
(1915) 07 CAL CK 0009
In the Calcutta High Court

Jitendra Nath Palit

APPELLANT

Vs

Lokendra Nath Palit and Others

RESPONDENT

Date of Decision : 15-07-1915

Acts Referred:

Universities Act, 1904 — Section 3

Citation : 34 Ind. Cas. 657

Hon'ble Judges : Imam, J;Greaves, J

Bench : Division Bench

Judgement

Imam, J.—This is an action brought to declare that two indentures, dated the 15th June 1912 and the 8th October 1912 respectively, executed by the late Sir Tarak Nath Palit are invalid and inoperative in law and that the properties covered by those indentures are unaffected thereby and form part of the estate of the deceased, and further for an order that the executors under the Will of the late Sir Tarak Nath do, in due course of law, administer the said properties as assets belonging to his estate.

2. The plaintiff Mr. Jitendra Nath Palit is one of the two sons of the late Sir Tarak Nath, and, under the Hindu Law of the Bengal School by which the family is admittedly governed, is one of the heirs of the deceased.

3. Sir Tarak Nath died on the 3rd October 1914, leaving a Will dated the 2nd May 1914, whereby he appointed his second son Mr. Lokendra Nath Palit and Mr. Sisir Kumar Mullick executors thereof. At the time of his death his heirs were his two sons above mentioned and his widow Lady Palit.

4. By the first indenture dated the 15th June 1912, Sir Tarak Nath purported to transfer and convey certain properties to the University of Calcutta on the conditions and upon the trusts mentioned in that deed.

5. By the second indenture dated the 8th October 1912, he purported to transfer and convey to himself, Sir Asutosh Mookerjee, Mr. Sisir Kumar Mullick, and the University of Calcutta, certain other properties upon trusts and conditions

mentioned in that deed.

6. By his Will dated the 2nd May 1914, after making certain express bequests in favour of some persons he devised the residue of his estate to the University of Calcutta to be held and applied by that body upon trusts specified in the two indentures.

7. Sir Tarak Nath's object in creating the trusts can best be expressed in his own language, which I quote here from the first indenture:

And whereas the Founder (meaning himself) has for sometime past contemplated doing something of a permanent character for the promotion and diffusion of Scientific and Technical Education in Bengal and the cultivation and advancement of Science, Pure and Applied, amongst his countrymen, and in the belief that this object could be best attained by the establishment of University Professorships of Science as a first step towards the foundation of a University College of Science and Technology, he approached the said University of Calcutta, &c, &c.

8. The conditions in that indenture are the following:

(a). The University of Calcutta should found two Professorships or Chairs, one of Chemistry and the other of Physics, and apply the entire income of the properties covered by the indenture or so much of it as they deem necessary towards the maintenance of those two Chairs, and should the entire income be found insufficient for the purpose, the University should make such recurring grant or contribution as may be required to supplement the deficiency.

(b). The said Chairs shall always be filled by Indians (that is, persons born of Indian parents as contradistinguished from persons who are called "Statutory Natives of India") to be nominated by the Governing Body hereafter mentioned, who may in their discretion require a Professor-elect to receive special training abroad before he enters upon the duties of his office and who may give such Professor-elect during such period of his training abroad such allowance, including travelling expenses, as may in each case be determined by the Governing Body -such allowance being considered as part of the maintenance expenses of the Chair or Chairs.

(c). In connection with the said Chairs the University shall from its own funds provide suitable Lecture Rooms, Libraries, Museums, Laboratories, Workshops and other facilities for teaching and research, and it shall out of its own funds earmark and set apart a sum of two lakhs and fifty thousand rupees and apply the same towards the construction of such Lecture Rooms, &c, of permanent and substantial structure with proper and adequate equipment on the site of premises No. 92, Upper Circular Road, one of the properties covered by the indenture.

(d) The Governing Body shall consist of the following persons:

(1) The Vice-Chancellor of the University as ex-officio president. (2) The Director of Public Instruction, Bengal. (3) The Dean of the Faculty of Science of the University. (4) The Dean of the Faculty of Engineering of the University. (5) Four members of the University to be annually elected by the Senate, at least two of whom shall be representatives of Calcutta Colleges under Indian management affiliated in Science to the University. (6) Four members to be nominated every three years by the Founder, and after his death by his representative or representatives in that behalf. The Hon'ble Sir Asutosh Mookerjee shall always be a nominee of the Founder if he has not otherwise a seat on the Board of the said Governing Body. The power of nominating a successor or successors shall be inherent in every original or derivative nominee of the founder. (7) Two representatives of the Professorial Staff to be elected by them annually from amongst themselves.

(e). The University shall from its own funds make such recurring and periodical grants as may be required (a) for the maintenance of the two Chairs, (6) for the maintenance of the Lecture Rooms, Libraries, &c., in such a state of efficiency as may be required and approved of by the Governing Body, subject to the control of the Senate, (c) for the maintenance and repairs of the buildings to be erected at No. 92, Upper Circular Road, and (d) for the payment of all rates and taxes and other impositions payable in respect of the said premises.

(f). It shall be the duty of the Professors (a) to carry on original research with a view to extend the bounds of knowledge, (b) to stimulate and guide research by advanced students, and as an essential preparation for this purpose, (c) to arrange for the adequate instruction of students for the Degrees of Bachelor of Science with Honours, and Master of Science and Doctor of Science exceptionally and also of other students who may be qualified in any of the subjects of study though they may not be even undergraduates of any University, provided that they be recommended by the said Governing Body.

(g). If the income of the endowed properties exceed the amount required for the maintenance of the two Chairs, such surplus income may at the discretion of the Governing Body be applied to the payment of Scholarships or Stipends to such advanced students for the Degrees of Master of Science or Doctor of Science as may receive training or carry on research under the said Professors-the number and value of such Scholarships to be determined by the said Governing Body.

(h). The income of the endowed properties shall be accumulated by the University until the Chairs are founded, the accumulations to be treated as part of the corpus of the endowed properties.

(1) The buildings now standing upon the premises No. 92, Upper Circular Road, shall be dismantled under the direction of the University who shall sell the old materials and hold the sale-proceeds as part of the corpus of the endowed properties.

