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money charged was only to fall due in 1920, that is the end of *Jeth* 1327 *fasli*. The present suit was brought in 1926 and I am, therefore, of opinion that it was well within limitation.

BY THE COURT :—The reference is answered accordingly.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

1928 *January*, 18.

DEPUTY COMMISSIONER, MANAGER, COURT OF WARDS OF THE KATESAR ESTATE, DISTRICT SITAPUR (DEFENDANT-APPELLANT) *v.* MUSAMMAT MUNNI AND ANOTHER (PLAINTIFFS-RESPONDENTS.)*

Grant—Grant from generation to generation of a fixed monthly allowance for household expenses of the grantee, his descendants and dependants—Arrears of monthly allowance, whether a charge on immoveable property—Construction of documents—Lord Canning's Proclamation—Confiscation—Restoration of full proprietary rights, effect of, on subordinate rights—Charge-holder, whether a subordinate proprietor.

Where a grant was made of a certain village and of a fixed monthly allowance to the grantee for his household expenses, including those of his descendants and dependents, and it was said that the grant was to be from generation to generation and that all the village expenses, land revenue and cesses of the village were to be borne by the estate and when the necessity arose the grantee was to continue to take other expenses from the estate, *held*, that the grant could only be construed as a grant of a monthly maintenance of the amount mentioned therein to be paid out of the

*First Civil Appeal No. 63 of 1927, against the decree of Mahmud Hasan Khan, Subordinate Judge of Sitapur, dated the 16th of March, 1927, decreeing the plaintiff's claim.

profits of the taluqa property and to be paid to the grantee during his lifetime and to his heirs after his death, and the arrears of this monthly allowance were a money charged upon immoveable property.

Even in absence of words directing that the payments of a certain maintenance should be a charge upon the property, the fact that it is a charge upon the property may be implied from the circumstances of the case and from other portions of the document.

Held further, that the effect of Lord Canning's Proclamation was that the whole of the rights in the soil of Oudh, with the exception of the estates specially exempted, passed from the former owners and became the property of the Crown. The confiscation vested the rights in the Crown and all subordinate rights ceased to exist, the Crown becoming the absolute owner. The restoration, however, by the Crown of full proprietary rights involved automatically the restoration of the rights of subordinate proprietors originally held by them against the former proprietors. The principle applicable to a subordinate proprietor in such a case would apply in the case of a charge-holder and where a charge existed before the Proclamation of 1858, the right to the charge revived as soon as the restoration took place. *Mana Vikrama Zamorin of Calicut* v. *Karnavan Gopalan Nair* (1), and *Raja of Ramnad* v. *Sundara Pandiyasami Tevar* (2), relied upon. *Sundar Lal and others* v. *Ramji Lal and others* (3), distinguished. *Sheo Bahadur Singh* v. *Bishnath Saran Singh* (4), referred to.

Messrs. *Bisheshwar Nath Srivastava, G. H. Thomas and Bhagwati Nath Srivastava*, for the appellant.

Messrs. *Niamat Ullah and Muhammad Ayub*, for the respondents.

STUART, C.J., and RAZA, J. :—This is a defendant's appeal against a decree of the learned Subordinate Judge of Sitapur, dated the 21st of March, 1927, by which he awarded a sum of over seven thousand rupees with future interest and proportionate costs to the plaintiffs. He

(1) (1907) I.L.R., 30 Mad., 203. (2) (1919) L.R., 46 I.A., 64,
(3) (1920) L.R., 47 I.A., 149. (4) 1927) I L R, 2 Luck., 4: 4 O. W. N., 15.

