

## PRIVY COUNCIL.

P.C.\*  
1892  
March 10  
and 11.

OMRAO BEGUM AND ANOTHER (PLAINTIFFS) v. THE SECRETARY  
OF STATE FOR INDIA IN COUNCIL (DEFENDANT).

[On appeal from the High Court at Calcutta.]

*Nawab Nazim's Debts Act, (XVII of 1873)—Award of Commissioners  
conclusive—Construction of documents not establishing a charge on  
immoveable property.*

Commissioners appointed under Act XVII of 1873, by their award, found that an estate was in the possession of the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being, a finding within their competence to make, of which the effect was that the Government held the property freed and discharged from all claims.

In a suit against the Government it was alleged that the estate, when in the hands of the Nawab, had been charged with payment of an annuity and arrears in favour of the plaintiffs' father on his abandoning the title which he had set up to the property.

*Held* that the above award, under the Act, would have been a sufficient answer to the claim, even if the charge had originally attached to the estate. But in equity no charge could be created unless there was an intent to charge. Here the documents showed that this payment had not been legally charged upon the property, neither party having contemplated this result, and there having been only a mandate by the Nawab for payment of the annuity out of his treasury.

APPEAL from a decree (10th July, 1889) of the High Court, affirming a decree (24th April 1888) of the District Judge of Murshidabad.

This suit, against the Secretary of State for India in Council, was for payment of an annuity with arrears granted by the late Nawab Nazim of Bengal to the plaintiffs' father, and alleged to have been charged on an estate afterwards in the possession of the Government. Among the questions raised in this appeal was whether this suit was barred by Act XVII of 1873, the Nawab Nazim's Debts Act, an award having been made by Commissioners under that Act to the effect that the estate, on which the annuity was said to have been charged, was property held by

\* *Present*: LORD MACNAGHTEN, LORD HANNEN, SIR R. COUCH, and LORD SHAND.

the State to uphold the dignity of the Nawab Nazim for the time being. It was also a question whether the annuity had been charged upon the estate at all.

A similar claim against the Government made by the present plaintiffs in 1877 related to the same annuity and the same estate during the lifetime of the late Saiyed Mansur Ali, who was Nawab Nazim when the above Act was passed. It was dismissed on the ground, that under the provisions of the Act, after the making of the award it was not competent to the plaintiffs to sue as they had sued. The state of things causing that result was that the suit of 1877 could not proceed without the Nawab Nazim being a party to it; while, at the same time, the permission of the Governor-General in Council, discretionary with that authority, but necessary under the Act to allow the Nawab to be sued, had not been obtained (1).

On the 7th May 1887, the Nawab Nazim Saiyed Mansur Ali having died in 1885, the present suit was brought by the daughters of Mehdi Ali, who died in 1864. The latter was half-brother to Amirannissa Begum, widow of the Nawab Nazim Ali Jah, who preceded Saiyed Mansur Ali in the Nizamut. Upon her death childless in 1858, her estate, including a zemindari, Gopinathpur, purchased and held by her in the name of Medhi Ali, had been claimed by the Nawab Nazim in virtue of a family custom as that of a "gaddinashin Begum," and therefore Nizamut property. On the ground that they, as Mehdi Ali's daughters, were entitled to seven-eighths of his estate, the plaintiffs claimed their proportionate share of an annuity, Rs. 600 a month, together with arrears. This annuity the Nawab had granted on the 25th July 1858 to Mehdi Ali in perpetuity upon the execution by the latter of a ladawanama, or claim-renouncing deed, relating to Gopinathpur; and the plaint stated that the Government having taken possession of all the properties of the Nawab Nazim, the daughters were entitled to a decree.

The defence, by written statement filed by the Collector of Murshidabad, stated that Act XVII of 1873, continuing to operate after the death, as it had during the lifetime of the late Nawab

(1) *Omrao Begum v. The Government of India*, I. L. R., 9 Calc., 704; L. R. 10 I. A. 39.

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Nazim, and Gopinathpur having been declared by the Commissioners to be property held by the State to support the dignity of the Nawab Nazim, the suit could not proceed without the consent of the Government first had and obtained in accordance with section 11. It alleged revision of the contract to pay the annuity, on the withdrawal of Mehdi Ali from the conditions between the parties, by his claiming the estate of Amirannissa, the deceased Begum. It was also denied that the annuity had been charged upon Gopinathpur or any of the Nizamut property, or that the Government was liable in consequence of the transfer of the estate into its possession.

The facts about the grant of the parwana of the 25th July 1858 and the ladawanama appear in their Lordships' judgment on this appeal; and are also stated in their judgments in *Oomrao Begum v. The Nawab Nazim of Bengal* (1) and in *Oomrao Begum v. The Government of India* (2).