9. The indenture recites that the University having agreed to accept the

Founder's offer of the properties upon the conditions and trusts above stated, he, in pursuance of the agreement and in consideration of the premises granted, transferred and conveyed to the University the properties set out in the schedules to the indenture, and it was agreed and declared between the parties to the indenture that the University should hold the endowed properties on the conditions and upon the trusts already recited. On behalf of the University the indenture was executed by their Vice-Chancellor, Sir Asutosh Mookerjee, who affixed to the deed the common seal of the University.

10. By the second indenture dated the 8th October 1912 made between Sir Tarak Nath (therein described as the Settlor) of the first part, Sir Asutosh Mookerjee, Mr. Sisir Kumar Mullick and the University of Calcutta (therein described as the Trustees) of the second part, and the University of Calcutta (therein described as the Trustee University) of the third part, the Settlor granted, conveyed, assigned and transferred the properties mentioned in the schedules to the indenture to the Trustees upon the trusts and to and for the ends, intents and purposes declared in the indenture, viz.:

(a) During the lifetime of the Settlor to permit him to collect, receive and take the rents, issues, profits, dividends and income of all the Trust Estate for his absolute use and benefit.

(b) Upon the death of the Settlor the Trustees or the survivors or survivor of them do and shall transfer and make over the said Trust Estate to the University of Calcutta, who shall thenceforth become the sole Trustee of the said indenture and shall hold and stand possessed of the Trust Estate upon the following trusts:

(1) To collect the income of the Estate and there out pay all necessary charges.

(2) To set apart Rs. 1,00,000 out of the Trust Estate and to apply the net income thereof in perpetuity in establishing and maintaining Scholarships for advanced students in Science to enable them to carry a research or investigation outside India, the number and value of such Scholarships to be determined by the Governing Body mentioned in the indenture dated the 15th June 1912, the right of nomination to any of the Scholarships resting with the Governing Body.

(3) To pay and to transfer to the authorities of the institution known as the Sakhi Shilpa Samity, Government Securities of the 3 1/2 per cent, loan of the nominal value of Rs. 15,000 whenever the same may be required by that institution, to be applied by it for providing local habitation for Hindu widows, and upon an undertaking by that institution to refund the same to the Trustee University whenever the said local habitation ceases to be utilized for the promotion of the welfare of Hindu widows, in which event the Trustee University to hold the amount so refunded upon the trusts declared in the indenture of the 15th June 1912.

(4) To pay and transfer to the Albert Victoria Hospital, Calcutta Medical School and College of Surgeons and Physicians, Bengal Government Securities of the 3

1/2 per cent, loan of the nominal value of Rs. 50,000 when the same may be required by that institution, to be utilized by it for the purpose of providing the said institution with a well-equipped Laboratory, upon an undertaking by the said institution, that in the events of the said institution ceasing to exist, or failing to carry out the purpose of the grant, to refund the amount of the securities to the Trustee University, the University to hold and apply the same upon the trusts set out in the indenture of the 15th June 1912.

(5) To pay out of the income of the Trust Estate a sum of Rs. 15 per month to Srimati Rani Palit, the daughter of the Settlor's nephew, for the term of her natural life.

(6) To make such contribution, if any, as in the University's discretion may appear desirable in order to provide for adequate instruction and to give facility to female students who may be desirous of prosecuting their studies for the Degrees of Bachelor of Science with Honours, Master of Science or Doctor of Science, and also to other female students who may be exceptionally qualified in any of the relevant subjects of study though they may not be undergraduates of any University.

(7) To apply the entire balance of the income of the Trust Estate in aid of and for the better carrying out of the trusts in the indenture of the 15th June 1912.

11. The parties executed this indenture and Sir Asutosh Mookerjee, Vice-Chancellor of the University, affixed the common seal of that body to the deed.

12. In the plaint the plaintiff has been reticent in enunciating the grounds on which he seeks the indentures to be declared invalid and inoperative, but at the trial his contention has been that in accepting the trusts the University have gone beyond their powers and it has been ultra vires of them to undertake to carry out trusts that are in their nature not consonant with the law governing the University. The plaintiff contends that it was ultra vires of the University:

(a) To agree that the Chairs shall always be filled by Indians.

(b) To agree that the Professors shall be elected by a Governing Body created by the founder.

(c) To leave to the Governing Body the determination (1) of whether the Professor-elect should receive special training abroad before entering upon his duties, and (2) of the amount payable to such Professor for allowance and travelling expenses.

(d) To agree to make recurring or periodical grants or contributions for the purposes mentioned in the first indenture.

(e) To agree to provide for instruction of persons who may not even be undergraduates of any University.

(f) To agree that the surplus income should at the discretion of the Governing

Body be applied to the payment of Scholarships or Stipends, the number and value of which are to be fixed by that body.

(g) To agree to the creation of a Governing Body, some members of which are foreign to the University.

13. It is further contended that the University by accepting the terms of the trusts have divested themselves of their statutory powers in favour of the Governing Body, which they were not competent to do.

14. The objections stated above are pressed against the first indenture, and as the educational purpose of the second indenture is subject to the first indenture, the second indenture is also assailed on those grounds. There are, however, some objections that are special to the second indenture, and they are:

(a) That the University could not accept the trust for preserving the life-estate of Sir Tarak Nath.

(b) That the University cannot administer the trusts in favour of (1) Sakhi Shilpa Samity, (2) Albert Victor Hospital, and (3) Srimati Rani Palit.

15. There are certain other objections, minor in their character, that have been pressed against both the deeds. They are;-

(a) That the previous sanction of the Governor-General in Council has not been obtained for the foundation of the two Chairs in accordance with Chapter IX of the Regulations framed under Act VIII of 1904.

(b) That the Senate of the University have not accepted the trusts.

(c) That the common seal of the University was affixed by the Vice-Chancellor without the express authority of the Senate.

(d) That the Registrar, being the custodian of the common seal, was the person to affix it.

16. The parties to this suit are (1) Mr. Lokendra Nath Palit in his individual capacity and also as one of the executors of the Will of the late Sir Tarak Nath, (2) Mr. Sisir Kumar Mullick, the executor, and (3) the University of Calcutta.

