

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Nawab  
Syed Ashgar Ali and others v. Dilrus  
Bannoo Begum, from the High Court of  
Judicature at Fort William in Bengal;  
delivered 28th June 1877.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS suit was instituted under Act 20 of 1863 against the Respondent, as the Matwali of a Mahommedan religious endowment, for malversation in wasting and misappropriating the estate. The Plaintiffs (Appellants) sought to obtain an account, the removal of the Respondent from the office of Matwali, and the appointment of two of the Plaintiffs, who are her nephews and next heirs, in her place. The allegation in the plaint, which is the foundation of the Plaintiffs' case, is as follows : " That the Defendant has by a registered waqf-  
" namah of the 25th Zikad 1268 Hijri,"  
answering to the 10th September 1852, "en-  
" dowed the entire estate held and owned by her  
" to the Imambara for religious purposes." The Judge of the Court of the Twenty-four Pergunnahs made a decree in favour of the Plaintiffs, establishing the validity of the endowment, and granting the relief prayed. This decree was reversed by the High Court, on the ground that the allegation in the plaint which has just been cited was not established. It was also held that the endowment, if established, was not of such a public nature as would sustain a suit under Act 20 of 1863.

The Respondent inherited a large estate from her mother, Nigarara Begum, having survived two brothers who died in their mother's lifetime. Two of the Plaintiffs are the sons of one of these brothers; the other three Plaintiffs are persons in no way connected with the family, but who claim the benefit of the endowment. The mother, Nigarara, died in 1850; and about two years afterwards the tauliutnamah relied on was executed. The family are Mahomedans of the Sheah sect. The tauliutnamah is dated the 10th September 1852, and the material parts of it are these: "I make a trustworthy declaration  
 " and a legal acknowledgment, and give in  
 " writing to the effect that I consider it indispen-  
 " sable and incumbent upon me to continue and  
 " perpetuate the ceremonies for pious uses of  
 " such description as 'fatiha' (offering prayers  
 " for the dead) 'hazrat,' on whom be the bene-  
 " dictions, &c., which is the fixed and settled  
 " usage of my family. I have no lawful children  
 " or grandchildren who may be my legal heirs,  
 " therefore talooka of Chitpore," describing  
 certain property, "and all the compensation  
 " money, &c., the price of which at present is  
 " estimated at one lakh of Rs. (1,00,000) which  
 " I hold in my possession, without anyone  
 " having any share therein, and without there  
 " being any other co-partner, as my legal here-  
 " ditary right, having received the same from  
 " my ancestors in accordance with what is laid  
 " down in separate documents, the same for  
 " special pious purposes I have made waqf in  
 " perpetuity with all inherent adventitious rights  
 " and interests, large and small, lying therein  
 " attached thereto, and arising therefrom, with  
 " all appurtenances particularly of pious uses.  
 " As long as I live, the wife of my brother, of  
 " blessed memory, Mussummat Jigri Khanum,  
 " the daughter of the late Moonshi Hidayat Ali,

