
Testamentary Matters*

Probate—Letters of Administration and Succession Certificates

Introductory observations. An executor may be appointed by the testator himself or he may ask another to make the appointment.¹ He only is entitled to probate of the will of a deceased person under s. 221 of the Indian Succession Act. He is the legal representative and all the property of the deceased vests in him for the purpose of representation and administration. Under s. 307 of the said Act, he has power to sell any such property in course of administration and in the absence of any contrary provisions in the will. This, however, does not mean that he becomes the absolute owner by virtue of his position as an executor. An executor has no beneficial interest in the property which vests in him under s. 211 of the said Act and he holds the same in trust for the administration of the estate of the deceased.² Therefore, s. 307 read with s. 211 makes his power to sell limited for the purpose of administration. The City Civil Court (Amendment) Act 1980 has taken away the jurisdiction of the High Court under the Indian Succession Act (Act 39 of 1925).

The property of the deceased vests in Executor on his acceptance of the office. He may institute a suit but must obtain the probate before the decree is made.² If he himself is a legatee then he must prove the will or otherwise manifest his intention to act as executor.³ The High Court had special jurisdiction to grant probate of will in the common form. This is based upon the English practice where an affidavit of one of the attesting witnesses in

* See Chapter 56 on Will.

1 *Mosa Haji v Haji Abdul* 5 Bom LR 630.

2 *Bibhuti Bhusan v Nagendra Narayan* AIR 1951 Cal 228.

3 Section 141 of the Indian Succession Act.

compliance with s. 63 of the Indian Succession Act read with s. 68 of the Indian Evidence Act is considered as sufficient evidence as regards the proof of the will. A probate granted in common form could be easily revoked than when it is granted in solemn form. If the grant was made in the common form, it may even then be shown that the will is forged.⁴ The difference in grant in solemn form and in common form was observed by the Privy Council in *Ramanandi v Mt. Kalawati*.⁵ If after service of the citation there is no contest, the procedure corresponds to the English practice of probate in the common form. But where the grant is challenged also on the ground that the will is forged which fails on evidence, it could be revoked even though there was no citation on proper parties. Further, it had in its original jurisdiction power to grant probate or letters of administration concurrent with the District Court.⁶ Moreover, it could, under s. 301 of the Act, remove any executor and give administrative directions under s. 302. It acts in pursuance of its testamentary and intestate jurisdiction under cl. (34) of the Letters Patent, but this section was not a substitute for a suit and did not mean adjudication of any substantive rights.⁷ An executor must obtain probate of will before he can establish his right as executor.⁸

A probate court is a court of conscience. A probate when granted establishes the will from the death of the testator⁹ and conclusive as regards execution according to the law of the country. It is no evidence as to the title of the testator in respect of the properties bequeathed. Nevertheless it is conclusive as to the appointment of the executor.¹⁰ Its judgment nevertheless operates as the judgment *in rem*,¹¹ but the same does not operate as *res judicata*. So the decision of the probate court on the construction of the will for the purpose of the grant does not bar any action for construction of the will.¹² A grant of administration does not decide any question of title but merely the right to administer the estate.¹³

Persons standing in confidential relationship cannot take any benefits under a will unless he can establish that the testator had competent and independent legal advice. So, if a solicitor prepares a will of which he is also a beneficiary, he is to discharge the onus.¹⁴ Similarly, a solicitor attesting a

4 *Priestman v Thomas* 53 LJP 109; 51 LT 843; 33 WR 842.

5 LR 55 IA 18.

6 Section 300 of the Indian Succession Act.

7 *Akshoy v Ghosh* AIR 1949 Cal 462.

8 Section 213 of the Indian Succession Act.

9 Section 227 of the Indian Succession Act.

10 Section 41 of the Indian Evidence Act.

11 Section 41 of the Indian Evidence Act.

12 *Arunmoyi v Mohendra* 20 Cal 888.

13 *Kamala Prasad v Murli* AIR 1926 Pat 356 at p. 358.

14 *Gangabhai v Bhagwandas* 32 IA 142.

will of which he is also a beneficiary loses his professional charges.¹⁵ This section does not apply to Hindus, Buddhists etc. This is the legacy of the principle of old English law by which the testimony of persons interested in the transaction was not admissible in evidence.

Law contemplated other types of grant, viz., certificate.

(a) Under s. 29 of the Administrator-General's Act (Act 45 of 1963) and in cases of small estates of values not exceeding Rs. 5,000 (excluding Government Savings Bank deposits and Provident Fund moneys). The said Act has no application in those cases. The Administrator-General of the State can issue a certificate to receive the assets mentioned therein. This is still granted.

(b) Under s. 12 of the Indian Securities Act 1920, read with s. 19 of the said Act, a District Magistrate could grant a certificate of heirship in case of Government promissory notes where the deceased was a member of a joint Mitakshara family and in the other cases when the face value does not exceed Rs. 5,000.¹ The laws as to Government securities have been consolidated by the Public Debt Act 1944 (Act XVIII of 1944), which came into force on 1st May 1946 (*vide* Gazette of India 1946, Part 1, page 575). Although under s. 7 of the said Act the executors or administrators of a deceased and the holder of a succession certificate are the only persons who may be recognised by the Reserve Bank, nevertheless it can in the case of the Mitakshara family, recognise the title of the next holder. The Reserve Bank can, on summary procedure on the death of the holder of G.P. Notes of the value not exceeding Rs. 5,000, adjudicate the title of the claimant (*Government Securities Manual*, 4th Ed., pp. 137-138). The functions of the Administrator-General are in no way less than those of the executor or of the administrator. He can be appointed as executor or administrator. He has also the power to take possession of any property under s. 10 of the Administrator-General's Act (Act 45 of 1963) in case of immediate danger of appropriation. He can, under s. 22 of the Act, accept transfer of assets from executors and administrators.

PROBATES OF WILL AND LETTERS OF ADMINISTRATION WITH WILL ANNEXED

(a) *Executor, Administrator, Probate, Letters of Administration.* 'Executor' is the nominee of the deceased. It means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided [s. 2(c) of the Indian Succession Act]. The testator may himself appoint or ask somebody to appoint an executor.

¹⁵ *Re, Pooley* 40 Ch D 1; 60 LT 63.

¹ See also s. 66 of the *Government Securities Manual*, 3rd Ed., p. 77.

'Administrator' means a person appointed by the court to administer the estate of the deceased in cases where there is no executor or where the executor has renounced probate or is incapable to act or dies before taking out the probate.² A creditor can apply for Letters of Administration under s. 218 in cases where no interested person come forward for the grant. No action lies against an executor named for delay in taking out the probate. Where letters of administration are granted to the Administrator-General, the estate of the deceased vest in him though the Administrator-General's Act does not contain any provisions to that effect.³ No administration bond is required in case of the Administrator-General. Probate means proof of the will under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator. Probate of will can be granted only to an executor appointed by the will. The appointment may be expressed or by necessary implication.⁴ Probate of a will when granted establishes the right of the executor with effect from the death of the testator, and renders valid all intermediate acts of the executor as such.⁵

'Letters of administration' mean the grant of administration by a court of competent jurisdiction to the estate of the testator or intestate. In case where the executor dies before completion of administration, a grant under s. 258 of the Indian Succession Act is issued in India which is called Letters of Administration *de bonis non*. The practice in England is different as the executor of the executor does the needful to complete the administration. He is called derivative executor.⁶

POWERS OF THE EXECUTOR FOR SALE OF THE PROPERTY OF THE TESTATOR
BEFORE AND AFTER PROBATE IS OBTAINED, AND THE EFFECT THEREOF

An executor derives his title under the will. All properties of the testator except the trust property and the coparcenary interest in the HUF estate unless the same comes under the amendment introduced by s. 6 of the Hindu Succession Act 1956 read with s. 30 of the said Act vest in him immediately on the death of the testator.

IN WHAT CASES AN ALIENATION BY AN EXECUTOR OR
ADMINISTRATOR MAY BE IMPEACHED? ...

The general rule is that under s. 307 of the Indian Succession Act an executor or administrator has power to dispose of property of the deceased vested in him under s. 211 in such manner as he thinks fit and the assets so transferred cannot be followed in the hands of the transferee either by a creditor or by

2 Section 232 of the Indian Succession Act 1925.

3 *Alwar Chetti v Chidanbara* 38 Mad 1134.

4 Section 222 of the Indian Succession Act 1925.

5 Section 227 of the Indian Succession Act 1925.

6 *DeSouza v Secretary of State* 12 BLR OC 423.

a legatee. The other rule is that the transferee is not bound to see to the application of the moneys by the executor. The alienee from an executor who is acting as such has a right to infer that the executor is acting fairly. The fact that the alienation does not purport to be made for administrative purposes does not affect his title. But there is a well recognised exception to these rules. This immunity is lost if the alienee is privy to the breach of trust or has actual or constructive notice of the fact that the executor is acting in breach of trust or the alienation is made for purposes which the executor has no power to do in the course of administration or if the transaction of sale is in its nature incompatible with the legitimate alienation of the estate (i). Therefore, fraud and collusion will vitiate any transaction and if fraud is proved the transaction will be set aside. Generally an alienation will be set aside in the following cases:

- (a) If the property is sold at a nominal price or at a fraudulent undervalue.⁷
- (b) Where the alienation is made by the executor for the payment of his own debt.⁸
- (c) Where the alienation is made by the executor for other private purposes of his own.
- (d) If any specific property bequeathed, the sale of the Chattel by the executor will be set aside if it is proved that the purchaser had notice of the same and of the fact that there were no debts of the testator or that they have since been discharged.⁹
- (e) If a great length of time has elapsed since the testator's death, it will be presumed that all the debts of the testator have been discharged, and that the alienation was for a purpose foreign to the administration of the deceased estate.¹⁰

Executor cannot delegate his authority to any person to sell any property. A power-of-attorney in so far as it confers on the authority of the agent to exercise his discretion is void.¹¹

(b) *Right as executor or legatee when established.* No right as executor or legatee can be established in any court of justice unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed. Letters of administration with the will or with a copy of an authenticated copy of the will annexed.¹²

7 *Vertannes v Robinson* 23 Bom LR 1017 at p. 1024.

8 *Mlead v Drammend* 17 Ves 155.

9 *Ewer v Corbet* 2 PW 149.

10 *Re: Verrell's Contract* (1903)1 Ch 65.

11 *Jogendra Chunder v Apurba Dutt* 13 CWN 1190.

12 Section 213 of the Indian Succession Act.

This provision of law does not apply in the case of wills made by any Mahomedan.

(c) *Persons to whom probate or letters of administration cannot be granted.* Probate or letters of administration cannot be granted to any person who is a minor though letters of administration with the will annexed may be granted to his guardian pending minority or is of unsound mind, or to any association of individuals unless it is a company which satisfies the rules prescribed by the State Government¹ as now framed by the Governor-General in Council in this behalf under the amending Act XVII of 1931. The said rules were published at page 40 of Part I of the *Gazette of India* dated 17th January 1933.

(d) *Accrual of representation to surviving executor.* When probate has been granted to several executors, and one of them dies, the entire representation of the testators accrues to the surviving executor or executors.²

(e) *Effect and extent of probate or letters of administration.* Probate of a will or letters of administration entitle the executor or administrator to all rights belonging to the testator or intestate as effectually as if the administration had been granted at the moment after his death.³ This is what is known as Doctrine of Relation Back in the case of the grant of letters of administration. Probate of will or letters of administration have effect over all the property of the estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, unless the same is or are for special purposes or with exception⁴ and are conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and will afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted.⁵

Provided that probates and letters of administration granted—

- (i) by a High Court, or
- (ii) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees, will, unless otherwise directed by the grant, have like effect throughout the whole of India.⁶ Probate is conclusive as to the genuineness of the will but nevertheless it does not establish

1 Section 223 of the Indian Succession Act.

2 Section 226 of the Indian Succession Act.

3 Sections 220 and 227 of the Indian Succession Act.

4 Sections 248 and 256 of the Indian Succession Act.

5 Section 273 of the Indian Succession Act.

6 Section 273 of the Indian Succession Act.

the title of the testator to the property bequeathed.⁷ It is not even *prima facie* evidence as to the death of the testator.⁸

RESEALING OF PROBATE OF WILL EXECUTED BY HINDUS OUTSIDE INDIA AND PROBATED THERE—ANCILLARY PROBATE IS A CONDITION PRECEDENT

In cases of Will executed by a Hindu outside India, in respect of which a foreign probate has also been obtained, an ancillary probate or what is termed in English law as the resealing of the probate is required under s. 213(1), of the Indian Succession Act as otherwise, the requirement of the *lex fori* enacted under s. 213(1) may not be satisfied more so, to enable parties claiming under such a Will with reference to properties situate in India, the procedure under s. 228 of the Act has been prescribed. If this is not so, then as the probate obtained in respect of a will executed in a foreign country would be operative only within that country and persons entitled to other properties under the will, which are situate outside the country where the will was executed will be left without any remedy, s. 228 is an enabling provision and when read with s. 270 permits an ancillary probate. Section 270 is enacted on the principle that the presence of personal property of the deceased would be sufficient foundation of jurisdiction for purposes of granting probate. If, therefore, s. 213 requires the production of a probate as a procedural requirement before recognition of the rights to property by court under a Will either as an executor or a legatee and s. 228 read with s. 270 further provide for ancillary probate in respect of wills executed and probated outside India for the purpose of enabling the executors and legatees to assert rights to the estate of a deceased in India, then the requirement as to the obtaining of a probate in such case in the shape of an ancillary probate cannot be stated to be unnecessary in view of s. 57(a) and (b) of the Act.⁹

(f) *When probate or letters may be granted by District Judge or delegate.* Probate of the will or letters of administration to the estate of a deceased person will be granted by a District Judge, if it appears by a petition verified by the person applying for the same that the testator or intestate, as the case may be, at the time of his death, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.¹⁰ Probate and letters of administration will, upon application for that purpose to any district delegate, be granted by him in any case in which there is no contest, if it appears by a petition verified that the testator or intestate, as the case may be, had, at the time of his death, a fixed place of abode within the jurisdiction of such delegate.¹¹

7 In the goods of *Nanda Lal Sett* 58 CWN 568.

8 *Chettiyar v Kulsum Bibi* AIR 1936 Rang 103.

9 *Alagammal v Rakkammal* AIR 1982 Mad 354; see also AIR 1959 Mad 410.

10 Section 270 of the Indian Succession Act.

11 Section 272 of the Indian Succession Act.

(g) *Contents of the application for probate.*¹² (1) Application for probate or for letters of administration with the will annexed must be made by a petition, duly signed and verified by the petitioner, stating—

- (i) the date of the testator's death, date of the will;
- (ii) that the writing annexed is his last will and testament;
- (iii) that it was duly executed and attested;
- (iv) the amount of assets which are likely to come to the petitioner's hands; and
- (v) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition must further state—

- (i) when the application is to the District Judge that the deceased at the time of his death had a fixed place of abode, or had some property, within the jurisdiction of the Judge;
- (ii) when the application is to a district delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such delegate; and
- (iii) names, addresses and descriptions of persons who are his heirs and legal representatives under the Hindu Succession Act 1956.

(3) When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition must further state the amount of such assets in each State and District Judges within whose jurisdiction such assets are situate.¹³

(4) The application shall be signed and verified by the applicant as required under s. 280 of the said Act. Moreover, it requires the verification of one of the attesting witnesses in the manner prescribed under s. 281 of the said Act. A petition by the Administrator-General for Letters of Administration shall be deemed as sufficiently verified by his signature only.¹⁴

Sections 68 to 72 of the Indian Evidence Act (Act I of 1872) prescribed the mode for proof of a document which requires attestation. A will is not admissible in evidence unless at least one of the attesting witnesses comes and proves the same. But if the attesting witnesses are dead, or otherwise not available, an affidavit by a person in proof of the handwriting of the attesting witness may be accepted as a substitute for verification.¹⁵

(5).An affidavit as to valuation is to be filed along with the petition.

12 Section 276 of the Indian Succession Act.

13 Section 276 of the Indian Succession Act.

14 In the goods of *McComiskey* 20 Cal 879.

15 Section 69 read with s. 114 of the Indian Evidence Act—*Nooruddin v Md. Omer* AIR 1956 Bom 641.

(h) *Time for grant of probate and letters.* No probate of a will can be granted until after the expiration of seven clear days; no letters of administration can be granted until after the expiration of 14 clear days, from the date of the death of the testator or intestate.¹⁶ There is, however, no time limit. An application for probate or letters of administration can be made any time before the assets have been administered, but the delay gives rise to suspicion.¹⁷

(i) *Liability of executor or administrator.* The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes and all the property of the deceased vest in him as such for the purpose of representation and administration of the estate.¹⁸

But when the deceased was a Hindu, Mahomedan, Buddhist, Sikh or Jain, or an exempted person, nothing herein contained will vest in an executor or administrator, any property of a deceased person which would otherwise have passed by survivorship to some other person or persons. In other words, a person governed by the Mitakshara School of Hindu Law had no right to make any will of his coparcenary interest in the joint family estate. The Hindu Succession Act 1956, has changed the law on this subject to the effect that under s. 6 read with s. 30 of the Act, such an interest can be disposed of under a will.

If a legacy is bequeathed to a person who is named and executor of the will, he cannot take the legacy unless he proves the will or otherwise manifests his intention to act as an executor.¹⁹ If an executor renounces or fails to accept executorship within the time limited for the acceptance or refusal thereof, the will can be proved and letters of administration with a copy of the will annexed can be granted to the person who would be entitled to administration in case of intestacy. Where the legacy is attached to the office the executor loses all benefits even though prevented from obtaining probate for any sufficient cause.²⁰

(j) *Minority of executor or residuary legatee.* When a minor is a sole executor or sole residuary legatee, letters of administration, with the will annexed, can be granted to the legal guardian of such minor or to such other person as the court may think fit, until the minor has attained his majority, at which period, and not before, probate of the will may be granted to him.²¹

16 Section 293 of the Indian Succession Act.

17 *General Accident, Fire and Life Assurance Company Ltd. v Janmohamad* (1941) 1 MLJ 88 (PC).

18 Section 211 of the Indian Succession Act.

19 Section 141 of the Indian Succession Act—*Rajam v Pankajam* AIR 1944 Mad 337.

20 *Henbury v Spooner* 5 Beav 680.

21 Section 244 of the Indian Succession Act.

(k) *Administration to attorney of the executor.* When any executor is absent from the State in which application is made and there is no executor within the State willing to act, letters of administration with the will annexed can be granted to the attorney or agent of the absent executor for the use and benefit of his principal limited until he shall obtain probate or letters of administration granted to himself.¹

(l) *Ad valorem duty.* The grant of probate or letters of administration is subject to *ad valorem* duty. In West Bengal the maximum duty is as in a suit, namely Rs. 10,000. The benefit of maximum court fee, where limited, is available in probate proceedings.² No duty is payable—

- (i) where the value of the estate does not exceed Rs. 2,000;³
- (ii) in respect of trust property;⁴
- (iii) in cases of more than one grant or grants in respect of the same estate;⁵
- (iv) on the property of any person subject to military law both army and navy killed or died of wounds suffered while on active service up to the value of Rs. 50,000 (revised notification under s. 35 of the Old Court Fees Act 1870, No. 23321 dated 4th March 1938 for Bengal only);⁶
- (v) on the moneys which vest in the dependents under s. 3(2) of the Provident Funds Act 1923;⁷ and
- (vi) deposits in Government Savings Bank not exceeding Rs. 3,000.⁸

When the karta of a Mitakshara family dies leaving bank deposits and shares standing in his name alone, he is the owner of those assets *vis-a-vis* the bank and the companies. In other words, he was ostensible owner of those assets which he held as a trustee for the benefit of all members of the coparcenary. It was held that such a grant was exempted from duty,⁹ but since the enactment of the Hindu Succession Act 1956, and in cases where the deceased left any female relations as referred to in s. 6 of the said Act, such grant is subject to duty only to the extent of the share of the deceased in the joint family assets.

(m) *Caveat against grant of probate or administration.* A caveat is a caution or warning entered in the testamentary court—a notice to the Registrar not

1 Section 241 of the Indian Succession Act.

2 *PMA Setty v State of Karnataka* AIR 1989 SC 100 (para 36).

3 Section 23(ii) of the West Bengal Court Fees Act 1970.

4 Section 27 of the West Bengal Court Fees Act 1970.

5 Section 26 of the West Bengal Court Fees Act 1970.

6 Repealed by W.B. Act X of 1970.

7 In the goods of *Maurice Saleh* 60 Cal 1016.

8 Section 8 of the Government Savings Bank Act.

9 In the goods of *Shewprasad Saraf* AIR 1954 Cal 444.

to issue any grant or to take any steps without notice to the caveator. A caveat remains valid for six months only unless it is renewed further if the caveator dies within the period the caveat may be discharged by an order on chambers summons. The caveator must have some interest in the estate of the deceased. The test laid down¹⁰ is—“Does the grant displace any right to which the caveator would otherwise be entitled?”¹¹ A caveat against the grant of probate or administration can be lodged in the High Court or with the District Judge or a district delegate. No action can be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or the district delegate to whom the application has been made or notice has been given of its entry with some other delegate until after such notice to the person by whom the same has been entered, as the court may think reasonable.¹²

Under s. 148A of Code of Civil Procedure 1908 a caveat may be filed before any proceeding has been taken. It remains valid for 90 days. Under s. 284 of Indian Succession Act 1925 caveat may be filed before or after making application for probate. If filed before application of probate then the caveat is likely to remain valid for 90 days under s. 148A, CPC.