17. In their written statements the first two defendants have submitted the contentions of law raised by the plaintiff to the judgment of the Court and have urged no defence. The University of Calcutta, on the other hand, have contended that each of the two indentures is, and all the trusts thereunder are, valid and binding under the law and equity, and that the University have an unimpeachable title thereunder as also under the residuary devise contained in the 10th clause of the Will. The University have further contended that the trusts are being, and ought to be, carried out, regard being had to the clear intention of Sir Tarak Nath manifested in the two indentures and his Will to devote the properties to the advancement of education in Bengal.

18. The properties comprised in the two indentures are in the possession of the University. The properties comprised in the second indenture have already been assured and transferred to the University by the surviving trustees under that deed.

19. The issues framed in the case are:

(1) Does the plaint disclose any cause of action; and is the suit maintainable in its present form in view of Section 42, Specific Relief Act?

(2) Are the two indentures of the 15th June 1912 and 8th October 1912, and the deed of transfer of properties assured by the indenture of the 8th October 1912, after Sir Tarak Nath Palit's death valid and operative in law, and have the University acquired a good and indefeasible title thereunder?

(3) Have the University acquired a good and indefeasible title under the residuary devise and bequest in the Will?

(4) Has not the Settlor by the two indentures of the 15th June 1912 and 8th October 1912 evinced a general intention to give his property to charitable and educational purposes for the use of the University to which the Court will give effect?

(5) Are not the Sakhi Shilpa Samity, the Albert Victor Hospital and Srimati Rani Palit, who are beneficiaries under the indenture of the 8th October 1912, and each of them, necessary and proper parties to this suit, and is not the suit bad for their nonjoinder?

20. After the above issues were framed, it was intimated to the Court that Mr. Lokendra Nath Palit in view of the 4th issue wished to be separately represented by Counsel in his individual capacity as distinguished from his capacity of an executor of his father's Will, and at the trial he was so represented.

21. The powers of the University of Calcutta are governed by Act II of 1857, whereby that body was established and incorporated, and Act VIII of 1904. The intendment of the establishment of the University, as expressed in the preamble to Act II, was for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science and Art, and of rewarding them by Academical Degrees as evidence of their respective attainments and marks of honour proportioned thereunto." The persons mentioned in Section 1 of that Act were constituted and declared to be one body politic and corporate by the name of the University of Calcutta with perpetual succession and a common seal, and by Section 2 this body corporate was empowered to take, purchase and hold any property, moveable or immoveable, which might become vested in it for the purpose of the University by virtue of any purchase, grant, testamentary disposition or otherwise. Section 8 of that Act provides that the Chancellor, Vice-Chancellor and Fellows, for the time being, shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and in a]] cases unprovided for

by the Act it shall be lawful for them to act in such manner as shall appear to them best calculated to promote the purposes intended by the University. In 1904, Act VIII, which was to be deemed to be part of Act II of 1857, was passed. Section 3 of Act VIII provides that the University shall be and shall be deemed to have been incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and Lecturers, to hold and manage educational endowments, to erect, equip, and maintain University Libraries, Laboratories, and Museums, to make Regulations relating to the residence and conduct of students, and to do all acts consistent with the Act of Incorporation and Act VIII which tends to the promotion of study and research.

22. The constitution and powers of the Senate of the University are set out in Section 4, Clause 3, which states that the body corporate shall be the Senate of the University, and all powers which are by the Act of Incorporation or by this Act conferred upon the Senate, or upon the Chancellor, Rector, Vice-Chancellor and Fellows in their corporate capacity, shall be vested in and exercised by the Senate constituted under this Act, and all duties and liabilities imposed upon the University by the Act of Incorporation shall be deemed to be imposed upon the body corporate as constituted under this Act. This Act vests the executive government of the University in the Syndicate.

23. To provide for matters relating to the University, Section 25 of the Act empowers the Senate with the sanction of the Government, which in the case of the University of Calcutta means the Governor-General in Council, to, from time to time, make Regulations consistent with the Act of Incorporation as amended by this Act, and with this Act; and Section 26 provides that where a draft body of Regulations is not submitted within the time allowed, the Government may make the Regulations. In the present instance the University not having submitted the draft body of Regulations within the time allowed, the Government made the Regulations to provide for matters relating to the University. It will be seen from the Act II of 1857 and Act VIII of 1904 that the powers of the University to hold and possess property for their purposes are extensive and no objection to their accepting the trusts in question could validly be urged if the Acts alone had to be considered and construed. The plaintiff's main attack on the indentures is derived from the Regulations, and we are asked to hold, at least on the basis of the Regulations, that it has been ultra vires of the University to undertake the trusts in terms of the indentures.

24. The provisions of the Regulations material to the consideration of the questions raised in this case are contained in Chapter I, Section 4; Chapter III, Section 4; Chapter IV", Sections 12 and 15; Chapter VI, Section 3; Chapter VII, Section 4; Chapter IX, Sections 1, 2, 9 and 10.

25. Section 4 of Chapter I says that no question shall be brought under the consideration of the Senate which has not first been considered by the Syndicate.

26. Section 4 of Chapter III provides that each Faculty shall elect its Dean annually from its own number as soon as its members have been appointed.

27. Chapter IV deals with the Syndicate, and Section 12 of that Chapter lays down, amongst other matters, that it shall be the duty of the Syndicate to consider and report upon matters to be submitted to the Senate, to administer the funds and to keep the accounts of the University, to correspond on the business of the University with the Government and all other authorities and persons, and generally to conduct the affairs of the University in accordance with the Act of Incorporation and Act VIII of 1934, the Regulations and the Resolutions of the Senate and the Syndicate, and Section 15 places the Syndicate under the Senate for approval, revision or modification of its decisions, or for direction to review the same.

28. Chapter VI constitutes a Board of Accounts and section B of that Chapter directs that the Board shall, amongst other things, prepare the University Budget, examine and audit the University accounts and the accounts of the Endowment and Trust Funds.

29. Section 4, Clause (a), of Chapter VII directs, amongst other matters, that the Registrar of the University shall be the custodian of the common seal,

30. Chapter IX of the Regulations is the most important of all in relation to the contentions raised by the plaintiff, and I reproduce here the material sections in their integrity.

31. Section 1.- When the funds of the University permit, the Senate with the previous consent of the Governor General in Council shall found such Professorships as it may think fit, prescribe the conditions on which they shall be tenable, and provide, in connection therewith, Lecture Rooms, Libraries, Museums, Laboratories, Workshops and other facilities for teaching and research."

