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Commissioner finds that to this category belong copper coins and cowries, and gold and silver articles (other than coins) of a value of less than eight annas and also cotton cloth of an inferior quality. The Khadims urge that they are entitled to all coins of two annas or less in value, and that it is immaterial whether they are made of copper or any other metal such as silver or nickel. It appears that the Khadims, who worked as servants of the Shrine, were allowed to take coins of a small value which were given by the pilgrims for their services, and there is no valid reason why the Sajjada Nashin, who occupies a position of importance and dignity should claim a share in coins of small value which are given by the pilgrims as rewards for the services rendered to them by the servants. Nor is there any evidence to suggest a differentiation between coins of copper and those of other metals. Indeed, it is doubtful whether the learned Judge of the Appellate Court intended to make any such distinction. Their Lordships think that the Khadims are entitled to all the coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal. To this extent the appeal preferred by the Khadims is allowed, but in all other respects the judgment pronounced by the Court of Appeal must be affirmed.

Their Lordships desire to make it clear that the Durgah Committee referred to in the judgment appealed against is a Committee to hold and to administer the Durgah property on behalf of the Durgah, and has no right as against the institution. The result is that while the appeal brought by the Diwan should be dismissed, that preferred by the Khadims should be allowed only to the extent mentioned above. Considering that the Khadims succeed on only one minor point but fail in all other respects, their Lordships think that the parties should bear their own costs here. They will humbly advise His Majesty accordingly.

K.S./R.K.

Order accordingly.

Solicitors for Appellants—

T. L. Wilson & Co.

Solicitors for Respondents—

Douglas Grant & Dold.

*A. I. R. 1938 Privy Council 73

(From Lahore)

6th December 1937

LORD THANKERTON, SIR LANCELOT

SANDERSON AND LORD NORMAND

(LORD PRESIDENT OF THE

COURT OF SESSION).

*Sunder Singh, Mallah Singh Sanatan,
Dharam High School Trust, Indaura.*
— Appellants.

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Managing Committee, Sunder Singh-Mallah Singh, Rajput High School, Indaura and others — Respondents.

Privy Council Appeal No. 62 of 1936.

* (a) Specific Relief Act (1877), S. 42, proviso — Plaintiff claiming to be trustee and administrator of institution—Neither plaintiff nor defendant in possession or control of institution—Suit for declaration by plaintiff maintainable — Injunction against defendant is further relief.

Where the plaintiff claims to be a trustee and administrator of certain institution of which neither he nor defendant is in possession or control of the management, a suit for mere declaration under S. 42 is maintainable; and where it is not open to the plaintiff to pray for possession also as against the defendant, injunction against the defendant is further relief within the meaning of the proviso to S. 42.

W.A. (b) Societies Registration Act (1860).
S. 3, 19—Presumption of proper registration
—Not certificate of registration under S. 3,
but copies of Rules and Regulation and Memo-
randum certified under S. 19 are sufficient
proof of due registration.

Presumption that an association is duly registered arises not on the certificate of registration granted by the Registrar under S. 3, but on the copies of the Rules and Regulations and Memorandum certified under S. 19, which constitutes the prima facie evidence of the matters therein contained.

(c) Evidence Act (1872), S. 106—Question whether plaintiff is authorized to represent institution in suit—Proof of the minutes of the meeting of Managing Committee constituting such authority is sufficient to discharge burden on plaintiff.

Where the question is whether plaintiff is authorized by the Managing Committee of an institution to institute a suit on its behalf, and the proof of the minutes of the meeting of the Managing Committee constituting such due authority is available, it is sufficient to discharge any burden on the plaintiff under S. 106. [76 O 2]

* (d) Trust — Creation of — Charitable endowment by a Hindu in Punjab — Purpose should be clearly specified — Property intended should be set apart — Divestiture by donor of property is necessary — But not writing essential.

For the foundation of a charitable endowment by a Hindu in the Punjab, no writing is required. What is necessary is that the purpose be clearly

of 1863, to perform the duties of the trustees of the Durgah property. The trial Judge adjudicated upon the rights of the various parties to the dispute, but on appeal his decision has been modified by the Judicial Commissioner of Ajmer Merwara in respect of a few matters which will be discussed presently. The Sajjada Nashin as well as the Khadims are dissatisfied with the appellate judgment, and have appealed to His Majesty in Council. Their Lordships, after examining the arguments submitted to them, do not think that that judgment can be successfully challenged except on one small point. In view of the importance of the points in controversy, their Lordships however consider it advisable to discuss them *en passant*.

On the question of the validity of the perpetual lease of the Sajjada Nashin's share of the offerings, the Court of Appeal, concurring with the trial Court, holds that the right to receive a share of the offerings is a right attached to the office of the Diwan, and that each successive incumbent of that office is entitled to receive that share as long as he holds the office. An alienation made by a Diwan of his share in the offerings cannot bind his successors. This decision has not been impugned by the learned counsel for the Khadims, and it is therefore clear that the lease cannot preclude the present Diwan from claiming his legitimate share in the offerings.

As regards the offerings made by the pilgrims, it was conceded by all the parties before the Court of Appeal that a distinction must be drawn between those articles, such as qabarposhes (coverings for the tomb), which are presented for the use of the Durgah, and the other offerings which are made at the Durgah. While the offerings belonging to the latter category may be divisible between the Diwan and the Khadims, those made for the specific use of the Durgah are the property of the Durgah. The Khadims however claim that an article presented for the use of the Durgah becomes the property of the Durgah only if the donor pays a tawan or custody money to them in respect of that article. There is however no documentary evidence to support the theory that the Khadims are entitled to an article presented for the use of the Shrine, if the donor thereof does not pay them custody money. They place their reliance only on

oral evidence, which has been rightly disbelieved by the Court of Appeal. Indeed the claim is wholly unreasonnable and cannot be sustained. The qabarposhes, as well as gold or silver vessels or implements presented for the use of the Durgah must therefore be kept by the Durgah Committee on behalf of the Durgah; and neither the Diwan nor the Khadims are entitled to participate in those offerings.

There remains the question of the respective rights of the Diwan and the Khadims in the offerings which are not the exclusive property of the Durgah. It is contended by the Diwan that he is entitled to all the offerings made at the Durgah to the exclusion of the Khadims, and this claim is based upon a firman alleged to have been granted by the Emperor Shah Jahan in 1640 A. D. This firman is however of doubtful authenticity, and the Courts below have concurred in holding that the firman has not been acted upon, and that the practice which has been followed by the successive Diwans and Khadims in respect of the distribution of the offerings runs counter to the terms of the firman. Their Lordships see no valid reason for departing from the conclusion, findings on a question of fact, and the claim of the Diwan to exclude the Khadims from a share in the offerings at the Durgah must therefore be rejected. This is the only point raised by the Diwan in his appeal, and that appeal must therefore fail.

It appears that the offerings, which are not intended for the use of the Durgah, are made at various places in the buildings attached to the shrine; but all the valuable presents are made within the main building of the sacred dome which contains the tomb of the Saint. Now, the Khadims maintain that the Diwan is entitled to share only in the offerings made at the foot of the tomb, and that he has no right to share in the offerings made at other parts of the tomb. The Court of Appeal holds that there is no evidence to support this distinction, and it is significant that no such distinction was suggested by the Khadims in their written statement. The finding of the Appellate Court on the issue must therefore be affirmed.

There are certain other offerings of small value which have by usage been regarded as the exclusive property of the Khadims, whether they are made inside the dome or outside. The learned Judicial

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