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further declared that the amount decreed should be a charge upon certain villages. The facts are as follows. Raja Ratan Singh was the holder of the Katesar estate in the Sitapur and Kheri districts. He died in 1850 and was succeeded by his son Sheo Bakhsh Singh. Sheo Bakhsh Singh was recognized in 1858 as the proprietor of the estate, and his name was entered as taluqdar in respect of the estate in the lists prepared under Act I of 1869. His name appears as the eighty-third name in list I and thirty-first name in list II. Raja Sheo Bakhsh Singh died in 1882. He was succeeded by his widow Pirthipal Kuar, who is still in possession of the Katesar estate. The Court of Wards assumed management of the estate, it is said, about 1896. The allegation on behalf of the plaintiffs was that Raja Ratan Singh had, in addition to his legitimate son Sheo Bakhsh Singh, who succeeded him, an illegitimate son called Jang Bahadur. The mother of the latter is said to have been a Muhammadan, and the descendants of Jang Bahadur are Muhammadans. According to the plaintiffs' allegation Raja Ratan Singh executed on a date corresponding to the 20th of August, 1830, a *sanad* (exhibit 27) by which he assigned to Jang Bahadur the village of Aguapur in the Sitapur district and a monthly stipend of Rs. 200 for his household expenses. According to the plaintiffs this sum of Rs. 200 a month was paid regularly by Sheo Bakhsh Singh until the time of his death, and afterwards by Pirthipal Kuar to Jang Bahadur himself. Jang Bahadur died in 1892. After his death it is alleged that this monthly allowance of Rs. 200 was paid first by Pirthipal Kuar and then by the Court of Wards on her behalf to the descendants of Jang Bahadur until the year 1914. The defendant-appellant, the Deputy Commissioner of Sitapur, as representing the Court of Wards, did not deny explicitly the allegation that the Court of Wards paid this monthly allowance up to 1914, and

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his learned Counsel in this Court has accepted the position that this monthly allowance was paid until that year when it was stopped under the orders of the Board of Revenue. First Jang Bahadur and then his family remained in possession of land in Aguapur until 1914 holding the property rent-free, the Katesar estate paying land revenue and cesses. In the year 1913, however, the Deputy Commissioner of Sitapur as Manager of the Court of Wards in charge of the estate instituted a suit under section 108, clause 5(*a*) of the Oudh Rent Act for the resumption of, or assessment of rent on the land held rent-free in Aguapur. The result of this suit was that the descendants of Jang Bahadur were declared entitled to under-proprietary rights in the land held in this village on the payment of a certain amount to the talúqdar. The case was taken in appeal to the Commissioner and the Board of Revenue, but the decision was maintained. Subsequently in 1917, a descendant of Jang Bahadur instituted a civil suit against the Katesar estate for a declaration that the amount of rent fixed was excessive and incorrect and based upon a wrong statement made by the Court of Wards in the previous proceedings. It was found that an extraordinary error had been made in the previous proceedings, under which the rent had been fixed on the basis of an assessment statement referring to a different village and allowing a very much higher rent; and eventually the parties compromised by an agreement under which a lower rate of rent was fixed. This agreement is filed as exhibit 40.

Although this monthly allowance was discontinued in 1914, the descendants of Jang Bahadur took no action until 1926. Even then, not all of them took action. The two present plaintiffs-respondents instituted in that year the suit, out of which this present appeal arises, claiming their shares of the arrears of the monthly allowance from October, 1914, onwards. The learned Sub-

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ordinate Judge having decreed their claim as a claim to enforcement of a money charge upon immoveable property and having further declared the existence of the charge, the present appeal is preferred by the Katesar estate. The first ground taken on appeal is that the plaintiffs failed to prove the *sanad* (exhibit 27) on which they rely. We shall take this point first. We have been taken carefully through the evidence. We consider that the learned trial Judge arrived at a correct conclusion when he found this *sanad* to be proved. We see no reason to distrust the evidence of Nandu Lal, Fida Husain, Drigpal Singh and Rahim Ullah. The learned trial Judge believed these witnesses to be telling the truth. We see no reason to arrive at a contrary conclusion. Apart from the evidence afforded by these witnesses, we see no reason to distrust the plaintiffs when they assert that this document was in possession of the family. It is noticeable that on the admission of the estate the monthly allowance of Rs. 200 was paid regularly up till 1914, when its payment was discontinued for reasons which the estate has not disclosed. The presumption of genuineness in this case is a very strong presumption which has in no way been rebutted. It is true that in the resumption suit this *sanad* was not produced, but, even had it been produced, the result would not have been different and we attribute the omission to produce it to a mismanagement of the case on behalf of Jang Bahadur's family which is palpable on the surface. When we find that the persons, responsible for the management of that case, omitted to notice that rent was being assessed against them at a rate very much higher than the rate which they were obliged to pay on the basis of an assessment statement of the wrong village, their omission to produce a document, which did not materially affect the decision of the case, does not appear to us to throw any suspicion on the

