

ORIGINAL CIVIL.

Before Sir Basil Scott, Chief Justice.

1910.
September 3.

IN RE TRUSTEES AND MORTGAGEES POWERS ACT (XXVIII OF 1866)

AND

IN RE TRUST OF SHETH KHULFANBHOY DAMANL.

SIR CURIMBHOY EBRAHIM, BART., AND ANOTHER.....PETITIONERS

Trustees and Mortgagees Powers Act (XXVIII of 1866)—Trust-deed—Application by trustees to divert funds to other objects—Trustees' opinion—Cyprès doctrine.

The surviving trustees of a fund founded with the object of distributing food amongst such poor persons as might assemble at certain stated times and places petitioned the Court under section 43 of the Trustees and Mortgagees Powers Act to divert the fund to more useful purposes on the grounds that in their opinion the charity tended to pauperise the recipients thereof and to encourage thriftlessness and laziness and vagrancy and to produce other undesirable results, that the donor's intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys.

Held, that the application was entirely misconceived so far as the Act was concerned as the word "trustees" has been deleted in section 43 of the Trustees and Mortgagees Powers Act of 1866. Even if the Act applied the Court could not under section 43 do more than give advice or directions. It could not pass any order which would in any way alter the duties of the trustees under the trust-deed.

Held, further, on the merits of the application that the trustees had no justification for coming to the Court to try and get their duties under the trust-deed altered according to their ideas of what was fit and proper.

In re Weir Hospital⁽¹⁾, referred to.

THE material facts of this case are set out in the judgment.

Jinnah for the applicants.

SCOTT, C. J.:—This is an application purporting to be made under the Trustees and Mortgagees Powers Act XXVIII of 1866 and in the matter of Sheth Khulfanbhoj Damani's trust by the surviving trustees.

(1) [1910] 2 Ch. 124.

The petition states that Khulfanbhoy Damani, a Khoja Mahomedan merchant, purchased two Government Promissory Notes of Rs. 5,000 each for the purpose of establishing a charity for distributing dry food to the poor, and by an indenture of trust of the 14th of September 1857 assigned the Government Promissory Notes to, and deposited the same in the Bank of Bombay, in the names of the parties to the deed of the second part for the benefit of the charity. The trusts particularly described in the deed are the purchase of rice and other articles of food, namely, roasted gram, parched rice, beaten rice, and grain called *dhani*, and the distribution of the same every Friday morning at such hours as the trustees might fix for the purpose amongst such poor persons as might assemble at that time for the purpose of receiving the same at or near the mosque or Dargah of Syed Mahomedshah belonging to the Khoja caste situate in Chatri Sarang street, without regard being had to nation, caste or creed. And it was also declared by the deed that such distribution and all questions relating to such distribution should be in the absolute and uncontrolled discretion of the trustees for the time being.

The trustees state that the distribution of food has for the last thirty-five or forty years been of baked wheaten bread called Nan at or near the donor's residence at Nishanpada Road every Friday. The cost of such distribution amounts to a sum falling not far short of the income of the fund.

The petitioners state that they are convinced that—

“This charity tends to pauperise the recipients thereof and to encourage thriftlessness and laziness and vagrancy and to produce other undesirable results. The persons, who receive the benefit of the charity, are not poor at all or deserving but are able-bodied vagrants capable of earning their livelihood by manual labour. The distribution of bread once a week does no good at all to anyone. The distribution of grain as provided in the trust-deed would be the merest waste of money. The donor's intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys. The distribution of grain might have been a desirable form of charity in 1857 when the trust-deed was made although that too is doubtful, but at the present day it is utterly useless as a means of relieving distress, and on the contrary increases the evils of poverty to a serious extent. Several charities of a useless nature have recently been

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diverted by this Honourable Court into useful channels and the petitioners pray that the same course might be adopted in this case to the great benefit of people in need."

The application is apparently made under a section of an Act which does not apply to trustees, because the word "trustees" has been deleted in section 43 of the Trustees and Mortgagees Powers Act by the Trusts Act of 1882. The petition must, therefore, fail in that it is entirely misconceived so far as the Act is concerned. Even if the Act applied, the Court could not, under section 43, do more than give advice or directions. It could not pass any order which would in any way alter the duties of the trustees under the trust-deed.

With regard to the merits of the application, it is desirable, having regard to the frequency of such applications in this Court, to call attention to the recent pronouncement of the Court of appeal in England with regard to *Cyprès* applications, delivered in the case of *In re Weir Hospital*⁽¹⁾.

The Master of the Rolls there said :—

"The first duty of the Court is to construe the will, and to give effect to the charitable directions of the founder, assuming them not to be open to objection on the ground of public policy. The Court does not consider whether those directions are wise or whether a more generally beneficial application of the testator's property might not be found. There are many charitable purposes which, according to modern views, are productive of more harm than good—for example, doles in money or kind. But, apart from such statutory power as is expressly conferred by section 30, of the Endowed Schools Act, 1869, the Court must give effect to a testator's directions as to doles."

In my opinion the trustees had no justification for coming to the Court to try and get their duties under the trust-deed altered according to their ideas of what is fit and proper, and they must pay the costs of the application out of their own pockets.

It is, however, said that an application was necessitated by the fact that the Bank of Bombay declines to credit the interest on the Government Paper, the subject of the trust, to the account of the petitioners as surviving trustees, without an order of the Court; but it is clear that the reason for this objection on the part of the Bank of Bombay is that the trustees have not taken

(1) [1910] 2 Ch. 124 at p. 131.

proper steps to have the Government Paper put into their names as survivors. Any order which is required could have been made upon an application under Act XXVII of 1866. But no such application has been made. Therefore, I do not think the trustees can save their costs by any reference to the objection of the Bank of Bombay.

I, therefore, dismiss the petition, ordering the trustees personally to pay the costs of the Advocate-General as between attorney and client.

Attorneys for the applicants: Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Attorneys for the opponents: Messrs. *Little & Co.*

Application dismissed.

B. N. L.

ORIGINAL CIVIL.

Before Mr. Justice Beaman.

CHOBAY SHRIGOPAL CHIRANJILAL AND OTHERS, PLAINTIFFS,
v. DHANALAL GHASIRAM, DEFENDANT.*

Limitation—Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation Act (IX of 1908), section 19.

Where an Insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the schedule, that is a sufficient acknowledgment, under section 19 of the Indian Limitation Act (IX of 1908), to extend the period of limitation.

THE defendant firm drew four hundies on Mansaram Chajulal, one for Rs. 2,500, dated 26th December 1906 and payable 31 days after date, and three for Rs. 2,500, Rs. 2,000 and Rs. 1,500 respectively, dated 20th January 1907 and payable at sight. All these were negotiated by the plaintiffs, in whose favour they were drawn, but subsequently, in consequence of the drawee dishonouring the hundies, the plaintiffs had to pay the amounts

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