32. Section 2. - The Senate shall likewise found and endow Professorships on particular subjects from funds specially given or bequeathed for the endowment of such Professorships, or if it thinks fit, accept endowments of such Professorships made by individual or corporate donors."

33. Section 9.-"Endowed Professorships already accepted by the Senate shall, subject to the conditions of the endowment, be governed by these Regulations."

34. Section 10.- No University Professor shall be appointed without the sanction of the Governor-General in Council."

35. On behalf of the plaintiff it has been contended that under the terms of the indentures the relation between Sir Tarak Nath and the University was that of two contracting parties and not of donor and donee. The object of such a contention is obvious, If the trusts constitute a charitable gift and the conditions are illegal, the charity takes the gift discharged from the conditions. In the present case it is clear to my mind that the University have received the

properties comprised in the two indentures merely as a charitable gift, and as such it cannot fail, even if the conditions accompanying it are held to be invalid or incapable of fulfilment by the University.

36. The first question to which attention has to be paid is that of ultra vires. Act II of 1857 and Act VIII of 1904, by themselves, confer on the University very comprehensive powers, but it is argued on behalf of the plaintiff that those powers have been curtailed by the Regulations framed under the latter Act. The plaintiff's contention further is that allowing the Regulations to be eliminated from consideration, it would be ultra vires of the University even under the Acts alone to undertake the trusts in terms of the indentures. This contention leads me to consider the Acts first. From the preamble to Act H of 1857 it may be pointed out that the object of establishing the University of Calcutta was to ascertain by means of examination the persons who had acquired proficiency in different branches of Literature Science and Art and of rewarding them by academically degrees as evidence of their respective attainments. In the scheme of that Act no mention is made of research. In Act VIII of 1904 the usefulness of the University of Calcutta was extended and the University were authorised by Section 3 of Act VIII to do all acts consistent with the Act of Incorporation and Act VIII which tend to the promotion of study and research. As Act VIII is to be deemed part of the Act of Incorporation, the power of the University in accordance with the provisions of Section 2 of Act II to take and to hold any property, moveable or immovable, for their purposes by virtue of grant or testamentary disposition cannot be questioned. In Section 3 of Act VIII it is provided that the University shall be and shall be deemed to have been incorporated for the purpose of making provision for the instruction of students, and for the plaintiff it is contended that the students must be of the University, and as the indenture provides as well for students other than those that belong to any University, the undertaking by the Calcutta University to carry out the trusts is not within their competence. In construing the term "Students," we cannot lose sight of one of the objects of the University being the promotion of study and research." There is nothing in the Act itself to prohibit the University giving their aid, as indeed they should, to research by students who may not belong to any University, yet by their exceptional gifts may well be requisitioned to, in the language of Sir Tarak Nath, "extend the bounds of knowledge." My reading of Act VIII convinces me that the object of that Legislation was to extend the usefulness of the University, and not to cramp it, and to construe the term "Students" to mean the students of the University alone is to fall into a rigidity of interpretation that is neither justified by the words of the Act, nor its purpose.

37. It has further been argued for the plaintiff that by accepting the conditions of the trusts the University have abdicated their statutory powers in favour of a Governing Body, the composition of which is not wholly out of the Senate, but some members of which are nominees, original or derivative, of the founder, foreign to the University. I see nothing in the Acts to prohibit this. If concession were made to the plaintiff's argument, it would imply that it would never be

open to the University to accept a grant or testamentary disposition, however beneficial to their purpose, unless the same be entirely free from the grantor's conditions. I do not think it could ever have been intended that a grantor should either hand over his property to the University free from all conditions, or not make the grant at all. The Acts by themselves do not fetter the discretion of the University to accept such gifts.

38. So far as the Regulations are concerned, it has been argued that they limit the powers of the University, and in view of those Regulations it was not competent to the University to accept the conditions of the two indentures. In my view of the Regulations the power of the University, derived from the Acts themselves, to accept endowments of Professorships made by donors, has not been curtailed, and the University are competent to accept, if they think fit, endowments subject to conditions. The only provision concerning it in the Regulations is found in Section 2, Chapter IX. It has been urged upon us that, in interpreting this section, we have to read Section 1 to that Chapter, and the two read together mean that the University can accept such Professorships only as are sanctioned by the Governor-General in Council. I do not think that this contention is sound. It does not appear to me that the qualifying word "likewise" in the first line of Section 2 governs the word "accept" in the last but one line of that section. Reading Section 9 of the same Chapter, the Regulations do not find it repugnant to allow the University to observe the conditions of endowments already accepted, and I see nothing in the Regulations to prohibit the acceptance of fresh endowments subject to conditions. Section 2 has clearly left it to the University to determine the fitness of an endowment for the purposes of their acceptance. In the view I take of the general competence of the University in this matter, the objection of ultra vires must fail.

39. As regards the special objections to the indenture of 8th October 1912, they are covered by the view I have just expressed. But apart from this, the University now stand possessed of the properties comprised in that indenture by the transfer effected in their favour by the surviving trustees after the death of Sir Tarak Nath in accordance with the terms of that indenture. Even if it were conceded that in the lifetime of Sir Tarak Nath the properties were not vested in the University as co-trustee, exclusion of one co-trustee by reason of legal disability, if any, would neither occasion a failure of the trust, nor would such an event affect the status of the other trustees or their competence to carry out the directions in the trust-deed. The objection that the University cannot administer the trusts in favour of Sakhi Shilpa Samity, Albert Victor Hospital and Srimati Rani Palit, is without real substance. No trusts in fact have to be administered in respect of Sakhi Shilpa Samity and Albert Victor Hospital. Under the terms of the indenture those institutions are entitled to receive from the University out of the Trust Estate Rs. 15,000 and Rs. 50,000 respectively in Government Securities; and with the payment of those two items the obligation of the University is discharged. As regards the monthly payment of Rs. 15 to Srimati Rani Palit for the term of her natural life, the undertaking on the part of the University is so

small as compared with the extent of the estate and the corresponding beneficence of the charity, that such a trifle can never be allowed to destroy the trust.

