a provision for the sale of the *corpus* of the property and an appropriation of the proceeds to the donatrix[2]. In the case of *Delroos Banoo Begum* v. *Nawab Syud Ashgur*[3] a dedication of property in *wakf* was declared invalid on the ground that the donatrix—an illiterate woman, though a wealthy one—had not really known what she was doing in endowing the imámbára. The imámbára was within her own house; she had appointed herself joint mutawali, and her co-mutawali had died. The property had never been treated as dedicated to a public religious establishment within the meaning of Act XX of 1863. Everything went to show that there had not been a true dedication; but the learned Judge, who pronounced the decision of the Court, said that if the instrument of *wakf* had been "really and knowingly executed" by the lady defendant "it would have bound Delroos Banoo Begum without the power of revocation." In the present case the direct ownership of the property was completely parted with. There was, it is said, a want of discretion on the part of the plaintiff; and certainly a dedication made by a girl of fourteen is not to be upheld without inquiry; but here the transaction was never questioned by the plaintiff's husband during his life, and the plaintiff herself has for fifteen years confirmed her own early act by a continued acceptance of the profits of the estate from the trustees. She cannot now say with any reason that the dedication was invalid on account either of its ceremonial defects, or of a want of an effectual accompanying volition.

The case of *Abdul Ganne Kasam* v. *Hussen Miya*[4] is an authority for the proposition that, under the Mahomedan law, an attempt, by using the word *wakf*, to create a perpetuity for the benefit of a family will be ineffectual. In the case of *Bibee Kuneez Fatima* v. *Bibee Saheba Jan*[5] there referred to, certain charitable objects are mentioned as the motive cause of the

(1) *Doe d. Jaun Beebee* v. *Abdollah Barber*, I Fult. 345; 3 Hamilton's Hedaya, 351: *Muzhurool Huq* v. *Puhraj Ditarey*, 13 Calc. W. R. 336; Baillie's M. L. 585.

(2) Baillie's M. L. 556.

(3) 15 Beng. L. R. 167, 190.

(4) 10 Bom. H. C. Rep. 7.

(5) 8 Calc. W. R. 313.

grant, but not as a purpose of the grant, the fulfilment of which is annexed to it as a condition or a trust. There was no dedication, even ultimately, "solely to the worship of God or to any religious or charitable purposes." In *Abdul Ganne Kasam* v. *Hussen Miya* there was no pretence of any such purpose. In neither, therefore, was there any creation of *wakf* in the proper sense with the peculiar attributes of that class of property, whereas in *Dayal Chand Mullick* v. *Sayad Keramut Ali*[1] there was a clear intention to dedicate to religious purposes. Though the *wakf* was mixed up with provisions of a different character, effect was given to the dedication; and in *Muzhurool Huq* v. *Puhraj Ditarey*[2] Kemp, J., says: "We are of opinion that the mere charge, upon the profits of the estate, of certain items, which must in the course of time necessarily cease, being confined to one family and for particular purposes, and which after they lapse will leave the whole profits intact for the original purposes for which the endowment was made, does not render the endowment invalid under the Mahomedan law." If the condition of an ultimate dedication to a pious and unfailing purpose[3] be satisfied, a *wakf* is not made invalid by an intermediate settlement on the founder's children and their descendants. The benefits these successively take, may constitute a perpetuity in the sense of the English law; but, according to the Mahomedan law, that does not vitiate the settlement, provided the ultimate charitable object be clearly designated[4].

That a true *wakf* is irrevocable, is stated in some of the cases I have referred to, and it follows from the definition of the term. The consequences of the dedication are that, even while the direct ownership is retained, the beneficial interest passes wholly from the appropriator[5]. In the present case the direct ownership has been conveyed to the trustees. If the surviving trustee fails in his duty—which, in full accordance with the Mahomedan law[6], is largely discretional—the plaintiff or her representatives can enforce

(1) 16 Calc. W. R. 116.
(2) 13 Calc. W. R. 236.
(3) Baillie's M. L. 557.
(4) *Ibid.* 570, ss. 586.
(5) *Ibid.* 551; *Abdul Hasan* v. *Haji Mahomed*, 5 Calc. Sud. Dew. Rep. 87.
(6) Baillie's M. L., 588, Comp. *Pocock* v. *Attorney General*, L. R. 3 Ch. Div. 342.

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the fulfilment of the trust; but the dedication once made cannot be recalled(1). Should the intermediate purposes of the dedication fail, the rule of Mahomedan law appears to be that the final trust for charity does not fail with them. It is but accelerated(2), being itself regarded as the principal object in virtue of which effect is given to the accompanying and intervening dispositions. Charitable grants being thus tenderly regarded, it would be inconsistent that a power of revocation should be recognized in the grantor. It is not recognized; and on the several questions submitted to the Court I must find against the plaintiff.

The costs of the defendant to be paid by the plaintiff by means of deductions from sums coming due to her under the indenture.

Defendant's costs as between attorney and client not thus satisfied to be defrayed out of the trust fund.

Attorneys for the plaintiff and second defendant.—Messrs. *Craigie, Lynch, and Owen.*

Attorneys for the Advocate General.—Messrs. *Hearn, Cleveland, and Little.*

(1) Baillie's M. L. 545, 558, 588.

(2) Baillie's M. L. 553, 558; *In re Williams*, L. R. 5 Ch. Div. 735; *In re Birkett*, L. R. 9 Ch. Div. 576.

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.

September 26.

MANJUNA'TH BADRA'BHAT (ORIGINAL DEFENDANT), APPELLANT, *v.* VENKATESH GOVIND SHA'NBHOG (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Execution—Limitation—Act XIV of 1859—*Act IX of* 1871—*Applications in suits instituted before the* 1*st April*, 1873—*Act VIII of* 1859, *Section* 2—*Act X of* 1877, *Section* 13—*Res judicata—Meaning of "suit".*

The decision, by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata*; and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding, and the question cannot be re-opened. A decision, that an application for execution is not time-barred, has a similar effect.

* Second Appeal, No. 10 of 1880, from order.