LETTERS OF ADMINISTRATION WITHOUT WILL ANNEXED

(a) *Right to intestate's property.* No right to any part of the property of a person who has died intestate can be established in any court of justice unless letters of administration have first been granted by a court of competent jurisdiction. Letters of administration are absolutely necessary in case of intestacy among Europeans, East Indians, Armenians and Jews. This provision of law does not apply in the case of the intestacy of a Hindu, Mahomedan, Buddhist, Sikh, Jain or Indian Christian.¹³

(b) *Persons to whom letters of administration cannot be granted.* Under s. 298 of the said Act the court can refuse the grant in cases of Hindus not coming under s. 57 and Mahomedans at its discretion. Such grant is also refused in ship. Letters of administration are absolutely necessary in case of intestacy among the Europeans, East Indians, Armenians and Jews.

(c) *Grant of administration to the estate of Hindus, etc.* If the deceased has died intestate and was a Hindu, Mahomedan, Buddhist, Sikh or Jain or an exempted person, administration of his estate can be granted to any person who, according to the rules for the distribution of the estate applicable in

10 *Baggiammal v Rajagopala* AIR 1948 Mad 81.

11 *Pradip v Umarani* AIR 1954 Cal 277.

12 Section 285 of the Indian Succession Act.

13 Section 212 of the Indian Succession Act. In the goods of *Annapurna* (1949)2 Cal 287.

the case of such deceased, would be entitled to the whole or any part of such deceased's estate.¹⁴

When no such person applies, it can be granted to a creditor of the deceased.

(d) *Rules for distribution of intestate's property.* Chapters I and II, Part V of the Indian Succession Act, are not applicable to Hindus except those married under the Special Marriage Act or to Mahomedans, Buddhists, Sikhs or Jains. The whole of this part applies to Europeans, Indian Christians, Jews, Armenians and other persons professing Christian faith and domiciled in India. The following are the rules for the distribution of intestate's property under ss. 29 to 49 of the Indian Succession Act.

(i) Where the intestate has left a widow or widower and lineal descendants—

Two-thirds of his property will go to the surviving children in equal shares, but, in that case, if there be surviving grand-children through a deceased child, they will, along with the children, inherit *per stirps*, i.e., will take in equal shares only the shares which their respective parents would have taken if living at the intestate's death. In the same manner the intestate's property will be equally divided among the surviving grandchildren, or more remote lineal descendants, in the event of surviving children, grandchildren, or more remote lineal descendants, respectively, being previously dead.

In any of the above cases, the remaining one-third of the property will go to surviving widow or widower.

(ii) Where the intestate has left a widow or widower but no lineal descendants—

If the net value of his property does not exceed five thousand rupees, the whole of his property will belong to the widow or widower; but, if the net value of the property exceeds five thousand rupees, the widow or widower will be entitled to five thousand rupees thereof, with interest thereon at the rate of four per cent per annum from the death of the intestate, provided that the provision for the widow or widower will not apply to the property of any Indian Christian, or of any child or grandchild of any male Indian Christian. After payment of the said sum of five thousand rupees with interest as aforesaid, one-half of the residue of the intestate's property will go to the father; if the father be dead, the surviving mother, brothers and sisters, or any of them, will inherit the moiety of the residue in equal shares, or the whole of such moiety, as the case may be, but, in that case, if there be surviving children of a deceased brother or sister, they will inherit *per stirps* along with the mother, brothers and sisters. In the absence of any surviving

14 Section 218 of the Indian Succession Act.

parent, brothers and sisters, one-half of such residue of intestate's property will be divided equally among those of intestate's surviving relations who are in the nearest degree of kindred to him.

In any of the above cases, the remaining one-half of the residue will go to the surviving widow or widower, who will inherit the whole of the property if there be no surviving kindred of the intestate.

(iii) Where the intestate has left no widow, the whole of his property will be inherited by his lineal descendants or kindred, according to the above rules. In the absence of either surviving lineal descendants or kindred, the property will go to the Crown.

For the purpose of succession, there is no distinction—

- (i) between those who are related to a person deceased through his father and those who are related to him through his mother, or
- (ii) between those related to him by the full blood and those related by the half blood, or
- (iii) between those who are actually born in his lifetime and those who have been born after his death.

(e) *Grant of administration to other persons.* If the deceased has died intestate and was not a person belonging to any of the classes above referred to, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects.

(f) *Effect of letters to attorney of absent person.* See corresponding note under Probate.

(g) *Grant of letters to attorney of absent person.* Where a person entitled to administration in case of intestacy is absent from the State, and no person equally entitled is willing to act, letters of administration do not render valid any intermediate acts of the absent person for the use and benefit of his principal limited until he will obtain letters of administration granted to himself.

When any person to whom if present letters of administration with the Will annexed might be granted is absent from the State, Letters of Administration with the Will annexed may be granted to his Attorney or Agent limited until a probate or Letter of Administration is granted to the said person.¹⁵

(h) *Time for grant of letters of administration.* No probate of a Will is granted before expiry of seven days and no Letter of Administration is granted until expiry of fourteen days from the death of the testator or of the intestate.¹⁶

15 Sections 241 and 242 of the Indian Succession Act.

16 Section 293 of the Indian Succession Act.

(i) *Acts not validated by letters of administration.* Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damages of the intestate's estate.

(j) *When letters of administration can be granted by District Judge or Delegate.* The District Judge has jurisdiction to grant or revoke probate and Letters of Administration within his district. This applies to Calcutta, Mumbai, Chennai as also to the notified areas in case of the deceased being a Hindu Mohammedan, Buddhist, Sikh or Jaina or an exempted person.¹⁷

(k) *Contents of petition.* See s. 278 of the Indian Succession Act. Application for letters of administration must be made by a petition, duly signed and verified by the petitioner, stating—

- (i) the time and place of the deceased's death;
- (ii) the family or other relatives of the deceased, and their respective residences;
- (iii) the right in which the petitioner claims;
- (iv) the amount of assets which are likely to come to the petitioner's hands;
- (v) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
- (vi) when the application is to a district delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such delegate.

Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition must further state the amount of such assets in each State and the District Judge within whose jurisdiction such assets are situate.

(l) *Administration bond, assignment of administration bond.* Every administrator, except such attorney or agent as mentioned in the above cl. (g), must give a bond to the District Judge, with one or more surety or sureties, engaging for the due collection, getting in and administering the estate of the deceased.¹⁸

The court can, on application made by petition and on being satisfied that the engagement of an administration bond has not been kept, and upon such terms as to security, or providing that the money received be paid into court, or otherwise, as the court may think fit, assign the bond to some person, his executors, or administrators who will thereupon be entitled to

17 Section 264 of the Indian Succession Act 1925.

18 Section 291(1) of the Indian Succession Act.

sue on the said bond in his or their own name or names as if the same had been originally given to him or them instead of the Judge of the court, and will be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.¹

SUCCESSION ACT

(a) *Restriction on grant of succession certificate.* A succession certificate cannot be granted under s. 370(1) of the Indian Succession Act 1925 with respect to any debt or security to which a right is required to be established by probate or letters of administration as in the cases of Jews, Parsis, Armenians, Europeans and East Indians. A Succession Certificate can be granted to any person claiming to be entitled to the effect of a deceased Indian Christian or with respect to any debt or security. The fact that such right can be established by Letters of Administration will not prevent the issue of such Succession Certificate. Any Hindu including a Brahmas, Sikh, Jaina or Buddhist can apply for a Succession Certificate where there is no Will of the deceased. Even where there is a Will but right to any debt or security cannot be established by the Will a Succession Certificate can be granted.²

Provided that nothing will prevent the grant of a succession certificate to any person claiming entitled to the effects of a deceased Indian Christian, or any part thereto, with respect to any debt or security, by reason of the fact that the right thereto can be established by letters of administration. Table A of the Companies Act 1956 and Articles of Association of limited companies in many cases require probate or letters of administration for transmission of shares. So the Rules of companies having safe deposit lockers may require probate or Letters of Administration to establish the right of the claimants to open the same after the death of the person in whose name the same stands.

- (b) *Security.* For the purpose of succession certificate. Security means—
- (i) any promissory note, debenture, stock or other security of the Government of India or the State Government;
 - (ii) any bond, debenture or annuity charged by Act of Parliament on the revenues of India;
 - (iii) any stock or debenture of, or share in, a company or other incorporated institution;
 - (iv) any debenture or other security for money issued by or on behalf of a local authority;
 - (v) any other security which the Governor-General in Council may declare to be a security for the purposes of succession certificate.

1 Section 292 of the Indian Succession Act.

2 Sections 370-382 of the Indian Succession Act 1925.

(c) *Application for succession certificate.* Application for such certificate must be made under s. 372 of the Indian Succession Act to the District Judge by a petition signed and verified by the applicant, stating—

- (i) the time and place of death of the deceased;
- (ii) the ordinary residence of the deceased at the time of his death, and if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within these limits;
- (iii) the family and other near relatives of the deceased, and their respective residences. In cases under the Hindu Succession Act (Act XXX of 1956) the names of the heirs under the said Act;
- (iv) the right in which the petitioner claims;
- (v) the absence of any impediment under s. 370(1) or under any other provision of the Indian Succession Act or any other enactment to the grant of the certificate or to the validity thereof if it were granted; and
- (vi) the debts and securities in respect of which the certificate is applied for.

(d) *Extension of succession certificate.* The District Judge can, on the application of the holder of a succession certificate, extend the certificate to any debt or security not originally specified therein and every such extension will have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.³

(e) *Local extent and effect of succession certificate.* A succession certificate has effect throughout the whole of India.⁴ It is conclusive as against persons liable to whom full indemnity is afforded for payments made.⁵

(f) *Security, bond, assignment of security.* The District Judge must in any case in which he proposes to proceed when questions of law or fact which seem to him to be too intricate and difficult for determination in a summary proceeding, or when there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, and may, in any other case, require as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties or other sufficient security for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

3 Section 376 of the Indian Succession Act 1925.

4 Section 380 of the Indian Succession Act 1925.

5 Sections 381 and 386 of the Indian Succession Act.

The Judge can, on application made by petition and on the cause shown to his satisfaction, and upon such terms as to security, of providing that the money received be paid into the court, or otherwise, as he thinks fit, assign the bond or other securities to some proper person, and that person will thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.⁶

NOTE: The law as it now stands after the amendment of the Code of Civil Procedure in 1976 is that the liability of the surety is co-extensive with the principal debtor even for fulfilment of any condition imposed upon any person under any order of the court in any suit or other proceeding (s. 145 of CPC).

Effect of Certificate under s. 381 of the Indian Succession Act. The effect of the certificate is no adjudication of title of the deceased far less than that of the holder as regards the debts and securities covered thereunder, but simply to afford protection to the parties paying the debts. The question whether the debt belonged to the deceased is not a matter to be decided on an application for a Succession Certificate.⁷ The grant of succession certificate is no proof of the debts far less an adjudication of the rights of the parties.

This section protects the debtors and affords full indemnity to the persons liable to pay the debts and in respect of the securities covered by the certificate as persons having the same paid in "good faith".⁸ The expression "good faith" is defined in the General Clauses Act. Even if payment is made without due care and caution still it will be considered as honestly paid. It affords full indemnity to the banks. If any one refuses to pay the debts to the holder of the certificate, he will become liable to pay interest. It entitles to the holder to institute a suit to recover the debt.

In the case of securities a Succession Certificate enables the grantee to transfer the security.⁹ Even so if the articles of association of the company provide that the executor or administrator of a deceased member shall be the only person to be recognised by the company, a transfer by a person to whom the Succession Certificate is granted is to be recognised as the legal representative of the deceased.

Nevertheless the certificate is only conclusive of the representative title of the holder thereof as against the debtors. A suit will not lie for the declaration that the holder of the certificate is not the legal representative of the deceased. Until the certificate is revoked under s. 383, it is good as

6 Section 375 of the Indian Succession Act.

7 *Srinivasa v Gopalan* 20 MLJ 865; 28 IC 424.

8 *Ganga Prasad v Mt. Saeedan* AIR 1952 All 801.

9 *Thenappa v Indian Overseas Bank* AIR 1943 Mad 743.

regards the representative title of the holder. Even in the case of a minor if the certificate is granted to the guardian of the minor it will afford indemnity to the debtor concerned and the certificate does not terminate on the minor attaining majority.

REVOCATION OF GRANTS

(Section 263 of the Indian Succession Act)

(a) *Just causes for revocation of grants.* A grant of probate of will or letters of administration can be revoked or annulled for just causes, e.g.

- (i) that the proceedings to obtain the grant were materially defective in substance, e.g. want of jurisdiction, suppression of citation, etc.;
- (ii) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case, e.g. probate of a forged will, fraud on court, etc.;
- (iii) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently, e.g. probate of a will revoked.
- (iv) that the grant has become useless and inoperative through circumstances, e.g. discovery of a subsequent will or codicil;
- (v) that (*for grant of probate or letters of administration*) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provision of law, or has exhibited an inventory or account which is untrue in material respects, or (*for grant of a succession certificate*) that a decree or order made by a competent court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate be revoked.

(b) *Effect of revocation.* The effect is not to revoke the entire proceedings *but to revoke the grant*. The will does not go off except when the probate is revoked on the ground of forgery of the will.

An important question arises as to the effect of revocation of probate or letters of administration as regards interim dealings in relation to the property of the deceased in particular when any property has been sold. The revocation does not make the grant void *ab initio*, so a *bona fide* purchaser acting in good faith for valuable consideration is always protected.¹⁰ Under ss. 216 and 273 of the Indian Succession Act the grant is conclusive. So people dealing with the grantee in good faith and in due course of administration

10 *Akshoy Kumar v Nandalal* (1946)1 Cal 432.

are protected. The law is that every person shall give credit to probate. This was also the law in England and is now embodied in a statute.¹¹ A distinction is however drawn between grant which are voidable and those void *ab initio*. In the former event a purchaser acting *bona fide* is protected.¹² When the grant is void *ab initio*, such a purchaser is not protected unless the dealing was effected under compulsion and in the best interest of the estate. He can at best claim to be a creditor.¹³

FORMS

Caveat against Grant of Probate or Administration

In the Court of

In the goods of AB (full name and nationality). In the matter of grant of probate of the will (or letters of administration of the estate) of the said deceased.

Caveat on behalf of CD (full name and address and relationship).

Let nothing be done in respect of the application, particulars of which are given below without due notice to the above-named caveator.

Dated this day of 1999.

Yours faithfully
Advocate
Address

- | | |
|---|---------|
| 1. Name of the caveator in full particulars. | 1. |
| 2. Address of the caveator in full. | 2. |
| 3. In case the caveator resides outside the jurisdiction of the court, address of the caveator for service of notice within the jurisdiction of this court. | 3. |
| 4. Name of the applicant in respect of the application against which caveat is lodged. | 4. |
| 5. Address of such applicant. | 5. |
| 6. Number of the suit/proceeding and the cause title thereof if instituted. | 6. |

11 15 Geo Vict 23, s. 27 replacing 2 or 21 Vict C 71, 77, 78.

12 *Gopal Lal v Badridar* 33 Cal 657 also *Boxall v Boxall* 27 Ch D 220.

13 *Ellis v Ellis* (1905)1 Ch 613.

- 7. Name and address of intended parties to the suit/proceeding as far as the caveator is aware if the suit/proceedings have not been instituted. 7.
- 8. Nature of the proceedings. 8.

**Petition for Probate or
Letters of Administration with the Will Annexed**

IN THE COURT OF THE DISTRICT DELEGATE (or District Judge) OF
District

Original petition No. of under
Indian Succession Act 1925 in the Matter of the
Will of AB deceased

Petition of XY son of EF by caste
by occupation resident of

MOST RESPECTFULLY SHEWETH:

(1) That the above-named AB hereinafter referred to as the said deceased who was a Hindu governed by the Hindu Succession Act (Act XXX of 1956) and died on the day of at within the jurisdiction of this court which was his fixed place of residence (or where he was temporarily residing, his fixed place of residence being at within the jurisdiction of this court or leaving the property within the jurisdiction of this court as will appear from the affidavit of assets filed herewith.

(2) That prior to his death and on the day of the deceased made and published his last will and testament whereby he appointed your petitioner as the sole executor and left and bequeathed his estate and effects thereof as indicated therein.

(3) The said will is annexed to the affidavit of Sri, one of the attesting witnesses and it will appear from the said affidavit that the same was duly executed by the said deceased in the presence of the witnesses whose names appear at the foot thereof and was also attested by them.

(4) Your petitioner is the same person as XY, the executor named in the will and, as such, he is entitled to probate thereof (or where the application is for letters of administration with a copy of the will annexed—as the said testator did not appoint any executor of his said will, your petitioner being his eldest son and one of the persons entitled to a share of his estate in the event of intestacy—is entitled to and so claims administration of the property and credits of the said AB.

(5) That your petitioner has truly set forth in Annexure A to his affidavit of valuation filed herewith all the properties and credits which the deceased died possessed of or was otherwise entitled to at the time of his death which have come or are likely to come to the petitioner's hands and so far as your petitioner has been able to ascertain or is aware, there are no property and credits other than what are specified in the Annexure A of the said affidavit and in case of discovery of other assets your petitioner undertakes to pay the requisite court-fee on that account.

(6) That your petitioner has also truly set forth in Annexure B to his said affidavit all the items that by law he is allowed to deduct.

(7) The value of the assets which are likely to come to your petitioner's hands in the event of probate of the will or letters of administration with a copy annexed thereto being granted does not exceed the aggregated sum of Rs. and the net amount after deducting all items which he is by law allowed to deduct, is under the value of Rs.

(8) That the deceased was a Hindu governed by the Hindu Succession Act (Act 30 of 1956) and at the time of his death he left the following and no other relations who would have been his heirs in the event of intestacy under the said Act.

Name, address, age and relationship: remarks, if any
(full details)

(9) That your petitioner has duly paid the *ad valorem* duty payable in respect of the estate of the deceased.

(10) That no application has been made before any other court for probate of the said will or letters of administration with a copy annexed thereto and no suit or other proceedings are pending for administration of the estate.

(11) Your petitioner hereby undertakes to administer the property and credits of the said AB deceased and to make and file a full and true inventory thereof and exhibit the same in this court within six months from the date of grant of probate of the will (or letters of administration) to him, and also to render to this court a true account of the said property and credits within one year from the said date.

(12) That this application is made *bona fide*.

Your petitioner therefore prays:

(a) That probate of the said will (or letters of administration to the property and credits of the said deceased, with a copy of the said will annexed) with effect throughout the State of may be granted to him.

(b) For such other reliefs as this court may seem fit.

Prepared in my office:
Advocate for the petitioner

Verification of the Applicant

I,, the above-named petitioner, do declare and say that the statements contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the above petition are true to my knowledge and those contained in paragraphs 12 and 13 thereof are my submissions.

I sign this verification at this day of

DECLARATION OF WITNESS

I,, one of the witnesses to the last will and testament of the testator mentioned in the above petition, do declare and say that I was present on the day of at and saw the testator affix his hand and signature or mark to the said will, marked A to the Affidavit of filed herewith (or that the said testator acknowledge the writing annexed to the above petition and marked A, to be his last will and testament in my presence).

Solemnly affirmed by the said
..... witness this day
of at Court House at
Calcutta

Sign
Before me

Commissioner/Magistrate
/Oath Officer

Petition for Probate to have Effect throughout India

In the court of the District Judge

Original Petition No. under Indian
Succession Act 1925

In the Goods of AB late of No. deceased

MOST RESPECTFULLY SHEWETH:

(1) That the above-named AB hereinafter referred to as the said deceased who was a Hindu governed by the Hindu Succession Act (Act XXX of 1956) died on the day of at within the jurisdiction of this court, which was his fixed place of residence.

(2) That at the time of his death the deceased left the following and no other persons who would have been his heirs under the said Act in case of intestacy (state name, address, age and relationship).

(3) That prior to his death and on the day of the said deceased made and published his last will and testament in English language and character whereby and whereunder he appointed your petitioner as the sole executor and left and bequeathed his estate and the effects thereof in the manner indicated therein.

(4) The said will is annexed to the affidavit of Sri, one of the attesting witnesses and marked with the letter A and it will appear from the said affidavit that the said will was duly executed by the deceased in the presence of witnesses whose names appear at the foot thereof and attested by them.

(5) Your petitioner is the same person named as CD, the executor appointed by the said will.

