

Privy Council Appeal No. 69 of 1930.

Rabbi Abraham Shorr - - - - - *Appellant*

v.

The Trustees of the United Aged Home (Institution), Jerusalem - *Respondents*

FROM

THE SUPREME COURT OF PALESTINE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH FEBRUARY, 1932.

Present at the Hearing:—

VISCOUNT DUNEDIN.

LORD BLANESBURGH.

LORD DARLING.

[*Delivered by* LORD BLANESBURGH.]

Dating from the 'eighties of the last century, there has existed in Jerusalem a charitable institution well known by its Hebrew name of "Moshab Sekenim," or "Aged Home." From small beginnings it has grown to great proportions, and in its homes and houses, specially set apart for the purpose, Jewish poor, hundreds in number, are maintained. In 1911, the inmates of two smaller local institutions for poor, aged Jews, which had become financially embarrassed, were taken into the "Moshab Sekenim," and since that time the "Aged Home" has come to be known as the "United Aged Home," and the Hebrew equivalent "Hameuchad" is often used with the Hebrew name as part of its description.

The actual lands and buildings of the "United Aged Home" -- they are situated in different districts of Jerusalem, are diverse in description and character, and apparently very extensive--were in part, in the years 1887 and 1908 respectively, dedicated as Wakf, and, whatever at these dates may have been the legal effect of such dedications, the management of the charity, before the

commencement of the action out of which this appeal arises was, in fact, always, directly or indirectly, controlled by the Rabbinical authorities of Jerusalem.

The plaintiff and present appellant—the Rabbi Shorr—has not, for some time, seen eye to eye in all matters with these authorities, nor they with him. He brought the action, suing, “in his capacity as trustee of the ‘United Aged Home’,” for the immediate purpose of securing to himself, as such trustee, the delivery of the correspondence addressed to the Home, containing in many instances, contributions to its funds.

The determining question upon this appeal will ultimately be whether the “United Aged Home,” thus referred to in the title to the action, and again in the statement of claim, was any other than the Institution of that name, of which some description has just been given. Their Lordships hope to show before they have finished, that these Institutions are one and the same, and in the meantime they will proceed on the assumption that they have done so.

The defendants to the action were one Shlomo Perlman and the Postmaster-General of Palestine. The presence of the Minister was purely formal: he has not appeared before the Board. Shlomo Perlman was made defendant for the reason that it was he who, in 1918, under an instrument later to be stated, had received at the hands of the appellant and another treated as a co-trustee of the Home, the appointment of Treasurer of the Institution. He had, however, ceased to be obedient to the appellant in the matter of the mail: having indeed long before action accepted office as Treasurer of the Institution from the Rabbinical Court, the Beth Din. So long as he remained a contesting defendant, Perlman was really representative of the Rabbinical authorities. In April, 1924, Perlman fell out with them, came to terms with the appellant, and, as put by him, “retired from the case.” In his place, notwithstanding strenuous opposition from the appellant, the Trustees of the Institution, as appointed by Beth Din, were added as third parties to the action, and remained on behalf of these authorities to face the claims of the appellant. And, all through, these claims were strenuously resisted. In the forefront of his defence, Perlman had taken the objection that there was not in the District Court, or in any Civil Court, any jurisdiction to try the case. The matter in dispute was concerned only with the rights of persons to act as guardians of a Wakf. Such causes were within the exclusive jurisdiction of the Religious Courts under the Proclamations and Palestine Orders in Council. Without prejudice to the objection to jurisdiction, the defence went on to allege that the appellant had, in 1917, been appointed a trustee of the “United Aged Home,” but that in July, 1918, he had been relieved of his office by the Beth Din with no right of management reserved to him: that since his removal from the trusteeship, up to the commencement of the action, he had neither exercised nor claimed

to exercise any authority in regard to the Institution, which, in 1918, was by Roth Chavas, the defendant Perlman, and Kook, the then Beth Din Trustees thereof formally registered as a charity with the Government of Palestine : that all charges of irregularity against Perlman were unfounded : while the complaints alleged to have been made by the inmates of the Institution were discounted, Perlman was not accountable to the appellant in regard to any matters connected with the Institution. By a counterclaim, the original defendant sought to have it declared that the appellant had no right to interfere with the Institution or any officer or inmate thereof, and claimed delivery of its documents, books of accounts and letters, which the appellant was therein alleged to have abstracted in May, 1923, and thereafter to have retained. With further relief.