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genuineness of the document which is not produced. It is to be noted that they succeeded as to title without producing the document at that stage. It is further clear that in the civil suit in 1917 this *sanad* (exhibit 27) was produced. We, therefore, arrive at a preliminary finding that this *sanad* is proved to have been executed by Ratan Singh on a date corresponding to the 20th of August, 1830.

The next question to be determined is whether under this *sanad* these particular plaintiffs are entitled to the share allowed to them by Muhammadan law in the monthly allowance. The portion of the *sanad* affecting this question is translated by us in the following words. We have varied the translation in the paper-book as that translation is, in our opinion, misleading.

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> Ratan Singh grants "on account of the maintenance of my beloved" (*barkhurdar* equivalent to son) "Jang Bahadur the village of Aguapur and Rs. 200 a month for household expenses including those of his descendants and dependants. The grant to be from generation to generation. All the village expenses, land revenue and cesses of the aforesaid village shall be borne by the estate, and when the necessity arises the grantee shall continue to take other expenses from the estate."

We can only construe this as a grant of a monthly maintenance of Rs. 200 to be paid out of the profits of the taluqa property, and to be paid to Jang Bahadur during his lifetime and to his heirs after his death. We are asked to consider it as an undertaking on behalf of Ratan Singh, which could not affect any one except Ratan Singh personally; but according to our view, such

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a construction is impossible in view of the fact that the grant was to be from generation to generation. Ratan Singh could not be in a position personally to continue the grant from generation to generation and, as it was his clear intention that the grant should be continued, the grant could only be paid out of the profits of the property. It is true that there is no direct condition that the Rs. 200 a month are to be paid out of the profits of the property. But it is noticeable that, whereas Rs. 200 a month are to be paid for ordinary household expenses, the grantor continues that the grantee and descendants are also to be paid extraordinary expenses and it is stated explicitly that these extraordinary expenses are to be paid out of the profits of the estate. The condition permitting the grantee to recover extraordinary expenses from the profits of the estate leads us to the conclusion that the grantor intended that the ordinary expenses were also to be met from the profits of the estate, to an extent of Rs. 200 a month over and above the profits of Aguapur. In construing this document, we are keeping in mind the fact that the *sanad* was executed during the *Shahi* period and that no high standard of draftsmanship can be expected reasonably. It appears to us that it would be wholly incorrect to take the view that, while Ratan Singh directed that the land revenue cesses and the village expenses of Aguapur and the extraordinary expenses incurred by the grantee should be met out of the profits of the estate, the Rs. 200 a month, which were being paid to supplement the income from Aguapur for the support of his natural son and his natural son's descendants, should not be met out of the profits of the estate but should be a personal liability of himself and of his successors. A direction to his heirs to continue the maintenance after his death could not bind them personally, and could only bind them in respect of the property

