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February 9.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

GIRDHARI DAS (DEFENDANT) v. POWLETT, POLITICAL AGENT AND SUPERINTENDENT OF THE KOTA RAJ ON THE PART OF THE GOVERNMENT OF INDIA (PLAINTIFF).*

Parties to a Suit—Political Agent—Superintendent of Raj.

A suit for property belonging to the Rajah of Kota was brought in the name of the 'Political Agent and Superintendent of the Kota State, on the part of the Government of India.' *Held* that, if the Rajah was the proprietor of the property, he should have been the plaintiff, or, if his right and interest therein had passed to Government, the Government should have been the plaintiff, but the Political Agent and Superintendent of the Kota State was not entitled to sue for the property.

THIS suit was instituted in the Court of the Subordinate Judge of Agra in the name of "Major P. W. Powlett, Political Agent and Superintendent of the Kota State, on the part of the Government of India," the plaintiff claiming certain moveable and immoveable property belonging to the Kota State. The defendant set up as a defence to the suit, amongst other things, that it had been instituted in the name of the wrong person, stating in his written statement, dated the 24th November, 1877, as follows:—"Since the plaintiff admits that the property belongs to the State, he is not competent to file the suit in his own name as Political Agent and Superintendent on the part of the Government of India: neither the Government itself nor the plaintiff as its representative is competent to file this suit." In his written statement, dated the 19th December, 1877, the plaintiff stated as follows:—"The Kota State was placed under the management of the Government of India on the application of the Rajah himself, and it is entirely managed by the Government, and Major Powlett has been appointed Political Agent and Superintendent of the State, on the part of Government: he alone and no other person therefore is competent to institute this suit, and in fact this suit is instituted by the plaintiff for the benefit of the State of Kota, as representative of the Chief and not in any other capacity." It appeared from the evidence adduced by the plaintiff that in or about 1873 the Maharao of Kota had invited the British Government to provide for the due administration of the Kota State promising to abide by whatever

* First Appeal, No. 163 of 1878, from a decree of Maulvi Maqsd Ali Khan, Subordinate Judge of Agra, dated the 22nd August, 1878.

arrangements might be made for that purpose. Accordingly the Governor-General in Council appointed one Nawab Sir Faiz Ali Khan, K.C.S.I., minister for the Kota State, whose powers were thus defined in the letter appointing him, addressed to him by the Agent of the Governor-General in Council in Rajputana, dated the 5th February, 1874: "You are invested with full powers of administration, subject only to the general advice and control of the Political Agent, Harauti, and myself; you will refer to us in any matters of difficulty and importance: His Excellency the Viceroy and Governor-General further deems it indispensable that His Highness the Maharao of Kota should be absolutely prohibited from interfering with or thwarting your proceedings: that His Highness should receive a suitable allowance for his support: that all debts in future contracted by His Highness should be treated as unauthorised and irrecoverable: that His Highness should have no power whatever to tamper with the revenues of the state: that your proceedings as minister, when concurred in by the Political Agent and myself, shall, if necessary, be enforced by the British Government: that the appointment of subordinate officials shall be left to my discretion, and that any member who may be associated with you in the administration of the Kota State shall be in subordination to you and bound to execute your requirements." In December, 1876, the Governor-General in Council appointed Major P. W. Powlett to the charge of the Kota State in the room of Nawab Sir Faiz Ali Khan, K.C.S.I.

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The first issue for trial framed by the Subordinate Judge was, "Regard being had to the administration of the Kota State, is the suit brought by the Political Agent and Superintendent entertainable or not?" The Subordinate Judge held on this issue that the suit so brought was entertainable. His reasons for so holding appear from the following extract from his judgment:—
"The papers relating to the appointment of the said officer show that the arrangement regarding the management of the Kota State was made in a special manner with the sanction of His Excellency the Viceroy and Governor-General of India in Council; that a sum of money has been fixed for the personal expenses of the Rajah; and that he has nothing to do with the administration of

