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according to this custom, an unlimited number of persons can take away the profits of a private property, and that nothing may be left to the owner. If the defendants are entitled to exercise the right of fishery in the way stated by them, they may take away the whole of the fish stocked in the bhils leaving nothing for the plaintiff, who is admittedly the owner of them. Such a custom as this does not seem to be reasonable. We are, therefore, of opinion that it ought to be rejected as invalid.

Upon these questions of custom and prescriptive right, there is the case of *Lord Rivers v. Adams* (1), which is exactly in point. It is true that we are not absolutely bound by the authority of this case, but if the grounds upon which the decision is based be founded upon natural justice, we would be fully justified in following it. On an examination of the reasons given by the Court in that case it will appear that they are not peculiar to any country or any particular state of society, but they are in conformity with the dictates of natural justice.

We are, therefore, of opinion that the decisions of the lower Courts are erroneous and should be reversed. We reverse them accordingly, and decree the plaintiff's suit with costs in all the Courts.

Appeal allowed.

PRIVY COUNCIL.

P. C.*
 1882
 November 28.

OMRAO BEGUM AND ANOTHER (PLAINTIFFS) AND THE GOVERNMENT
 OF INDIA AND ANOTHER (DEFENDANTS.)

[On appeal from the High Court at Fort William in Bengal.]

Jurisdiction of Commissioners appointed under the Nawab Nazim's Debts' Act (XVII of 1873).

The Commissioners appointed under the Nawab Nazim's Debts' Act XVII of 1873, (2) having ascertained and certified that a certain zemindari was nizamut property, (i.e., held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being), the fact that

* *Present*: LORD FITZGERALD, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

(1) L. R. 3 Ex. D., 361.

(2) An Act to provide for the liquidation of the debts of the Nawab Nazim, and for his protection from legal process.

this property had, before the passing of the Act, been conveyed by the Nawab Nazim to his son, did not deprive the Commissioners of jurisdiction to deal with the question. The plain language of s. 12 of the Act is not controlled by any words in the preamble.

A suit brought by a claimant against the Government and the grantee to recover the property, without the Nawab Nazim having been joined as a party, could not proceed.

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APPEAL from a decree of the High Court, dated 26th April 1880, affirming a decree of the Judge of the Murshedabad District dated 29th May 1878.

The question raised on this appeal was whether the suit, out of which it had arisen, could proceed without the Nawab Nazim of Bengal having been made a party to it; and this, again, depended on whether the Commissioners appointed under the Nawab Nazim's Debts' Act XVII of 1873 had had jurisdiction to certify a zemindari to be nizamut property.

The appellants were the daughters of one Mehdi Ali Khan, who died on the 4th of January 1865, and were entitled by Mahomedan law to seven-eighths of his estate. He was the half brother of Amiranuissa Begum, a deceased widow of a former Nawab Nazim. This widow had in her lifetime purchased a zemindari in the Murshedabad District, named Pargana Gopinathpur, which she held, not in her own name, but in that of Mehdi Ali. On her death in 1858, a question arose as to whether the succession to her estate was to be governed by the Mahomedan law, in which case Mehdi Ali would have succeeded to it, or by a custom alleged by the Nawab Nazim to the effect that the latter was the heir of every "guddinashin Begum," or wife of a Nawab Nazim, such as Amirannissa had been.

Mehdi Ali received maintenance from the Nawab Nazim, not taking the zemindari; and on the 24th February 1858, he and his wife executed a la-dawa-nama, or deed renouncing claim, receiving a grant by purwana from the Nawab to the effect that "His Highness should grant to Mehdi Ali Khan and his heirs from generation to generation, Rs. 600 per month, upon condition that he should always remain submissive to the Nawab and never depart from this arrangement. On the death of Mehdi Ali in 1865, an order was made, by the Magistrate having jurisdiction,

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under s. 318 of the Criminal Procedure Code then in force, placing Gopinathpur in the possession of the present appellants. Litigation followed, the Nawab Nazim obtaining a decree for the possession of Gopinathpur, on the ground that his was the better title, upheld on appeal both by the High Court at Calcutta and by order of Her Majesty in Council. According to the final judgment in that case given in 1875, their Lordships saw no reason to doubt that both Mehdi Ali and the Nawab at the time of the execution of the la-dawa-nama of 1858, and of the purwana, believed, *bona fide*, that the Nawab had a right to succeed to Amirannissa's estate; and that those two instruments amounted to a valid contract by which the Nawab Nazim and Mehdi Ali were respectively bound; and they maintained the title of the former to Gopinathpur. Meantime, and some years before this judgment was given in his favor, *viz.*, on the 11th February 1869, the Nawab had made a gift of this zemindari to his second son Humayun Kader Mahomed Ali Mirza Bahadur, commonly called Amir Saheb, the second respondent in this appeal.