The action came on for trial in the District Court as long ago as the 27th May, 1923. The objection to the jurisdiction was at once taken by the defendant Perlman and was upheld by the Court, which thereupon dismissed the action with costs. Thereafter during the next four years this question of jurisdiction was agitated at various hearings in the Supreme Court by way of appeal and in the District Court by way of rehearing. And at a final hearing in the District Court on the 5th July, 1927, the objection to jurisdiction was at length repelled, and the Court, for the first time, dealing with the merits, rejected the appellant's claims in the action as put forward, but by its judgment declared the "United Aged Home" to be a charitable trust within the meaning of the Charitable Trusts Ordinance, 1924, and with the office of trustee thereof vacant, and leave was given to the Attorney-General of Palestine to apply under the ordinance for the appointment of proper trustees.

The charitable trust so declared was expressed to be the "United Aged Home" in its entirety, "including its general machinery of administration, the organisation for inviting, collecting and receiving subscriptions and chattels of the Institution and all property belonging to it, whether in the form of movables or immovables not yet constituted Wakf, or constituted Wakf, but for the transfer of which into a charitable trust application has been made to this Court." The application referred to had been made by the appellant and was before the District Court on the 5th July, 1927.

Now, quite clearly, the "United Aged Home" with which the defence was concerned was the charitable institution of that name already described and no other. Equally clearly, it is with reference to that Institution and to no other that the order just stated was made. As to the "United Aged Home," whose affairs were brought into suit by the appellant, there is so far nothing to show that the assumption upon which with reference to it their Lordships are still proceeding, is not otherwise than justified.

Pursuant to the leave given as stated, the Attorney-General duly applied under the ordinance for the appointment of trustees of the charitable trust declared by the Court, and by order of the 11th July, 1927, upon his petition, the District Court appointed the respondents, Abraham Zvi Goldsmith, Akiba Eliash and Moses Silver to be such trustees. There has been no appeal from that order. The appointment has not been challenged in any quarter, and ever since its date, these respondents have been acting as trustees of the "United Aged Home." At the suggestion of the appellant himself, they were served with his petition of appeal to the Supreme Court against the judgment of the 5th July, 1927. They duly appeared and supported that judgment and the appeal was dismissed by a judgment of the Supreme Court of the 16th December, 1927. On the present appeal therefrom, they are the only respondents.

In other words, the judgment of the District Court of the 5th July, 1927, has been accepted by the Rabbinical authorities, and is canvassed now only by the appellant. He asks that the judgment be discharged. He does not ask for judgment in his own favour. *In hoc statu*, he recognises that he is not in a position to do so. He must confine his claims before the Board to one for an order that the action be remitted to the District Court for further trial. His true case, the appellant says, has never yet been heard. The District Court refused to hear his witnesses in support of it. The oral judgment of the 5th July, 1927, was brought into Court, typed and ready to be delivered, before, at that hearing, any argument had been addressed to the Court by Counsel.

Their Lordships disregard and will not again return to the complaint that the judgment was immature. The case had been before the Court on many previous occasions, while no complaint on that score can be made with reference to the learned Judges of the Supreme Court by whom the judgment of the District Court was affirmed. But the allegation that the appellant's witnesses were not heard in support of his case is one which must be inquired into. It is too serious in character to be ignored. Before embarking upon that inquiry, however, their Lordships permit themselves to express the doubt whether, in the special circumstances of this case, a further hearing could advantage anyone. They regret that the appellant, avowing himself to be a trustee only, should in the circumstances think it right to advance such a demand.