40. The objection that the Senate have not accepted the trusts seems to have been raised in ignorance of the proceedings of the Senate, bearing dates the 22nd June 1912 and 30th November 1912. By the proceedings of the 22nd June the Senate accepted the trusts contained in the first indenture and by the proceedings of the 30th November 1912 the Senate accepted the trusts contained in the second indenture. The other objection that the common seal of the University should have been affixed by the Registrar and not by the Vice-Chancellor seems to possess no weight, for even if it were allowed it would not suffice to invalidate the trusts. Apart from this, the objection loses all its force by reason of the Vice-Chancellor being asked and authorized by the Syndicate to sign and take such further steps in the matter on behalf of the University as he might deem necessary. The resolutions embodying the authority are recorded at page 1144, Part III, and page 2351, Part VII, of the Minutes of the Calcutta University for the year 1912.

41. These resolutions were submitted to the Senate in due course, and that body expressed no disapproval of them. The Senate having accepted the trusts, the formal act of affixing the common seal comes within the executive government of the University, which is vested in the Syndicate by Section 15 of Act VIII of 1904, and the authority given by the Syndicate fully qualified the Vice-Chancellor to affix the common seal on behalf of the University. My conclusion on the second issue, therefore, is that the two indentures dated the 15th June 1912 and 8th October 1912 and the deed of transfer of properties assured by the second indenture after Sir Tarak Nath's death, are valid and operative in law, and the University have acquired a good and indefeasible title thereunder.

42. I do not propose to deal with the other issues as the decision on the second issue disposes of the case.

43. This suit is dismissed with costs on scale No. 2.

44. The defendants Messrs. Lokendra Nath Palit and Sisir Kumar Mullick are also allowed their costs on the same scale.

Greaves, J.

45. The plaintiff in this action, who is one of the two sons of the late Sir Tarak Nath Palit, claims a declaration that the two indentures dated respectively the 16th June 1912 and the 8th October 1912, whereby Sir Tarak Nath Palit purported to grant certain properties to the Calcutta University upon certain trusts and conditions are invalid and inoperative in law and that the properties are unaffected thereby and form part of his estate. The plaintiff also asks for an order that the executor defendants do administer in due course of law the properties as assets of the estate of the late Sir Tarak Nath Palit.

46. By the indenture of the 15th June 1912, which was made between Sir Tarak Nath Palit (therein called the Founder) of the one part and" the University of the other part, after reciting, among other things, that the Founder had for some time past contemplated doing something of a permanent character for the foundation and diffusion of Scientific and Technical Education in Bengal and the cultivation and advancement of Science, Pure and Applied, amongst his countrymen and in the belief that this object could be best attained by the establishment of University Professorships of Science as a first step towards the foundation of a University College of Science and Technology, had approached the University and offered to make over to them the properties specified in the schedules thereto on the conditions and upon the trusts following, namely, (a) that the University should found two Professorships or Chairs, one of Chemistry and the other of Physics, and apply the entire income of the scheduled properties or so much as they might deem necessary to the maintenance thereof, and in the event of the said entire income being found insufficient for the purpose, the said University should make such a recurring grant or contribution as would supplement such deficiency, (b) that the Founder's object being the promotion and diffusion of Scientific and Technical Education and the cultivation and advancement of Science, Pure and Applied, amongst his countrymen by and through indigenous agency, such Chairs should always be filled by Indians to be nominated by the Governing Body therein after mentioned, (c) that in connection with the said two Chairs the University should from its own funds provide suitable Lecture Rooms, Libraries, &c., and out of its own funds earmark and set apart a sum of Rs. 2,50,000, and apply the same to or towards the construction, on the site of 92, Upper Circular Road, of permanent and substantial structures and their proper and adequate equipment, (d) that the Government Body should consist of (1) the Vice-Chancellor of the University as ex-officio President, (2) the Director of Public Instruction of Bengal (who by the provisions of Clause 5 of the Indian Universities Act, Act VIII of 1904, is ex-officio a Fellow of the University), (3) the Dean of the Faculty of Science of the University, (4) the Dean of the Faculty of Engineering of the University, (5) four members of the University to be annually elected by the Senate, (6) four members to be nominated every three years by the Founder and after his death by his representatives as therein provided, (7) two representatives of the Professorial Staff, and that the proceedings of the Governing Body should be laid before the Syndicate and might be revised by it, (e) that the University should from its own funds make such recurring and periodical grants as might be required for the maintenance of the said two Professorships, the Libraries, Laboratories, &c, the maintenance and repairs of 92, Upper Circular Road, and for payment of the rates and taxes thereof, (f) that it should be the duty of the Professors to arrange for the adequate instruction of students for scientific degrees and also of other students exceptionally qualified in any of the subjects of study, though not undergraduates of any University, if recommended by the Governing Body, and further reciting that the University had agreed to accept the Founder's offer of the said properties as and by the way of endowment on the conditions and upon the

trusts therein before set forth in pursuance of the agreement and in consideration of the premises, the Founder granted, transferred and conveyed the scheduled properties to the University upon the trusts and to and for the ends, intents and purposes thereinbefore as also thereafter declared, expressed and contained of and concerning the same, and it was thereby agreed and declared between and by the parties thereto that the University should hold the endowed properties on the conditions and upon the trusts following, which are the conditions and trusts previously recited. The indenture was executed on behalf of the University by Sir Asutosh Mookerjee, the Vice-Chancellor of the University, the common seal of the University being affixed by him. By the indenture of the 8th October 1912 which was made between Sir Tarak Nath Palit (thereinafter called the Settlor), of the first part, Sir Tarak Nath Palit, Sir Asutosh Mookerjee, Sisir Kumar Mullick and the University, (thereinafter called the Trustees) of the second part, and the University (thereinafter called the Trustee University) of the third part, the Settlor granted, assigned and transferred to the Trustees the, premises mentioned and described in the schedules thereto, and it was thereby declared and agreed that the Trustees should hold the scheduled premises (thereinafter called the Trust Estate), (A) upon trust during the Settlor's lifetime to permit him to collect and receive the income of the Trust Estate and apply and dispose of the same for his absolute use and benefit, (B) upon the death of the Settlor, upon trust to transfer the Trust Estate, to the University, who should thenceforth become the sole trustee of the said indenture, and should hold the Trust Estate upon trust (a) to collect the income thereof, (b) to set apart out of the Trust Estate Rs. 1,00,000 upon trust to apply the income in perpetuity in establishing Scholarships, the number and value thereof to be determined by the Governing Body mentioned in the indenture of the 15th June 1912, who should have the right of nomination thereto; (c) and (d) to provide and transfer out of the Trust Estate to certain institutions called respectively the Sakhi Shilpa Samity and the Albert Victoria Hospital, Calcutta, the respective sums of Rs. 15,000 and Rs. 50,000, (e) to pay out of the income of the Trust Estate to Sreemutty Rani Palit Rs. 15 per month during her life, (f) to apply the entire balance of the income of the Trust Estate in aid of and for the better carrying out of the trusts of the indenture of the 15th June 1912.