which they had received from him. This circumstance affords an additional reason for the view which we adopt. We may mention here in passing that it was evidently the intention of Ratan Singh, as is shown by the later part of the *sanad*, that on his death his son Sheo Bakhsh Singh and Jang Bahadur should succeed jointly to the estate. This intention was never fulfilled, as we have already stated. There is some evidence that Jang Bahadur did not wish to press any claim in the presence of Sheo Bakhsh Singh. But apart from that the matter of succession to the estate is concluded, as far as we are concerned, by the action of the British Government in awarding the estate to Sheo Bakhsh Singh. But the circumstance that the desire of Ratan Singh that his son born in wedlock and his natural son should succeed jointly to the estate was not satisfied in no way affects the validity of the grant. Taking this view we consider, that the arrears of this monthly allowance are a money charge upon immoveable property. In *Mana Vikrama Zamorin of Calicut* v. *Karnavan Gopalan Nair* (1) a Bench of the Madras High Court arrived at the conclusion that the fact that an allowance had been enjoyed for more than three-quarters of a century, and had been received during all that time out of the income of certain lands with the acquiescence of successive holders was a fact which went to justify the conclusion that there was a valid grant of maintenance which was a charge on those lands. Further their Lordships of the Judicial Committee found in *Raja of Ramnad* v. *Sundara Pandiyasami Tevar* (2) that a person, who, having relinquished claim to title to zamindari property, received in lieu of his relinquishment an undertaking from the other side that he should receive Rs. 700 a month, had a right to charge the payment of that amount to either the whole property or a portion of the property. We do

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(1) (1907) I.L.R., 30 Mad., 203. (2) (1919) L.R., 46 I.A. 64.

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not find that in the decision of their Lordships of the Judicial Committee in *Sundar Lal and others* v. *Ramji Lal and others* (1), which has been cited to us at the Bar, there is anything to support a view contrary to the view which we take. There a certain person had obtained specific villages in lieu of maintenance and endeavoured to show that he was further entitled to a charge which their Lordships found did not exist. But the decision in *Raja of Ramnad* v. *Sundara Pandiyasami Tevar* (2) is an authority in support of the view which we take that, even in absence of words directing that the payment of a certain maintenance should be a charge upon the property, the fact that it is a charge upon the property may be implied from the circumstances of the case and from other portions of the document. Having decided the above points in favour of the plaintiffs-respondents, we have now to consider a further argument. The learned Counsel for the appellant has pressed before us an argument that as the whole of the property in Oudh was confiscated to the British Crown under the terms of Lord Canning's proclamation of the 15th of March, 1858, any charge, which was obtained by Jang Bahadur upon the property in question, became extinguished on that date and has never been revived. Upon this point we have little to say, as a similar question was discussed at great length by a Bench of this Court in *Sheo Bahadur Singh* v. *Bishunath Saran Singh* (3). There this Court adopted the view, which we follow here, that the effect of Lord Canning's Proclamation was that the whole of the rights in the soil of Oudh, with the exception of the estates specially exempted, passed from the former owners and became the property of the Crown. The confiscation did not vest the rights in no one. It vested the rights in the Crown. The Crown becoming the absolute owner, all

(1) (1920) L. R., 47 I.A., 149.
(2) (1919) L.R., 46 I.A., 64.
(3) (1927) I.L.R., 2 Luck., 4: 4 O. W. N., 15.

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subordinate rights ceased to exist. But when the Crown restored full proprietary rights, as it did on the present occasion in respect of the estate of Katesar, the restoration of full proprietary rights involved automatically the restoration of the rights of subordinate proprietors which had originally been held by them against the former proprietor. In other words where proprietary rights were restored the rights of subordinate proprietors, which had been held against the proprietors before the confiscation were revived. This being the view of the effect of the Proclamation taken previously by this Court, it is necessary to apply the principle to the present case. It is true that Jang Bahadur was not a subordinate proprietor; but we are unable to distinguish, on the principle laid down in the former decision, the case of a charge-holder from the case of a subordinate proprietor. It having been found by us that Jang Bahadur would have had a right to enforce the charge against Sheo Bakhsh Singh between the death of Ratan Singh and the date of the Proclamation of 1858 and the etsate of Katesar having been confiscated in 1858 from Sheo Bakhsh Singh and then restored to Sheo Bakhsh Singh with full proprietary rights, the right of Jang Bahadur to the charge against Sheo Bakhsh Singh revived as soon as the restoration took place. For the above reasons we dismiss this appeal with costs.

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Appeal dismissed.