

*Privy Council Appeal No. 116 of 1923.*

*Oudh Appeal No. 16 of 1922.*

Mirza Fida Rasul and others - - - - - *Appellants*

v.

Mirza Yakub Beg and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 18TH NOVEMBER, 1924.

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*Present at the Hearing :*

LORD SUMNER.

SIR JOHN EDGE.

MR. AMEER ALI.

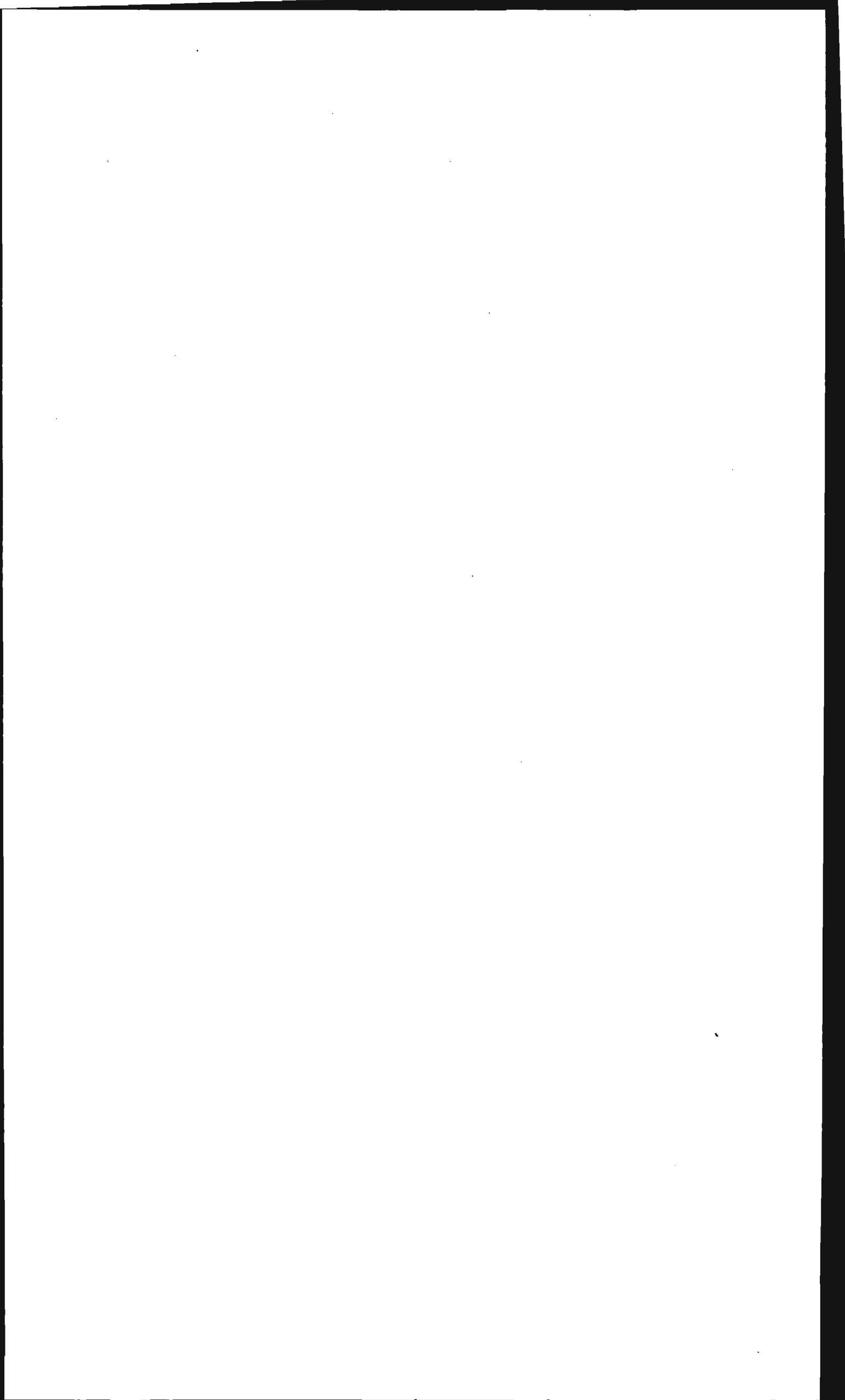
SIR LAWRENCE JENKINS.

[*Delivered by LORD SUMNER.*]

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In July of 1911 Mirza Habib-ullah Beg executed a deed of wakf. He was at that time a man of about 67 years of age. He lived for some seven years afterwards. In substance this appeal raises, and raises only, the question whether that deed of wakf ought to be set aside upon the ground that Mirza Habib-ullah Beg's mind was so dominated by two nephews, who managed his business, that the transaction ought not to stand. The trial Judge, misled, as their Lordships think, by some misapprehension as to the onus of proof, and also by some confusion between setting aside the whole deed and merely avoiding a particular provision in a deed which benefits a person under a fiduciary relation to the maker of it, came to the conclusion that he should set aside the entire deed of wakf. This judgment was reversed on appeal. There are concurrent findings of fact that Mirza Habib-ullah Beg when he executed this deed was *compos mentis*,

was of a sound disposing mind, and, as far as is known, was in no way disqualified by his infirmities from understanding what he was doing. During the rest of his life he not only never challenged this deed of wakf, but there is evidence that he recognised it. spoke of it as being in existence, and gave effect to it, he himself having been named in it as the mutwalli during his lifetime. He did not denude himself of the whole of his property, for he reserved a substantial portion for the maintenance of himself and his wife. He was himself childless, and when the deed comes to be examined it is in no respect unconscionable. Though not very skilfully prepared, it is quite clear and is entirely such as a reasonable and piously disposed Mohammedan might have chosen to enter into. The only thing that can be said against it, or that has been said against it, in substance is that it conferred certain benefits upon these two nephews, because one was appointed mutwalli after Mirza Habib-ullah Beg himself, and the other was appointed supervisor, and provision was made for their emoluments and expenses. The Court of the Judicial Commissioner formed the opinion, with which their Lordships entirely agree, that such provision was not at all unreasonable in amount or in character, and, under these circumstances, they came to the conclusion, which their Lordships think is the right conclusion, that, as a matter of fact, the deed was the disposition of Mirza Habib-ullah Beg himself, made with an understanding mind, free from domination or coercion or undue influence by others. They also found, and their Lordships agree in the finding, that he was not coerced or dominated in any way from that time to the day of his death, a finding which in itself would dispose of the matter, because, unless the contrary can be made out, the suit is barred by limitation. The Court of the Judicial Commissioner went elaborately into the authorities, and their Lordships think it unnecessary to discuss them now. They show that there is no question here which is not disposed of by the findings of fact. The Court of the Judicial Commissioner further expressed an opinion upon the question : Whether, according to the Mussulman law, a wakf of cash is valid. This has not been discussed before their Lordships, and, without indicating any dissent from the opinion of the Court of the Judicial Commissioner, their Lordships think it unnecessary to express any opinion upon this point of their own. In the result the appeal fails and should be dismissed with costs, and their Lordships will humbly advise His Majesty to that effect.



In the Privy Council.

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MIRZA FIDA RASUL AND OTHERS

2.

MIRZA YAKUB BEG AND OTHERS.

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DELIVERED BY LORD SUMNER.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1924.