APPELLATE CIVIL.

Before Chatterjea and Page JJ.

1926

June 16.

CHANDI CHARAN DAS

v.

DULAL CHANDRA PAIK.*

Hindu Law—Debatter—Debatter property, how converted into secular property.

Per CURIAM. In order to convert the absolute *debatter* property of a family *thakur* into secular property it is necessary that a consensus of all persons interested in the worship of the deity including all the members of the family, male and female, should be obtained but, *semble*, even if all persons interested in the worship of a family deity are agreeable they cannot validly convert absolute *debatter* into secular property, and such a doctrine cannot be sustained as being in accordance with Hindu Law.

Monmohon Ghosh v. *Siddheswar Dubay* (1), *Lalit Mohan Seal* v. *Brojendra Nath Seal* (2), *Konwar Doorga Nath Roy* v. *Ram Chunder Sen* (3) and other cases referred to.

Sonatun Bysack v. *Juggut Soondree Dossee* (4) and *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (5) distinguished.

APPEAL by Chandi Charan Das and another, the defendants.

This appeal arose out of a suit for partition and accounts. One Lokenath Das dedicated certain property to his family deity by an *arpannama* dated the 20th July 1902. On the 26th July 1903 he executed a will disposing of the other properties. Lokenath died

* Appeal from Original Decree, No. 109 of 1924, against the decree of Kunja Behari Biswas, Subordinate Judge of 24-Parganas, dated March 7, 1924.

(1) (1922) 27 C. W. N. 218.
(2) (1925) I. L. R. 53 Calc 251, 257.
(3) (1876) I. L. R. 2 Calc. 341; L. R. 4 I. A. 52.
(4) (1859) 8 Moo. I. A. 66.
(5) (1879) L. R. 6 I. A. 182.

leaving his widow Manmohini, his daughter Ramani, the defendant No. 5, his daughter's son Dulal Chandra Paik, the plaintiff and two brothers Taraknath and Hiralal. Hiralal left two sons Chandi, the defendant No. 1, and Kedarnath, the defendant No. 2. On the 4th December 1907 Manmohini obtained probate of the will of Lokenath. In 1912 the defendants Nos. 1 and 2 brought an administration suit against Manmohini and others. That suit was decreed in modified form. The defendants Nos. 1 and 2 appealed to the High Court and the appeal was compromised. Subsequently Manmohini brought a suit for accounts against Dulal and died. Consequently the suit was continued by defendants Nos. 1 and 2 and it was dismissed on the 17th January 1921. Dulal, the plaintiff, then sued the defendants on the 5th August 1921 for partition, accounts and for other relief. The Subordinate Judge partially decreed the suit, holding that the properties dedicated to the deity were absolute *debatter*.

Babu Girija Prasanna Roy Choudhuri (with him *Babu Abinash Chandra Ghose*), for the appellants, argued *inter alia* that the endowment was merely an arrangement for the benefit of the family, with a charge for the *deb sheba* upon the properties.

Babu Nagendra Nath Ghose (with him *Babu Panchanon Ghoshal* and *Babu Surjya Kumar Aich*), for the respondents, principally urged that the endowment was an absolute *debatter*, and not merely a charge in favour of the *deb sheba*.

CHATTERJEA J. This appeal arises out of a suit for partition, accounts and for various other reliefs.

The plaintiff respondent is the daughter's son of one Lokenath Mandal. Lokenath had two brothers

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Tarak Nath and Hira Lal. Lokenath left his widow Manmohini, his daughter Ramani, the defendant No. 5, and his daughter's son Dulal Chand, the plaintiff. Taraknath's widow Uma Sundari was the defendant No. 3 since deceased. Hira Lal left two sons Chandi, the defendant No. 1, and Kedar Nath, the defendant No. 2, and a daughter Bhabini, the defendant No. 4.

Lokenath established a deity Sree Sree Radha Krishna Jiu in his dwelling house in May 1902. On the 20th July 1902 he executed an *arpannama* (deed of endowment). On the 26th July 1903 he executed a will. On the 31st July of the same year he executed an *ekrar*. A codicil was executed on the 11th November 1904.