(6) That the petitioner has truly set forth in Annexure A to his affidavit of valuation filed herewith all the properties and credits which the deceased died possessed of or was otherwise entitled to at the time of his death which have come or are likely to come to the petitioner's hand and so far as the petitioner has been able to ascertain or is aware, there are no property and credits other than what are specified in the Annexure A of the said affidavit and in case of discovery of other assets your petitioner undertakes to pay the requisite court-fee on that account.

(7) That the petitioner has also truly set forth in Annexure B to his said affidavit all the items that by law he is allowed to deduct.

(8) It will appear from the said affidavit of assets that the value of the assets which are likely to come to your petitioner's hands in the event of the grant of probate of the said will in his favour does not exceed in the aggregate the sum of Rs. out of which assets of the value of Rs. are situate in the State of West Bengal, within the jurisdiction of this court and assets of the value of Rs. are situate in the State of Maharashtra, within the local limits of the jurisdiction of the High Court of Bombay.

The value of the assets of the said deceased beyond the limit of the State of West Bengal does not exceed Rs. 10,000.

(9) That to the best of your petitioner's knowledge, no application has been made to any High Court or other District Court for probate of the said will or for letters of administration of the said estate, intended to have effect throughout India, (or, on or about the day of application was made to the Court of the District Judge of by EF of for a grant of probate of the said will to him, and the same was on the day of dismissed on the ground that the said EF was not appointed executor by the said will, or as the case may be).

(10) That your petitioner has paid the *ad valorem* duty payable for the grant of probate hereunder made and in case of discovery of any further assets, your petitioner undertakes to pay the deficit court-fees on that account.

(11) Your petitioner does hereby undertake to duly administer the property and credits of the said deceased and to make a full and true inventory thereof and exhibit the same in this court within six months from the date of grant of probate to him and also to render to this court a true account of the said property and credits within one year from the said date.

Your petitioner therefore prays:

- (a) Probate of the will with effects throughout the Union of India may be granted to him.
- (b) For such other relief as to the court may deem fit.

Verification of the Petitioner

I, the above-named petitioner do hereby declare and say that the statements contained in paragraphs 1 to 9 of the above petition are true to my knowledge and those contained in paragraphs 10 and 11 thereof are my humble submissions.

I sign this verification at Calcutta
this day of

DECLARATION OF WITNESS

I, one of the witnesses to the last Will and Testament of the Testator mentioned in the above petition do declare and say that I was present on the day of at and saw the Testator affix his hand and signature or mark to the said Will marked "A" to the affidavit of FILED HERewith (or that the said Testator acknowledged the writing annexed to the above petition and marked "A" to be his last Will and Testament in my presence.

Solemnly affirmed by the said
this day of at the Court
House at Calcutta

Signature

Before me
Commissioner/Magistrate

**Petition for Letters of Administration
of Property and Credits as no Will was Made**

IN THIS COURT OF THE DISTRICT JUDGE (OR DELEGATE) OF
Original Petition No. of under Indian Succession Act 1925
in the Goods of AB late of No. deceased.

Petition of XY under s. 278 of the Indian Succession Act 1925 for Letters of Administration—

MOST RESPECTFULLY SHEWETH:

1. That the above-named deceased AB hereinafter referred to as the said deceased late of died on or about the day of at within the jurisdiction of this court, which was his fixed place of residence (or where he was temporarily resident, his fixed place of residence being at within the jurisdiction of this court) or leaving properties specified in the Annexure A to the affidavit of assets filed herewith within the jurisdiction of this court.

2. That the said deceased died intestate and although your petitioner made due and diligent search to ascertain whether the deceased left any will, none so has been found up till now.

3. That the said deceased was a Hindu governed by the Dayabhaga or Bengal School of Hindu Law and at the time of his death he left him surviving the following and no other person or persons as his heirs and legal representatives under the Hindu Succession Act (Act 30 of 1956).

- (1) CD, your petitioner as eldest son—age and residence;
- (2) EF of (residence, age and description) his youngest son;
- (3) J. the wife of LM of etc. his daughter (residence and age);
- (4) N of etc. his wife—residence and age;
- (5) PQ of etc.—residence and age.

4. That the petitioner as the eldest son of the deceased is entitled to share of his estate and he claims Letters of Administration in respect of the estate of the deceased.

5. That the petitioner has truly set forth in Annexure A to his affidavit of valuation filed herewith all the properties and credits which the deceased died possessed of or was otherwise entitled to at the time of his death which have come or are likely to come to the petitioner's hands and so far as the petitioner has been able to ascertain or is aware, there are no property and credits other than what are specified in the Annexure A of the said affidavit and in case of discovery of other assets your petitioner undertakes to pay the requisite court-fee on that account.

6. That the petitioner has also truly set forth in Annexure B to his said affidavit all the items that by law he is allowed to deduct.

7. That the said assets exclusive of what the deceased may have been possessed of or was entitled to as a trustee for another and beneficiary or with power to confer a beneficial interest and also exclusive of the items mentioned in the said Annexure B but inclusive of all rents, interests and dividends and increased value since the date of his death are under the value of Rs.

8. That no application has been made to any District Court or delegate or to any High Court for probate of any will of the said deceased or letters of administration with or without the will annexed in respect of his property and credits.

9. That your petitioner has paid the *ad valorem* duty payable in respect of the estate of the deceased.

10. That your petitioner undertakes to duly administer the property and credits of the said AB deceased and to make a full and true inventory thereof and exhibit the same in this court within six months from the date of grant of letters of administration to him, and also to render to this court a true account of the said property and credits within one year from the said date.

11. That this application is made *bona fide*.

Your petitioner therefore prays:

- (a) Letters of Administration be granted to him having effect throughout the State of West Bengal.
- (b) For such other relief as this court may deem fit.

Verification

I, the petitioner above-named, do solemnly declare and say that what is stated in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the above petition are true to my knowledge and that what is stated in the remaining paragraphs 10 and 11 are my submission before this court.

I sign this verification at No. this day of 2000.

Prepared in my office
Advocate for the petitioner

Sd/-

Form of Valuation (to be used with such Modifications, if any) as may be Necessary

AFFIDAVIT OF ASSETS

In the Court of

Re.: Probate of the will of (or administration of
the property and credits of) deceased.

Solemnly Affirm

I, make oath and say that I am the
executor (or one of the executors, or one of the next-of-kin) of deceased and

that I have truly set forth in Annexure A to this affidavit all the property and credits which the above-named deceased died possessed of or was entitled to at the time of his death, and which have come or are likely to come to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interests, dividends and increased values since the date of the death of the deceased or under the value of—

Annexure A
Properties of Deceased

<i>Valuation of the movable and immovable property of deceased</i>	Rs.	P.
Cash in the house and at banks, household goods, wearing apparel, books, plates, jewels, etc. Property in Government securities transferable at the public debt office		
Immovable property consisting of		
Leasehold property		
Property in public companies		
Policy, of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills of exchange, notes and other securities for money		
(State the amount of the whole; also the interest separately, calculating it at the time of making the application)		
Book debts		
Stock in trade (estimated value, if any		
Other property not comprised under the foregoing heads (state the estimated value, if any).		
Total		
Deduct amount shown in Annexure B not subject to duty.		
Net Total		

Annexure B
Schedule of Debts, etc.

	Rs.	P.
Amount of debts due and owing from deceased, payable by law out of the Estate		
Amount of funeral expenses		
Amount of mortgage encumbrances		
Property held in trust not beneficially or with general power to confer a beneficial interest.		
Other property not subject to duty		
Total		

4. The statements contained in paragraphs 1, 2 and 3 of the above affidavit are true to my knowledge.

Solemnly affirmed by the said
at the Court House on this
day of before me.

Commissioner

Petition for the Grant of Succession Certificate by Widow

In the Court of the District Delegate
at

District

Indian Succession Act 1925, Case
No. of 1999

In the Goods of (name, address, caste and
nationality of the deceased)

And

In the matter of Succession Certificate in
respect of the debts and securities of the
estate of the deceased

The humble petition of sole
widow of the deceased of No.

RESPECTFULLY SHEWETH:

1. That your petitioner is the sole widow of the deceased.

2. That the deceased above-named, hereinafter referred to as the 'said deceased' who had been during his lifetime and until his death permanently living and residing at the said premises within the jurisdiction of this court and was by faith and nationality a Hindu citizen of India governed by the Dayabhaga or Bengal School of Hindu Law, died intestate on the day of at his aforesaid place of residence.

3. The deceased, at the time of his death, left only his widow, the present applicant and none else as his heir under the Hindu Succession Act 1956.

4. That at the time of his death the deceased left no son or daughter or father or any grandson or granddaughter by any predeceased son or daughter or any great-grandson or any great-granddaughter by any predeceased grandson and granddaughter or any widow of any predeceased son or predeceased grandson or great-grandson or any other relation specified in class I and class II of the Schedule under s. 8 of the said Act.

5. That the deceased left at the time of the death *inter alia* assets for which succession certificate has been prayed for of the market value of Rs.

A full and complete schedule of the said assets is hereunto annexed and marked "A".

6. That strict and diligent searches were made by your petitioner to ascertain whether the deceased left any will or made other disposition in respect of the properties, assets, and credits but no such will has been discovered up till now. Your petitioner, therefore, believes and has reasons to believe that he died intestate. No letter of administration has been issued in respect of the estate of the deceased. No application for letter of administration or succession certificate is pending in this court or in any other court.

7. That your petitioner is the same and identical person described as the sole widow of the deceased and she is interested in the administration of the estate of the deceased.

8. That it is evident from the facts and circumstances hereinbefore stated that there is no impediment under s. 370 of the Indian Succession Act 1925 or any other provisions of the said Act or any other enactment against the grant of Succession Certificate hereunder prayed to your petitioner nor to the validity thereof when granted.

9. That your petitioner states and submits that in the circumstances aforesaid, she alone is entitled to the grant of Succession Certificate in respect of the said assets payable to the estate of the deceased.

10. That the *ad valorem* duty of Rs. payable in respect of the grant of Succession Certificate hereunder prayed for has been paid.

11. That this application is made *bona fide*.

Your petitioner, therefore, prays for an order in the following terms:

- (i) Succession certificate may be granted to your petitioner in respect of the properties, assets and credits specified in Schedule "A" hereto with power to collect and/or receive and/or realise the same including all interests accrued thereon and to negotiate and/or sell and/or deal with the same without any restriction.
- (ii) Your petitioner be exempted from furnishing any security on that account.

And your petitioner as in duty bound shall ever pay.

Schedule A, PART-I
Debts and Liabilities

Sl. No.	Name of the debtors	Amount of debt including interest on the date of application	Description and date of the instrument, if any, by which the debt is secured
1.	Rs. ....	.....
2.	Rs. ....	.....
3.	Rs. ....	.....
4.	Rs. ....	.....

PART-II
Securities

Sl. No.	Distinguishing number and letter of security	Number, title or nature of security	Amount or par value	Market value on the date of application
1.	.....	.....	.....	.....
2.	Unsecured dividend warrant No. ... in respect of the above shares.	.....	.....	.....
3.	.....	.....	.....	.....

Verification

I, Sm., sole widow of the above-named residing at No., do hereby declare and say that the statements contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 10 of the above petition and also the particulars contained in the Schedule including all figures, are true to my knowledge and those contained in paragraphs 9 and 11 hereof are my submission to this Learned Court.

I sign this verification at
No. this
day of 1999

Prepared in my Office
Advocate for the Petitioner

Petition for Grant of Succession Certificate

In the Court of in the goods
of (state name, address and
nationality)

In the matter of the grant of a succession
certificate in respect of the debts,
securities of the said deceased

The humble petition of AB (state address
and relationship)

The above-named applicant respectfully begs to state as follows:

1. That the deceased GH of, etc., at etc., hereinafter referred to as the said deceased died intestate at No. on the day of
2. That prior to and at the time of his death the said deceased has had his fixed place of residence at No. within the jurisdiction of this court, where he ordinarily lived and resided and left also some property.
3. That the said deceased was governed by the Hindu Succession Act (or Indian Succession Act) etc., and the applicant being his legal heir under the said law is entitled to succession certificate in respect of the debts and securities hereunder mentioned.
4. That the said deceased left him surviving at the time of his death, only the following and no other relatives.
 - (a) CD son of, etc., of, etc.
 - (b) EF son of, etc., of, etc.
5. That as the said deceased left no will, no application was or could therefore be made in any court for the grant of probate thereof or of

administration of his estate, with a copy annexed thereto and there is no impediment to the grant of a certificate to the applicant.

6. That the particulars of the debts and securities in respect of which the certificate is prayed for are set forth in Annexure A.

The applicant prays that the court may be pleased to grant him the succession certificate for collection of the debts and securities with interest thereon mentioned in Annexure A below.

Annexure A

Debts

Sl. No.	Name of debtor	Amount of debt, including interest on date of application for certificate (or extension)	Description and date of instrument, if any, by which the debt is secured
1.
2.
3.
4.

Annexure B

Securities

Sl. No.	Distinguishing number or letter of security	Name, title or class of security	Amount of par value of security	Market value of security on date of application for certificate (or extension)
1.
2.
3.

Verification

I, residing at being the of the above-named do hereby declare and say that the statements contained in paragraphs 1 to 6 of the above petition and also the particulars contained in the Annexures 'A' and 'B' including all figures are true to my knowledge and the rest are my humble submissions to this Learned Court.

I sign this verification at this day of 2000.

Signature

Before me

Notary

Prepared in my Office

Advocate for the Petitioner

Petition for Extension of Succession Certificate

In the Court of etc.

In the goods of (state name, address and nationality)

In the matter of the grant of extension of Succession Certificate in respect of the debts and securities of the said deceased under s. 376 of the Indian Succession Act

The applicant above-named states as follows:

1. That CH of etc., hereinafter referred to as the said deceased died at etc., intestate on the day of 2000.

2. That the fixed place of residence of the said deceased at the time of his death was at etc. within the jurisdiction of this court, where he has left also some property.

3. That the said deceased was governed by the Hindu Succession Act (or Indian Succession Act) and the applicant, being his legal heir under the said law, was entitled to the grant of succession certificate already granted and so is entitled to the extension thereof hereunder prayed for.

4. That the said deceased left heirs surviving at the time of his death only the following relatives:

(a) CD, son of etc., of etc.

(b) EF, son of etc., of etc.—Address and age.

5. That the said deceased left no will and no application has been made to any court for the grant of probate or any letters of administration with a copy annexed thereto and there is no impediment to the grant of extension of certificate.

6. That the applicant obtained on the day of a succession certificate from this court in respect of some of the debts and securities of the said deceased. A copy of the said certificate is hereunto annexed and marked A.

7. That the applicant on the day of came to know that the said deceased also left behind several other debts and securities mentioned in Schedule hereunder.

The applicant, therefore, prays that this court may be pleased to grant him an extended certificate for collection of the debts and securities with interest thereon mentioned in Schedule hereunder on payment of additional duty, if necessary.

THE SCHEDULE

Verification

I, residing at being the of the above-named do hereby declare and say that the statements contained in paragraphs 1 to 7 of the above petition and also the particulars contained in Annexure "A" and the Schedule including all figures are true to my knowledge and the rest are my humble submissions to this Learned Court.

I sign this verification at this day of

Signature

Before me

Notary

Prepared in my Office

Advocate for the Petitioner

Petition for Revocation of Grant of Probate, Letters of Administration, Certificate

In the Court of

In the goods of (full name, address and nationality)

And

In the matter of revocation of the grant of probate of will or letters of administration of the estate, or, in of GH deceased

AB residing at Petitioner

versus

CD residing at Respondent

The humble petition of AB (state full name, address and nationality)

RESPECTFULLY SHEWETH:

1. That the deceased above-named who was a Hindu governed by the Dayabhaga or Bengal School of Hindu Law died intestate on the day of at
2. That the deceased was governed by the Hindu Succession Act 1956 and at the time of death he left the following and no other persons as heirs and legal representatives (state, name, address, age and relationship).
3. That your petitioner being a son of the deceased is entitled to share in the estate of the deceased.
4. That your petitioner was most surprised when he came to know on the day of that the Respondent No. has had on the day of obtained probate of a pretended will (which is completely a forged document manufactured by the said respondent) alleged to have been made and published by the deceased on the day of of which he never heard except for the first time as on the day of and of which he had no means of knowledge of the proceedings in relation thereto.
5. That your petitioner was not served with any citation or any other notice nor had any information in connection with the grant of probate of the said purported will.
6. That the said will is also hard and unkind inasmuch as it has left out all near relations, including your petitioner, and purports to give the entire estate unto and in favour of the respondent No. 1 and thereby deprive your petitioner and also the other heirs from their legitimate rights and shares in the estate.
7. That in the circumstances and in the ends of justice your petitioner is advised and he respectfully submits that this court might be pleased to revoke the grant of probate.
8. That this application is made *bona fide*.

Your petitioner therefore prays for an order revoking probate of the said will.

Verification

I, residing at being the of the above-named do hereby declare and say that the statements contained in the paragraphs 1 to 8 of the above petition and are true to my knowledge and the rest are my humble submissions to this Learned Court.

I sign this verification at this day of 2000.

Signature

Before me
Notary

Prepared in my Office
Advocate for the Petitioner

Compromise in Probate Proceedings

THIS DEED OF SETTLEMENT made on day of 1999 among AB and CD, sons of PQ, now deceased, of of the First Part (hereinafter called collectively the SONS) AND EF, wife of, CH, wife of and LM, wife of of the Second Part (hereinafter called the DAUGHTERS) Witnesses as under:

WHEREAS the said PQ of hereinafter referred to as the said deceased died on the day of And whereas the said PQ was at the time of death seized, possessed of properties and outstandings, more particularly detailed in the schedule hereunder written and hereinafter referred to as the said properties.

WHEREAS prior to his death and on the day of 1999 the said deceased made and published his last will whereby and whereunder he left and bequeathed all his estate and effects thereof unto and in favour of his SONS providing only certain annuities for his DAUGHTERS. And whereas the said SONS applied for probate of the said will in the court of on the day of whereupon citations were issued and served on the said DAUGHTERS who have all entered caveat and filed their respective affidavits in support thereof challenging *inter alia* the authenticity of the will and the testamentary capacity of the testator.

WHEREAS there are also various other disputes and differences between the parties as to the administration of the estate of the deceased, And whereas in order to avoid the costs of protracted litigation and for preservation of the honour, dignity and prestige of the family the said parties having consulted their respective lawyers and under advice from them have settled all disputes relating to the distribution or inheritance of the properties left by the said deceased in an amicable manner for all times in the manner hereunder appearing.

NOW THIS DEED OF SETTLEMENT WITNESSETH as follows:

(1) The DAUGHTERS shall withdraw the caveat filed by them and shall not contest probate of the will which the SONS shall obtain after proof of the will in the solemn form and manner required by law, without prejudice to their rights in the inheritance and distribution of the estate of the deceased as hereinafter appearing by virtue of the settlement hereunder made.

(2) In consideration of the settlement herein made, the sons and each of them shall divide and distribute the properties of the deceased and have the same partitioned into two lots and one lot, *viz.*, lot A consisting of premises No. and No. shall be transferred, assigned and delivered to the DAUGHTERS to have and to hold the same jointly and in equal shares and the other lot B consisting of the premises No. and premises No. shall be held possessed and enjoyed by the SONS absolutely free from all claims and demands of the DAUGHTERS. The DAUGHTERS will not press for any after-claim as to the other benefits provided

for them in the said will which are all hereby renounced. It is further agreed that the properties to be allotted to the DAUGHTERS shall be transferred to them after the SONS shall obtain probate of the will and prior thereto the SONS shall not charge, encumber or otherwise deal with the same.

IN WITNESS WHEREOF the parties aforementioned all together and each individually for himself and herself have set their respective hands on this final compromise in token of acceptance thereof.

Schedule of the properties: Lot A which will be allotted to the DAUGHTERS.

Lot B which will be absolutely held possessed and enjoyed by the SONS.

Sd/. Sons

Sd/. Daughters

Disclaimer by a Trustee of a Will

THIS DISCLAIMER IS MADE this 5th day of November 1999 by Mr. X of

WHEREAS Mr. Z late of since deceased (Testator), by his Will dated, appointed the said Mr. X and Mr. Y of to be the Executors thereof and thereby devised and bequeathed all his Real and personal Estate unto the said Mr. X and Mr. Y upon the Trusts and with and subject to the power and provisions declared therein.

AND WHEREAS the Testator died on and his said Will was duly probated on in the Court of the District Delegate at Alipore by the said Mr. Y the said Mr. X having renounced the Probate thereof.

AND WHEREAS the said Mr. X has in nowise acted and has declined to act as an Executor or Trustee of the said Will.

NOW THIS DEED of Disclaimer Witnesseth that the said Mr. X has from the death of the Testator disclaimed and by this Disclaimer does disclaim the office of Executor and Trustee and all Estate and interest in the movable assets and immovable properties of the Testator, and all Trusts and powers devised or bequeathed to or vested or reposed in him by or under or by virtue of the said Will of the Testator jointly with the said Mr. Y.

