

Power of Courts as to costs in certain suits against trustees of charitable and religious trusts.

10. (1) In any suit instituted under section 92 of the Code of Civil Procedure, the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub-section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

Provisions of the Code of Civil Procedure to apply.

11. (1) The provisions of the Code of Civil Procedure relating to—

- (a) the proof of facts by affidavit,
- (b) the enforcing of the attendance of any person and his examination on oath,
- (c) the enforcing of the production of documents, and
- (d) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

Barring of appeals.

12. No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

THE MUSSALMAN WAKF ACT.

[INDIA ACT XLII, 1923.] (1st August, 1924.)

Preliminary.

Extent.

1. (1) * * * *

(2) The President of the Union may, by notification,¹ direct that this Act, or any specified part thereof, shall extend to the whole or any specified part of the Union of Burma.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli ;

¹ Sections 2 to 13 were brought into force in certain districts of Burma from the 1st August 1924 ; see *Burma Gazette*, 1924, Part I, page 600.

- (b) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of the High Court, such Court, subordinate to the High Court, as the President of the Union may, by notification in the Gazette, designate in this behalf ;
- (c) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property ;
- (d) "prescribed" means prescribed by rules made under this Act ;
- (e) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act,¹ under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

Statements of Particulars.

3. (1) Every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, or to any one of two or more such Courts, a statement containing the following particulars, namely :—

Obligation to furnish particulars relating to wakf

- (a) a description of the wakf property sufficient for the identification thereof ;
- (b) the gross annual income from such property ;
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter ;
- (d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property ;
- (e) an estimate of the expenses annually incurred in the realization of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;
- (f) the amount set apart under the wakf for—
 - (i) the salary of the mutwalli and allowances to individuals ;
 - (ii) purely religious purposes ;

¹ See Part XXII, C (Personal Laws—Muhammadan).

- (iii) charitable purposes ;
- (iv) any other purposes ; and
- (g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where—

(a) a wakf is created after the 1st August, 1924,¹ or

(b) in the case of a wakf such as is described in section 3 of the Mussalman Wakf Validating Act,² the person creating the wakf or any member of his family or any of his descendants is on the 1st August, 1924,¹ alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

Publication of particulars and requisition of further particulars.

4. (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

Statement of Accounts and Audit.

Statement of accounts.

5. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during

¹ Date of commencement of this Act.

² See Part XXII, C (Personal Laws—Muhammadan)

the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

6. Every statement of accounts shall, before it is furnished to the Court under section 5, be audited— Audit of accounts.

- (a) in the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the President of the Union under section 144 of the Burma Companies Act, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the Union of Burma ; or
- (b) in the case of any other wakf, by any person authorized in this behalf by general or special order of the said Court.

General Provisions.

7. Notwithstanding anything contained in the deed or instrument creating any wakf, every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act. Mutwalli entitled to pay cost of audit, etc., from wakf funds.

8. Every statement of particulars furnished under section 3 or section 4 and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure for the signing and verification of pleadings. Verification.

9. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6. Inspection and copies.

Penalty.

10. Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall be upon him, fails to furnish such statement or document, as the case may be, in due Penalty.

time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

Rules.

Power to
make rules.

11. (1) The President of the Union may, after previous publication, by notification in the Gazette, make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the additional particulars to be furnished by mutwallis under clause (g) of sub-section (1) of section 3 ;
- (b) the fees to be charged upon applications made to a Court under sub-section (1) of section 4 ;
- (c) the form in which the statement of accounts referred to in section 5 shall be furnished; and the particulars which shall be contained therein ;
- (d) the powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors ;
- (e) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9 ;
- (f) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act ; and
- (g) any other matter which is to be or may be prescribed.

Savings.

12. Nothing in this Act shall —

- (a) affect any other enactment for the time being in force in the Union of Burma providing for the control or supervision of religious or charitable endowments ; or
- (b) apply in the case of any wakf the property of which—
 - (i) is being administered by the Treasurer of Charitable Endowments, the Administrator-General, or the Official Trustee ; or
 - (ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

Exemption.

13. The President of the Union may, by notification in the Gazette, exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.