On the 4th December 1907 Manmohini obtained probate of the will of Lokenath. In 1912, the defendants Nos. 1 and 2 brought an administration suit against Manmohini and others. That suit was decreed in a modified form on the 5th September 1913 by the trial Court. There was an appeal by the defendants Nos. 1 and 2 to the High Court in Regular Appeal No. 19 of 1914. There was a compromise between the parties and a decree was passed by consent on the 25th July 1916. Subsequently Manmohini brought an account suit (No. 9 of 1919) against Dulal, the plaintiff. She died on the 10th November 1919 and the suit was continued by the defendants Nos. 1 and 2 which, however, was dismissed on the 17th January 1921. The present suit was instituted on the 5th August 1921 by Dulal as stated above.

The *arpannama* dated the 20th July 1902 was executed by Lokenath in favour of Sree Sree Iswar Radha Krishna Jiu and runs as follows :—

"I, Lokenath Das Mandal, do execute this *arpannama* or deed of endowment to the following effect : I have installed the idol Sree Sree Iswar "Radha Krishna Jiu in my dwelling house at No. 43 Beniapukur Lane on "8th Joista 1309 last after due performance of sacrifices, etc., and the said

"dwelling house has come to be called a "Thakurbati". I am now duly "performing the *sheba* (service) and *puja* (worship etc.) of the said Sree "Sree Radha Krishna Jiu. But in order that the *sheba* and *puja* etc. of "the said idols may be duly carried on after my death, I, with that "intention, make over or endow once for all, the properties mentioned in "the schedule to the said Sree Sree Radha Krishna Jiu, and become "divested of all rights thereto. The said Sree Sree Radha Krishna Jiu "thus becomes the absolute owner of the properties mentioned in the "schedule from this day. The *sheba* and *puja* etc. of Sree Sree Radha "Krishna Jiu shall be carried on and the management of the said *debatter* "properties made and the expenses in connection therewith on the score of "revenue and taxes etc. defrayed out of the income of the said properties. "As it is necessary to appoint *shebaits* or trustees for duly performing "the duties mentioned above, I appoint *shebaits* under the following "conditions and rules. The *shebaits* shall carry on the *sheba* and *puja* "according to the rules set forth below. I shall perform the *sheba* and "*puja* etc. as the sole *shebait* of Sree Sree Iswar Radha Krishna Jiu, so "long as I shall be alive; on my death, my wife Manmohini Dassi shall be "the *shebait* of the said Sree Sree Iswar Radha Krishna Jiu and on her "death, my daughter Ramani Dasi and on the death of the latter, my "nephew Kedar Nath Das Mandal and my daughter's son Dulal Chand Paik "shall jointly act as *shebaits*; and on the death of both of them, their "heirs shall become the *shebaits* in succession. The *shebaits* shall defray "the expenses of *deb sheba* etc. management of the properties and repairs "etc. out of the income of the properties hereby dedicated as *per* details "given below, and shall credit the half of the surplus income after deduct-"ing the expenses thus incurred, to the *tehbil* of Sree Sree Iswar Radha "Krishna Jiu and shall, at the end of every three years, appropriate the "remaining half of the surplus income, as remuneration for their labour. "The *shebaits* shall live with their family in the "Thakurbati" and "perform the *sheba* etc. of the *thakurs* (idols). I, of my own accord and "in sound health, execute this *arpannama* or deed of endowment to the "above effect."

The properties dedicated were mentioned in the schedule to the deed, viz., premises No. 14-1, Beniapukur Road, which was let out at a monthly rent of Rs. 60 and the dwelling house No. 43, now 53, Beniapukur Lane.

Various questions were raised in defence, one of them being whether the endowment was an absolute *debatter* or merely was an arrangement for the benefit

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of the family with a charge for the *deb sheba* upon the properties. The first question, therefore, for consideration is whether there was an absolute *debatter*. The *arpannama* states that Lokenath made over, or "endowed once for all, the properties mentioned in "schedule to Sree Sree Radha Krishna Jiu and became "divested of all rights thereto." Further on it states that Sree Sree Radha Krishna Jiu thus became the "absolute owner of the properties mentioned in the "schedule." These provisions *prima facie* show that there was an absolute dedication. The contention on behalf of the appellants that it is not absolute *debatter* is based upon the ground that half the surplus income is to be taken by the *shebaits* as remuneration for their labour, and that the *shebaits* will have the right to reside in the house 53, Beniapukur Lane.

