

ACT No. XV OF 1878.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 5th September 1878).

An Act to make better provision for the management of the Husainábád endowment at Lucknow.

Preamble.

WHEREAS in the year 1838 the third King of Oudh, Muhammad Alí Shah, built at Lucknow a Mosque called Husainábád Mubárak for the purpose of the celebration therein of certain religious ceremonies and for the ultimate interment of himself and his mother;

And whereas, on or about the twenty-third day of November 1839, the said Muhammad Alí Shah deposited the sum of twelve lákhs of Lucknow sicca rupees in the treasury of the late East India Company at the Residency at Lucknow;

And whereas by a deed of gift dated the 15th of the month of Ramazán in the year 1255 of the Hijra, corresponding with the said twenty-third day of November 1839, the said Muhammad Alí Shah declared that the annual interest on the said sum of twelve lákhs of rupees at the rate of four per centum per annum, together with the rent of certain shops therein referred to and the income of certain religious offerings, should be applied to the payment of the pensions of certain persons therein mentioned and their descendants (hereinafter called "the pensioners"), and to defraying the expenses of the said Mosque and the repairs of a road therein mentioned; and by the same deed the said Muhammad Alí Shah appointed two of his servants named Rafík-ud-Daulah Sayyid Imám Alí Khán Bahádur and Azímulláh Khán Bahádur, and after them their descendants, generation

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tion after generation, to be Superintendents (*mutawalis*) of the said Mosque, and Sharf-ud-Daulah Muzaffar-ul-Mulk Muhammad Ibráhím Khán Bahádur Mustakím Jang, and his descendants after him, to be Agent of the pensioners only, and the expenses of the said Mosque were to be paid in perpetuity from the said treasury to the said two Superintendents and their descendants after them, and the said pensions were to be paid through the said Agent; and the said deed further provided that, in the event of failure of heirs of the said Superintendents or Agent, the British Resident for the time being at Lucknow should, with the concurrence of three-fourths of the pensioners, appoint one of their number to the vacant post. And the deed now in recital also contained the following provisions:—

“As the pensioners enumerated in this deed are objects of our peculiar consideration and favour, it is necessary that the Resident for the time being, owing to the union and friendship subsisting between the two Governments, treat them with kindness, and, considering them deserving of the support of the British Government, always afford them his aid and assistance.

“The undermentioned items of income are hereby remitted and shall be devoted to the expenses of the Husainábád Mubárák and its dependencies, and all the property in it is given by us as a gift. It shall not be optional with the sovereigns of Oudh, at any time, on any account whatsoever, to interfere in any way with it, and let the Resident for the time being, at the request of the *mutwalis* or Superintendents in this particular matter, give his countenance and support that this good work may continue in existence for ever;”

And whereas the items of income so referred to were the rents of certain shops attached to the said Mosque and the income from religious offerings thereto;

And whereas, on the fifth day of December 1839, Colonel Caulfield, the British Resident at Lucknow, addressed a letter to the said Muhammad Alí Shah in

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which he acknowledged the receipt of the said deed of gift, and stated that His Majesty might rest satisfied that every attention would be paid by the Resident to the wishes therein expressed, that his relatives would ever meet with the utmost attention, and that their interests would always be attended to by the Resident so far as his official duty permitted ;

And whereas, some time after the said twenty-third day of November 1839, the said Muhammad Alí Shah added to the endowment so created Government promissory notes amounting to the sum of two millions four hundred and seventeen thousand five hundred sicca rupees, but he did not expressly declare any trusts of such further endowment ;

And whereas the said notes are believed to have been in September 1841 converted into Government promissory notes for Company's rupees and to have been then endorsed in favour of the said Superintendents and the Agent ;

And whereas, at some time between the same date and the month of February 1856, certain surplus-funds of the said endowment were invested in Government promissory notes, some in the names of the said Superintendents and Agent, and some in the names of the said Superintendents only ;

And whereas, after the mutiny of 1857 and the re-occupation of Lucknow, the said Mosque was found to have been stript of all its valuable property ; and the promissory notes of which the said endowment then consisted were missing, and it appeared on enquiry that the said Agent had joined the mutineers and been killed during an attack on the said city, and that the said Superintendents had sold certain of the same promissory notes ;

And whereas the Government of India thereupon removed the existing Superintendents from their office, and called upon the existing pensioners to appoint under the hereinbefore-recited provisions of the fourth article of the said deed of gift two other Superintendents and an Agent ;

And whereas the Nawábs Muhsin-ud-Daulah and Muntáz-ud-Daulah were accordingly appointed Superintendents,

perintendents, and Shahámatulláh Khán was appointed Agent, and such appointments were confirmed by the then Chief Commissioner of Oudh in the year 1860 ;

And whereas in the meanwhile most of the promissory notes so missing as aforesaid were recovered, and of some of the others duplicates were granted by Government ;

And whereas the Superintendents and Agent appointed as last aforesaid subsequently obtained from the Civil Court at Lucknow a declaration of their title to the arrears of interest which had accrued due on the promissory notes then constituting the said endowment ;

