

*Privy Council Appeals Nos. 23 and 24 of 1922.*

Mirza Mahomed and another - - - - - *Appellants*  
v.  
The Official Assignee - - - - - *Respondent.*  
  
The Official Assignee - - - - - *Appellant*  
v.  
Mirza Mahomed and another - - - - - *Respondents*  
(*Consolidated Appeals*)

FROM

THE CHIEF COURT OF LOWER BURMA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 30TH APRIL, 1923.

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*Present at the Hearing :*

LORD BUCKMASTER.  
LORD SUMNER.  
SIR JOHN EDGE.  
MR. AMEER ALI.  
LORD SALVESEN.

[*Delivered by* LORD BUCKMASTER.]

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The dispute that has given rise to these appeals is due to the manner in which the estate of one, Yacoob Ali, has been administered by his representatives. He died on the 15th May, 1865, having made a will dated on the 3rd of the preceding January by which he left one-third of the portion of the property, of which he was competent to dispose, to be dealt with for charitable purposes. — His executor was one, Abdul-Husseïn, who, in 1870, bought out of the estate certain property known as the Puzandaung property, and then died on the 2nd April, 1879. One, Hajee Mahomed Hady, became administrator *de bonis non* to the estate of Yacoob Ali in September of 1884, and he then sold

all the remaining assets of the estate except the Puzandaung property for a sum, one-third of which represented Rs. 1,64,600. There never appears to have been any appropriation of any part of the estate to the charity and no proper administration has ever taken place, but Hady having become insolvent the Official Assignee, who is the respondent in the main appeal, instituted the suit out of which the appeals have arisen asking for, among other things, a declaration that the gift to the charity was bad and that a partition of the estate should take place.

The court of first instance decided that the gift to the charity was good and directed that the charity should be entitled to one-third of the estate of the testator as it existed at the date of his death. In other words it assumed that the effect of the will was to give to the charity, not one-third part of the estate, but a sum that would be measured by ascertaining what one-third part of the estate would be at the date when he died. Their Lordships think that the will is incapable of bearing any such interpretation and that the charity is, and has been throughout, entitled to one-third of the whole of the estate.

That view appears to have been taken by the Appellate Side of the Chief Court, who reversed the judgment of the court of first instance in this respect, but the Chief Court judgment only gave to the charity one-third of the Puzandaung property. That was an obvious mistake because they clearly were entitled also to one-third of the other property which had been all realised in 1884. How it was that that mistake arose is not clear. It may have been an oversight. At any rate it justified the appellants in coming before the Board and asking that their rights might be more exactly defined.

Their Lordships have heard what has to be said against this application by the respondent and they can find no answer to it. In their opinion the appellants, on account of the wakfs created by Aza Yacoob Ali and Abdul Hoosain, are entitled to the Rs.1,64,600 representing one-third of the proceeds of the property which was realised in 1884, together with interest on that sum at £6 per cent. from that date down to now; and also to one-third of the Puzandaung property; and also to  $\frac{21}{256}$ ths of the remaining two-thirds of the above mentioned proceeds, together with interest; and also to  $\frac{21}{256}$ ths of the remaining two-thirds of the Puzandaung property; they are also entitled to have an account of the rents and profits received from the property by Hady from 1884, and his representative is entitled to have set against those rents and profits all moneys properly paid on account of the estate, the balance as to one-third and  $\frac{21}{256}$ ths of the remaining two-thirds, after giving credit for any sums paid in respect of the two wakfs, to belong to the appellants on account of the wakfs, with interest at £6 per cent. on such sums running from the end of each year.

There will be a charge on the bankrupt's estate in respect of the total amount due to the appellants under this judgment for principal and interest.

With regard to the costs it appears that the Chief Court gave the costs out of the estate, and that order will not be interfered with, but the respondent will have to pay the costs of the main appeal.

There is a cross-appeal which involves nothing beyond the points already mentioned by the respondent and that appeal must be dismissed with costs.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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MIRZA MAHOMED AND ANOTHER

v.

THE OFFICIAL ASSIGNEE.

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DELIVERED BY LORD BUCKMASTER.

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