It is urged that these two circumstances go to show that it was really a device for the benefit of the family and that there was merely a charge of the *deb sheba* on the properties.

The question whether an absolute *debatter* is created or there is merely a charge in favour of the *deb sheba* depends upon the terms of the deed and the circumstances of each case. In the present case the income of the property No. 1 which was the only property let out was Rs. 60 per month, although the income has in recent times increased. But in considering this question we have to take the income of the property at the time of the execution of the *arpannama* The expenses of the *sheba* of the deity stated in the schedule to the deed amounted to Rs. 527 per annum. That works out at about Rs. 44 per month. The *arpannama* provides that the *shebaits* after defraying the expenses of *deb sheba* etc. out of the income of the properties shall credit half of the surplus income of the *tehbil* of Sree Sree Iswar Radha Krishna Jiu and

shall, at the end of every three years, appropriate the remaining half of the surplus income and remuneration for their labour. It appears, therefore, that the *shebaits* were not to get anything under the deed for three years. That probably was to provide for any unforeseen contingency relating to the *deb sheba* expenses within three years, and it is only after the expiry of every three years that the *shebaits* would get half the surplus income. The total surplus income would not exceed Rs. 16 a month one half of which is to be credited to the *debatter* fund. The amount, therefore which would go to the *shebaits* is trifling, and moreover this is to be enjoyed by them as their remuneration as *shebaits*.

In the case of *Jadu Nath Singh* v. *Thakur Sita Ramji* (1) the Judicial Committee observed as follows :—

" The deed ought to be read just as it appears, and there is no reason " why it should not be construed as meaning simply what the language " says, a gift for the maintenance of the idol and the temple, under which " the idol is to take the property and, for the rest, the family are to be " the administrators and managers, and to be remunerated with half the " income of the property. If the income of the property had been large " a question might have been raised, in the circumstances, as throwing " some doubt upon the integrity of the settler's intention, but, as the entire " income is only 800 rupees, it is obvious that the payment to these ladies " is of the most trifling kind, and certainly not an amount which one would " expect in a case of that kind."

The learned vakil for the appellant relied upon the decisions of the Judicial Committee in *Sonatun Bysack* v. *Juggut Soondree Dossee* (2) and *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (3). Both these cases are, however, distinguishable. As pointed out by their Lordships in the case of *Jadu Nath Singh* (1) although nominally there was a gift in *Sonatun*

(1) (1917) L. R. 44 I. A. 287. (2) (1859) 8 Moo. I. A. 66.
(3) (1879) L. R. 6 I. A. 182.

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Bysack's case (1). at the beginning to the idol, that gift was so cut down by subsequent disposition as to leave it clear that the subsequent disposition ought to prevail rather than the earlier one, and that consequently there was no gift to the idol such as to make the property pass as an absolute and entire interest in its favour. With reference to the case of *Ashutosh Dutt* (2) their Lordships observed :—

"It was a question of the construction of a will, taken as a whole, and it was said there was not a complete gift to the idol, it was cut down by the subsequent disposition to the family. Here there is no such cutting down. There is, in the beginning, a clear expression of an intention to apply the whole estate for the benefit of the idol and the temple, and then the rest is only a gift to the idol *sub modo* by a direction that of the whole, which had already been given, part is to be applied for the upkeep of the idol itself and the repair of the temple, and the other is to go for the upkeep of the managers. There was no reason why the disponer should not nominate the members of his family as his managers and he has done so. And there is nothing in that which militates against the propriety of his earmarking a certain part of the money to remunerate them as managers so long as they so continue."

These observations apply to the present case.

As for the provision that the *shebaits* would be entitled to reside in the house, it appears that only a portion of the house is required for the location of the deity, and there is nothing wrong in the provision that the *shebaits* would reside in the other portions of it. On the contrary, the residence of the *shebaits* in the house may be convenient for the proper performance of the *sheba* and *puja* of the deity.

On the whole we agree with the lower Court in holding that there was an absolute *debutter*.