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the State, which is in every respect governed by the Agent and Superintendent, subject to the supervision of the Government of India. There is no law or ruling which would lead me to hold the suit to have been illegally brought in the name of the Agent and Superintendent, nor is there any ground for making such a presumption, inasmuch as it would be clearly improper to judge of the Rajah, who is an intelligent person and attained the age of majority, according to those ordinary persons to whom the law is applicable. Even in the cases of the minor chiefs whose states are managed by Agents under the supervision of the Government of India, suits are not prohibited to be brought in the names of those Agents; moreover, the powers vested in the present Agent of Kota, who in addition to the usual title of Agent bears the special title of Superintendent, and in the letter of his appointment absolute powers are granted to him, must be considered to be far superior to those vested in the other Agents. Consequently, as he can discharge all the important and intricate business of the State under the powers vested in him, and is in every respect responsible for it, there is no reason why he should not institute this suit, which is brought only for the benefit of the State, in his own name. Now, as far as I can see, I think the suit is properly brought in the name and designation used in the plaint, and considering all the procedure of the Civil Courts, there appears to be no harm at present or in future in passing a decree in that name." The Subordinate Judge eventually gave the plaintiff a decree for the immoveable property claimed.

The defendant appealed from this decree to the High Court, contending that the suit had been instituted in the name of the wrong person and was consequently not maintainable.

Mr. Howard, Mr. Chatterji, and Munshi Sukh Ram, for the appellant.

Mr. Colvin, the Junior Government Pleader (Babu Dwarka Nath Banarji), and Pandit Nand Lal, for respondent.

The following judgments were delivered by the Court :

STUART, C. J.—This appeal must be allowed. Indeed, no serious attempt was made at the hearing before us by the counsel

for the respondent to support the judgment, and I must express my surprise and disappointment, that so experienced an officer as the then Subordinate Judge of Agra should have been content to have given such reasons as he assigns in his judgment for holding that the suit in this instance had been properly laid. It is not pretended that the Rajah is a disqualified proprietor under the Court of Wards, or that he has been in any respect divested of his rights of property over his estate; and as for the suggestion that the position assumed by the Government of India and its Political Agent in this suit could be justified as an act of State, such a contention cannot for one moment be admitted. The claim for interference on the part of the Government of India, whether in its own name or in that of its Political Agent, is one based entirely on a correspondence shewing the necessity of the management and administration of the estate being for a time taken out of the hands of the Rajah, and he himself no doubt acted wisely in applying to the Government for assistance in his troubles. But it is a very different thing to say that such management and administration gave the Government, not only the power to administer the estate for the benefit of the Rajah, but to deprive him of his right and title in it and his dominion over it, to such effect, that the Government could by itself, or by any of its officers, deal with it and with parties indebted to it as if it was the Government's own independent property. For, however large the power of the Government might be in the way of administration and management, the right to the estate itself and every part of it, the title to the estate and all that constitutes a *jus in re* in regard to it, remained in and was inherent in the Rajah himself, and such a suit as the present could only be brought in his own name, by which means, and by which means alone, could his consent as the true plaintiff be made to appear on the face of the record. In such a case the Government of India neither have themselves, nor can they delegate to others, any larger powers than those that could be given to any other administrator or manager; and the principle on which this view of the case rests is that no man who is *sui juris* can be deprived of his property, for a single moment, or for any purpose whatever, excepting by his own deliberate consent and act, such an act on his part as would in law have the effect of at once divesting himself of,

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and investing his transferee with, his estate. No doubt the services agreed to be given to the Rajah on his own application were most important and likely to be very beneficial to himself and his property, but the estate has still remained his, and is his, and his alone, and his name alone can be used in all judicial proceedings connected with its administration. As for Major Powlett, he, as Political Agent and Superintendent of the estate under the orders of the Government of India, has simply no *locus standi* whatever, nor could he be allowed to represent the Government of India, in such a suit, even if that Government had itself a better title than it has.

The appeal is allowed and the suit is dismissed with costs in both Courts.

PEARSON, J.—The property in suit is claimed as belonging to the Kota estate, and the claim is based on the proprietary right of the Rajah of Kota. If he be the proprietor of the property the subject of the claim, he should have been the plaintiff in the suit; on the other hand, if his right and interest therein has passed to the Government of India, the Government of India should be the plaintiff. The Political Agent and Superintendent of the Kota Raj does not profess to have any such proprietary right and interest in the property as to entitle him to sue as plaintiff for its recovery. The suit, as brought, must be dismissed, and the appeal decreed with costs.

Appeal allowed.

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Strachan v. C.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spinkie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v. SRI LAL AND OTHERS.

Act XLV of 1860 (Penal Code), ss. 372, 373—Buying or selling minor for the purpose of prostitution, &c.

Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true. Held, per STEART, C. J., that such persons could not be convicted, on those facts, of offences under ss. 372 and 373 of the Indian Penal Code. Per OLDFIELD,