This Disclaimer shall not operate to disclaim or release any beneficial interest whether vested or contingent to which the said Mr. X now is or may hereafter become entitled to under the Trust or provisions of the said Will or any legacy thereby given to Mr. X for his own benefit.

IN WITNESS WHEREOF the said Mr. X has executed these presents on the day, month and year first above-written.

WITNESS:

Signature

Disclaimer by Devisee of a Gift by Will

BY THIS DEED I, Mr. X of, the undersigned, hereby disclaim all benefits under the devise of land and building being Premises No. in my favour contained in the Will of Mr. MN dated and probated in the Court of the District Delegate, Alipore by Mr. MN the Executor named therein and also disclaim all Estate and interest in the subject-matter of the said Devise.

IN WITNESS WHEREOF I hereby execute these Presents on this day of 5th September 1999 at Calcutta.

WITNESS:

Signature

Deed of Disclaimer by a Person who is Entitled to an Interest in the Settled Property

THIS DEED OF DISCLAIMER is made on this by Mr. X of (the Disclaimant).

WHEREAS by a Deed of Settlement dated made BETWEEN Mr. MN (Settlor) of the ONE PART and Mr. AB and Mr. GH (Trustees) of the OTHER PART certain properties mentioned therein were transferred to the Trustees upon Trust for the family members of the Settlor as mentioned in the Settlement.

AND WHEREAS the Settlor died on leaving his family members as the beneficiaries under the said Settlement.

AND WHEREAS the Disclaimant is also one of the persons mentioned as the beneficiary of the Settlement and become entitled to an interest in the property comprised in the Settlement which he wishes to disclaim.

NOW THIS DEED WITNESSETH that the disclaimant hereby disclaims all interest and benefit in his favour in or under the Settlement and also disclaims all estate and interest in the property comprised in and subject of the Settlement.

IN WITNESS WHEREOF I have executed these Presents on the day, month and year first above-written.

WITNESS:

Signature

Trust

History of trust ownership. Modern trusts are successors of what was originally called Uses in England. A trust is an obligation attached to the ownership of the property out of confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another.¹ Although every person capable of holding property can be a trustee but not the Government of India.² A Government servant cannot be the trustee of a mosque, temple or other religious institution.³

In a trust there are more than one party to the instrument of trust but in fact there would at least be two main parties, namely, the settlor on the one hand and the trustees on the other and also there would be the beneficiaries who would be indirectly third parties to the instrument though not being direct parties thereto. Thus the settlor is one party to the trust who settles the property in trust for the benefit of others who become beneficiaries and the legal ownership of the property is transferred to the trustees. Accordingly, it would be almost a tripartite transaction.⁴

Legal and equitable trusts. The distinction between the "legal" and the "equitable estate" is the essential characteristic of the trust. Equitable estates in land had their origin out of the ancient practices in England of people putting their trusted friends and relations in possession of their lands in faith and confidence that they would deal with and/or dispose the same according to their wish and desire.⁵ A trust ownership is different from other

1 Section 3 of the Indian Trusts Act 1882.

2 *Vizaramarju v Secretary of State* 8 Mad 525 (PC).

3 Section 22 of the Religious Endowment Act 1863.

4 *I.T. Commr. v Kamla Town Trust* AIR 1996 SC 620.

5 *William's Real Property*, 20th Ed., p. 165.

types of legal relationship, e.g. bailment, agency, mortgage, etc., which cannot pass a good title to the property even to a *bona fide* transferee for value without notice.⁶

A trustee cannot take advantage of the statute of limitation.⁷ If a trustee wrongfully sells the trust property, the beneficiaries have the right to follow it so long as it can be traced notwithstanding any intermediate change or changes in its ownership except in the case of a *bona fide* sale for value and without notice of the trust.⁸ In England, the evolution of the trust estate was by the method of double use. Thus, when *A* wanted to convey the legal estate of any particular property to *B* and the equitable estate to *C*, the following form was adopted—"To *A* in fee simple to the use of *B* in fee simple to the use of *C* in the fee simple". There were two *uses*. As the common law courts did not grant any relief in cases like this, the Chancellor stepped in and used to make an order upon *B* to hold the property for the benefit of *C* and the old form of double use was simplified and the following form was reproduced—"unto and to the use of *B* in trust for *C*". Trust was thus a posthumous legacy of the "medieval use". The Statute of Uses (27 Henry VIII C. 10) was enacted to abolish the distinction created between legal estate and equitable estate by the Chancellor's Court which has been repealed by the Law of Property Act 1925 as from 1st January 1926.

A trust may be created by the act of the parties or by operation of law. The former may be express or implied. The latter is either a resulting or a constructive trust except where the same defeats the policy of law.

Where a compromise decree provided that out of 50% of the sale proceeds of a property a land was to be purchased in the name of *A* and the latter was to convey it to *B* husband of *C* after his death without there being any statement in the compromise that it was for the benefit of *C*, it could not be said that there was conferred any equitable or legal interest on *C* and as such *A* was not a trustee for *C* and subsequent sale by *A* to a third party was not void.⁹

Permission for sale of trust property by the Trustees should be refused by the court where it was not disclosed that there was a higher offer by a person and at the same time pleading that in spite of best efforts they could not secure higher offer as this conduct amounts to practising fraud upon the court.¹⁰

Trusts among the Hindus. The Hindu law is based upon Hindu religion which is encyclopedic in character—not a particular form of faith but a

6 *Taylor v Plummer* (1815)3 M & S 575.

7 Section 10 of the Limitation Act.

8 *Taylor v Blacklock* (1885)32 Ch D 650 (see also s. 63 of the Indian Trusts Act).

9 *N.A. Mohammed v Sulochana* AIR 1995 SC 1624.

10 *Gowrishankar v Joshi Amba* AIR 1996 SC 2202.

commonwealth of faiths. The Hindu law did not recognise two estates in the same property, half by two different persons. So it made no provisions for trust analogous to English law but it recognises endowment under which the property vest straightway in the beneficiary. The Mahomedan law which is also based upon Islamic religion does not recognise trust in the English sense but it permits gifts through the mediunt of trust. A public wakf is however treated as a trust for the purpose of s. 92 of the Code of Civil Procedure.¹¹

Doctrine of Advancement as applies in England in cases of purchase of any property in which the person providing for the purchase money is under some obligation to support or make provision for the person to whom the same was conveyed, *i.e.* where the former is the husband or father or stands in *loco parentis* in relation to the latter as observed by Lord Justice Baron Eyer.¹ The doctrine however has no application to India.² A *benamdar* has no interest in the property. He is not a trustee unless he is in possession of the property,³ though as an ostensible owner he can sell same unless the purchaser has notice of his pretended title. Nevertheless, the relationship is a fact to be taken into account in determining whether the transaction is *benami* or not.⁴ Although the Doctrine of Advancement has no application to India, nevertheless the presumption of *benami* is rebutted by evidence to the contrary. The doctrine is applicable where it is established by evidence that the husband intended to create a title in favour of or intended to make provisions for the wife.⁵

Endowment and trust. A deed of trust by itself creates no endowment of the property. The author must prove that he intended for and divested himself of the ownership in the property and caused the same vested in the deity. The mutation of the name of deity and production of account showing the application of the income for the benefit of the idol are evidence *aliunde* of the creation of the debutter.⁶ The absence of any ceremony is an item of evidence but mere performance is not conclusive test.⁷ It was held in *Sankar Raghunath v Ganeshgopal*,⁸ that *sankalpa utsarga* followed by *samarpan* are

11 *Mahomed Kuzin v Syed Abi* 136 IC 417; AIR 1932 Pat 238.

1 *Dyer v Dyer* (1788)2 Cox Equity Case 92.

2 *Bhusan Mohini v Kumud Bala Dashi* AIR 1924 Cal 467 (see also s. 82 of the Indian Trusts Act); *CED v Alope* AIR 1981 SC 102.

3 *Controller of Estate Duty v Alope Mitter* AIR 1981 SC 102.

4 Sections 81 and 82 of the Indian Trusts Act 1882 are the statutory recognition of *benami* in India.

5 *Pritinarayani v Patit Paban* 60 CWN 890.

6 *Mohini Das v Pareshnath* AIR 1934 Ori 198.

7 *Manohari v Sambhunath* AIR 1933 All 622.

8 AIR 1982 NOC 7.

the ingredients of dedication. Intention to extinguish the rights of the owner and vest the same in the deity is the most important factor in an endowment.

Discretionary trust. In a discretionary trust which was to survive for 18 years and having two categories of beneficiaries. Neither category has a right but only on expectation to receive income and in that sense the Supreme Court held that members of the second category are as much beneficiaries as the members of the first category. The trustees are entitled to choose not to pay a pie out of the income to any one and invest the whole of it in their own concerns. They are under no obligation to disburse or distribute the income received in a year in that year or in the following year. Either category could receive income wholly to the exclusion of the other or both could receive it partly.⁹

Endowment for other. Trusts in the sense as understood in English law were unknown to Hindu law. It was observed by the Chief Justice Peacock: 'The Hindu law does not provide for trust'¹ in the sense of bifurcation of ownership by the creation of 'legal estate' and 'equitable estate'. Nevertheless, trust in the wider sense of the term was not unknown to old Hindu society and law. It was not very uncommon among the ancient Hindus to create endowment for the benefit of others, e.g., dharamsalas, rest houses, sarai, etc., are living examples of religious and charitable trust of ancient societies. So also the dedication of tanks and trees intended for the benefit of the public. Further, the cases of religious and charitable endowments, gifts to idols, establishment of hospitals, were and still are most common in India since ancient days as clear evidences that trusts were never forbidden in Hindu law nor repugnant or inconsistent with their existence. The same court used to administer Law and Equity in India. Properties were dedicated for or subject to pious uses. All these facilitated the growth and development of trust in India. A Hindu who is of sound mind and not a minor may dedicate his property for religious and charitable purposes. It is not absolutely necessary that the same shall be done by a registered deed. All that is necessary is a clear intention on the part of the donor to divest himself of all ownership and control in the beneficiary and vest the same in the beneficiary. The dedication shall be for an object which is not vague or uncertain, e.g. a gift for advancement of religion, to Dharma or for social services without particulars or for good work without specification are void.

A gift to an idol to be consecrated and established after the death of the donor is valid.² The dedication is not invalid by reason of the fact that the members of the settler's family are nominated *shebait*s or given reasonable remuneration for services to the deity or was entitled to a share of the

9 *Gosar Family Trust v I.T. Commr.* AIR 1995 SC 1644.

1 *Kumar Asima Krishna Dev v Kumar Kristo Krishna Dev* (1869)2 BLR OC 11.

2 *Vide Bhupati Nath Smrititirtha's case* 37 Cal 128 (SB).

income.³ It was also held that it is not necessary that the idol shall be in existence at the time of creation of the trust.⁴

The Indian Trusts Act 1882, does not affect the Mahomedan Law of *Wakf* or the mutual relations of the members of an undivided family as determined by the customary or general law of public or private religious or charitable endowments.

The Mahomedan law recognises gift with a condition in the nature of trust, e.g. a gift of a property without reserving any dominion over the corpus but with the stipulation for enjoyment of the income is valid.⁵

Public trust. A private trust is one intended for the benefit of an ascertained or ascertainable number of individuals. A public trust, on the other hand, is for the benefit of the public at large or of some considerable portion of it. It is synonymous with religious or charitable trust. (i) Relief to the poor; (ii) advancement of education; (iii) support of scholars; (vi) advancement of religion etc. are *inter alia* illustrations of religion or charitable objects.⁶ Section 18 of the Transfer of Property Act dispense with the restrictions on transfers under ss. 14, 16 & 17 thereof in cases of transfer for religious or charitable objects. The Indian Trust Act deals only with Private Trusts. It has no application even to private or public endowments.⁷ The Charitable and Religious Trusts Act (Act XIV of 1920) controls the administration of public trusts, i.e. charitable and religious trusts.

Although the court administers a public trust in theory under s. 92 of the Code of Civil Procedure yet some of the principles of the Indian Trusts Act 1882, apply also to public trusts.

A charitable trust cannot be implied from the fact that the owner used a part of the income of the property in charity. Where a temple was built on a plot of land by its proprietor and the Hindu community uses the temple for worship and maintenance of the temple for performance of religious ceremonies without any objection by anyone, the property may be regarded as a public trust. The principles embodied in ss. 44, 52, 62, 63 and 76 of the Indian Trusts Act are applicable to all kinds of trusts. In settling a scheme for the administration of a charitable trust involving the appointment of trustees or managers, the court is bound to secure persons whom it regards as suitable. Hence it cannot be contended that the court has no jurisdiction to remove a person nominated as the head of a Math by will by his

3 *Jadunath Singh v Silaramji* 44 IA 187.

4 *Ratan Sen v Suraj Bhan* AIR 1944 All 11; *Jagdish v Mt. Kausilla* AIR 1947 All 317.

5 *Mulla on Mahomedan Law*, 19th Ed., pp. 134-135.

6 See judgment of Lord Macnaghten in *Commissioner of Income-tax v Pemsel* (1891) AC 583. See also s. 118 of the Indian Succession Act 1925.

7 *Gopal v Sami* ILR 28 Mad 517.

predecessor when it is found as a fact that the person has by his conduct and/or dealings made himself unfit for such position. The existence of a trust for public or charitable purposes can be proved either by direct evidence of dedication or by user extending over a long period and the conduct of the parties concerned.

An order under s. 3 of the Charitable and Religious Trusts Act (Act XIV of 1920) which control the administration of religions and charitable trusts holding certain property to be a public charitable trust does not operate as *res judicata*. The use of the word "pratishtha" shows that the author has dedicated the property.

Doctrine of cy pres. If the donor declares his intention in favour of a defined object which happens to fail for whatever cause, yet if the general purpose is charity, such purpose will, notwithstanding the failure of its immediate object, be carried into effect with a substituted object.

In order that the Charitable and Religious Trusts Act of 1920 may apply, the trust must be substantially for public purpose. It is not sufficient if one of the purposes of the trust is public. A mere provision for the service of sadhus, occasional guests and way-farers in a dedication to an idol does not render the dedication substantially for public purposes.

The Act is intended to provide more effectual control over the administration of charitable and religious trusts and provision is made therein for obtaining an order calling on the trustee to give particulars of the object of the trust and, if the trust is denied, to file a suit. No such provision is made in the Mussalman Wakf Act of 1923.⁸

Trust and settlement. A trust is not always a settlement nor is a settlement always a trust. As defined in s. 2(24) of the Stamp Act, a settlement is a non-testamentary disposition of property either (i) in consideration of an intended marriage; (ii) for distribution of some property among persons intended to be provided for by way of partition or otherwise, e.g. a family settlement; or (iii) for religious and charitable purposes.

It was laid down by Lord Langdale in *Knight v Knight*⁹ that a trust requires three certainties for its creation, viz. (a) certainty of words; (b) certainty of subject-matter; and (c) certainty of object. In other words (a) the declaration of trust shall be of imperative nature. (b) The property shall be specified and (c) the beneficiary must be clearly indicated. The legal title passes unto and the property vests in the trustee. So every instrument creating a trust must be executed by a competent person and shall contain express words of

8 AIR 1927 Pat 189. See also AIR 1936 Lah 695.

9 (1840)3 Beav 148 at p. 171.

transfer. There is, however, no uncertainty in case an alternative subject-matter is provided for where the property specified may not be available.

Salmond in his *Jurisprudence*, 7th Ed., at p. 286 says: "A trust is more than an obligation as to the use of one's property for the benefit of another or others. The beneficiary has more than a personal right as to performance of the duties and obligations of the trust. He, in other words, is in effect the owner of the property". Although Indian law does not recognise equitable estate or ownership in the same sense as in English law but for all practical purposes, there is very little or no difference between a beneficiary under the English law and beneficiary under the Indian Trust Act.

A trustee may, whether appointed under any will or deed of trust, disclaim his office before acceptance and within a reasonable time.¹⁰

Section 118 of the Indian Succession Act 1925, contains some illustrations of charitable objects, e.g. (i) relief of the poor; (ii) maintenance and support of the sick people; and (iii) education of the orphans. Section 4(3) of the Income-tax Act 1922, exempts income of such a trust from taxation.¹¹

Creation of Wakf. A Mahomedan can make an oral Wakf of his property under the Mussalman Wakf Validating Acts 1913 and 1930. A Wakf may be also created by a will. If created by a deed, it is to be registered under s. 17 of the Indian Registration Act in cases where the value of the property is Rs. 100 or upwards. It is a permanent dedication of some property for any purpose recognised as pious, religious or charitable in Mahomedan law. The property vests in God. Trusts in the sense as understood in English jurisprudence, e.g., legal and equitable ownership, is unknown to the principles of Mahomedan law.¹² A Sunni Mahomedan can create a valid wakf even though the gifts to charity are illusory. A wakf is something quite different from a trust. It is a dedication to God only for religious or charitable purposes. According to the Muslim law, a valid wakf is completed by the declaration of the wakif intending thereby a dedication of the property in good faith for some pious or religious purposes. A wakf does not fail even if the objects are not at all specified or where the objects specified fail for impracticability or where the objects specified are partly valid and partly not valid.

By virtue of s. 92(3) of the Code of Civil Procedure, inserted by the amendment in 1976 the court may alter the original purposes of an express or constructive trust created for public purpose of a charitable or religious nature applying the doctrine of *cy pres* and frame a scheme. The rules requiring the objects of the trust specified with certainty as contained in s. 6 of the Indian Trusts Act do not apply to a wakf and its validity is tested

10 Section 10 of the Indian Trusts Act 1882.

11 Sections 11, 12 & 13 of the Income-tax Act 1961—*Commissioner of Income-tax v Pemsal* (1891) AC 581.

12 *Tagore v Tagore* 6 BLR 401.

according to Mahomedan law.¹³ When a wakf commissioner holds certain properties to be wakf properties even wrongly interpreting documentary evidence such finding cannot be vitiated for lack of jurisdiction and cannot be challenged under Art. 226.¹⁴

Execution and attestation—registration. A deed of settlement is executed and attested as a bond, and its registration will be compulsory if the value of the immovable property involved be Rs. 100 or upwards.

Although the law relating to trust has been codified under the Indian Trusts Act 1882, nevertheless the Act does not apply to public or private religious endowments.

Section 18 of the Transfer of Property Act 1882, relaxes all restrictions provided under ss. 14, 16 and 17 in cases of transfers of any property for the benefit of the public, e.g., advancement of knowledge, religion, commerce, health and other allied objects.

Nature of trust. A trust thus is an obligation annexed to the ownership of property arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or the owner.

The person who reposes or declares the confidence is called *the author of the trust*; the person who accepts the confidence is called the trustee.

“Trust property”, “beneficial interest” and “instrument of trust”—“breach of trust”. The subject-matter of the trust is called the *trust property or trust money*. The *beneficial interest or interests* of the beneficiary is his right against the trustee as owner of the trust property; and the instrument (if any) by which the trust is declared is called the *instrument of trust*. A breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a *breach of trust*.

Lawful purpose of trust. A trust as provided under s. 6 of the Indian Trusts Act 1882, may be created for any lawful purpose. The purpose of a trust is lawful unless it is (i) forbidden by law; or (ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or (iii) is fraudulent; or (iv) involves or implies injury to the person or property of another; or (v) the court regards it as immoral or opposed to public policy. The following trusts were declared illegal, e.g. trust in restraint of marriage,¹⁵ trust creating a perpetuity by settlement of properties intended for maintenance of persons born and to be born indefinitely,¹⁶ trust to defraud creditor.¹⁷

13 *Haji Isak v Fauz Mahomed* AIR 1943 Sind 134.

14 *Board of Muslim Wakfs v Sm. Hadi Begum* AIR 1992 SC 1083.

15 *Allen v Jackson* (1875)1 Ch D 399.

16 *Ajit Kumar v Tarubala* ILR 63 Cal 209.

17 *Re, Great Berlin's Steam Boat Co.* 26 Ch D 616 (CA).

Every trust of which the purpose is unlawful is void.¹⁸ It therefore follows that trust tying the property or income for any period longer than or offending against rule against perpetuity or intended to defeat the law relating to bankruptcy or to defraud creditors or for immoral purposes are all void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

The expression "law" includes, where the trust property is immovable and situate in a foreign country, the law of such country.

Trust of immovable and movable property. No trust in relation to immovable property is valid unless the same is intended for and declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.¹⁹ The above section corresponds with s. 53(1)(b) of the Law of Property Act 1925, replacing s. 7 of the Statute of Frauds.¹

Creation of trust. A trust is created when the author of the trust indicates with reasonable certainty by any words or acts:

- (i) an intention on his part to create thereby a trust;
- (ii) the purpose of the trust is lawful;
- (iii) the beneficiary;
- (iv) the trust property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) the transfers the trust property to the trustee;² and
- (v) the author of the trust, the trustees and the beneficiary all being competent powers (s. 8).