And whereas, in the month of June 1864, the said promissory notes and arrears were assigned to the said Superintendents and Agent free from all restrictions ;

And whereas the said Nawáb Muhsin-ud-Daulah has recently died, but the said deed of gift confers no power to appoint any other person to be a Superintendent in his stead ;

And whereas it is doubtful whether the aforesaid appointment of Superintendents and Agent was a regular and valid appointment, and whether there exists any person who can exercise the power of appointment conferred on the Resident by the said deed of gift ;

And whereas, owing to the changes which have happened since the death of the said Muhammad Alí Shah, it is expedient to provide for the management of the said endowment in manner hereinafter appearing ;

And whereas it is also expedient to indemnify all persons for anything done before the passing of this Act which might lawfully have been done if the said appointments of the said Nawábs and Shahámatulláh Khán had been valid ;

It is hereby enacted as follows :—

1. The Local Government may call upon the pensioners and such of the descendants of the said Muhammad Alí Shah as may for the time being reside

Power to appoint trustees of endowment.

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at Lucknow to nominate so many persons, not less than six in number, as they or a majority of them think fit, to be trustees of the said endowment ; and may appoint three of the persons so nominated to be such trustees :

Provided that the said Nawáb Mumtáz-ud-Daulah shall be one of the persons nominated and appointed as aforesaid.

Power to appoint in place of trustee dying, &c.

2. If any of the said trustees dies, or is desirous of being discharged, or refuses or becomes incapable to act, or is declared an insolvent, or is guilty of any misconduct which in the opinion of the Local Government disqualifies him to be a trustee, then and so often the Local Government may call upon the pensioners and such descendants to nominate so many persons, not less than two in number, as they or a majority of them think fit, to be trustees of the said endowment, and may appoint one of the persons so nominated to be a trustee in the stead of the trustee so dying or desiring to be discharged, or refusing or becoming incapable to act, or declared an insolvent, or deemed disqualified.

Appointment in default of nomination.

3. If the pensioners and such descendants, on being called upon under section one or section two to nominate, fail to do so within one month from the date on which they are so called upon, the Local Government may (except as provided in respect of the said Nawáb Mumtáz-ud-Daulah in section one) appoint such persons as it thinks fit to be trustees of the said endowment : Provided that the number of the trustees shall not in the whole exceed three.

Notification of appointment of trustees.

4. The appointment of trustees under this Act shall be effected by a notification in the local official Gazette, and the appointee shall become a trustee on the date fixed in the notification, or if no date is fixed, from the day after its appearance in such Gazette.

Validity of such appointment. Devolution of property.

5. The validity of any such appointment so notified shall not be questioned in any Court of justice.

6. After the first appointment of trustees under this Act, the whole property of the endowment shall, for the purposes of the endowment, always be vested in the whole body of trustees for the time being:

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7. The trustees for the time being under this Act shall, for the purposes of the endowment, have the entire management of the property and affairs of the endowment, and shall be responsible for the due conduct of such affairs.

Management.

In the event of any difference of opinion among the trustees, the decision of the majority of them shall prevail ; and such majority may, on behalf of themselves and their co-trustee, execute all such assurances as may be requisite for carrying into effect any lease or other disposition of any property of the endowment.

8. With the previous sanction of the Local Government, the said trustees may from time to time appoint some person, not being one of their own body, to act as their Secretary, to keep their accounts, conduct their correspondence and perform other ministerial duties, and may suspend or dismiss any person so appointed.

Trustees to appoint Secretary.

Every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary not less than one hundred rupees per mensem as the trustees, with the previous sanction of the Local Government, may direct.

9. If the said trustees, on being called upon by the Local Government, when the office of Secretary is vacant, to nominate a Secretary under section eight, fail to do so within one month from the date on which they are so called upon, the Local Government may appoint such person as it thinks fit to be Secretary ; and every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary as the Local Government may direct.

Power of Government to appoint in certain cases.

10. The Local Government may in its discretion dismiss any Secretary appointed under section eight or section nine who is guilty of any misconduct which, in the opinion of the Local Government, disqualifies him to be Secretary.

Power of Government to dismiss Secretary.

11. The receipts of the said trustees for any monies or securities which may be paid or transferred

Receipts of trustees.

to them in pursuance of this Act or the trusts thereof shall discharge the person paying or transferring the same therefrom and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof.

Indemnity of trustees.

12. The said trustees shall be chargeable only with such monies and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any of the property of the endowment may be placed; nor for the insufficiency or deficiency of any securities, nor otherwise for any loss or misapplication of the said property, unless the same is occasioned by or through their own wilful neglect or default; and they may reimburse themselves out of the said property all expenses properly incurred in or about the execution of their trust.

Power to call for accounts and information.

13. The Local Government may from time to time require the said trustees to render such accounts and other information respecting the said endowment as it thinks fit; and any trustee failing to comply with such requisition, or furnishing false information respecting such endowment, shall be deemed to have committed an offence under section 175, section 176 or section 177 (as the case may be) of the Indian Penal Code.

Indemnity-clause.

14. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if the hereinbefore-recited appointments of the said Nawábs and Shahámatulláh Khán had been valid; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.