47. Clause 9 of the indenture provided that during the Settlor's lifetime the Trustees should never be less than three in number, and by Clause 11 it was declared that during the Settlor's lifetime he, in conjunction with any of the Trustees, should be competent to do all the acts required to be done by the Trustees, or to exercise all the powers conferred upon them.

48. The indenture was executed by the parties thereto, the seal of the University being affixed by Sir Asutosh Mookerjee, the Vice-Chancellor of the University.

49. The Calcutta University was established and incorporated by Act II of 1857 and the preamble to this Act states that it had been determined to establish a University at Calcutta for the purpose of ascertaining by means of examination

the persons who had acquired proficiency in different branches of Literature, Science and Art, and of rewarding them by Academical Degrees, and the Act goes on to constitute certain named persons and others as one Body Politic and Corporate by the name of the University of Calcutta, and provides that such body shall have perpetual succession and a common seal. By clause II of the said Act it is provided that the Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purpose of the University by virtue of any purchase, grant, testamentary disposition or otherwise and by Clause VIII, that the Chancellor, Vice Chancellor, and Fellows for the time being shall have the entire management of and superintendence over the affairs, concerns and property of the University, and that in all cases unprovided for by the Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the University.

50. By the Indian Universities Act 1904 (VIII of 1904), it is provided (inter alia) by clause III, that the University shall be and shall be deemed to have been incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and Lecturers,, to hold and manage educational endowments, to erect, equip and maintain University Libraries, Laboratories and Museums, and to do all acts consistent with the Act of Incorporation and this Act, which tend to the promotion of study and research. Clause IV provides for the constitution of the Body Corporate of the University, and " that such body shall be the Senate of the University and that all powers which by the Act of Incorporation or this Act are conferred upon the Senate, or upon the Chancellor, Rector, Vice-Chancellor and Fellows in their corporate capacity, shall be, vested in and exercised by the Senate, and that all the duties imposed on the University by the Act of Incorporation shall be deemed to be imposed upon the Body Corporate as constituted under this Act. Clause XIV provides that nothing contained in the Act of Incorporation shall be deemed to prohibit the constitution of a, new Faculty or the abolition or reconstitution of any existing Faculty by the Senate under Regulations made in accordance with the provisions of this Act.

51. Clause XV provides that the Executive Government of the University shall be vested in the Syndicate, and also provides for the constitution of the Syndicate. Clause XXV provides (1) that the Senate with the sanction of the Government (that is to say, the Governor-General in Council) may from time to time make Regulations consistent with the Act of Incorporation as amended by this Act, and with this Act to provide for matters relating to the University, (2) that in particular and without prejudice to the. generality of the foregoing power, such regulations might provide for, (3) the appointment and duties of Professors appointed by the University and clause XXVI provides for the preparation of new Regulations. In accordance with the provisions of clause XXVI of Act VIII of 1904, new Regulations were prepared- the appointment of University Professors is dealt with by Chapter IX of such Regulations, which provides (1) that when the

funds of the University permit, the Senate with the previous consent of the Governor-General in Council shall found such Professorships as it may think fit, prescribe the conditions on which they shall be tenable, and provide in connection therewith Lecture Rooms, Libraries, Museums, Laboratories, Workshops and other facilities for teaching and research, (2) that the Senate shall likewise found and endow Professorships on particular subjects from funds specially given or bequeathed for the endowment of such Professorships, or, if it thinks fit, accept endowments of such Professorships made by individual or corporate donors.

52. It appears from the Minutes of the Syndicate (see Calcutta University Minutes, Part III, 1912, Vol. LVI, at pages 1124 and 1144) that Sir Tarak Nath Palit, in a letter dated the 14th June 1912 addressed to the Vice-Chancellor of the University, forwarded a draft of the indenture of the 15th June 1912, and that the Syndicate passed a resolution on that day requesting the Vice-Chancellor to sign the indenture on behalf of the University, and also resolved that the Syndicate recommend to the Senate (i) that the donation of Sir Tarak Nath Palit (then Mr.) be accepted on the terms mentioned in the Trust-deed, (ii) that the two Professorships be instituted, one to be called the Tarak Nath Palit Professorship of Chemistry, and the other the Tarak Nath Palit Professorship of Physics, (iii) that on the land given to the University by Mr. Palit, a University Laboratory be erected, to be called the Tarak Nath Palit Laboratory. These recommendations of the Syndicate were submitted to the Senate on the 22nd June 1912 and carried by acclamation, see Volume LVI, *supra*, at pages 1148 and 1149.

53. From Volume LVI, Part VII, of the Calcutta University Minutes for 1912, at pages 2350, 2351 and 2352, it appears that the Vice-Chancellor on the 12th October 1912 reported to the Syndicate the execution by Sir Tarak Nath Palit (then Mr. Palit) of the indenture of the 8th October 1912, informing the meeting that he had accepted the trust on behalf of the University, and that the Syndicate thereupon resolved (i) that the action of the Vice-Chancellor be confirmed, (ii) that he be authorized to take such further steps in the matter on behalf of the University as he might deem necessary and (iii) that the gift be reported to the Senate, and it also appears that the Senate accepted the Syndicate's recommendations unanimously.

54. It appears from these Minutes that the Vice-Chancellor had reported to Lord Hardinge Sir Tarak Nath Palit's first benefaction under the indenture of the 15th June 1912, and that the Government of India had promised a grant of Rs. 12,000 a year for the maintenance of the College of Science.

55. Sir Tarak Nath Palit, by his Will dated the 2nd May 1914, appointed the defendants Lokendra Nath Palit and Sisir Kumar Mnllick executors thereof, and after giving certain specific and pecuniary legacies devised and bequeathed all properties that might remain undisposed of to the University to be held and applied by the University upon the valid Trusts contained in the indentures of the

15th June 1912 and the 8th October 1912.