Agreement to create a trust if supported by consideration may be specifically enforced.

Reimbursement of expenses. Every trustee can reimburse himself, or pay or discharge out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realisation, preservation, or benefit of the trust property, or the protection or support of the beneficiary.³

18 Section 4 of the Indian Trusts Act 1882.

19 Section 5 of the Indian Trusts Act 1882.

1 State 29 Car 11 C 3.

2 Section 6 of the Indian Trusts Act 1882—*Knight v Knight* (1846) 3 Beav 148—three certainties of trust.

3 Section 32 of the Indian Trusts Act 1882.

Prohibition to buy beneficiary's interest. No trustee and no person, who has recently ceased to be a trustee, can without the permission of a principal Civil Court of original jurisdiction buy or become mortgagee or lessee of the trust property or any part thereof, and such permission is not given unless the proposed purchase, mortgage or lease is manifestly for the advantages of the beneficiary.⁴

When trustee can renounce. A trustee who has accepted the trust cannot afterwards renounce it except (i) with the permission of a principal Civil Court of original jurisdiction, or (ii) if the beneficiary is competent to contract, with his consent, or (iii) by virtue of special power in the instrument of trust.

Discharge of trustee. A trustee can be discharged from his office only as follows:

- (i) by the extinction of the trust;
- (ii) by the completion of his duties under the trust;
- (iii) by such means as may be prescribed by the instrument of trust;
- (iv) by appointment under the Indian Trusts Act of a new trustee in his place;
- (v) by consent of himself and the beneficiary, or where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (vi) by the court to which a petition for his discharge is presented under the Indian Trusts Act.⁵

Trust how revoked. A trust created by will can be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

- (i) where all the beneficiaries are competent to contract by their consent;
- (ii) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of power of revocation expressly reserved to the author of the trust; or
- (iii) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust;⁶
- (iv) by a court of competent jurisdiction on sufficient grounds, e.g., a trust for unlawful objects or created to defraud creditors.

4 Section 53 of the Indian Trusts Act 1882.

5 Section 71 of the Indian Trusts Act 1882.

6 Section 78 of the Indian Trusts Act 1882.

Extinction of trust. A trust is extinguished (a) when its purpose is completely fulfilled or (b) its purpose becomes unlawful or (c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise or (d) where the trust, being revocable, is expressly revoked. A trust will, however, be not extinguished on the failure on the part of all trustees to administer the trust.⁷ But a trust will come to end where the deed had provided for such termination on the death of the wife or son's attaining certain age whichever was later on the happening of that event⁸ or where the purpose of a certain deposit was achieved.⁹

FORMS

Deed of Settlement by Father in Favour of Children

THIS DEED OF SETTLEMENT is made this day of 1999 BETWEEN AB son of residing at (hereinafter called the SETTLOR) of the one part and CD, son of residing at and EF son of residing at (hereinafter called the CHILDREN) represented by their mother XY residing at of the other part.

WHEREAS the SETTLOR has been hitherto paying allowance of Rs. a month freely and voluntarily to each of the CHILDREN and is desirous of placing the same on record and for that purpose to enter into an agreement as to the future payment of the same in the manner as hereinafter provided: NOW THIS DEED WITNESSES as follows:

In consideration of his natural love and affection which the SETTLOR had and still bears for the CHILDREN, the SETTLOR hereby agrees in writing and covenants with the said XY that he, the SETTLOR, will so long as the CHILDREN shall, all or any one of them remain alive, pay or cause to be paid to each of them through the said XY the sum of Rs. on the day of every month, for their maintenance and livelihood without any delay or default subject to such modification or release thereof as may be hereafter agreed between the said AB and XY or between the said AB and the CHILDREN on their becoming of full age.

If, however, any of the CHILDREN shall become insolvent or shall do or suffer anything whereby the monthly sum hereinbefore agreed to be paid to him (or her) is attached or any prohibitory order of injunction is made in

7 *Vadivelu v Kuppuswami* (1972)1 MLJ 265.

8 *Darshan Lal v Dalliwali* AIR 1952 All 825 (DB).

9 *Jugalkishore v Ambala* AIR 1953 Punj 98.

respect thereof or the official assignee or receiver-in-insolvency or any third party become entitled to collect the same, then and in such event this settlement shall be inoperative in so far as he or they is or are concerned but the cessation of the payment to any one or more of the CHILDREN of the said monthly sums under this provision shall not prejudice the payment of the said monthly sums to the others or other of the CHILDREN, but in the case of all on grounds hereinbefore stated this settlement shall stand revoked.

The Schedule above referred to

IN WITNESS WHEREOF AB the SETTLOR has executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the SETTLOR in the presence of:

Signed, sealed and delivered by
XY mother of the children in the
presence of:

Settlement of Property for the Benefit of Minor Children

THIS DEED OF SETTLEMENT is made on this day of 2000
BETWEEN AB son of residing at
(hereinafter called the SETTLOR) of the first part and CD son
of residing at (hereinafter called the TRUSTEE
which term shall unless the context otherwise requires include his heirs,
successors legal representatives) of the second part and X, Y and Z all
are sons of K represented by their mother and natural guardian (the said X,
Y, Z are hereinafter referred to as the BENEFICIARIES which term shall unless
excluded by or repugnant to the context shall include their heirs, successors,
legal representatives) of the third part.

THIS DEED WITNESSETH as follows:

In consideration of natural love and affection which he, the SETTLOR, had and bears for X, Y, Z, the minor sons of K, and for other good reasons and considerations he, the SETTLOR, doth hereby and hereunder grant, convey, transfer, assign, assure unto and to the use of the said CD and settle the property belonging to the SETTLOR which is fully mentioned and described in the schedule below and deliver possession of the same TO HAVE AND TO HOLD the same in trust and for the use and benefit of the said BENEFICIARIES, viz., the said X, Y, Z as aforesaid subject to the terms and conditions hereunder expressed and declared.

(1) The TRUSTEE shall assume charge, possession, control, supervision and management of the said property and administer and develop the same

either personally or through an agent to be employed by him in a manner as might be most profitable and beneficial to the interest of or otherwise most advantageous to the trust and also the BENEFICIARIES.

(2) The TRUSTEE shall, out of the rents, issues and profits, pay all municipal taxes and other capital and revenue liability of property, all costs, charges and expenses for maintenance and preservation and spend the surplus for the maintenance and education of the BENEFICIARIES and invest the balance, if any, in some securities approved by law. He shall have power to change such investment from time to time as he shall think fit and proper.

(3) The TRUSTEE shall have no power to sell, mortgage or otherwise deal in the said property or any part thereof except with the consent in writing of the SETTLOR first had and obtained, or in the alternative with the permission of the District Judge having jurisdiction over the subject-matter of the trust.

(4) The TRUSTEE shall keep and maintain proper accounts of all incomes and expenses which shall be open to the inspection of the SETTLOR and upon the youngest beneficiary attaining the age of 21 years grant, convey, transfer the said property unto and in their favour absolutely and for ever when and in such an event the trust executed hereunder shall come to an end.

PROVIDED, however, that in case the property or any portion thereof is acquired by the Government, the TRUSTEE shall invest the compensation money to be awarded in purchase of some other property to be held in trust on terms hereunder provided.

The estimated market value of the property is Rs.

The Schedule

IN WITNESS WHEREOF the said AB the SETTLOR has executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB the SETTLOR in the presence of:

Signed, sealed and delivered by the mother and natural guardian of the BENEFICIARIES.

Trust Deed

(Provident Fund)

THIS DEED OF TRUST is made this day of 2000 BETWEEN X Co. Ltd. having its registered office at (hereinafter

called the COMPANY) of the one part and AB, CD and EF all are residing at and/or working for gain at (hereinafter called the TRUSTEES) of the other part.

WHEREAS THE COMPANY intends to create a Provident Fund for the benefit of the employees and whereas it is necessary to execute a declaration of trust in respect of the contribution of the company and of the contributories to the fund.

THIS DEED WITNESSES and it is hereby agreed and declared as follows:

1. That the above-named persons, viz., (1) AB (2) CD and (3) EF are hereby appointed as the TRUSTEES for administering the Provident Fund of the COMPANY and the income thereof as provided in the rules in force for the time being.

2. That the TRUSTEES shall stand possessed of the existing fund as also all contributions made in future from time to time with all accumulations to the said fund upon trust for the benefit of the employees of the COMPANY according to the rules of the fund a copy whereof is attached hereto.

3. That this trust shall not be revocable except with the consent of all contributories to the fund.

4. That the money for the time being constituting the fund shall be invested by the TRUSTEES in any one or more of the following securities:

(a) In promissory notes, debentures, stock or other securities of any local Government or of the Government of India.

(b) In bonds, debentures and annuities charged on the revenues of India.

(c) In stock or debentures of, or shares in, Government and other companies the interest whereon shall have been guaranteed by the Government of India.

(d) In debentures or other securities for money issued, under the authority of any Central Act or Act of a Legislature established in the States of India, by or on behalf of any Municipal Body, Port Trust or City Improvement Trust in any Presidency town.

(e) On a first mortgage of immovable property situate in the States of India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half of the mortgage money.

5. Provided that in execution of the trust and in performance of his duties and powers hereunder conferred no trustee shall be made liable for any loss caused to the trust arising by reason of any improper investment made *bona fide* and in good faith or for the negligence or fraud of any agent employed by them or by reason of any error of judgment or act, default, mistake or omission done in good faith and under *bona fide* belief by any trustee or by reason of any other matter or thing except wilful and individual wrong or fraud on the part of the trustee who is sought to be made liable.

6. The TRUSTEES shall be appointed by the company, and shall administer the fund and the income thereof as provided in the rules for the time being in force.

The number of TRUSTEES shall be not less than three nor more than seven.

A trustee shall continue in office until he dies or becomes insolvent or is removed or withdrawn by the company, from the trust or resigns his office as trustee, and upon the happening of any such event the COMPANY may nominate and appoint a successor who shall thereupon be and become a trustee in the place of such trustee so ceasing to be a TRUSTEE. On the appointment of a new TRUSTEE or new TRUSTEES, the number of TRUSTEES may be increased notwithstanding that there shall be no vacancy. The COMPANY shall not be bound to fill a vacancy in the number of TRUSTEES provided that the number of TRUSTEES shall not be reduced to less than three. The COMPANY may, in its absolute discretion, appoint an additional TRUSTEE or TRUSTEES notwithstanding that no case for appointing a new TRUSTEE may exist to be a TRUSTEE or TRUSTEES of the fund jointly with the continuing TRUSTEES.

7. The TRUSTEES shall at each meeting of the TRUSTEES elect one of the TRUSTEES present to be Chairman of the meeting. Questions arising at meetings of TRUSTEES shall be decided by a majority of votes and, in case of an equality of votes, the Chairman of the meeting shall have a casting vote. Three of the TRUSTEES shall be a quorum. The TRUSTEES may from time to time by a resolution or resolutions under their signatures authorise any one or more of them to sign and endorse for transfer or for conversion or for payment, Government Promissory Notes, and Bonds, Treasury Bills and other securities issued by the Government of the India or any State Government or by any Municipality or Improvement Trust or other local authority or any other securities held by the TRUSTEES or to sign or endorse cheques, drafts, interest, warrants or receipts for interest.

8. The fund shall be exclusively managed and administered by the TRUSTEES in accordance with these rules, and the decision of the TRUSTEES upon any question relating to the fund or any rights or benefits in connection therewith or generally upon the interpretation of any provision of these rules shall be absolutely final and binding on all subscribers, their executors, administrators, representatives, widows or relatives and the employers.

The costs, charges and expenses of administering the fund and of the determination of any question arising under these rules or otherwise including expenses incurred by the TRUSTEES in the discharge of their duties shall be charged to the funds and may be properly paid therefrom from time to time.

Any decision of the TRUSTEES may be given under the hand of any one or more of them.

9. The TRUSTEES shall have power to employ any person or persons (including any one or more of their number) to do any secretarial, legal, accountancy or other work which they may consider necessary or expedient in connection with the management of the fund or the funds thereof and to pay in addition to all other proper disbursements all ordinary or reasonable charges out of the fund or the funds.

10. Every subscriber shall subscribe to the fund at the rate of 10 per cent. of his monthly salary or wages and such percentage shall be deducted from his salary at the time of payment thereof and shall, as soon as practicable, be paid to the TRUSTEES who shall credit the same to the account of the employee in the books of the fund.

The COMPANY may at any time on three months' notice to the subscribers increase the rate of subscription up to but not exceeding 12 $\frac{1}{2}$ per cent. of their monthly salaries and on similar notice the company may reduce the rate of subscription but not below 7 $\frac{1}{2}$ per cent. of such monthly salaries. Provided nevertheless that the subscriptions of an employee in any year shall be a definite proportion of his salary for that year.

11. Subject to the previous approval by the Commissioner of Income-tax, the TRUSTEES shall, with the approval of the Board of Directors, be competent to vary, alter, omit, modify or add to the rules of the provident fund.

12. In the event of any vacancy by reason of resignation, death or otherwise in the office of a trustee, the COMPANY shall appoint a new trustee in the vacancy so caused. But the surviving TRUSTEES shall, notwithstanding such vacancy, be competent to administer the fund.

IN WITNESS WHEREOF the parties above-named have hereunto affixed their seals and subscribed their names the day and the year first above-written.

Signed, sealed and delivered by
Mr. pursuant to
Board Resolution dated
of X Co. Ltd. in the presence of:

Signed, sealed and delivered by AB,
CD and EF the TRUSTEES as a token
of acceptance in the presence of:

Trust Deed Constituting Guarantee Fund (As Security)

THIS DEED OF TRUST is made this day of 2000
BETWEEN X Bank Ltd., a banking company registered under the Companies
Act 1956 and carrying on business at (hereinafter called

the BANK which term shall include its successors) of the one part and AB son of residing at and CD son of residing at (hereinafter called the TRUSTEES) of the other part.

WHEREAS the BANK has determined to establish a guarantee fund for the purposes hereinafter appearing: AND WHEREAS, the said AB and CD have agreed to act as TRUSTEES for the purposes of these presents.

Now, THEREFORE, IT IS AGREED as follows:

1. A fund, to be called 'the guarantee fund', shall be established and such fund shall be formed by contributions to be made by officers and clerks in the employment of the bank, who shall become subscribers to the said fund in the manner following:

2. Every officer or clerk who desires to become a subscriber to the said fund shall apply to the bank to fix the amount of his security and, when that has been fixed, shall sign and deliver to the BANK a letter as follows:

'To the X Bank Ltd.

'Gentlemen, My security having been fixed by you at Rs., I beg to apply for liberty to become a subscriber to the guarantee fund in respect of a guarantee of Rs., and I request your consent thereto, and in consideration thereof agree to be bound by the provisions of the trust deed constituting the said fund.

Yours, etc.,

3. It shall be for the BANK to determine whether an applicant as aforesaid shall or shall not be admitted to subscribe to the fund, and notice of such determination shall be given to such applicant.

4. A register of subscribers to the said fund shall be kept by the BANK, and in such register there shall be entered the name of each subscriber to the fund, and the amount of the guarantee in respect of which he subscribes, and the time from which he is a subscriber for that amount, and the time when he ceases to be a subscriber.

5. Every applicant, who is admitted to subscribe as aforesaid, shall be bound to contribute to the fund a premium of 5% per annum on the amount fixed as his security, and such contribution must be made by equal quarterly payments on the usual quarter days.

(Provision may be made for contributions by the company, e.g., a sum equal to the yearly contributions of the subscribers until the fund amounts to a specified sum, and that when the fund amounts to that sum subscribers who have subscribed for 10 years shall not pay further subscriptions unless and until the fund is reduced to less than the specified amount. Sometimes it is provided that when the fund exceeds a specified sum, the surplus shall be carried to the superannuation fund).

6. If any subscriber makes default for more than seven days in paying any contribution due from him as aforesaid, the BANK may, by notice in writing, exclude such subscriber from the benefit of the fund and thenceforth he shall forfeit all interest in the fund, but the BANK, in its discretion, may annual any such forfeiture on such terms and conditions as it may think expedient.

7. The fund shall be treated as a security to the BANK against all defalcations and misfeasances by the subscribers thereto for the time being, but as regards each subscriber, such security shall be limited to the amount in respect of which he has been a subscriber.

8. Wherever the BANK certifies under its seal that any subscriber to the fund has been guilty of any defalcation or misfeasance, and the amount necessary to compensate the BANK therefor, then and in any and every such case the BANK may withdraw from the fund and appropriate a sum equal to the amount so certified, but not exceeding the amount of the security in respect of which such employee has been contributing.

9. In the event of any subscriber to the fund voluntarily retiring from the service of the bank, or dying, such subscriber, or his legal personal representatives, as the case may be, shall, provided such subscriber has not been guilty at any time of any defalcation or misfeasance in relation to the BANK, be entitled to payment out of the fund of a sum equal to one-half the amount of the premiums paid by him to the fund.

10. A subscriber to the fund, who is dismissed by the BANK from its service for any cause whatsoever, shall forfeit all interest in the fund.

11. All contributions to the fund shall be paid to the BANK, and the BANK shall keep a proper account thereof; but it shall not be bound to keep such contributions separate from the general assets of the BANK, or be regarded as a trustee of such fund.

12. The BANK may at any time by deed dissolve the fund, and in that case the fund shall be applied, first, in making good to the BANK all sums certified by the BANK under clause (8) hereof, and the surplus shall be applied, so far as the same may extend, in paying off to each subscriber who has not been guilty of any defalcation or misfeasance in relation to the BANK, one-half the amount of the premiums subscribed by him, and the residue shall belong to the BANK.

13. The BANK may at any time by deed alter all or any of the regulations and provisions herein contained, and may make new regulations and provisions to the exclusion of or in addition to all or any regulations and provisions herein contained, and any regulations and provisions so made by deed shall be deemed to be regulations and provisions of the same validity as if they had been originally contained in these presents and shall be subject in like manner to be altered or modified.

14. The BANK may at any time, and from time to time, appoint any of the officers of the BANK to act as a consultative committee for the purposes of these presents, and may from time to time define the duties and powers of such committee, and may modify or dissolve sZuch committee.

15. Nothing herein contained shall prevent the BANK from requiring or taking from any subscriber to the fund any additional or special security for his fidelity.

16. The personal liability of every subscriber to the fund to make good his defalcations and misfeasances shall remain and subsist in every respect as if the said guarantee fund had not been established and each subscriber shall enter into a bond for faithful service framed in accordance with the form approved by the BANK.

17. The statutory power of appointing new TRUSTEES hereof shall be vested in the BANK.

The Schedule above referred to

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
and CD the TRUSTEES in token of
their acceptance of Trusteeship in
the presence of:

Signed, sealed and delivered by
Mr. pursuant to Board
Resolution dated of
X Bank Ltd. in the presence of:

Trust Deed Constituting Superannuation Fund

THIS DEED made the day of 1999 BETWEEN X. Co. Ltd., (hereinafter called the COMPANY) of the one part, and S, of, secretary of the company, and N, of as nominee of the committee of the sick fund (hereinafter called the TRUSTEES) of the other part.

WHEREAS the COMPANY is desirous of establishing a superannuation fund for the benefit of its employees.

NOW THESE PRESENTS WITNESS and declare as follows:

1. In these presents, unless excluded by the subject or context, 'the trustees' means and includes the TRUSTEES for the time being. 'The fund' means the superannuation fund to be constituted as hereinafter provided.

2. A fund to be called the superannuation fund shall be constituted and established.

3. The superannuation fund shall consist, of the several investments specified in the schedule hereto, and there shall be added to the fund all contributions and additions which are to be carried to it as hereinafter provided, and the income of the fund and of the investments for the time being representing the same shall also be added to the fund.

4. The fund shall be vested in the present TRUSTEES and their successors in the trust.

5. The moneys from time to time in the hands of the TRUSTEES not presently required for making any payment pursuant hereto, shall, if and so far as the COMPANY shall be willing to accept the same, be advanced to the COMPANY by way of loan, repayable on demand, and carrying interest at 15 per cent per annum and the COMPANY may at any time pay off any moneys so advanced, and any moneys in the hands of the TRUSTEES upon the trusts hereof, which the COMPANY shall at any time be unwilling to accept on loan, may be invested in any investments by law permitted to TRUSTEES, and the investments thereof may at any time be varied as may seem expedient to the TRUSTEES, or may be placed on deposit with any bank as may seem expedient to the TRUSTEES.

6. The COMPANY may contribute each year to the fund the sum of Rs., or such other sum as the COMPANY shall from time to time determine.

7. The fund is to be regarded as primarily established for the benefit of employees whose nature and length of service may, in the judgment of the TRUSTEES, entitle them to a claim on it, and, secondly, for the purpose of assisting survivors who may have been dependent on deceased employees, and whose circumstances may necessitate some help.

8. The establishment of the fund is not to be regarded as in any way relieving employees of their duty to make such provision for old age and those dependent upon them as their means will permit.