In 1870 the present appellants, alleging that the maintenance, Rs. 600 per month, had not been paid, sued the Nawab Nazim for recovery of the estate of Amirannissa, and also for arrears of the maintenance. They obtained a decree for the latter only to the amount of Rs. 50,000, confirmed by the High Court in 1872.

On the 24th November 1873 the Nawab Nazim's Debts' Act XVII of that year came into operation, and under it were appointed Commissioners having power to investigate claims against the estate of the Nawab Nazim, and to compel the attendance of witnesses for that purpose, with power to ascertain and certify what jewels and immovable property were held by the Government of India for the purpose of upholding the dignity of the Nawab for the time being (1).

(1) Section 11 of Act XVII of 1873 enacts :—

“No suit shall be commenced or prosecuted, and no writ or process shall at any time be sued for against the person or property of the said Nawab Nazim, unless such suit be commenced, or such writ or process be sued for with the consent of the Governor-General in Council, first had and obtained,

“Such consent shall be certified by the signature of one of the Secretaries

The present appellants then preferred a claim before the Commissioners, appointed under the above Act, for Rs. 50,000, the amount of the decree which had been given in their favor, but this claim, with one for further maintenance, was rejected.

On the 10th May the Commissioners certified that all the properties of which the Nawab Nazim had taken possession as heir of Amiranuissa Begum, including Gopinathpur, became an appanage of his office and state; that he could not convey them to any one else; and that they were held by the Government of India for the purpose of upholding the dignity of the Nawab.

The Government having refused leave to the present appellants to execute the decree of 1872 against the property of the Nawab Nazim, they brought this suit in 1877 in the District Court of Murshedabad. They claimed against the Government and Amir Sahab Rs. 60,969, the arrears of maintenance decreed, with farther arrears up to date, asking in the alternative for a return of Gopinathpur, which had been charged (it was alleged) with the payment of the allowance. They alleged that it was bound in the hands of the person to whom it had passed, so that upon non-payment of the allowance, it was recoverable by the plaintiffs. The Nawab Nazim was not made a party to the suit. The defence made by the Government was, amongst other things, that "as the present Nawab Nazim has an interest in the property, the subject-matter of the present suit, the plaintiffs should have made him a party."

On the 4th October 1877 the Court decided an issue framed in regard to this defence that the Nawab Nazim ought to be made to the Government of India, and every such signature shall be judicially noticed.

"And any suit which at any time shall have been or shall be commenced, and any writ or process which at any time shall have been or shall be sued for against the person or property of the said Nawab Nazim, shall be of no effect unless and until the consent of the Governor-General in Council, certified in manner aforesaid, is obtained."

Section 12.—"The Commissioners shall ascertain what jewels and immovable property are held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim for the time being, and shall certify the particulars of such jewels and property; and their finding thereon shall be binding and conclusive on all persons whomsoever."

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a party. The Government being empowered by the Act of 1873 to withhold its consent to a suit being brought against him, refused, in February 1878, to grant the necessary permission.

On the 29th May 1878 the Judge of the Murshedabad District dismissed the suit, on the ground that the Nawab Nazim was not joined, and his decision was upheld by the High Court (JACKSON and TOTTENHAM, JJ.) on the 26th April 1880.

The Court said, in dismissing the appeal: "However the suit may be brought, it is clear that it is not one which ought to be allowed to proceed without the Nawab Nazim being a party to it. The Legislature has given the Governor-General in Council full discretion to allow or not to allow the Nawab Nazim to be made a party to such suits; and in this case the Governor-General has refused to grant such permission."

On this appeal,—

Mr. *R. V. Doyne* appeared for the appellants.

Mr. *Graham, Q.C.*, and Mr. *J. D. Mayne* for the respondents.

For the appellants it was contended that the suit had been wrongly dismissed. The question whether the Nawab Nazim should have been made a party to the suit (the only question now raised on the record as it stood) had been incorrectly dealt with. If Gopinathpur had come to the Nawab by inheritance, as it had come, it was an estate which he had power to convey; and if he had done so, thereby parting with his entire interest in the property, he would not be a necessary party to the present suit. Reference was made to the preamble of Act XVII of 1873; and it was contended that the property having passed away from the Nawab Nazim before that enactment, the jurisdiction of the Commissioners under the Act did not attach; and that, although, if they had had jurisdiction, their report would have been conclusive, yet, for the above reason, the matter was beyond their powers.

Counsel for the respondents were not called upon.

Their Lordships' judgment was delivered by

SIR R. P. COLLIER.—This was an action brought by Omrao Begum and Zahuran Begum, daughters of the late Saiyud Mehdi

Ali Khan, against the Government of India and the second defendant, who is called for shortness Amir Saheb, for the recovery of certain arrears of an allowance, or, in lieu thereof, possession of certain immovable property. There is also a claim that the allowance may be charged upon this property, and that if it be not paid, the property be sold for the purpose of payment.