56. Sir Tarak Nath Palit died on the 3rd October 1914, leaving him surviving his widow Dame Kumud Kamini Palit and two sons, the plaintiff and the defendant Lokendra Nath Palit, his heirs under the Bengal School of Hindu Law, by which it is common ground he was governed.

57. Lady Palit is not a party to this suit, nor are the two institutions and the annuitant who are referred to in the indenture of the 8th October 1912. No evidence was called on either side, but it is common ground between the parties to the suit that the University is in possession of the properties purported to be granted and assigned by the two indentures of the 25th June 1912 and the 8th October 1912, and that the University is carrying out the provisions of these two indentures in every particular, the two Chairs having been founded and Professors appointed and Rs. 2,50,000 applied for the purposes referred to in the indenture of the 8th October 1912.

58. The contentions urged at the Bar on behalf of the plaintiff with regard to the validity of the trust and conditions contained in the two indentures are as follows:

With regard to the first indenture, that of the 15th June 1912, it is urged that it is ultra vires of the University, to enter into the conditions therein contained, the main contentions urged being that these conditions involve

(a) The creation of a Governing Body, some members of which are foreign to the University and the others of whom, although members of the University, could not be nominated in such a manner to serve on this body.

(b) An agreement by the University that the new Chairs should always be filled by Indians, which might prevent the best available Professors being selected.

(c) The divesting by the University in favour of the Governing Body of certain of its statutory powers by a delegation to such Governing Body of

(1) The election of Professors.

(2) The determination whether the Professors should receive special training abroad before entering on their duties, and of the amount payable to them for allowances and travelling expenses.

(d) An obligation to make recurring periodical grants and contributions which will fetter the future discretion of the University, and which the University may hereafter refuse or fail to carry out.

(e) An obligation to provide for the instruction of students not members of the University, if recommended by the Governing Body.

(f) Leaving to the discretion of the Governing Body, with regard to the application of any surplus income, the number and value of the Scholarships to be given.

Certain subsidiary objections with regard to the validity of the deed were also

raised, namely,

(1) That the previous sanction of the Governor-General in Council to the foundation of the Professorships was not obtained in accordance with Chapter IX of the University Regulations.

(2) That there was no acceptance by the Senate of the terms and conditions of the deed.

(3) That the University seal was affixed by the Vice Chancellor without the express authority of the Senate, the proper person to affix the seal, in the absence of any resolution, being the Registrar as the custodian of the seal [see Chapter IV (7) of the Regulations].

59. With regard to the second indenture, that of the 8th October 1912, the same objections that were raised with regard to the first deed were raised with regard to this also, and the following additional special objections were also raised with regard to it, namely:

(a) That it was ultra vires of the University to act as trustee during the lifetime of Sir Tarak Nath Palit and for the purpose of enabling him to receive the life-interest reserved to him under the indenture.

(b) That if this is so, the surviving trustees on Sir Tarak Nath Palit's death could make no valid assurance or transfer of the properties to the University inasmuch as they were never vested in them.

(c) That it is ultra vires of the University to act as trustee in respect of the trusts created in favour of-

(1) Sakhi Shilpa Samiti,

(2) The Albert Victor Hospital,

(3) Rani Palit.

60. The following issues were raised for our determination:

(1) Does the plaint disclose any cause of action, and is the suit maintainable in its present form in view of Section 42 of the Specific Relief Act?

(2) Are the two indentures of the 15th June 1912 and the 8th October 1912 and the deed of transfer of the properties assured by the indenture of the 8th October 1912 after Sir Tarak Nath Palit's death valid and operative in law, and has the University acquired a good and indefeasible title thereunder?

(3) Has the University acquired a good and indefeasible title under the residuary devise and bequest in the Will?

(4) Has not the Settlor, by the two indentures of the 15th June 1912 and the 8th October 1912, evinced a general intention to give his property to charitable and educational purposes for the use of the University to which the Court will give

effect?

(5) Are not the Sakhi Shilpa Samiti, the Albert Victor Hospital and Sreemutty Rani Palit, who are beneficiaries under the indenture of the 8th October 1912, and each of them, necessary and proper parties, and is not the suit bad for their non-joinder?

61. The 3rd and 4th issues were admitted subject to the plaintiff's objection that they did not arise and could not be decided in this suit. These issues were also objected to by the executors and by Counsel for the defendant Lokendra Nath Palit, who, after the admission of these issues, severed from his co-executor and was separately represented in his individual capacity. Lady Palit, who in the event of the two indentures being declared invalid, would in certain events be entitled to a Hindu widow's estate, was, as before stated, not a party to the suit.

62. The Advocate-General on behalf of the University stated that the University did not wish to rely on any technical objection that the plaintiff could not maintain the suit, having regard to the fact that the University were performing the trusts, and that even if their action in so doing was ultra vires of the University, the plaintiff, as having no interest in the University, was not entitled to complain of any ultra vires act on its part. The Advocate-General stated on behalf of the University that the University were desirous of having the question of ultra vires and the validity of the two indentures determined in this suit.

63. A considerable body of argument was addressed to us on behalf of the plaintiff with regard to the nature of the two indentures of the 15th June and the 8th October 1912, it being urged that the two indentures were simply contracts between Sir Tarak Nath Palit and the University and nothing more, Sir Tarak Nath conveying certain premises to the University in consideration of the University covenanting to do certain things and to expend certain moneys. We were asked to consider the indentures as contracts and nothing more and to say that the usual results must follow when one party to the contract, is acting beyond its statutory powers, and that if this once be established, the indentures are null and void. In my opinion we cannot so regard the indentures—they are indentures which make certain gifts to the University for the purposes of education coupled, it is true, with certain conditions to be performed by the University, and they constitute a charitable trust for the purposes of education.

64. I now propose to examine what exactly are the powers of the University under the two Acts, namely, Act II of 1857 and the Indian Universities Act, 1904, so far as concerns the purposes of this suit.