9. Any employee of the company who has been in the service of the company or its predecessors in business for at least 25 years, and has completed the 60 years of his age, may apply for a retiring allowance.

10. Except in cases where ill-health or special circumstances shall, in the opinion of the directors, justify it, no allowance shall be granted to an employee who is not 60 years of age and has not completed 20 years of service with the COMPANY or its predecessors in business.

11. Any employee who has been in the service of the COMPANY or its predecessors in business for at least 20 years, and has become mentally or physically incapacitated, may be granted an annual or other allowance subject to the provisions hereof.

12. Any employee under 60 years of age who shall be in receipt of a retiring allowance shall, when required by the trustees, be bound to satisfy

them, by medical certificate or otherwise, that there has been no material change in the circumstances in which the allowance was granted.

13. The TRUSTEES may withdraw or modify or determine any allowance when, in their opinion, the circumstances or conduct of the recipient shall justify them in so doing.

14. An allowance as aforesaid is to be regarded as strictly personal and cannot be assigned, charged, or alienated in any way, and any attempt to assign, charge, or alienate shall determine the allowance, but without prejudice to the trustees' discretion to continue the same if they think fit after an interval or otherwise.

15. In fixing the amount of each allowance and in making any modification therein, the TRUSTEES may exercise their discretion with reference to all the circumstances; but, without prejudice to such discretion, it is declared that the following is the retiring allowance which, it is contemplated, will be payable, that is to say:

- (a) until such time as the fund shall have reached the sum of Rs. the retiring allowance per month after 20 years' service shall be one-third of the person's average monthly earnings for the last three years of his employment, but so that such allowance shall not exceed Rs. 500 per month.
- (b) after the fund shall have reached the sum of Rs. and upwards, the retiring allowance per month after 20 years' service shall be one-half of the person's average monthly earnings for the last three years of his employment, but so that such allowance shall not exceed Rs. 600 per month.

16. Any employee, who shall be dismissed, or shall retire from the service of the COMPANY in consequence of misconduct, shall be disqualified from receiving any allowance hereunder.

17. The TRUSTEES may grant such temporary or other allowance to widows and other dependants of employees who may die in the service of the company, or shortly after leaving the service of the company, as in their absolute discretion they may think proper.

18. The TRUSTEES may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined, three TRUSTEES shall form a quorum. A trustee may at any time convene a meeting of the trustees to be held at the office of the company. Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the Chairman shall have a second or casting vote.

19. A meeting of the TRUSTEES for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers, and discretions by these presents vested in the TRUSTEES generally.

20. The TRUSTEES shall cause proper minutes to be kept and entered in a book provided for the purpose, of all their resolutions and proceedings, and any such minutes of any meeting of the TRUSTEES, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

21. A register shall be kept by the TRUSTEES in which shall be entered the names and addresses of the persons for the time being, and from time to time, who are in receipt of allowances hereunder, and of the trustees for the time being hereof.

22. For the purposes hereof any notice to any trustee, or to any person in receipt of any allowance hereunder, may be given by sending the same through the post, in a letter addressed to him at his registered place of address, and any notice so sent shall be deemed to be served on the day following that on which it is posted.

23. The COMPANY may from time to time, by instrument in writing under its common seal, with the assent in writing of the TRUSTEES, alter all or any of the regulations contained in these presents for the time being relating to the fund hereby constituted, and make new regulations to the exclusion of, or in addition to, all or any of the regulations for the time being relating to such fund; and the regulations so made and for the time being in force shall be deemed to be regulations, in relation to the fund, of the same validity as if they had been originally contained in these presents, and shall be subject in like manner to be altered or modified by any subsequent instrument in writing as aforesaid. For the purposes hereof, all the provisions herein contained shall be deemed to be regulations in relation to the fund.

24. The TRUSTEES, in the exercise of the authorities and discretions hereby vested in them, shall have an absolute and uncontrolled discretion, and may exercise the same from time to time, and at any time.

25. The TRUSTEES shall respectively be indemnified against all liabilities incurred by them in the execution of the trusts hereof, and shall have a lien on the fund for such indemnity.

26. The TRUSTEES of the fund shall always include two of the directors of the COMPANY, the secretary of the COMPANY, and one other person to be appointed by the majority for the time being of the committee of the sick fund which has been established in relation to the COMPANY. The said M and N are two of the present directors, the said S is the secretary, and the said T has been nominated by the committee of the sick fund.

27. The statutory power of appointing new TRUSTEES in the place of any trustee appointed in respect of his being the managing director or director or secretary of the COMPANY shall be vested in the COMPANY, and the statutory power of appointing a new trustee in the place of any trustee nominated by

the committee of the sick fund shall be vested in the majority of the committee of the sick fund.

28. Any trustee, who having been appointed as the managing director or a director or secretary of the COMPANY, vacates office as such, shall be deemed thereupon to desire to be discharged from the trusts hereof for the purposes of the exercise of the statutory power of appointing new TRUSTEES.

29. If the COMPANY shall at any time give to the trustees notice in writing stating that the COMPANY does not intend to make any further contributions to the fund, or an order shall be made or an effective resolution shall be passed for the winding-up of the COMPANY, the fund shall be realised and shall be distributed amongst the employees of the company in such proportions as shall be determined to be just and equitable by an arbitrator to be appointed as hereinafter provided, and accordingly such person shall forthwith be appointed an arbitrator as the COMPANY and the TRUSTEES hereof shall unanimously appoint, and if such appointment is not made within three months after such order or an effective resolution is made or passed, then the majority of the TRUSTEES hereof may request the President for the time being of the Incorporated Law Society of Calcutta to appoint such arbitrator, and such President shall have authority to appoint him accordingly.

30. The determination of the arbitrator appointed under the foregoing clause shall be absolute and final, and all the costs, charges and expenses of and incidental to the realisation and distribution of the fund, including the remuneration of the arbitrator, shall be payable out of the fund.

IN WITNESS, etc.

The Schedule above referred to
(Particulars of Investments)

Signed, sealed and delivered by
S on behalf of X Co. Ltd. in
presence of:

Sd. for X Co. Ltd.

Signed and delivered by the
TRUSTEES in presence of:

Sd. TRUSTEES

Trust Deed Constituting Pension Fund

THIS DEED, MADE THE day of1999 BETWEEN AB, of
....., hereinafter called the FOUNDER of the one part, and C
of, and D of of the other part.

WHEREAS the founder, who is largely interested in the N. Co. Ltd.
(hereinafter called the COMPANY), is desirous of establishing a pension fund

in relation to that company, and with a view thereto has transferred fully-paid shares of Rs. each in the company, numbered to inclusive, to the said C and D. Now IT IS AGREED AND DECLARED as follows:

1. The trustees, which expression in this deed means the said C and D, or other the trustees or trustee for the time being hereof, shall hold the said shares and the income thereof in trust for the purposes hereof.
2. The income of the trust fund shall be applied in paying the pensions from time to time payable hereunder, and if the income of any half-year or other period shall be insufficient to pay the said pensions, such pensions shall abate rateably.
3. The following persons shall be eligible as pensioners, that is to say—
 - (a) Persons who, having served the company for more than 10 years, have attained the age of 65.
 - (b) Widows and orphans of employees who have died in the service of the COMPANY.
4. During the life of the founder, it shall rest with the FOUNDER and after his death it shall rest with the COMPANY to elect pensioners and to determine the amount of the pensions payable to them respectively, and the time or times of payment, and to withdraw, reduce, or increase any pension.
5. A register of pensioners shall be kept by the COMPANY and there shall be entered therein the names and addresses of the pensioners and the amounts of their respective pensions and any other particulars relating thereto.
6. Any surplus income from time to time in the hands of the trustees may be invested by them in any investments authorised by law for the investment of trust funds, and the moneys so invested and the income thereof shall constitute a reserve fund and may be applied by the trustees or trustee at any time in augmentation of the income of any half-year which shall be insufficient to pay the subsisting pensions.
7. Pensioners shall be elected for one year only, but they may be re-elected.
8. The FOUNDER may at any time during his life by deed modify the provisions of this deed, and after his death the COMPANY may at any time by deed modify the provisions of this deed.
9. The statutory power of appointing new trustees hereof shall be vested in the founder during his life and after his death in the COMPANY.
10. Any notice to any pensioner may be given, etc.
11. Proviso for winding-up within legal limits as in clause (29) of form of the trust deed constituting superannuation fund.

IN WITNESS, etc.

Deed of Ante-nuptial Settlement

THIS SETTLEMENT IS MADE the day of 2000 BETWEEN AB of, etc. (INTENDED HUSBAND AND SETTLOR) of the first part, CD of, etc. (INTENDED WIFE), of the second part, and EF of, etc., and GH of, etc., hereinafter called the TRUSTEES of the third part.

WHEREAS a marriage is intended to be solemnized shortly BETWEEN the said AB and CD and upon the treaty of the said marriage it was agreed that the settlement hereinafter appearing shall be effected: AND WHEREAS with a view to effect such settlement the said AB has, with the consent and approbation of the said CD, agreed to transfer in the names of the trustees the property, hereinafter described: NOW THIS DEED WITNESSES as follows:

1. In pursuance of the said agreement and in consideration of the intended marriage, the said AB as the beneficial owner, with the approbation of the said CD do hereby grant, convey, transfer and assign unto and to the use of the trustees ALL THAT etc., (*describe the property*) TO HAVE AND TO HOLD the same IN TRUST for the said AB until the said intended marriage, and after the solemnization of the said marriage UPON TRUSTS hereinafter declared.

2. The TRUSTEES shall, after the solemnization of the said marriage, stand possessed of the said property (hereinafter referred to as the TRUST PROPERTY), UPON TRUST either to hold the same as at present situated (*or invested*) or, with the consent of in writing of the said AB and CD during their joint lives and the survivor during his or her life, to sell the same and invest the proceeds thereof in any investments which may for the time being be authorized by law for the investment of trust funds, and stand possessed thereof and of the investments from time to time representing the same UPON TRUST to pay the income thereof to the said AB during his life, and after his death to pay the same to the said CD during her life, and after the death of the survivor of them, the said AB and CD to stand possessed of the Trust Estate IN TRUST for such child, children or remoter issue of the said intended marriage in such shares (if more than one) and in such manner as the said AB and CD shall by deed or deeds jointly appoint, and in default of any such appointment, or so far as the same shall not extend IN TRUST for the child or all the children of the said marriage who, being sons, shall attain the age of 21 years or, being daughters, shall attain that age or marry under that age, in equal shares: BUT if there shall be no child of the said intended marriage who shall live to attain a vested interest in the Trust Funds, IN TRUST for such person or persons as under the law for the distribution of the estates of intestates would, on the death of the said CD, have been entitled, if she had died possessed thereof intestate and without having been married.

3. The TRUSTEES may, at any time or times, with the consent in writing of the said AB and CD during their joint lives, and of the survivor of them during his or her life, and after decease of such survivor at the sole discretion

of the trustees, raise any part of parts, not exceeding one-half, of the vested or presumptive share of any child or other issue of the said intended marriage, of and in the Trust Estate, and may pay or apply the same for his or her advancement or benefits as they shall think fit.

4. The said AB and CD during their joint lives, and the survivor of them, during his or her life, shall have power to appoint new trustee or trustees.

5. The said CD may, after the death of the said AB, grant either by deed or will a life interest in a moiety of the Trust Estate in favour of any future husband whom she may marry.

6. The TRUSTEES shall not be responsible for any *bona fide* act, default, omission or error in judgment on the part of the said AB about maintenance, preservation or repair of the said property or any part thereof or for any loss or damage occasioned thereto by the said AB.

7. Provided, however, and it is hereby expressly agreed by and between the parties that in case the said intended marriage breaks off this deed shall stand *ipso facto* cancelled and be void and of no effect and the said property hereby assigned shall be reassigned to the said AB or as he shall direct.

IN WITNESS WHEREOF the parties herein have signed these presents on the day, month and year above-written.

Signed, sealed and delivered by CD
the INTENDED WIFE in the presence of:

Signed, sealed and delivered by EF and
GH the TRUSTEES in the presence of:

Signed, and sealed and delivered by AB
the SETTLOR in the presence of:

Deed of Settlement of Family Disputes

THIS DEED OF FAMILY SETTLEMENT, made the 6th day of December 1999 BETWEEN AB of, etc., of the first part, and CD of etc., of the second part.

WHEREAS the business and undertaking described in Schedule A hereunder were started and carried on, organised and developed by AB by his own initiative and efforts in his own name and with his own capital AND WHEREAS the movable and immovable properties described in Schedule A hereunder have also been acquired by AB out of the moneys of the said business in his name and for his use and benefit AND WHEREAS the said CD, who is the son of the deceased elder brother of AB has been living with AB for some time past and was at all times treated as a member of his family

under the care and patronage of AB as an assistant or helper in his said business for which he was paid a share of profits as his remuneration AND WHEREAS the said CD having thus contributed his labour and skill for the growth and development of the said business and rendered valuable services claims to be and has set up and asserted his right as an equal partner thereof and so also as moiety holder of said properties which right and claim are denied and disputed by the said AB AND WHEREAS in the circumstances aforesaid disputes and differences having thus arisen between the parties and with a view to save themselves from ruinous litigation and for the sake of peace and preservation of the honour and dignity of the family they have themselves settled and/or adjusted their said disputes and differences as follows:

1. That it is hereby agreed and declared by and between the parties as follows, *viz.* that the said AB shall at all times hereafter hold own, possess and enjoy as full and absolute owner the business and properties mentioned and described in Schedule B and that the said CD has at present no right nor any claim or interest therein which is hereby expressly relinquished by the said CD in favour of the said AB to all intents and purposes.

2. That it is further agreed and declared that the said CD shall likewise at all times hereafter own, possess and enjoy the properties mentioned in Schedule C without any claim or demand by the said AB on any account whatsoever for which purpose they are hereby expressly granted, conveyed, transferred, assigned and assured by the said AB unto and to the use of CD.

3. That it is further agreed and declared that all disputes and differences as between the parties as regards account and mutual dealings etc. in relation to said business and the properties have been fully and finally adjusted and settled and in any event neither party has any claim against the other on any account whatsoever and this deed of family settlement shall not be reopened on any ground whatsoever.

AND that the parties hereto in so far as it relates to their respective acts, deeds and things covenant with each other that they have not done, executed, performed nor suffered anything to the contrary whereby or by reason whereof the properties hereunder settled may be in any way affected or prejudiced in title or estate or they or any of them are or is hindered or prevented from settling the same in the manner hereinbefore indicated.

Schedule A

Schedule B

Schedule C

IN WITNESS WHEREOF the parties hereto have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Private Trust for Management and Preservation of Property

THIS DEED OF TRUST is made on this day of 2000 by AB son of residing at (hereinafter referred to as the SETTLOR) of the one part and CD son of residing at EF son of residing at and GH son of residing at (hereinafter called the TRUSTEES which term shall include the Trustee or Trustees for the time being) of the other part.

WHEREAS the said AB owns and possesses all that property detailed and specified in the Schedule hereto which are his self-acquired property and over which he has full disposing power under the Hindu law.

AND WHEREAS the said AB has for some time past been keeping indifferent health and is unable to look after his affairs and manage the said properties and has lost all hopes of complete recovery.

AND WHEREAS his only son CD having long been subject to epileptic fits is now a man of weak intellect and of almost unsound mind totally incapable of managing the household and estate affairs.

AND WHEREAS for reasons and considerations as aforesaid and for the due management, protection and preservation of his estate, the said AB is desirous of creating a trust in respect of his aforesaid property in the manner hereinafter appearing.

AND WHEREAS the total value of the aforesaid property is estimated at Rs. as detailed in the Schedule hereto.

Now THIS DEED WITNESSES as follows:

1. This said AB in pursuance of his wish and desire as aforesaid do hereby grant, convey and transfer ALL that property described in the Schedule hereto (hereinafter referred to as THE TRUST PROPERTY) unto and to the use of the TRUSTEES TO HAVE AND TO HOLD the same in trust for the said AB and after his death upon trust hereinafter declared concerning the same with and subject to such powers and limitations as are hereinafter specified.

2. The TRUSTEES shall by themselves or through an agent or agents employed by them manage and administer the trust property in such a

manner as might be most beneficial to the interest of the trust and shall realise the rent, dividend, interest and other income accruing from the trust property and the said AB shall make such formal endorsements and execute such document or documents and do every such thing as may be legally necessary to enable the trustees to realise such income:

PROVIDED that so long as the said AB or his wife shall remain alive and in full possession of his senses, the TRUSTEES shall have no power to sell, mortgage or otherwise transfer any portion of his residential house except with his express consent if he is alive and able to give consent or with the consent of his wife in the event he is dead or is unable to give his consent.

3. During the said AB's lifetime, the TRUSTEES shall spend the income of the trust property in such a manner as the said AB may direct and in case he is not able to give any directions the said income shall be spent for the maintenance of the said AB, his wife, his son, his son's wife and such other members of his family as may for the time being be in existence and dependent on him and on all religious, social and customary needs of the family.

4. After the death of the said AB, the income of the trust property shall be spent for the maintenance of his wife, his son, the said CD, the said CD's wife and such member or members of his family as may be in existence and on all such religious, social and customary needs of the family as aforesaid.

5. If at any time the TRUSTEES find that the income of the trust property is not sufficient for the objects of the trust as hereinbefore recited, they shall be at liberty to raise money by disposing of such stocks, shares or securities mentioned in the said schedule as they may think proper, provided that except in cases of sudden, urgent and unavoidable necessity they shall not be entitled to raise more than rupees ten thousand in any one year by disposing of such stocks, shares or securities.

6. If on account of death or other cause the office of a trustee falls vacant, and the said AB is alive and in proper senses and after his death or if he is not in his proper sense the remaining TRUSTEES shall appoint a new trustee or trustees if they so agree unanimously and in the event they cannot agree about the appointment of a new trustee or fail to appoint one within a reasonable time, the court may appoint a new trustee in accordance with the law for the time being in force in this behalf and, in making such appointment, the TRUSTEES or the court shall respect the wishes, if any, of the said AB's wife and the wife of the said CD expressed in this behalf.

Pending the appointment of a new trustee, the remaining trustee shall continue to administer the trust.

7. On the death of both the said AB and his son, the said CD, this trust shall cease and the trust property or such portion of it as may be in existence shall immediately vest in the heirs and legal representatives of the said CD.

8. The said AB hereby expressly reserves to himself the power to revoke or modify any time at his pleasure the trust hereby created, but such revocation or modification will not affect any act already done by the TRUSTEES in good faith in due execution of the trust.

The Schedule

IN WITNESS WHEREOF the parties have signed this Deed on the day, month and year first above-written.

Signed, sealed and delivered by AB
the SETTLOR in the presence of:

Signed, sealed and delivered by
CD, EF and CE the TRUSTEES in
the presence of:

Deed of Settlement for Establishing a Girls' School

THIS DEED OF SETTLEMENT is made on this day of 2000 BETWEEN AB son of residing at (hereinafter called the SETTLOR) of the One Part and CD son of residing at, EF son of residing at and GH son of residing at (hereinafter called the TRUSTEES which expression shall where the subject or context allows or admits of be deemed to include the survivor or survivors of them and the successors in office as also the Trustees or Trustee for the time being of the Trust hereby created) of the Other Part.

WHEREAS the SETTLOR is the sole and absolute owner of the immovable property fully mentioned and described in the First Schedule hereto as also of the securities mentioned in the Second Schedule hereto;

AND WHEREAS for good reasons and considerations and in order to perpetuate the memory of the settlor's father the SETTLOR is desirous of establishing a girls' high school at to be named after the said and settling the said property irrevocably for its maintenance.

AND WHEREAS the SETTLOR has also endorsed the securities mentioned and described in the Second Schedule hereto in favour of and delivered to the TRUSTEES to provide for the necessary capital for establishing such

AND WHEREAS the estimated value of the properties mentioned is Rs.

Now THIS INDENTURE WITNESSES as follows:

1. In pursuance of the said wish and desire of the SETTLOR, the SETTLOR do hereby grant, convey, transfer, assign and assure to the TRUSTEES ALL

THAT property described in the First Schedule hereto AND DELIVER ALL the securities described in the Second Schedule hereto duly endorsed in favour of the TRUSTEES TO HAVE AND TO HOLD them all upon trust for the objects and with the intent and subject to the powers, provisions and agreements hereunder declared and expressed concerning the same.

2. The TRUSTEES or the TRUSTEE shall, not later than one year from the date of these presents, erect, build, construct on the land described in the First Schedule hereto a building suitable for a girl's school at a cost of not more than Rs. to be raised by sale of such of the securities mentioned in the Second Schedule hereto or portion thereof as the TRUSTEES may think proper.

3. The TRUSTEES or TRUSTEE shall immediately after such a sale establish a girls' high school in the said building with the sanction of the appropriate authorities and pay all initial costs in that connection out of the income of the property described in the First Schedule and the securities described in the Second Schedule hereto and in case of any deficiency shall make good the same out of the sale proceeds of such securities as the TRUSTEES may consider necessary to sell for the purpose.