The hearing before the District Court on the 5th July, 1927, was the last of four separate hearings of the action in that Court. The case has been four separate times before the Supreme Court on appeal. It has now been pending for nearly nine years. Its long drawn-out proceedings, until the 5th July, 1927, barren of result, are already in the region of scandal. To send back the cause for a rehearing on the ground that, so far, it has never been heard at all, would cause the judicious to grieve. But

that is not all. The action is concerned with charitable funds, the safety of which is now ensured by the existing judgment. As a result of it, the affairs of the charity are in the hands of independent trustees, who for over four years have been in control, and upon whose competence and integrity no kind of reflection has been cast. To the appellant, again, the only consequence of the judgment is that as a result of it he has ceased to hold a trusteeship which, as is still being assumed, he had claimed to be his, a grievance hardly serious enough of itself to earn a welcome for the displacement of a judgment attended by so much benefit to every other interest concerned.

A plaintiff, however, is entitled to a hearing of his pleaded case. That right must be vindicated as often as it is without justification denied. Accordingly, the appellant's complaint must receive dispassionate investigation at their Lordships' hand, and if made good, must be redressed, however unfortunate the result in the present instance must almost necessarily be.

The complaint to be investigated is that the appellant was not given the chance to prove his real case in the District Court. What was his case as so described? Was it within the purview of the action as pleaded? These seem to be the questions to which attention must now be directed.

Throughout the proceedings in their earlier stages, it was apparently taken for granted, on all hands, that "the United Aged Home," whose mail the appellant, as trustee, was seeking to have delivered to himself, or by his direction, was the charitable institution already described in this judgment. As the proceedings developed, however, and the pretensions of the Rabbinical authorities to control that charity through trustees appointed by the Beth Din became more formidable, it was suggested by the appellant's Counsel that "the United Aged Home," with whose affairs the action was concerned, was something quite different from that well-known Institution. The assertion, apparently first definitely put forward at the second hearing before the District Court (*see* Record, p. 19), and thereafter made with increasing emphasis, was that the plaintiff's "United Aged Home" was merely the trade name of the appellant attached by him to an organisation initiated by himself for the collection of funds to be applied to charity. The mail addressed to "the United Aged Home" was really addressed to himself, and did not belong to "the Wakf," *i.e.*, to the charity in the other sense of these words. (*See* Record, p. 21.)

The witnesses whom the appellant desired to call and whose evidence was, he says, rejected were to be called to prove these allegations. It was never apparently suggested that "the United Aged Home," in the physical sense of buildings or lands, in any way belonged to this charitable organisation of the appellant's.

Now no application to amend the pleadings was ever made. Was such a case within the ambit of the statement of claim as it

stood, or was it not? Unless the answer is in the affirmative any evidence in support being irrelevant to any issue in the suit was rightly rejected. That, then, is the question, and the answer to it, as their Lordships think, must quite clearly be in the negative.

As has already been seen, the "United Aged Home" referred to both in the defence and judgment of the 5th July, 1927, is indubitably the charity above described. That the appellant also is, in the action, referring to that charity is shown by a document to which while he was actually its trustee he put his hand as also by the contents of his statement of claim, the relief in which is based upon the alleged breach by the defendant Perlman of his obligations under that document. The document referred to is dated the 2nd May, 1918, is signed by one Eliahu Ram, the appellant, and the defendant Perlman. In it the appellant and Ram are described as "Trustees of the United Aged Home," and in it is recorded a meeting of these trustees, at which they had resolved to appoint Perlman Treasurer of the Institution. Through his hands the funds of the Institution were to pass, subject, however, to the conditions stated in the instrument, two of which were as follows:—

"A. The aforementioned Trustees," that is to say, the appellant and Eliahu Ram, "shall prepare immediately circulars to the Banks, the Post Office, the Joint Distribution Committee, and the Spanish Consul, *i.e.*, to all the channels through which moneys flow to our Institution, officially advising them of the appointment of the said Treasurer and notifying them that as from this date they are not to deliver moneys to our Institution, except against the three signatures of the said Trustees and the said Treasurer.

B. The Trustees Rabbis Abraham Shorr and Eliahu Ram are adjudged highly satisfactory in the performance of their duty, and bear the responsibility for the entire administration of the Home. It is, therefore, resolved that they shall receive remuneration out of the funds of the Institution (as keepers of cabinets in the temple receiving remuneration out of the funds of their cabinet). Any trustees, however, that may be subsequently appointed shall only bear the title of Honorary Trustees or some designation like advisory Board, and none of them shall receive any remuneration from the Institution funds nor shall their signatures be necessary for the receipt of moneys."