It is contended that even if there was an absolute dedication the subsequent conduct of the members of the family goes to show that the property dedicated was treated as secular property, and that the

(1) (1859) 8 Moo. I. A. 66. (2) (1879) L. R. 6 I. A. 182.

consensus of the whole family might in the case of a family idol "give the estate another direction". This contention was founded on the terms of the will and the compromise between the parties which provided that all the members of Lokenath's family were to have the right of residence although the *arpannama* merely provided for the residence of the *shebait* and his family.

The proposition that in the case of a family idol, the consensus of the whole family might "give the estate another direction" cannot be said to be settled. It is based upon an observation to that effect in the case of *Konwar Doorga Nath Roy* v. *Ram Chunder Sen* (1). But their Lordships did not decide the question. There was in fact no question of consensus of the whole family in that case, for their Lordships observed in the next sentence: "No question, however, of that kind arises in the present case." The above observation has no doubt been followed in this Court by Rampini and Sharfuddin JJ., in the case of *Gobinda Kumar Roy* v. *Debendra Kumar Roy* (2) where their Lordships said, following the above *dictum*, that the properties dedicated to a family idol may be converted into secular property by the consensus of the family. In the case of *Sri Sri Gopal Jew Thakur through Narendra Nath Mondal* v. *Radha Binode Mondal* (3), however, it was pointed out that—

"Where there is a consensus of all the members of the family there is "no one to object to the diversion of the endowment to secular uses, but "the question whether, in a case of an absolute *d-batter*, where the "property is absolutely vested in the deity, the successors of the members "of the family, who give the estate another direction, may not call in

(1) (1876) I. L. R. 2 Calc. 341; L. R. 4 I. A. 52.

(2) (1907) 12 C. W. N. 98.

(3) (1924) 41 C. L. J. 396, 426.

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"question the diversion of the estate, did not arise nor was it considered "by the Judicial Committee".

In considering this question, the rights of the deity in whom the properties have absolutely vested, and the fact that a Hindu who endows a family deity does so for the worship of his descendants from generation to generation have to be taken into account. It is to be observed that in the recent case of *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick* (1) their Lordships directed a special guardian to be appointed of the deity in order to protect its interests.

But even if the consensus of the whole family can convert an absolute *debatter* property into secular property such consensus must be of all the members, male and female, who are interested in the worship of the deity. See, *Monmohan Ghosh* v. *Siddheswar Dubay* (2) and *Lalit Mohan Seal* v. *Brojendra Nath Seal* (3). In the present case the defendant No. 4 did not join in the compromise. We are of opinion that the absolute property which was made *debatter* was not converted into secular property in the present case.

Having regard to our finding that there was an absolute dedication, Ramani, defendant No. 5, is the present *shebait* after the death of Lokenath and his widow Manmohini.

A question has been raised by the learned vakil for the appellants that the present suit having been brought by Dulal, there could not be any decree passed in favour of Ramani, the defendant No. 5, more specially as the suit was one for partition. That is so, but in order to decide which properties are liable to partition the Court has to decide whether some of the properties which are claimed as *debatter* are really absolute

(1) (1925) I. L. R. 52 Calc. 809. (2) (1922) 27 C. W. N. 218.
(3) (1925) I. L. R. 53 Calc. 251,257

debatter or not, and as we have found that the properties mentioned in schedule *Ka* of the plaint are absolute *debatter* properties, they will be excluded from partition. It is unnecessary to make any decree for possession in favour of Ramani (nor is it permissible in this suit to do so), as the defendant No. 5 Ramani is already in possession as receiver and as stated above, she is the *shebait* after the death of Manmohini.

It was contended by the learned vakil for the appellants that Ramani's right as *shebait* was cut down by Lokenath in the *ekrar* subsequently executed by him. But it does not appear to be so. What was stated was that she was to take the advice of the executors and certain other persons. That, however, does not take away her rights as *shebait*.

It is also contended for the appellants that in the suit as framed there could be no provision made for the maintenance *jalpani* and annuity of certain members of the family. But the suit primarily relates to secular properties and the plaint prayed for direction as to maintenance legacies and tiffin money; we think, therefore, but there is nothing to prevent the Court from giving the directions which it has given with respect to those matters, and we do not think that the decision of the Court below on those points is erroneous.