4. The TRUSTEES shall manage and develop the said property and every part thereof as mentioned in the First Schedule hereto and after having paid Government revenue, cesses, taxes and all expenses of collection and management shall use the balance of the income as well as the income from such of the securities mentioned in the Second Schedule hereto as may remain unsold or of any other securities into which the same may hereafter be converted by them, for the recurring expenses of the girls' high school and any balance remaining after making such expenses shall be deposited in such bank and invested in such manner as the TRUSTEES may consider proper.

5. The TRUSTEES shall have power to convert such securities mentioned in the Second Schedule hereto as they think necessary into other securities or into money, but they shall have no power to sell, mortgage, otherwise transfer the said property described in the First Schedule hereto except with the permission of the District Judge having jurisdiction over the subject-matter of the trust.

6. In case of any vacancy amongst the TRUSTEES occasioned by death, resignation or incapacity of any trustee or otherwise, the SETTLOR shall have the power to fill up the vacancy and after his death, the remaining TRUSTEES shall make the appointment.

7. In case the land where the school building is to be created or erected is acquired by the Government, the trustee shall utilise the entire compensation money for purchase of another land or lands suitable for the purpose and erect a new building or buildings and restart the girls' school thereon.

The First Schedule

The Second Schedule

IN WITNESS WHEREOF the parties hereto have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by the said AB the SETTLOR in the presence of:

Signed, sealed and delivered by CD, EF and GH the TRUSTEES as a token of acceptance of the Office of TRUSTEES in the presence of:

Endowment for Building a Ward in a Hospital and Maintenance of Beds therein

THIS INDENTURE MADE THIS day of 2000 BETWEEN XY son of of (MAKER OF THE ENDOWMENT) of the one part and the said AB and CD son of of of (TRUSTEES) of the other part (which expression shall where the subject or context allows or admits of be deemed to include their successor or successors in office).

AND WHEREAS the said XY having been motivated by pious wishes and desire and benevolent consideration for relieving the suffering of the ailing poor and being desirous of creating an endowment for the maintenance of a ward in the hospital known as ELH Hospital located at premises No. to be named after his deceased parents as MN ward has set apart and kept earmarked a fund and constituted AB and CD as the first TRUSTEES NOW THIS INDENTURE WITNESSETH THAT in pursuance of the said wish and desire and for consideration as aforesaid the said XY hereby declare that the said AB and CD as joint TRUSTEES do hold and possess ALL AND SINGULAR the Promissory Notes, Stocks and Securities etc. of the aggregated value of Rs. of denominations and numbers described in the Schedule hereto TOGETHER WITH a cash sum of Rs. 10 lakhs hereinafter referred to as the trust fund as trustees for the endowment to be created for the purpose as aforesaid for ever, upon trust and subject to the terms, powers, provisions and declaration hereinafter mentioned:

AND IT IS HEREBY DECLARED THAT out of the sum of Rupees ten lakhs the said AB and CD shall construct and build a ward in the premises of the ELH HOSPITAL., according to the directions and specifications contained in the plan as approved by the Hospital Authority and shall from and out of the income, dividend etc. of the TRUST FUND accruing from the said Promissory

Notes, Stocks and Securities maintain 25 beds in the said ward upon the terms and conditions hereinafter appearing PROVIDED ALWAYS that the said number of beds may be increased or decreased according to the income of the trust fund accruing from time to time AND IT IS HEREBY FURTHER DECLARED THAT upon the death of any of the TRUSTEES or in the event any of them shall desire to retire or be discharged from or refuse to act or become unfit to continue as trustee by reason of any personal disqualification or become incapable to act as trustee as aforesaid, then, in every such case, it shall be lawful for the surviving or continuing trustee or TRUSTEES for the time being and if there be no surviving or continuing trustee it shall be lawful for the MAGISTRATE AND COLLECTOR of the place for the time being, by writing or writings to nominate and/or appoint any person or persons to be trustee or trustees in the place of the trustee or trustees so dying or desiring to be discharged or refusing or becoming unfit or personally incapable to act as aforesaid, and that upon such appointment the trust fund shall to all intents and purposes vest in the newly appointed trustee or trustees jointly with the continuing or surviving trustee. Provided however that in every such appointment the number of TRUSTEES may be increased or reduced, but the TRUSTEES or TRUSTEE for the time being and every trustee so appointed shall act and assist in the execution of the said trust as fully and effectually as if he had been originally appointed a trustee by the said PROVIDED always that the number of TRUSTEES of the said trust shall never be less than two or more than five AND IT IS HEREBY FURTHER DECLARED as follows:

(i) Firstly, that the said ward shall be named after the deceased parents of the said AB and shall be called, known and distinguished as MN ward.

(ii) Secondly, that the said ward shall be a free ward and open to all the poor people irrespective of their caste religion faith or nationality. The trustee or TRUSTEES shall have the power to nominate two patients for admission at a time who shall have preferential right of admission over the patients.

(iii) Thirdly, subject to what are hereinbefore stated the right of admission of patients in the said ward shall be reserved and the same shall be exercised and controlled by the Chief Medical Officer of the said Hospital for the time being only in consultation with the said and or the TRUSTEES for the time being if so desired.

(iv) Fourthly, that the said and or the TRUSTEES for the time being, shall keep and maintain proper accounts of the income and expenditure of the said trust fund and get such accounts duly audited in every year by one qualified auditor to be appointed by them in that behalf.

(v) Fifthly, that the said and or the TRUSTEES for the time being, shall meet at least once in every six

months for the purpose of transacting the business of the said trust and the decision of both the trustee, or of the majority of TRUSTEES shall regulate all such actions and proceedings in that behalf PROVIDED ALWAYS THAT it shall be open to the said TRUSTEES to make rules and regulations relative to such meetings and the conduct of their business.

(v7) Sixthly, that the said and for the TRUSTEES for the time being, may at any time break the trust fund sell the trust securities or any part hereof for the purpose of investing the sale proceeds on more profitable securities; Provided always that such securities shall in no case be other than those mentioned in s. 20 of the Indian Trusts Act 1882, PROVIDED also that permission of the Magistrate and Collector for the time being shall have been first obtained therefor in all cases of changes of investments.

The trustee or trustees for the time being shall have power to apply to court for such directions and order as they may be advised and if necessary for removal or discharge of any trustee or appointment of any new trustee or trustees.

In case the said hospital is closed or shifted elsewhere the trustee or TRUSTEES shall make the interest of the fund available for some similar object or purpose or for any other hospital for such ward or wards.

The Schedule above referred to

IN WITNESS WHEREOF the maker of the endowment and the TRUSTEES have set and subscribed their respective hands and seals the day, month and year first above written.

Signed, sealed and delivered
at Calcutta in the presence of:

XY
AB
CD

Trust Deed Establishing a Scholarship

THIS INDENTURE IS MADE on the 2nd day of November 2000 BETWEEN AB, etc. (hereinafter called THE FOUNDER) of the One Part and CD, etc., EF etc., and GH etc. (hereinafter called THE TRUSTEES which expression shall where the subject or context allows or admits of, be deemed to include the survivor or survivors of them and also the successor or successors in office or the trustee or trustees for the time being of the trust) of the Other Part.

WHEREAS the FOUNDER has made over to the TRUSTEES a sum of Rs. 20 lakhs and/or put them in effective control over the same for investment thereof in some approved security and apply the income exclusively for the objects hereunder mentioned.

Now THIS INDENTURE WITNESSETH and it is hereby agreed and declared by and between the parties as follows:

1. The TRUSTEE or TRUSTEES shall invest and at all times keep the said sum of Rs. 20 lakhs invested in some approved security or securities prescribed under s. 20 of the Indian Trust Act and apply the income thereof in perpetuity for awarding a scholarship to be named after the FOUNDER to a most meritorious student who will secure the highest number of marks in Electronics every year in the MSc Examination of the University of tenable for two years at the rate of Rs.5,000 per month.

2. The TRUSTEES may at any time and from time to time vary such investment or investments for others of a like nature for the sake of better return but shall on no account change the character of the investment or investments.

3. The said sum of Rs. 20 lakhs and the investment or investments representing the same shall be known as *ELH Trust Fund* and is hereinafter referred to as the *Trust Fund*.

4. The TRUSTEE or TRUSTEES shall out of the income of the TRUST FUND pay at the first instance all costs, charges and expenses of or incidental to the maintenance and administration of the TRUST FUND and shall apply the balance for awarding the scholarship as aforesaid. In case of any surplus the same shall be invested in the same type of security. In case of any deficit the value of the award shall abate proportionately.

5. The award of the scholarship shall be subject to such terms and conditions as shall from time to time be prescribed by Statutes, Regulations, Ordinance of the said University and in case there is no candidate eligible for such scholarship in any particular year or years the TRUSTEES may utilise for any other purpose or purpose for advancement and promotion of education the entire amount thereof as may be desired by the University.

6. The TRUSTEES or TRUSTEE may at any time and from time to time set apart as and by way of sinking fund the whole or any part of the surplus income produced by the trust fund in any year not needed to meet the cost of the said scholarship and may invest any such sum or sums so set apart and the resulting income thereof in the manner aforesaid with power at any time to vary any such investment or investments.

7. The TRUSTEES or TRUSTEE may at any time sell any investment or investments representing the capital income of the sinking fund and apply the proceeds thereof or the capital or income of the sinking fund as if the same were income produced by the trust fund.

8. The TRUSTEE or TRUSTEES may at any time apply the income for the grant of any such other scholarship or scholarships and in such manner as the University may from time to time direct in so far as the same is permitted by the surplus income of the trust fund in any year as is not required for the aforesaid scholarship or sinking fund.

9. The TRUSTEES may, with the concurrence of the Vice-Chancellor of the said University, at any time wholly or partially vary any of the purposes for which the income of the TRUST FUND is to be applied and such income or part thereof shall then be applied to such other purpose provided that the same shall not be applied to any purpose unless the same is conducive to the promotion or encouragement of education at the said University.

10. In case of any vacancy amongst the TRUSTEES occurred by reason of death or bankruptcy or resignation of any trustee or for any other cause, the FOUNDER will have the right to appoint a new trustee or trustees and failing him and after the death of the founder the remaining trustees shall have power by a majority of votes to appoint a new trustee and in case of equality of votes or failing same the appointment shall be made by the Vice-Chancellor of the said University or by the court having jurisdiction in this behalf.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered by AB the FOUNDER at Calcutta in the presence of:

Signed, sealed and delivered by CD, EF and GH, indicating consent to act as TRUSTEES in the presence of:

Deed of Trust for the Purpose of Paying Debts

THIS DEED OF TRUST made this day of 2000 BETWEEN AB son of (hereinafter called THE DEBTOR) of the First Part AND CD son of and EF son of (hereinafter called THE TRUSTEES) of the Second Part, GH son of (hereinafter called THE CREDITOR) of the Third Part.

WHEREAS the said AB is truly and justly indebted to the said CD in the sum of Rs. 5 lakhs only for which the latter has served the former with legal notice and intends to institute a suit for recovery of the said sum with costs and interest.

AND WHEREAS the said AB having at present no means nor any further resource to liquidate the said loan approached the said GH for time and accommodation to pay up the said debt by instalments which the said GH has agreed to grant only if adequate arrangement is forthwith made to secure regular payments of instalments and for preservation of the assets of the said AB as they are now until repayment of the entire debt.

THIS DEED OF TRUST WITNESSES that in pursuance of the said agreement and in consideration of the said GH refraining from taking any action against AB for immediate enforcing payment, the said AB doth hereby and hereunder

grant, convey, transfer and assign all his property mentioned in the Schedule below UNTO the said TRUSTEES TO HAVE AND TO HOLD the same upon TRUST for the purpose hereinafter mentioned:

- (i) That the said TRUSTEES shall exert themselves by all legitimate ways and means, exercise all the powers and authorities hithertofore exercised by AB, supervise, manage and develop all the properties of the said AB so as to yield much better income from all sources.
- (ii) That the said TRUSTEES continue to hold, possess, manage and administer the said properties until full satisfaction and discharge of the debt of the said AB to the said GH and thereafter the said properties shall be retransferred to the said AB.
- (iii) The TRUSTEES shall out of the income of the said properties as and when collected shall, after payment of the municipal taxes and other capital and revenue liabilities, pay or cause to be paid to the said AB an allowance of Rs. 2,000 per month regularly not later than the 7th of every current month subject to such increase or decrease thereof as may be necessitated by the rise or fall of the annual income of the trust properties.
- (iv) The TRUSTEES shall divide the entire balance of the income of the properties hereby transferred in four parts, one part of which shall be kept deposited in an account in some bank approved by the said GH to meet such unforeseen or emergent expenses as may be necessary in the interest of and for the benefit of the trust. The TRUSTEES shall pay the remaining three parts to the said GH towards liquidation of the debt inclusive of interest until the entire debt is liquidated.

AND IT IS HEREBY furthermore agreed and declared by and between the parties that subject to aforesaid the said TRUSTEES shall stand possessed of the said properties hereby transferred in trust for the purpose aforesaid but shall have no power to sell, mortgage, charge or otherwise encumber the same except with the consent of the other parties first had and obtained or under order of a court of competent jurisdiction.

PROVIDED ALWAYS and it is hereby agreed and declared that in the event of the office of any of the trustee falling vacant the appointment of a new trustee or trustees shall only be made at a meeting called for the purpose to be presided over by the said GH and attended by the parties, and in case the trustees fail to carry out the object of the trust in the manner hereinunder provided, it shall always be lawful but not compulsory on the part of the said GH to institute a suit for recovery of the amount due to him and to have a Receiver appointed to take possession, control and management of the trust property.

The Schedule above referred to

The estimated value of the trust property is Rs.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered by AB
the DEBTOR in presence of:

Signed, sealed and delivered by CD
and EF accepting the TRUSTEESHIP
in presence of:

Signed, sealed and delivered by
GH the CREDITOR in presence of:

Deed for Public Charitable Trust

THIS INDENTURE IS MADE this 2nd day of November 2000 BETWEEN AB son of by faith by occupation residing at hereinafter called the SETTLOR (which expression shall unless excluded by or repugnant to the subject or context be deemed to include his heirs, executors, administrators, assigns, and representatives) of the one part and CD son of by faith and EF son of by feith both residing at hereinafter jointly called the TRUSTEES (which expression shall unless excluded by or repugnant to the subject and context be deemed to include the trustees for the time being of these presents and/or Survivor or Survivors of any of them and their Successor or Successors in Office) of the other part:

WHEREAS

1. The SETTLOR is desirous of creating an endowment by setting apart and establishing a Fund for the Public Religious and Charitable objects and purposes in India hereinafter expressed.

2. The TRUSTEES have at the request of SETTLOR agreed to act as TRUSTEES of these presents upon the terms and provisions hereinafter contained.

Now THIS INDENTURE WITNESSETH as follows:

1. In order to effectuate the said object of creating and establishing a Public Charitable Trust, the Settlor has delivered to and made over to the TRUSTEES a sum of Rs. 250 lakhs (Rupees two hundred fifty lakhs) only, with intent to part with all his right, title and interest claim therein and vest the same in the TRUSTEES to have and to hold the same and the investment or investments for the time being representing the same and all other properties

that may for the time being represent the trust estate together with all additions and accretions thereto and all accumulated income thereof and all other property or properties that may be acquired out of the same or otherwise may hereafter be subject to the trust (hereinafter referred to as the TRUST FUND) for the charitable objects and purposes and uses hereinafter expressed with the powers and on the terms and conditions herein contained of and concerning the same.

2. The name of the Trust shall be ELH CHARITABLE TRUST and the office of the trust shall be situated at No. which may be shifted from time to time to such other place or places as the trustees may deem fit and proper at their discretion.

3. The objects of the Trust shall be:

- (i) to establish, promote, set-up, run, maintain, assist, finance support and/or aid to or help in the setting up and/or maintaining and/or running schools and other institutions orphanages, widow homes, lunatic asylums, poor houses or other establishments for relief and/or help to the poor, old and infirm people and/or destitutes.
- (ii) To give, provide and/or render help and assistance in cash or kind to poor and/or destitute people widows, etc.
- (iii) To give, provide and/or render help and assistance to and/or implement any scheme for providing livelihood and upliftment of the poor.
- (iv) To give provide and or render food, medicine and other help and/or assistance in any shape or form to the poor deserving and needy persons.
- (v) To give, provide and/or render monetary and/or other help and assistance for the relief of persons and animals affected by natural and other calamities such as flood, fire, famine, cyclone, earth-quake, storm, accident, pestilence, drought, epidemic, unbearable cost of living and the like, to give donations, subscriptions or contributions to institutions, establishments, centres or persons doing relief work on such occasions.
- (vi) To start, maintain and assist any relief measures in those parts which are or become subjected to natural calamities such as flood, fire, drought, famine, cyclone, earth-quake, epidemic, storm, accident, pestilence, etc.
- (vii) To establish, maintain or grant aid for the establishment or maintenance of wells, tube-wells, tanks, water-reservoirs and trees and constructions of and repairs to paths, roads, bridges, etc. for the use of the public.
- (viii) To give, provide, distribute *dhoties*, blankets, rugs, woollen clothings, quilts of cotton, woollen, silk, or other varieties of cloths or other articles of necessity and facilities for the poor.

- (ix) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running schools, colleges, lecture halls and other establishments or institutions for advancement of education and of knowledge in arts, science, literature, humanities and all other useful subjects in all their manifestations.
- (x) To open, found, establish, promote, set-up, run maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running hospitals, boarding houses, libraries, reading-rooms, gymnasium and other training and vocational institutes.
- (xi) To promote, advance and encourage and/or aid in helping, promoting, advancing and encouraging primary, secondary and higher education including technical and medical education also physical training, training of handicrafts, fine art and other useful arts, crafts among the public including the establishment and maintenance of Shilpa-Shikshalayas, Kala-Kendras and other welfare centres for them.
- (xii) To foster and encourage education and training in handicrafts, fine arts, among women folk in general and establish and found institutions imparting such education and to establish, maintain, support or help by monetary gifts or otherwise, centres and institutions for women and children and to provide social welfare works for women and children.
- (xiii) To meet travelling, boarding and lodging expenses for students going abroad for higher commercial and technical education.
- (xiv) To grant, pay or give scholarship, stipends, prizes, rewards, allowance and other financial assistance or help in cash or kind to students with a view to help them in prosecuting their studies in schools, colleges, educational institutions, technical institutions, art schools, institutions teaching commercial and other arts including teaching of cultural arts or other training, research or educational works in India or abroad.
- (xv) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running hospitals, charitable dispensaries, maternity homes, child welfare centres, convalescent homes, sanatoriums, hostels and other similar institutions or centres for rendering or providing medical relief and/or aid to the suffering humanities or for research centres and institutions for promotion of research and education for medical science including surgery.
- (xvi) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running by monetary gifts or otherwise,

centres, stadium, playgrounds and parks for public use sports, and games and other social welfare works and/or activities in Calcutta and/or other places in India.

- (xvii) To open found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up and/or maintaining and/or running institutions, centres, auditoriums and the like for the running of welfare and other services to the public and to provide meeting-room for socially useful activities and functions.
- (xviii) To open, found, establish, promote, set-up, run, maintain, assist, finance, support and/or aid or help in the setting up establishment, maintenance and/or running dharamsalas, wells, deep tubewells, tanks, roads, etc.
- (xix) To promote, organise, administer, establish, support, maintain, and/or grant aid to any person, institution or society or organisation whatsoever having for its objects of charitable purposes and to incur expenditure in connection therewith.
- (xx) To renovate or repair any such temple, mosque, gurudwara, church or other places which is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.
- (xxi) To promote, assist and/or maintain all activities by whosoever carried on or wherever carried on in India in conformity with the objects of the Trust and as are conducive to the well being and general welfare of the nation or are conducive for advancement of any object or objects of general public utility not involving/carrying on any activity for profit.
- (xxii) To help in the preservation of cattle and useful animals.
- (xxiii) To publish and or publishing books, pamphlets, periodicals and newspapers in India or outside for the spread and advancement of education and culture.

4. If any one or more of the objects specified in clause (3) of these presents are held not to be objects of a public charitable nature, the TRUSTEES shall not carry out such object or objects as if the same are not incorporated in these present but the validity of the trust created by these presents as a trust for public charitable purposes shall not be affected in any manner.

5. The financial year of the trust shall end on 31st March, every year provided that the Board of Trustees shall be at liberty to change the same from time to time if they so deem it fit and proper. The first financial year of the trust shall close on 31st March 2001.

6. The TRUSTEES shall from time to time after meeting the expenses of and incidental to the management of the Trust Properties and of the Trust

decide the particular object or objects for which the income or corpus of the TRUST FUND or Properties for the time being available shall be applied.

7. The TRUSTEES may accept any donation or contribution in cash or in kind from any person, firm, company, corporation, associations, institution or trust (including the SETTLOR or the trustees or any of them) for the furtherance of the objects of the trust or for any one or more of them upon such terms and conditions as they may in their absolute discretion think fit and which are not inconsistent with the objects of the trust. The trustees may also take over the management of any other charitable or public institutions on such terms as they think fit and may manage such institutions.