Their Lordships are not concerned now with the remarkable provision whereby the appellant and Ram, two charitable trustees, purport to assign to themselves exclusively a right to remuneration for their services. This reservation might well prove to be a fatal obstacle to any final success of the appellant in these proceedings. But for present purposes, it is sufficient to note that the treasurer-ship of "the United Aged Home" to be held by Perlman, is one constituted by an appointment from two trustees and not from the appellant alone, and that upon any fair construction of the

document "the United Aged Home," "for the entire administration of which" the two trustees "bear the responsibility," point to the Institution already described in this judgment.

This same conclusion results even more clearly from the statement of claim. The allegations therein, by which the appellant seeks to justify his right to sue for its mail as a trustee of "the United Aged Home," are that he and the said Eliahu Ram (the latter, however, is no party to the action) are the trustees of "the Home" and have been so since 1910. The pleading then sets up the defendant Perlman's appointment as Treasurer by the instrument of the 2nd May, 1918. It alleges that without any authority from the appellant the mail addressed to the Institution has been handed over against Perlman's sole signature: that recently the appellant has had complaints from the inmates of the Institution to the effect that Perlman was committing irregularities in his capacity of Treasurer, and that the Postmaster-General, notwithstanding his objection, has continued to hand over the mail to Perlman on his sole signature. Accordingly, the appellant claims as against the Postmaster-General an injunction to restrain him from handing over the mail in question to Perlman, or to anyone without the appellant's signing therefor. As against Perlman, he claims an injunction restraining him from interfering with or applying to the Post Office "for the mail of the Institution" and from taking any part whatsoever in the affairs of the institution "or entering its precincts."

Now, first of all, it is clear from this pleading that the Institution referred to is the institution of which Perlman had been appointed Treasurer. Further, it is an institution with "inmates" from "the precincts" of which Perlman is by the order of the Court to be excluded altogether; an institution of which, according to the allegation, both the appellant and Ram still remain trustees. The institution has no reference whatever to any trust or collecting organisation, with neither premises nor inmates for which the appellant could claim sole responsibility and of which there had never been any trustee but himself or one appointed by him.

In these circumstances there can be no doubt as to the issue to which the rejected evidence was to be directed. It was thus described by the appellant's counsel at the final hearing in the Supreme Court. See p. 62 of the record. "President, District Court, should have heard my witnesses, who would have said that Shorr had founded an organisation for collecting of subscriptions."

Their Lordships say nothing, of course, about the difficulties which must have confronted the appellant in any attempt to prove such a case with any effective result. They do, however, say that in their judgment, such a case was in no way within the purview of the action, and for that reason alone, any evidence

tendered in support of it was rightly rejected. It must have been disregarded by the Board had it been admitted.

With that ground for the discharge of the order of the 5th July, 1927, out of the way, no other justification for this appeal remains. In the course of their judgment the learned Judges of the District Court say this :—

“ Both parties agree and it is further abundantly clear from the documents submitted that the Institution in question has for its object the relief of needy Jews of the Ashkenazi Section of the Jewish Community who are resident or come to spend their last days in Jerusalem, and that the property, proceeds and income of the Institution and the subscription sent to it from abroad are or ought to be devoted to the said charitable purpose.”

