

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Fatima Bibi and others v. Sheikh Ahmed
Buksh and others, from the High Court of
Judicature at Fort William in Bengal;
delivered the 2nd December 1907.*

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The question in this case is whether a certain deed of gift made by one Moulvi Dadar Buksh deceased in favour of his son Sheikh Ahmed Buksh is invalid by reason of the Mahomedan Law of *marz-ul-mout* relating to gifts made in death illness. The deed was executed on the 21st May 1897, and on the 27th of the same month Moulvi Dadar Buksh, the donor, died. A great number of objections to the deed were urged by the Appellants (the Defendants) before the Subordinate Judge, all of which were considered in great detail and overruled by him in a most elaborate judgment in favour of the Respondents. That judgment was affirmed on appeal by the High Court at Fort William, and it is the concurrent judgments of these two tribunals that this Board is now called upon to overrule. The only point which the Appellants have argued on this occasion was that which no doubt goes to the root of the matter, viz., whether the gift was invalid under the law of

marz-ul-mout. The test which was treated as decisive of this point in both Courts was, Was the deed of gift executed by Dadar Buksh under apprehension of death? This, which appears to their Lordships to be the right question, is essentially one of fact, and of the weight and credibility of evidence upon which a court of review can never be in quite as good a position to form an opinion as the court of first instance, and it would probably be enough to prevent this Board from interfering if it should appear that there was evidence such as might justify either view without any clear preponderance of probability. Their Lordships are, however clearly of opinion that the reasons given both by the Subordinate Judge and by the High Court, which they will not repeat, establish a large preponderance of probability in favour of the conclusion at which they both arrived.

Their Lordships will therefore humbly advise His Majesty that this Appeal be dismissed.

The Appellants will pay the costs of the first Respondent, who alone defended the Appeal.