“ shall remain Matwali of the afore-mentioned  
 “ waqf. If I, the endower, die before the afore-  
 “ said lady, then the affairs connected with  
 “ tanliut shall, in a perfect form, revert to the  
 “ afore-mentioned lady. Should the afore-men-  
 “ tioned lady die before me, I, the bequeather,  
 “ alone will act as a Matwali of the waqf endowed  
 “ property. The one of us two who may survive  
 “ the other shall, either at the time of death or  
 “ previous to it, appoint whomsoever she finds  
 “ most worthy and befitting as a trustee and  
 “ (Matwali) to the endowment.” Then the deed  
 goes on, “The specification of the expenses is  
 “ this :—All the income derived from the afore-  
 “ mentioned endowment has, after the payment  
 “ of the Government revenue, been divided into  
 “ 28 parts. Of these, 15 parts are to be applied  
 “ to the expenses of the fatiha of the Lord of  
 “ the Universe, the last of the prophets (Ma-  
 “ homed) and the Imams, the blessing and peace  
 “ of God be with them all, and the expenses of  
 “ the ten days of Mohurram and all the holy  
 “ days, the repairs of Imambari and tombs;  
 “ seven parts thereof shall be received by all  
 “ the amlahs and servants, whose names are  
 “ inserted at the foot of this or other documents  
 “ bearing the seal and signature of me, the  
 “ declarant, which they may have in their pos-  
 “ session, some from generation to generation,  
 “ and others as long as they retain the service,  
 “ as detailed in separate documents; and six  
 “ parts thereof will be received by us, the Mat-  
 “ walis, in equal shares.” Now, the effect of this  
 instrument is to devote all the property which  
 this lady possessed to religious uses, to destroy  
 her rights as proprietor, and to constitute her  
 one only of the Matwalis for the management  
 of the endowment, giving her  $\frac{2}{3}$  parts of the  
 income of the whole property only for her  
 management. The deed was written in Persian,

a language the Begum did not understand. Her case is, that although she executed the instrument, its contents were not explained to her, and that she was ignorant that its effect would be that which has just been described.

Their Lordships are of opinion, agreeing with the High Court, that it is not established that the Begum understood the full import and effect of the document she executed. It is incumbent on the Court, when dealing with the disposition of her property by a purdanasheen woman, to be satisfied that the transaction was explained to her, and that she knew what she was doing; and especially so in a case like the present, where for no consideration, and without any equivalent, this lady has executed a document which deprives her of all her property.

A mutation of names from her own alone to her own and Jigri Khanum's as Matwalis was effected; but the mookteamumah was not proved. Undoubtedly, also, the estates were afterwards described in several documents as waqt mehals, and she herself was described in many transactions relating to the estates as Matwali. Receipts for rents were given first in her own and Jigri's name as Matwalis, and, after Jigri's death, which happened about two years after the deed, in her own name as Matwali. Pottahs were granted in which she is so described. Suits were also brought in which she is Plaintiff with a similar description. On the other hand, for more than 20 years, notwithstanding she was nominally described in the transactions to which I have referred as Matwali, she actually dealt with the property as her own. She granted mourugsi leases, sold parts, and mortgaged other parts, and in every way treated the property as her own, and as if it were not subject to a religious trust. Those acts, which extended over the whole time from the execution of the deed to the

commencement of the suit, are very strong to show her own consciousness, that while she was described as Matwali she really believed herself to be the proprietor and owner of the property, and had no idea that she had reduced herself to the state of a mere manager of it, entitled only to  $\frac{3}{8}$ th parts of the income for her maintenance.

Her own evidence, with reference to the deed, is given in an apparently candid manner. She admits its execution, and that she intended to create some trust for religious purposes, but she denies that she knew what was the full extent and import of the deed. She says, "I executed the Tauliutnamah when  
 " I was residing in this house. I have been,  
 " prior to the execution of the Tauliutnamah,  
 " residing and am still residing in this house  
 " since my mother's death. When my mother  
 " died I was then at Moorshedabad. A year  
 " after my mother's death I came here, but in  
 " the way my nephews Nawab Ashgar Ali  
 " and Nawab Ahmed Ali, the Plaintiffs in this  
 " suit, stopped my boat. I was detained for  
 " 20 days near Roushenabad, and then I applied  
 " to the magistrate and got my boat released.  
 " After this I came here. Two or three years  
 " after I came here, I executed this tauliut-  
 " namah. I myself do not how to read and  
 " write. I told Ali Zamir, my servant, to draw  
 " out a will, or some such writing, as will after  
 " my death be able to keep up the religious  
 " ceremonies of my mother. Then he brought  
 " to me a writing which he read to me." She says in another place that it was read in Persian:  
 " He also told me that after my death whoever  
 " will be the matwali will perpetuate the works  
 " (*i.e.*, the religious affairs) of my mother. I  
 " do not understand Persian." Then there is a note by the Commissioner: "A portion of  
 " the document marked 'A' was read to the