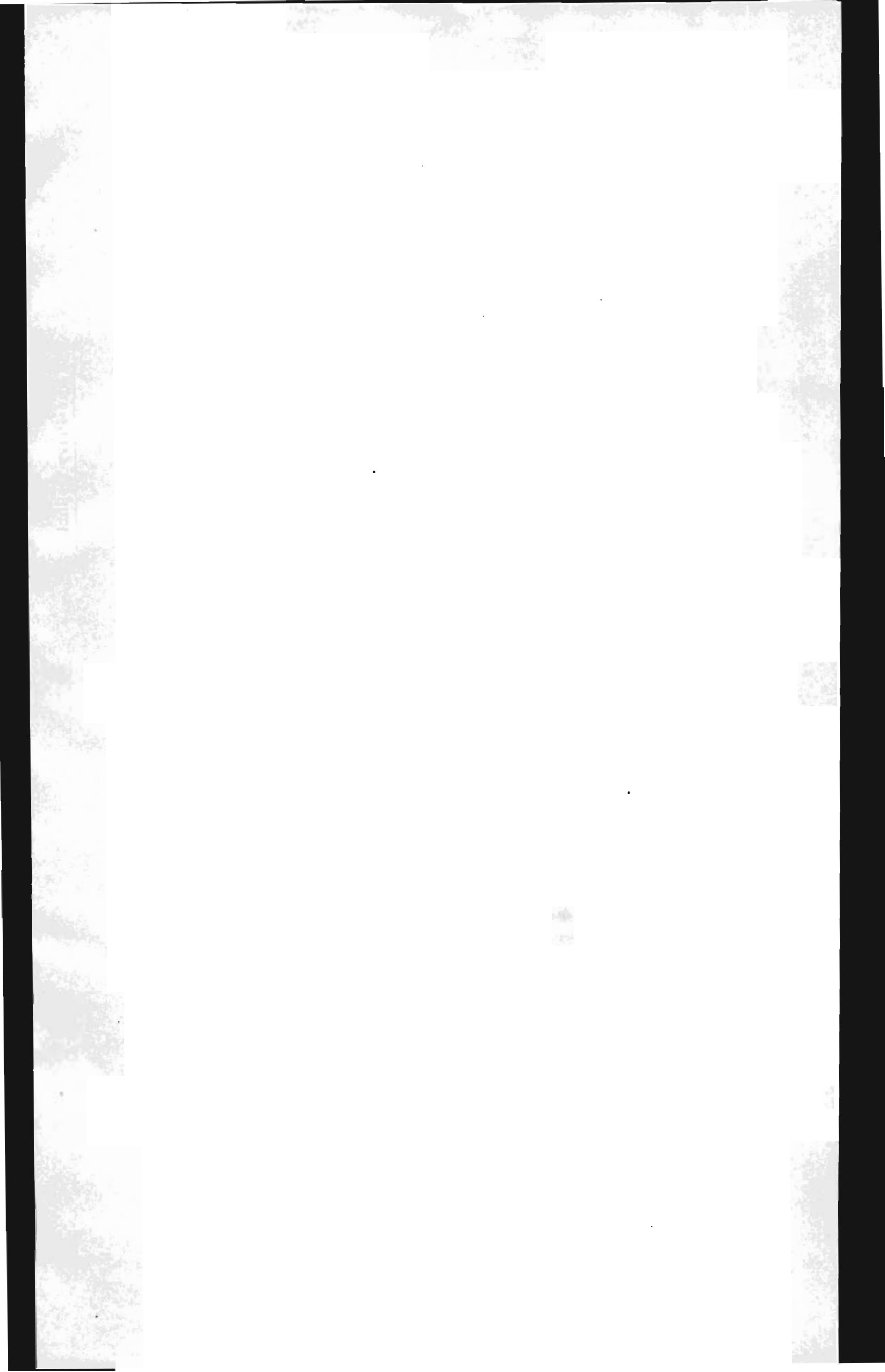
This finding of fact was expressly accepted by the Supreme Court and it is now concurrent. The Supreme Court held, also, that the charitable trust declared by the District Court was rightly described in the words from the judgment of that Court already transcribed.

Both Courts are also agreed that there were, in July, 1927, no trustees of the Institution so described. Upon that point the Beth Din Trustees might have had something to say had they objected to their own supersession. But they have accepted the judgment on that as on all other matters, and the appellant has failed to establish, if, indeed, he then desired to contend, that of the charitable trust declared, he remained in any sense a trustee. It appears to their Lordships, on the evidence available, that he had ceased to be such trustee in July, 1918.

Nor has it been seriously suggested that if there were no trustees of the charity it was not within the power of the Court, under the ordinance, to appoint the respondents to be trustees as it did by the order of the 11th July, 1927, from which, indeed, there has been no appeal.

In short, this appeal in their Lordships' judgment is without either merit or foundation. It ought to be dismissed, and with costs.

And their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

RABBI ABRAHAM SHORR

v.

THE TRUSTEES OF THE UNITED AGED HOME
(INSTITUTION), LIMITED.

DELIVERED BY LORD BLANESBURGH.

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1932.