Then there is the question of the legacy of Rs. 3,000 in favour of the plaintiff as mentioned in the will. Two contentions have been raised by the learned vakil for the appellants on this point. The first is that in the compromise decree there was no mention of this legacy at all and that therefore Dulal must be taken to have given up his right to this legacy. It is true that this legacy of Rs. 3,000 was not mentioned in the compromise decree, but after stating

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the terms contained in clauses 1 to 8 in the compromise decree it was provided that all other rights of the parties in the litigation "would remain intact and unaffected". That being so, we do not think that the plaintiff Dulal can be said to have given up his right to the legacy. It is further contended that the plaintiff Dulal having agreed to take one-third share of the property No. 14-1, Beniapukur Road, must be taken to have given up his right to Rs. 3,000 because this legacy of Rs. 3,000 was to be realised by sale of the said property in case the money could not be raised by other means. We do not think that that is sufficient to show that Dulal agreed to give up his claim for Rs. 3,000 because the property might be divided into three shares, subject to the charge for the legacy. It is further to be observed that the arrangement under the compromise was to inure only for the lifetime of Manmohini.

The second contention is that even if the plaintiff is not to be taken as having given up his right to the legacy he was entitled only to the sum of Rs. 1,400, *i.e.*, after giving credit for the sum of Rs. 1,600 which had been paid over to him by Manmohini. There is a finding as to the said payment by Manmohini to Dulal in the judgment of the trial Court in the suit which came up to this Court, and which was compromised, but then that judgment was by consent of parties set aside and a consent decree was passed. In the circumstances, we think the question whether the plaintiff received Rs. 1,600 from Manmohini should be enquired into.

The defendants Nos. 1 and 2 claimed the expenses connected with the worship during the time they had performed the *sheba* of the deity, and the defendant No. 5 in her written statement prayed that the *thakur* might be made over to her. Strictly speaking, in the

suit as framed, neither the claim for the possession of the *thakur* on the part of the defendant No. 5 nor the claim of the defendants Nos. 1 and 2 for the expenses in connexion with the *deb sheba* can be gone into.

The parties however have agreed that the defendants Nos. 1 and 2 will make over the *thakur* together with ornaments and utensils (such as there might be) to the defendant No. 5 within one week of this order being signed, and that defendant No. 5 will make over the expenses of the *sheba* of the *thakur* that is—the amounts of expenses incurred by the defendants Nos. 1 and 2 for the period they have been performing the *sheba* since the death of Manmohini up to the date which they deliver possession of the *thakur* to the defendant No 5. The parties are agreed that the amount of expenses for the *sheba* will be taken at Rs. 25 per month with the result that the defendant No. 5 will pay the sum of Rs. 1,987-8 annas to the appellants.

The defendant No. 4 states that the arrears of her maintenance should be paid out to her. The Court below has found that she is entitled to maintenance. She can apply to the Court below for a direction upon the receiver of the secular estate to pay her the amount of the arrears of her maintenance.

The decree of the lower Court with regard to other matters except the direction in the decree "and "she do get *khas* possession of the *debatter* properties "described in schedule *Ka* and of the said idol."

"And that the plaintiff do get Rs. 3,000 as legacy "from the estate of Lokenath Das for which portion of "premises No. 14, Beniapukur Lane, may be sold if necessary" will stand. But the case will go back to the Court below in order that the question whether the plaintiff received Rs. 1,600 from Manmohini may be gone into. If he did receive it, the legacy payable

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to him will be reduced accordingly. It is further ordered by consent that the defendant do pay the sum of Rs. 1,987-8 annas to the appellants as the expenses of the *sheba* of the deity incurred by them during the period they had been performing the *sheba* and that the defendants do make over the *thakur* together with ornaments and utensils (such as there might be) to the defendant No. 5 within one week of this order being signed.

The defendant No. 5 the contesting respondent will be entitled to costs, the hearing-fee being assessed at five gold mohurs to be paid by the defendants Nos. 1 and 2. Other parties will bear their own costs in this Court only.