65. Under clause II of the Act of 1857 the University is empowered to hold any property which may become vested in it for the purpose of the University by virtue of any grant. Under the general words of clause VIII (and it is noticeable that whilst other clauses of this Act have been repealed, this clause remains unrepealed) the Chancellor, Vice-Chancellor and Fellows in all cases unprovided for by the Act may act in such manner as shall appear to them best calculated to

promote the purposes intended by the University.

66. Under clause III of the Act of 1904 the University shall be deemed to have been incorporated for the purpose of making provision for the instruction of students with power to appoint University Professors, hold and manage educational endowments, erect, equip and maintain University Laboratories, &c, and to do all acts consistent with the Act of incorporation and this Act, which tend to the promotion of study and research. And clause XIV provides for the constitution of new Faculties.

67. If one turns to the indenture of the 15th June 1912, it provides (a) for the foundation of two Professorships or Chairs with a proviso that in certain events the University should make recurring grants for the upkeep-provisions which, in my opinion, clearly fall within the powers conferred by Clauses III and XIV of the Act of 1904, which enable the University to found new Faculties and appoint Professors.

(b) That they shall always be filled by Indians-a provision which, in my opinion, must be read in the light of the general words at the end of clause III of Act VIII of 1904, that is to say, if, in the opinion of the University, the acceptance of the Palit endowment or trust tended as a whole to promote study and research, it was within the powers of the University to accept the endowment with this proviso attached.

(c) For the provision of Lecture Rooms, Laboratories, &c, and for the application by the University of a sum of Rs. 2,50,000 for the construction thereof on a certain site- provisions which, in my opinion, clearly fall within the words of Clause 3 of the Act of 1904, erect, equip, and maintain University Laboratories, &c."

(d) For the constitution of a Governing Body which, if the constitution thereof is examined, must contain a large preponderance of University representatives, all but the four to be nominated by the Founder or his representatives being office-holders in or members of the University and, moreover, proceedings of the Governing Body are subject to revision by the Syndicate of the University, whose proceedings are in turn subject to revision or modification by the Senate of the University under the provisions of Chapter IV (15) of the Regulations of the University.

(e) For the making of periodical grants by the University for the maintenance and upkeep of the Professorships and of the Laboratories, &c, and repairs, &c, of certain premises-provisions which clearly fall, either expressly or by implication, within clause III of Act VIII of 1904.

(f) For (inter alia) the instruction of-exceptionally qualified students at the recommendation of the Governing Body, even if not undergraduates of any University-a provision within clause III of Act VIII of 1904, which does not expressly, nor I think inferentially, limit the word " Students " in the clause to

undergraduates of the University.

(g) For the application of surplus income to Scholarships, the number and value and award thereof to be determined by the Governing Body-provisions which, in my opinion, are not ultra vires, having regard to the constitution and control of this body as before stated.

68. With regard to what I have called the subsidiary objections to the first indenture, in my opinion, if one arrives at the conclusion that the trusts and provisions of the indenture are within the powers conferred on the University by Act II of 1857 and Act VIII of 1904, the fact that the internal Regulations of the University may not have been observed, that is, that (a) the previous sanction of Governor-General was not obtained, (6) that the Senate did not accept the trust, (c) that the seal was irregularly affixed, cannot invalidate the indenture, as no question of ultra vires arises, and these are merely irregularities which, if necessary, can be cured at any time. But if it is necessary to deal with these matters, it is sufficient to say that there is no evidence that the previous sanction of the Governor-General was not obtained, that it appears that the Senate did in fact accept the gift, and that Sir Asutosh Mookerjee was authorized to sign the indenture, if any execution of the deed by the University was necessary, (and, in my opinion, it was not in the view I take of the indenture as expressed above) in my opinion, under the circumstances of this case, was sufficient authority to him to affix the seal of the University: In Re: Bamed's Banking Company, Ex parte Contract Corporation Co. (1867) 3 Ch. 105 : 37 L.J. Ch. 81 : 17 L.T. 269 : 16 W.R. 193.

69. Before I come to deal with the second indenture, I want to make one observation with regard to the argument addressed to us that there was no guarantee that the persons who have the control of the affairs of the University in future years will observe the provisions of the indenture, and the observation I wish to make is, that this question does not now arise, and that if and when this happens, will be the proper time to consider the position which then arises.

70. I now turn to the indenture of the 8th October 1912 and to the special objections urged against it. Even assuming that the University could not act as a trustee of the life-estate thereby reserved to Sir Tarak Nath, and that the appointment of the University as trustee was therefore null and void, and as if it had never been made, the premises thereby transferred then vested during Sir Tarak Nath's lifetime in Sir Tark Nath himself, Sir Asutosh Mookerjee and Sisir Kumar Mullick, who were certainly not incapable of acting as trustees, and who, having regard to Clauses 9 and 11 of the indenture, constituted a sufficient number of trustees within the provisions of the indenture. And I fail to apprehend how the survivors could not on Sir Tarak Nath's death make a valid transfer of the trust property to the University. If and so far as it is contended that after the death of Sir Tarak Nath the University could not act as trustee with regard to the two sums to be transferred to the Shilpa Samiti and the Albert Victor Hospital, the answer is that there are no active trusts to be performed, and all the

University has to do is to hand over certain sums of money, which can hardly be seriously argued to be acts ultra vires of the University. The only trust that remains is the payment of Rs. 15 a month to Sreemutty Rani Palit, and it is difficult to treat seriously the argument addressed to us that the existence of this provision can invalidate the indenture. Accordingly, in my opinion, the trusts or conditions attached by Sir Tarak Nath to his benefactions are within the express powers of the University.

71. Having regard to the view which I have expressed with regard to the validity of the two indentures, it is not necessary to deal with the questions raised by the 3rd and 4th issues or to decide if these questions can properly be raised in this suit as at present constituted.

72. In view of the desire of the University to have a decision of this Court upon the question of the validity of the two indentures having regard to the powers of the University, it is not necessary for me to express any opinion upon the first issue that was raised.

73. With regard to the second issue, I hold that the two deeds of trust and the deed of transfer are, each of them, valid and operative in law, and that the University has acquired a good and indefeasible title thereunder.

74. Having regard to the view expressed upon the 2nd issue, the 3rd and 4th issues do not arise.

75. With regard to the 5th issue, in my opinion, the two institutions and Srimati Rani Palit were necessary parties to the suit as being interested in maintaining the validity of the second indenture.

76. The result is that this action must be dismissed with costs.