" witness, and she says, I do not understand it.  
 " That portion being translated into Urdu by  
 " Abdool Aziz, she says: I now understand it.  
 " My object in making the tauliutnamah was not  
 " what is stated in the part marked A." This  
 part of the deed is not identified, but no doubt it  
 was a material part. Then there is this question,  
 " Whether for the purpose of perpetuating the  
 " ceremonies observed in your family from  
 " ancient time, you executed the tauliutnamah?  
 " Answer, Moonshi Ali Zamen brought to me  
 " a writing saying that I shall have absolute  
 " power over the properties during my life-  
 " time." If the deed was thus represented  
 to her, then it did not carry out her intentions.  
 It was a deed which not only did not carry them  
 into effect, but was entirely and absolutely opposed  
 to them. She intended and desired to retain  
 the estate for her own life, and to create an  
 endowment by way of testamentary disposition  
 of it after her death. The person who prepared  
 the tauliutnamah may have been aware that she  
 could not effect her purpose by such a disposi-  
 tion, and having prepared this deed may have  
 led her to suppose that it did carry out her  
 purpose, without explaining to her that it would  
 deprive her of her property and leave her in the  
 state of a mere manager of it, liable to be  
 deprived of that management if she broke any of  
 the trusts of the deed. It is impossible to sup-  
 pose that she could have been conscious of the  
 tenor and effect of the deed, when immediately  
 after, and ever after, she wholly disregarded the  
 trusts of it by the mode in which she dealt with  
 the property.

There are eight witnesses to the deed; one  
 only has been called, and he does not prove that  
 the deed was read over and explained. This  
 witness does not say that he was present when  
 it was read over to her in Persian. Undoubtedly

if a person of competent capacity signs a deed, it is to be presumed that he understood the instrument to which he has affixed his name ; but in the case of a purdanasheen woman, who had, as in this case, no legal assistance, the ordinary presumption does not arise, and it is incumbent upon the Court to be satisfied, as a matter of fact, that she really did understand the instrument to which she has put her name. This seems to have been the view of the High Court, which it has expressed in two passages of the judgment. The Court says, "It is clear that she had no professional assistance at the time. Ali Zamen is described as " an old and trustworthy servant, but not a " lawyer,"—(it may be observed, the Respondent says that this is the only deed that he ever drew as far as she knows,)—" and none of the witnesses " examined for the Plaintiffs prove that the " Begum, in creating the waqf, was in any way " cognisant of the effect of her act. It has been " generally held in this country that Purda- " nashir ladies have a claim to special considera- " tion, particularly in cases where they deny on " oath an effectual knowledge of documents " which they are said to have made." And again, the Court says, "In this case we have an " illiterate and prejudiced woman, with no pro- " fessional assistance, executing a deed written " in a language which she did not understand, " and which, as she swears, was not explained " to her, by which she completely divests her- " self of the whole of a large property, and then " immediately sets to work to do a series of acts " which would have the effect of turning her " out of the matwalliship she had created for " herself, and of throwing her upon the world " absolutely penniless. Before we come to such " a conclusion we ought to have very distinct " proof that the real purport of the waqf deed

“ was properly explained to Dilrus Banoo  
“ Begum, and that she knew what she was  
“ about, and that it is not too much to say that  
“ no such proof has been attempted to be given  
“ by the Plaintiffs.”

Their Lordships having come to this conclusion upon the main facts of the case, it is not necessary for them to determine the other point which the High Court decided, namely, that this endowment was not of such a public character as would sustain a suit under Act 20 of 1863, but their Lordships desire to say that they see no reason for disagreeing with that part of the judgment.

In the result, their Lordships will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this Appeal, with costs.