The cross-objection is dismissed. No order as to costs.

PAGE J. I agree. We have come to the conclusion that under the *arpannama* Lokenath dedicated and transferred the two properties 14-1 and 43 (now 53), Beniapukur Lane, absolutely to the deity, and became divested of all right and title thereto. After dedication Lokenath possessed only such rights in relation to these properties as were expressly given to him under the *arpannama*. As founder he was *functus officio*, [*Gauri Kumari Dasee* v. *Ramanimoyi Dasee* (1)] and the only rights which he retained for himself under the *arpannama* were those that appertain to the office of *shebait*. What those rights are I endeavoured to explain in *Nagendra Nath Palit* v. *Rabindra Nath Deb* (2) and *Lalit Mohan Seal* v. *Brojendra Nath Seal* (3). The question as to who are the persons entitled to be *shebaits* in future was also canvassed before us at the hearing of the appeal.

(1) (1922) I. L. R. 50 Calc. 197. (2) (1925) I. L. R. 53 Calc. 132.
(3) (1925) I. L. R. 53 Calc. 251.

The answer to that question appears to me to present no difficulty. But until the death of Ramani no question as to the succession to the *shebaiti* can arise, for under the *arpanmama* it is specifically provided that Ramani should be the sole *shebait* with an unfettered right to exercise her powers in their behalf. It would be premature, therefore, in this case and during the lifetime of Ramani to decide any question as to the right of succession to the *shebaiti* in the future which can properly be taken into consideration only after Ramani's death. A further contention was raised by the appellants that there was a consensus of opinion among all the persons interested in the worship of the deity that these two properties, which had been dedicated absolutely to the deity, should be treated as secular property. In my opinion it is clear upon the facts that no such consensus was proved. But it must not be taken that I should be prepared to hold that if all persons interested in the worship of a family deity are agreeable they can validly convert absolute *debatter* into secular property, or that such a doctrine can be sustained as being in accordance with Hindu Law. Although this is not the occasion to express a definite opinion upon this vexed and still unsettled question it appears to me, as at present advised and subject to any further argument that hereafter may be presented when the question arises for determination, that this doctrine, which is based upon a mere *obiter dictum* of Sir Montague Smith in *Konwar Doorga Nath Roy* v. *Ram Chunder Sen* (1) is incompatible with the spirit that moves a pious Hindu to set up a *thakur* for his family to worship from generation to generation, and also with an absolute dedication

(1) (1876) I. L. R. 2 Calc. 341 ; L. R. 4 I. A. 52, 58.

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of property to the deity: *Dharmadas Mandol* v. *Gosta Behary Mandol* (1), *Monmohan Ghosh* v. *Sidhdheswar Dubay* (2), *Sri Sri Gopal Jew Thakur* v. *Radha Binode* (3), *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick* (4), see also Sarkar's Hindu Law 5th Edition at page 710. I concur in the order proposed.

B. M. S. *Case remanded.*

(1) (1911) 16 C. W. N. 29.
(2) (1922) 27 C. W. N. 218, 220.
(3) (1924) 41 C. L. J. 396, 426.
(4) (1925) I. L. R. 52 Calc. 809, 824.

ORIGINAL CIVIL.

Before Buckland J.

1926

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SATISH CHANDRA DAS

v.

SECRETARY OF STATE FOR INDIA.*

Civil Servants of the Crown—Power to dismiss at pleasure—The Government of India Act (5 & 6 Geo. V. c. 61; 6 & 7 Geo. V. c. 37; and 9 and 10 Geo. V. c. 101) s. 96B.—Rules regarding the Civil Services in India—Rule XIV—Cause of action.

Notwithstanding section 96B of the Government of India Act, 1915, the provisions of Rule XIV† of the rules regarding the Civil Services in India made by the Secretary of State for India in Council under sub-section (2) of section 96B of the Government of India Act, which are manifestly intended for the protection and benefit of the officer, are inconsistent with importing into the contract of service the term that the Crown may put an end to it at pleasure.

Gould v. *Stuart* (1) followed.

* Original Civil Suit No. 1445 of 1925.

† The provisions of the rule are set out *in extenso* in the judgment.

(1) [1896] A. C. 575.