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The facts necessary to the decision of this case may be shortly stated. Mehdi Ali Khan was a half brother of Amirannissa, who was the widow of the grand-uncle and predecessor of the present Nawab Nazim of Bengal. A certain estate of Gopinathpur had been purchased by her, benami, in the name of Mehdi Ali, but really for herself. Upon her death the Nawab Nazim claimed, by a custom of the family, all her property. Mehdi Ali, the father of the plaintiffs, raised some question upon this subject, and made some claim to the property himself; but he withdrew his claim upon an agreement, which is to be found in a purwana, not before their Lordships, to the effect that he was to receive Rs. 600 per month, and in consideration thereof to forego any claim he might have, and not to molest the Nawab Nazim for the future. It seems that, notwithstanding the agreement, he took possession of the property, whereupon the Nawab Nazim was put to a suit which finally came before this Board, and in which this Board decided that he was entitled to recover possession of the property in dispute, mainly upon the strength of the agreement, which agreement prevented the defendant from disputing his title. In the Courts of India a suit was brought by the appellants against the Nawab Nazim, to recover, amongst other things, the arrears of the allowance granted to Mehdi Ali Khan; and a judgment for some Rs. 18,000 was obtained in December 1873, about a month after the passing of the Act called the Nawab Nazim's Debts' Act, on which the question in the present case turns.

The Government of India plead, among other things, that the suit could not proceed because the Nawab Nazim was not made a party to it. Whether they are right or wrong in that contention depends upon the construction of the Act which has been referred to—an Act to provide for the liquidation of the debts of the Nawab Nazim of Bengal, and for his protection against

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legal process. The object of this Act was, as stated in the preamble, to put a stop to various suits, to ascertain what property, with respect to which there had been some disputes, was or was not held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim, and for the purpose of exempting him for the future from being sued in the Courts. This Act appointed certain Commissioners for the purpose of determining what claims or debts were enforceable against the Nawab Nazim, and how much it was equitable to pay in respect of them, and gave them this jurisdiction without their being bound by any previous agreement or judicial proceeding; and then it proceeded, by s. 12, to enact thus: "The Commissioners shall ascertain what jewels and immovable property are held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim for the time being, and shall certify the particulars of such jewels and property; and their finding thereon shall be binding and conclusive on all persons whomsoever."

The contention on the part of the appellants has been that the Nawab Nazim having, as it is admitted, executed a conveyance of this property of Gopinathpur to the second defendant, his son, in the year 1859, it was not what may be called nizamut property, and that the Commissioners had no jurisdiction to deal with it, or to declare it to be nizamut property. But it has been very properly admitted on the part of Mr. Doyne that, if they had such jurisdiction, and if they rightly declared it to be nizamut property, then the suit cannot proceed.

Their Lordships are of opinion that the power of the Commissioners under s. 12 is by no means controlled, as it has been contended, by any words in the preamble, but must be construed according to the plain meaning of the language; and that language is, that the Commissioners are to ascertain "what jewels and immovable property are held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim." Whether this property had been conveyed to the son; whether the conveyance was valid; whether it was voluntary; whether it was collusive; or whether it was revocable—all these were questions which would come under the jurisdiction of the Commissioners to decide; and they have held that this property was immovable

property held by the Government for the purpose of upholding the dignity of the Nawab. Their Lordships have no doubt that that was within the jurisdiction of the Commissioners; and if so, as has been very properly admitted, the suit cannot proceed, and the judgment of the High Court was right.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm that judgment; and this appeal will be dismissed with costs.

Appeal dismissed.

Solicitors for the appellants : Messrs. *Wrentmore and Swinhoe.*

Solicitor for the respondents : Mr. *H. Treasure.*

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, and Mr. Justice Wilson.

MAMFAZUL HUQ AND OTHERS (DECREE-HOLDERS) v. NIRBHAI SINGH (JUDGMENT-DEBTOR)*

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March 9.

Beng. Act VIII of 1869, s. 58—Limitation—Landlord and Tenant—Execution of Decree—Instalments.

On the 10th of July 1878, a rent-decree was passed in favour of certain parties for the sum of Rs. 168, payable in two equal instalments, on the 4th of June 1879 and the 30th of October 1879, respectively. On the 18th July 1881, the decree-holders applied for execution of the decree.

Held, by the majority of the Full Bench (GARTH, C.J. and MITTER, J. dissenting) that the application was barred by limitation under the provisions of s. 58, Beng. Act VIII of 1869.

Gureebullah Sircar v. Mohun Lall Shaha (1), dissented from.

THIS case was referred to a Full Bench by Mr. Justice Mitter and Mr. Justice Maclean, on the 22nd December 1882, with the following opinions :—

MITTER, J.—As at present advised I am inclined to follow the ruling in *Gureebullah Sircar v. Mohun Lall Shaha* (1). As my

* Full Bench Reference made by Mr. Justice Mitter and Mr. Justice Maclean, dated the 22nd December 1882, in appeal from Appellate Order No. 134 of 1882.

(1) I. L. R., 7 Calc., 127 : S. C. 8 O. L. R., 409.