Only Rs. 2,000 were paid in respect of the annuity. In April 1867 the Nawab Nazim sued the daughters of Mehdi Ali for the possession of Gopinathpur, for which he obtained a decree in the district, affirmed on appeal by the High Court in April 1869. This was upheld by the Judicial Committee in 1875 in *Oomrao Begum v. The Nawab Nazim of Bengal* (1) their Lordships holding that both parties, Mehdi Ali on the one part, and the Nawab Nazim on the other, were bound respectively by the ladawanama and the parwana, and that Mehdi Ali and his heirs were not released from the disclaimer of title by reason of the Nawab not having continued, after the first payment, to pay the monthly allowance according to the parwana.

Meanwhile, in 1870, these appellants instituted in the Court of the Subordinate Judge of Murshidabad a suit against the Nawab Nazim to recover, first, their shares of estates, other than Gopinathpur, which had belonged to Amirannissa, which claim was decided against them; and, secondly, to obtain their shares of this same monthly allowance now in question. The latter was decreed in their favour in 1872 for their shares of the annuity that had fallen due within the previous three years, regard being had to limitation, the sum amounting to Rs. 18,900. An appeal from

(1) 24 W. R., 28.

(2) I. L. R., 9 Calc., 704; L. R., 10 L. A., 39.

this decree was dismissed by the High Court on the 1st December 1873, and a few days before this dismissal, *viz.*, on the 24th November in the same year, Act XVII became law. The effect of the provisions of that Act appear in their Lordships' judgment on this appeal, and in their judgment in 1882 (1). The Commissioners, appointed under the Act, rejected a claim brought before them by the present appellants in respect of the annuity now claimed, and they certified by their award on the 10th May 1874, that all the properties of which the Nawab Nazim had taken possession, as heir of Amirannissa, including Gopinathpur, were held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being. An application for the review of this decision as to Gopinathpur, made after the judgment of their Lordships' of the 7th May 1875, was rejected by the Commissioners. An application made to the Government on the 26th May 1876 for leave to execute the decree of 1872, and for leave to sue the Nawab Nazim for further maintenance, was not granted. On the 26th May 1878 the District Judge dismissed a suit, brought by the present appellants against the Government of India and Amir Saheb (to whom the Nawab had purported to transfer Gopinathpur) for a declaration that their maintenance was a charge upon that estate. This decision was maintained by the High Court on the 26th April 1880, and by their Lordships on the 28th November 1882 in the judgment already referred to (1).

The District Judge dismissed the present suit, as, in his opinion, the award of the Commissioners of the 10th May 1874 was a bar to it; and he was also of opinion that the Act operated to make the award an adjudication within the contemplation of section 13 of the Code of Civil Procedure. Also that the Act had not been affected by the death of the Nawab Nazim Mansur Ali in 1885.

The High Court dismissed an appeal from the above, on the grounds that the plaintiffs had failed to prove that the estate of the Nawab had been so vested in the Secretary of State for India in Council that the latter had become responsible for the annuity. Also that, assuming this to have been proved, the suit was not maintainable under section 11 of Act XVII of 1873, because

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1892 the consent of the Governor-General in Council to the commencement of the suit had not been obtained.

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On this appeal—

Mr. R. V. Doyne, for the appellants, submitted that the 11th section of Act XVII of 1873 was not applicable after the death of the Nawab for whose relief the Act was passed; and the consent of the Government to the bringing the suit was unnecessary. The Act operated only during the lifetime of Mansur Ali. The plaintiffs' claim in regard to the annuity was, in effect, based on their right under the parwana given to their father in 1858, as to which the judgment of their Lordships in 1875 was that the ladawanama and this document amounted to a valid contract, by which the Nawab and Mehdi Ali were respectively bound, the Nawab having executed the parwana on the faith of the disclaimer. The operation of the disclaimer had been enforced, and it remained that the corresponding liability should be established in favour of those from whom Gopinathpur had been taken.

As to the judgment of the High Court, that Court had erred in holding that the estate of the Nawab Nazim was not liable in the hands of the Government, as defendant, to satisfy the appellants' legal claims under the parwana of 1858, erring also in applying the 11th section of the Act after the death of Mansur Ali. The grounds given in the judgment were no complete answer to the case made. The award of the Commissioners had not been restricted to its due effect. The question whether they had not exceeded their powers was before the Courts, and had not been correctly decided. The first Court upon this had held erroneously that the Commissioners did not act *ultra vires* in awarding that the plaintiffs had no right to the maintenance claimed. And the finding that Gopinathpur was held by the Government for the purposes of upholding the dignity of the Nawab Nazim did not govern the question whether the general liability to make good the annuity "out of the tehbil of the sircari mehals" had not attached to the Nizamut estate in the hands of the Government. There was error also in the Court's having maintained the proposition that the award of the Commissioners had effect, as if it had been a decree, to operate under the 13th section of the Code of