8. Without affecting the generality of powers and functions of the TRUSTEES to manage and administer the trust, the Board of Trustees shall have the following functions.—

- (i) To borrow if needed against the security of the assets of the trust by way of bank overdrafts, loan or otherwise, as may be necessary, for the benefit of the trust and for more effectively carrying out the objects of the trust provided however the trustees unanimously agree on such borrowing and limited to the terms of their decision or agreement and to authorise two or more of the trustees to execute such documents, deeds, papers, etc. as may be necessary in connection therewith.
- (ii) To arrange for and/or authorise the signing or execution of any agreement, contract, instrument, document or any other paper or writing required to be signed or executed on behalf of the trustees by any two of the trustees to be nominated in this behalf by the Board of Trustees and to make the same effective and binding as if the said agreement, contract, instrument or document or paper or writing were signed by all the trustees.
- (iii) To appoint or make provision for the appointment of a sub-committee of trustees and/or others to attend to or supervise or conduct specified jobs or functions or trust matters in such manner and subject to such rules and regulations as the trustees may prescribe.
- (iv) To authorise any one or more trustees to hold any property or any fund or any investment of the trust subject however to the terms of these presents in such manner and subject to such terms and conditions, rules and regulations as the Board of Trustees may from time to time think fit and proper.
- (v) To spend any portion of the corpus or the income of the trust fund for purchasing any land and or constructing any building or buildings for and in the name of the trust for the purpose of carrying out promoting and/or executing any or all of the objects of the trust.

9. The TRUSTEES shall cause true and accurate accounts to be kept of all moneys received and spent and of all matters in respect thereof in course of management of trust properties or in relation to the carrying out of the objects and purpose of the trust as well as of all the assets, credits and effects of the trust properties.

10. The TRUSTEES may invest the Trust Estate either in the purchase of immovable properties or of mortgage immovable properties, or in such manner as allowed by law as may be in force from time to time and to convert, alter, vary, dispose of or transfer such investments from time to time provided that such investments shall not be made which are directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act 1961, or any subsequent amendments as may be made from time to time.

11. If the income from the trust property in a particular year is not fully utilised, the unexpended income subject to the applicable provisions of the Income-tax Act 1961, shall be carried over to the next year or years and spent in such subsequent year or years for the advancement of any of the objects of the trust.

12. The TRUSTEES shall be at liberty to sell such portion or portions of the movable or immovable properties forming part of the Trust Estate either by public auction or by private contract at such price or prices and on such terms and conditions relating to title or otherwise in all respects as they may in their absolute discretion think fit and to rescind or vary any contract for the sale thereof and to resell the same without being answerable for any loss occasioned thereby and to execute all conveyances or other assurances and to pass valid and effectual receipts and discharges for all moneys received by them.

13. The TRUSTEES shall keep an account or accounts with any bank or banks, to operate such account or accounts whether in debit or in credit and to give all appropriate instructions to the banker or bankers concerning the operation of such account or accounts and to authorise by appropriate resolution two or more of the trustees jointly with an agent appointed by the Board of Trustees in this behalf to operate such account or accounts.

14. The TRUSTEES may pay all charges and outgoings payable in respect of any immovable property for the time being forming part of the TRUST FUND and may carry out repairs required to be done to the same and keep the same insured against loss or damage by fire and may incur all other costs, charges, and expenses incidental to the administration and management of the Trust Estate and the properties for the time being belonging to the trust as they may in their absolute discretion think fit.

15. The TRUSTEES may manage or supervise the management of any lands, hereditaments, and premises for the time being comprised in the Trust Estate or any part thereof with power to erect, pull down, re-build, add to,

alter and repair houses and other buildings and to build drains and make roads and fences and otherwise to improve and develop and to cultivate or cause to be cultivated all or any of the said lands, hereditaments and premises and to insure houses and buildings against loss or damage by fire and/or other risks or to let, lease, make allowances to and arrangements with tenants, agriculturists and generally to deal with the said lands, hereditaments and premises as they may deem fit in their absolute discretion.

16. The TRUSTEES may appoint Secretaries, Managers, Lawyers, Solicitors, Auditors, Architects, Engineers, Surveyors, Gomastas or other employees for the purpose of management and supervision of the Trust Estate, for collection of rents, effects and profits, for keeping the accounts and records and for other purpose of the trust.

17. The TRUSTEES may establish their office at such place or places and may change such places from time to time as they may think fit.

18. The TRUSTEES may demise the immovable property or properties for the time being and from time to time belonging to the trust either from year to year or for any fixed term or for any term of years or on monthly tenancies at such rent and subject to such covenants and conditions as they may think proper and also accept surrenders of lease and tenancies and generally manage the same in such manner as they think proper.

19. The TRUSTEES shall have full power to compromise or compound all actions, suits, and other proceedings and settle differences and disputes touching the Trust Estate and/or the Trust Properties and to refer any such differences or disputes to arbitration and to adjust and settle all accounts relating to the Trust Estate and/or the Trust Properties and to do all other acts and things fully and effectually without being liable or answerable for any *bona fide* loss occasioned thereby.

20. The TRUSTEES may join, co-operate and amalgamate the trusts created by these presents or any portion thereof with any trust or institution having allied and or similar objects upon such terms as they may in their absolute discretion think fit.

21. The TRUSTEES may from time to time frame schemes and rules and regulations to carry out the objects of the trust and for managing the affairs of the trust and otherwise for giving effect to the objects and purposes of the trust and to vary the same from time to time as the trustees may in their discretion deem fit and proper.

22. The receipts granted by the TRUSTEES or any one or more of them for any moneys, stocks, funds, shares, securities or investments paid, delivered or transferred to them in exercise of the trust or powers hereof shall effectually release and discharge the person or persons paying, delivering or transferring the same therefrom and from seeing or from being bound to see the application thereof or being answerable for the loss or misapplication thereof.

23. The TRUSTEES shall be entitled at their discretion from time to time to start, discontinue, abolish and re-start any charity or charitable institution, to impose any condition or conditions to any subscription or donation made by them and to earmark any portion of the Trust Property or income for any particular object or objects.

24. The TRUSTEES may reimburse themselves and pay and discharge out of the TRUST FUND all expenses incurred by them in or about the execution of the trust or any of their duties under these presents including travelling expenses, but will not be entitled to any remuneration.

25. All the TRUSTEES unless they voluntarily resign or otherwise decide, shall continue to be the trustees during the term of their natural lives.

26. The number of trustees shall be not less than two and not more than nine.

27. Any trustee may retire at any time without assigning any reason and without being responsible for any costs occasioned by such retirement.

28. The surviving or continuing TRUSTEES may notwithstanding any vacancy in their board act as trustees PROVIDED HOWEVER that if the number of TRUSTEES shall fall below two the minimum fixed by these presents, the trustees shall not, except for the purpose of filling any vacancy, act so long as the number is below the said minimum.

29. Two TRUSTEES at a meeting shall form a quorum for any meeting of the TRUSTEES.

30. The TRUSTEES for the time being shall elect from amongst them one Chairman and he shall hold office for years, unless he resigns or refuses to act as Chairman or otherwise ceases to be trustee.

31. All proceedings and questions and matters arising at the meeting of the TRUSTEES shall be decided by a majority of votes and in case of equality of votes the Chairman shall have a second or casting vote PROVIDED HOWEVER that notwithstanding anything herein stated no question dealing with the disposal of the corpus of any of the trust properties and/or investment out of the trust corpus shall be decided except with the consent of the Chairman of the trust.

32. In case of difference of opinion between the TRUSTEES the opinion of the majority shall prevail and if the TRUSTEES are equally divided in any matter, the Chairman shall have a casting vote.

33. A resolution in writing circulated amongst all the TRUSTEES and signed by a majority of the trustees present in India shall be as valid and effectual as if it had been passed at a meeting of the TRUSTEES duly convened and held.

34. Notice of the meeting of the TRUSTEES and all communications may be sent to the TRUSTEES at their addresses registered for the time being in the records of the trust.

35. All meetings of the trust shall be held at such place and at such time as the Chairman of the trust shall decide from time to time.

36. A trustee who is unable to be present at a meeting of the TRUSTEES may send his views on the agenda in writing and such expression of opinion shall be taken to be his vote on the matter concerned.

37. The minutes of the proceedings of every meeting of the TRUSTEES shall be entered in a book to be kept for that purposes and signed by the Chairman of such meeting or of the following meeting when they are read over and shall when so entered and signed be conclusive evidence of the business and other matters transacted at such meeting.

38. No person being—

- (i) an undischarged insolvent; or
- (ii) convicted of an offence involving moral turpitude; or
- (iii) of unsound mind; or
- (iv) a minor;

shall be eligible to be a trustee.

39. The power to appoint new or additional TRUSTEES, but so as not to exceed the maximum number and to fill vacancies in the office of the trustees, shall vest in the continuing trustee or trustees.

40. A person shall cease to be a trustee in any of the following events:

- (a) if he dies; or
- (b) if he becomes bankrupt; or
- (c) if he becomes insane or otherwise become incapable to act; or
- (d) if he resigns his office.

41. On a new or additional trustee being appointed and on his signifying his acceptance in writing to the effect of his accepting the appointment, the Trust Property shall automatically vest in him along with the other TRUSTEES for the time being and he will be entitled to carry out all the duties and functions of a trustee without any other deed or writing.

42. The Board of Trustees shall be entitled to sue in the name of the trust and may similarly be sued in the name of the trust.

43. The Board of Trustees may, by a unanimous vote of all the TRUSTEES for the time being except the trustee proposed to be removed, remove any trustee, permanent or otherwise, from office after finding the trustee proposed to be removed guilty of serious misconduct in relation to or concerning the trust estate or trust affairs and after arriving at a definite conclusion that for the reasons to be recorded in writing the continuance of the trustee proposed to be removed as trustee or these presents was desirable keeping to the objects of the trust in view and other related or connected matters provided however that no conclusion of such guilt shall be arrived

at without giving to the trustee proposed to be removed a full and fair opportunity of explaining his conduct and/or the charges levelled against him for his removal. And the decision of the Board of TRUSTEES in this behalf shall be final and binding and shall not be called in question anywhere.

IN WITNESS WHEREOF the SETTLOR and the TRUSTEES have executed these presents on the day, month and year above-mentioned.

Signed and delivered by the SETTLOR
at Calcutta in the presence of:

Signed and delivered by the
TRUSTEES at Calcutta in the
presence of:

Deed of Trust when no Trustees are Appointed but Money is given Straight to the University Direct

THIS INDENTURE made this 10th day of December 1999 BY me AB etc.

WHEREAS I am desirous of establishing a scholarship at the University (to be known as SCHOLARSHIP) to be awarded to the student who would stand first in the first class in Political Science in the M.A. Examination every year at the rate of Rs. 900 per month for two years and for that purpose purchased with the approbation of the said University and in the name of the said University 9 per cent. Government Promissory Relief Bonds (or other security as may be described by the SETTLOR) of the face value of Rs. 2 lakhs yielding interest of Rs. per annum (*state particulars of the security*).

AND WHEREAS I have made over the said Government Promissory Relief Bonds (or other security) to the Registrar of the said University on the day of for the purpose as aforesaid.

NOW THIS INDENTURE WITNESSES and I the said AB do hereby declare that the University shall at all times hereafter hold and possess the said Relief Bond (or other security) upon trust hereunder created and with and subject to the powers and provisions hereinafter contained.

(a) The University shall collect the interest of the said Bonds (or other security) twice each year on due dates and after meeting therefrom the costs, charges and expenses for such collection including bank charges, if any, keep the amount earmarked for the purpose of awarding the scholarship after the final publication of the result of the said examination.

(b) In case there is no award of such SCHOLARSHIP for any particular year or years, none having passed in the first class in Political Science the University may, if so decided by the syndicate, award the said SCHOLARSHIP to the student who would stand first in the second class or alternatively the University may declare no award for that particular year. If, however, the

particular student is not available for any reason whatsoever, the SCHOLARSHIP will go to the next best student for that year.

(c) The University shall have ordinarily no power to encash the said Bonds (or other security) but shall, on the contrary, hold the same for the trust hereunder created except upon its redemption whether on their maturity or earlier when it shall convert them and invest the proceeds in sum or other good security yielding an income of Rs. 18,000 per annum tax free or so.

IN WITNESS WHEREOF I the said AB have set and subscribed my hand and seal this 10th day of December 1999.

Signed, sealed and delivered by AB

Accepted and confirmed:

For and on behalf of the University:

Appointment of New Trustee by continuing Trustees in pursuance of a Power in a Deed of Charitable Trust

DEED OF APPOINTMENT MADE this 30th day of November 1999 BETWEEN AB son of of and CD son of of (CONTINUING TRUSTEE) of the first part, EF son of of (RETIRING TRUSTEE) of the second part AND GH son of of (NEW TRUSTEE) of the third part:

WHEREAS by a Deed of Trust dated the day of 1999 and made BETWEEN XY son of of of the One Part and the said AB, CD and EF of the Other Part, and registered in Book I, vol pages being No. for the year in the office of the Sub-Registrar of the said XY granted, transferred and assured unto and to the use of the said AB, CD and EF the lands, houses, securities and moneys described in the First Schedule hereto TO HAVE AND TO HOLD the same in trust for the objects thereunder indicated and whereas the said Deed of Trust is still in force and virtue.

AND WHEREAS it was provided in the said deed that in case of death of any of the said trustees or should any of them be unwilling to continue and/or desirous of being discharged or refuse to act or become unfit or physically incapable or mentally deficient to act as such trustee as aforesaid, then, and in such an event it shall be lawful for the surviving or CONTINUING TRUSTEES or TRUSTEE for the time being to appoint any person or persons as the trustee or trustees in the place and stead of the trustee or trustees so dying or desiring to be discharged or refusing to act or becoming unfit or physically incapable or mentally deficient to act as such trustee or trustees in their place and stead.

AND WHEREAS it was further provided in the said deed that the number of trustees for the time being shall under no circumstances be less than three or more than five:

AND WHEREAS it was furthermore provided in the said Deed of Trust that all the trust estates and premises upon such appointment or appointments being made shall vest in the new trustees or trustee jointly with the surviving or CONTINUING TRUSTEES or trustee to all intents and purposes.

AND WHEREAS the said EF having been unwilling to act any longer as a trustee of the trusts as aforesaid is desirous of being discharged as testified by his being a party hereto and executing these presents.

AND WHEREAS the trust estates and premises now consist of the items described in the Second Schedule hereto:

NOW THIS INDENTURE WITNESSES that in exercise of all powers and authorities to that effect vested in them under and by virtue of the said Deed of Trust and of all other powers in that behalf enabling them, they the said AB and CD do hereby appoint the said GH as trustee of the said trust in the place and stead of EF to the intent that the said GH shall have the same powers, authorities and discretions and shall in all respects act as if he had been originally nominated a trustee under the said instrument: AND THIS INDENTURE further witnesses that in consideration of such appointment they the said AB, CD and EF do hereby grant, transfer, assign and assure to the said AB, CD and GH all and singular the trust estates and premises described in the Second Schedule hereto; TO HOLD the estate and premises hereby transferred, assigned and assured to the said AB, CD and GH for ever, upon trust and subject to the same powers, terms and provisos applicable thereto by virtue of the said instrument.

And this Indenture furthermore witnesseth that the said AB, CD and EF and each of them so far as it relates to his own acts and omissions doth hereby for himself, his heirs, executors and administrators covenant with the said GH, his heirs and assigns that they the said AB, CD and EF have not done or executed, performed or knowingly suffered to the contrary or been party or privy to any act or thing whereby or by reason or means whereof the estate and premises hereby transferred and assured or any part thereof are or is in any way encumbered or affected in any manner whatsoever or whereby the said AB, CD and EF respectively are in any way prevented from transferring and assuring the said premises or any part thereof in the manner aforesaid.

The First Schedule above referred to

The Second Schedule above referred to

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals the day, year first above-written.

Signed, sealed and delivered by
AB, CD, GH, EF in presence of:

**Appointment of a New Trustee on the Death
of a Trustee, the Appointment being made by the
Surviving Trustee in Exercise of Power of Appointment**

This DEED OF APPOINTMENT MADE on the 11th day of December 1999 BETWEEN the within-named CD (SURVIVING TRUSTEE) of the one part and EF son of of (NEW TRUSTEE) of the other part. Whereas by a Deed of Trust dated made BETWEEN AB son of of the one part and CD son of and XY son of of the other part and registered in Book I vol pages to in the office of the Sub-registrar of the said AB granted, transferred and assured the lands, houses, etc., fully mentioned and described in the Schedule hereto and hereinafter referred to as the TRUST PROPERTY unto and to the said CD and XY TO HAVE AND TO HOLD the same in trust for the objects thereunder created. AND WHEREAS the said Deed of Trust is still in force and virtue AND WHEREAS it is expressly provided in the said deed that in the event of the death of any one of the trustees the SURVIVING TRUSTEE shall be entitled to appoint a NEW TRUSTEE in the place and stead of the deceased.

AND WHEREAS XY one of trustees appointed thereby died on or about the 4th day of November 1999.

Now this INDENTURE witnesses that in exercise of the power, authorities and liberties for that purpose vested in him under and by virtue of the aforesaid Deed of Trust and all other powers in that behalf in any way enabling him, he the said CD does hereby and hereunder appoint the said EF to be a trustee in the place of the said XY for the purposes of the said Deed of Trust dated jointly with him the said CD upon trust and subject to the same powers, terms, provisions, etc., applicable thereto by virtue of the said Deed of Trust dated and in the same manner as if the said EF had been originally appointed a trustee of the said Deed of Trust. AND THIS INDENTURE further witnesses that in consideration of the said appointment he the said CD doth hereby grant, transfer and assure the TRUST PROPERTY and every part thereof unto and to the use of the said CD and EF TO HAVE AND TO HOLD the same jointly as trustees for the purpose and subject to the terms and conditions of the said Deed of Trust.

Schedule of trust property

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above-written.

Signed, sealed and delivered
in presence of:

CD
EF

Deed of Trust

THIS DEED OF TRUST is made the 2nd day of March 2000 BETWEEN AB etc. (hereinafter called the SETTLOR), of the one part and CD of, etc., and EF of, etc. (hereinafter called the TRUSTEES), of the other part.

WHEREAS the SETTLOR is desirous of creating a settlement or trust in respect of the properties described in the schedule hereto to the intents and purposes hereinafter appearing: NOW THIS INDENTURE WITNESSES that the SETTLOR does hereby grant, convey, transfer and assign and assure unto and to the TRUSTEES the properties described in the schedule hereto TO HAVE AND TO HOLD the same to the use of the TRUSTEES or any one or more of them subject to and upon the following trusts namely:

1. The TRUSTEES or the trustee for the time being shall, at the first instance, pay out of the rents, issues and profits thereof all Government revenue, cess, taxes, rates, and other impositions and outgoings in respect of the said properties.

2. Secondly, pay out of the balance of income the costs, charges and expenses for the maintenance, upkeep and repair of the said properties.

3. Thirdly, make the following payments available out of the residue thereof.

(a) A sum of Rs.8,000 monthly for the deity worship and periodical festivals of the deity located at

(b) A grant of Rs. 5,000 per month to MN as his maintenance allowance for the term of his natural life.

The TRUSTEES or TRUSTEE shall, out of the rest and residue of the income of the estate keep and maintain a sum equivalent to 20 % thereof as reserved to meet emergency expenses and pay the balance to the SETTLOR during the term of his natural life for his absolute use and enjoyment and after his death to his two sons X and Y and their natural heirs in equal shares.

The TRUSTEES or TRUSTEE hereby appointed or to be appointed in future as hereinafter provided shall have full power to sell, transfer, alienate or convert any one or more of the properties set forth in the schedule hereto with the permission of the court of the District Judge having jurisdiction over the subject-matter of the trust and to convert the proceeds thereof in other property or properties and/or securities as are prescribed by law.

In case of death, retirement or removal of any one or more of the TRUSTEES during the life of the settlor, the SETTLOR will have the right to appoint such other TRUSTEE or TRUSTEES in the place of the TRUSTEE or TRUSTEES so dying, retiring or removed. In case of inability or refusal on the part of any trustee to act as such trustee, the surviving trustee will be entitled to nominate a competent male member of the family of AB and if no such person is available,

then and in such an event the vacancy shall be filled up by the court of competent jurisdiction: PROVIDED, however, that in case of acquisition of the trust properties or any portion thereof, the TRUSTEES or TRUSTEE shall invest the compensation money either in purchase of some other income-fetching property or properties or purchase some securities to be held by him or them on the same terms as to trust hereunder created and that the TRUSTEE or TRUSTEES so appointed will have the same powers and rights as if he or they was or were originally appointed the TRUSTEE or TRUSTEES under these presents.

The Schedule above referred to

IN WITNESS, etc.

Signed, sealed and delivered
in the presence of:

AB
CD
EF