Civil Procedure. These views had caused the plaintiffs to lose the benefit of the decree obtained by them in 1870, and of the decision of their Lordships of the 7th May 1875, as to the reciprocal rights of the parties to the ladawanama and the parwana of 1858. The appellants' rights under the contract between the late Nawab Nazim and their father should have received effect. In reference to the operation of Act XVII in regard to process against the Nawab's person or property, reference was made to the *Nawab Nazim of Bengal v. Amrao Begum* (1), and to the cases mentioned above.

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Mr. *W. F. Robinson*, Q. C., and Mr. *J. H. A. Branson* were called upon only in case they should desire the maintenance of the judgment of the High Court for the same reasons that had been assigned by that Court. They were not desirous of so limiting their grounds, and their argument was therefore not heard.

Their Lordships' judgment was delivered by:—

LORD MACNAGHTEN.—The Appellants, who were plaintiffs in the suit, claim to be entitled to seven-eighths of a perpetual annuity of Rs. 600 a month, which was granted in 1858 to their father, Syed Mehdi Ali, by the late Nawab Nazim, Syed Mansur Ali. They now demand payment of the annuity with arrears from the Government of India on the ground that the Government hold property on which, as they allege, the annuity was and is charged.

If the claim were well founded the charge would apparently extend to all the immoveable property of the Nawab, or at least to all the immoveable property belonging to him which he had power to alienate. But for the purposes of this suit the plaintiffs limit their claim to pergunnah Gopinathpur. That pergunnah was the property of the Nawab in 1858, when the annuity was granted, and it is now held by the Government. The Government holds it "for the purpose of upholding the dignity of the Nawab Nazim for the time being" under the award of certain Commissioners appointed in pursuance of "the Nawab Nazim's Debts Act, 1873."

Although their Lordships propose to rest their judgment mainly upon another ground, it appears to them that the award under

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which the Government holds the property would be an answer to the present demand, even if the plaintiffs' claim had been well founded originally.

It seems that the affairs of the Nawab had got into a state of hopeless confusion. He was involved in debts and liabilities which he could not meet. The Government intervened, laid hands on his property, and passed the Act of 1873 for his relief. All persons having claims against the Nawab or his property were required to notify them within a limited time to certain Commissioners appointed under the Act. Every debt or liability not so notified was to be barred. The Commissioners were empowered "after due and full inquiry," to determine and certify "the amount which, on the consideration of all the circumstances," they might "consider each claimant ought in fairness and justice to receive." On payment or tender by the Government of the amount certified the debt or liability was to be extinguished. No suit was to be commenced or prosecuted, and no process was to be sued for against the person or property of the Nawab without the consent of the Government, and, lastly, the Commissioners were to ascertain what immoveable property was held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being. They were to certify the particulars, and it was declared that "their finding thereon" should be "binding and conclusive on all persons whomsoever."

Complying with the exigency of the Act of 1873, the plaintiffs brought in their claim. The Commissioners rejected it altogether. They held that if there was a contract it was "not binding on the Nawab Nazim either for past years or for the future." They made an award finding that the acquisition by the Nawab of certain specified property including Gopinathpur was, to use their own words, "so to speak official, and that it became an appanage of the office and state of the Nawab Nazim." They held that he was incapable of alienating his interest in such property. And in the terms of the Act they declared that it was "held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim for the time being."

Their Lordships understand that finding applied to Gopinathpur to be that Gopinathpur is held by the Government for the

purpose declared in the Act, freed and discharged from all claims and incumbrances including the alleged claim or incumbrance of the plaintiffs. Such a finding in their Lordships' opinion was within the competence of the Commissioners, and, if so, it was, in the words of the Act, "binding and conclusive on all persons whomsoever."

The learned counsel for the Appellants commented severely upon the manner in which the Commissioners discharged their functions. He insisted that they had misunderstood or disregarded the opinion of this tribunal which certainly had held that the Nayab was bound by contract to pay the annuity in question to Syed Mehdi Ali. But their Lordships have no power to review the findings of the Commissioners, nor is it within their province to express any opinion upon their conduct. The Commissioners were invested with arbitrary powers. If they used those powers harshly, or otherwise than in accordance with the principles of fairness and justice, to which they were required by the Act to conform, the only remedy open to persons who might conceive themselves aggrieved was to appeal to Government. The Government had the power of removing the Commissioners or permitting recourse to be had to Courts of Justice.

The plaintiffs, it seems, did apply to the Government for leave to enforce a decree of the High Court for payment of arrears of their annuity. This application, however, was refused. Thus through the action of the Government the plaintiffs were deprived of legal rights which had been recognized by this Board, and successfully vindicated in the highest Court in India, while at the same time the property renounced in consideration of those rights was placed for ever beyond their reach.

Passing from the consideration of the Act of 1873 and the findings of the Commissioners, their Lordships will now direct their attention to the terms of the contract which was made between the Nawab Nazim and Syed Mehdi Ali, and which is the foundation of the plaintiffs' claim. In January 1858, Amirannissa, the widow of a former Nawab Nazim, died without issue. She was a lady of great wealth and the proprietor of Gopinathpur, which she had purchased in the name of Syed Mehdi Ali. On her death the Nawab claimed to succeed to all her property to the exclusion of her heirs, of whom Syed Mehdi Ali was one. Not

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caring at the time to dispute the matter with the Nawab, Syed Mehdi Ali approached him with a petition, dated the 12th of February 1858, admitting in terms the Nawab's claims and soliciting from him an allowance for maintenance. Thereupon the Nawab passed the following order:—"Out of the properties, mehals and zemindaris of the Begum Sahiba, deceased, let a monthly allowance Rs. 600, besides the sum given in the report, be fixed for Syed Mehdi Ali, and nothing further shall be allowed to him by the Sircar at any time or in any way."

Then after about a fortnight's interval, during which, no doubt, communications passed between the parties, Syed Mehdi Ali executed a ladawanama, or agreement of disclaimer, dated the 24th of February 1858, in which in the most unqualified terms he renounced every claim and all pretension to the property of the late Begum. Thereupon the Nawab executed the following parwana:—"The late Nawab Amirannissa Begum, deceased, my grand-mother, adopted you as her son, and maintained and supported you, and she died on the 21st January 1858. After the death of the deceased, you along with your children and dependents appeared before me and made application for support and maintenance from the sircar. Consequently for the purpose of your support and maintenance, posterity after posterity, and generation after generation, the sum of Company's Rs. 600 per mensem, being the annual sum of Company's Rs. 7,200, will be paid to you out of the tehbil of the sarkari mehals. You and your heirs shall be supported and maintained one after another out of the said stipend. It is incumbent on you never to prove faithless to the sircar. And as for the expenditure of the 10 days of the Mohurrum connected with you, mehal Nimgram, lying in pergunnah Bhalul, a mehal in the name of Zahura Begum, is granted by the Government." That document is dated the 25th of February 1858.

The learned counsel for the appellants contended that the four documents are parts of one transaction. That is perfectly clear. But it is equally clear that the first set, the two documents of the 12th of February, are introductory to the second set, the documents of the 24th and 25th of February which were intended to be the operative and governing instruments. Even if the matter rested on the order of the 12th of February, their Lordships would

be prepared to hold that no charge was created on any part of the Nawab's property. It is not a legal charge. In equity no charge can be created unless there is an intent to charge. Taking all the documents together, it is plain that no charge was contemplated by either party. The order of the 12th of February is, in their Lordships' opinion, nothing more than a mandate by the Nawab Nazim to his own officials for their convenience. The parwana of the 25th of February 1858 does not even purport to charge any property. It simply says that the amount is to be paid out of the Nawab's State Treasury.

Upon these grounds, and especially upon the last, which goes to the very root of the matter, their Lordships hold that the appeal must fail. They express no opinion as to the particular ground on which the High Court rested their judgment. They would not have been prepared to have concurred in that view without further argument.

Their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. But having regard to all the circumstances their Lordships do not think fit to make any order as to costs.

*Appeal dismissed.*

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

Solicitor for the respondent: *The Solicitor, India Office.*

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## APPELLATE CIVIL.

*Before Mr. Justice Norris and Mr. Justice Beverley.*

HALADHAR SAHA AND ANOTHER (DEFENDANTS NOS. 1 AND 3) v.  
RHIDOY SUNDRI AND OTHERS (PLAINTIFFS).\*

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May 3.

*Bengal Tenancy Act (VIII of 1885), s. 188.—Joint landlords—Tenure, enhancement of rent of—Fractional co-sharers—Suit for enhancement of rent of a tenure by some only of several joint landlords.*

The provisions of section 188 of the Bengal Tenancy Act apply to a suit by some only of several joint landlords to enhance the rent of a tenure,

\* Appeal from Appellate Decree No. 191 of 1891, against the decree of J. Douglas, Esq., District Judge of Tippera, dated the 29th December 1890, modifying the decree of Baboo Kali Prossonno Mukherjee, Subordinate Judge of that district, dated the 27th of September 1883.

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