

On these grounds we consider there was no sufficient cause within the meaning of explanation 4 to section 50 for revoking the grant of probate. The mere fact that the estate has now devolved on the widow as heir of her deceased son does not by itself render any revocation of the probate necessary, as the widow is at liberty to apply for letters of administration to the estate of her deceased son.

We must reverse the order of the Court below and allow the appeal. The costs to be borne by applicant throughout. An application for revocation of probate being of the nature of a miscellaneous proceeding, the costs should be regulated accordingly.

*Order reversed.*

---

## APPELLATE CIVIL.

---

*Before Mr. Justice Crowe and Mr. Justice Batty.*

SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL FIRST DEFENDANT), APPELLANT, *v.* SULEMANJI MOOSAJI [AND ANOTHER (ORIGINAL PLAINTIFFS)], RESPONDENTS.\*

1902.

*August 20.*

---

*Principal and Agent—Government—Government officers—Scope of authority—Ratification.*

The plaintiffs sued the Secretary of State (defendant 1) and one Makan Haribhai (defendant 2), who was an overseer in the Government Local Fund Department in the Surat District, for the price of bamboos sold to the second defendant for the purpose of erecting sheds during an epidemic of plague in 1897. The plaintiffs alleged that they supplied the bamboos to the second defendant on his representing that he was acting under the orders of the Assistant Collector and the Mámlatdár. The first defendant denied that Government had ever authorised the purchase of the bamboos, and the second defendant denied that he had made the alleged representation. The lower Court passed a decree against the first defendant. On appeal to the High Court,

*Held*, (reversing the decree) that there was no evidence to show that the second defendant was authorised by Government to purchase the bamboos and

\* Appeal No. 132 of 1901.

1802.

SECRETARY  
OF STATE  
FOR INDIA  
2  
SULEMANJI.

to pledge the credit of Government for payment, or that the acts of the second defendant had ever been ratified by Government or by any officer of Government duly authorised in that behalf.

APPEAL from the decision of Mr. E. H. Moscardi, District Judge of Surat.

Plaintiffs, who traded under the name of Mahomedbhai Moosaji at Surat, sued to recover the sum of Rs. 763-8-0 from the Secretary of State for India in Council (defendant 1) and Makan Haribhai (defendant 2), an overseer in the Government Local Fund Department in the Surat District, as the value of 14,000 bamboos purchased by the second defendant as building materials for sheds required during an epidemic of plague in May, 1897.

The plague at that time was raging at Ránder, and the plaintiffs alleged that when the bamboos were purchased from them by the second defendant, he stated that he was purchasing them by the order of the Assistant Collector, Mr. Seddon, and of the Mámlatdár of the táluka, and that the price would be paid by Government. The plaintiffs accordingly supplied the bamboos.

The defence was that the Government had never authorised the purchase of the bamboos from the plaintiffs, and that the second defendant had never made the statements alleged by the plaintiffs. The lower Court passed a decree for the plaintiffs against the first defendant, holding that the bamboos had been purchased by the second defendant under the orders of Government servants.

The first defendant appealed to the High Court.

The Government Pleader for the appellant.

*G. S. Rao* for the respondents.

The following authorities were cited:—Story on Agency, page 30; *Collector of Masulipattam v. Cavalry Venkata Narain Apa*<sup>(1)</sup>; *Beer Kishore v. Government of Bengal*.<sup>(2)</sup>

CROWE, J.:—This was a suit brought by plaintiffs to recover the sum of Rs. 635 principal, and interest Rs. 128-8-0, from

(1) (1861) 8 Moo. I. A. 500; 2 Cal. W. R. 61 (P. C.).

(2) (1872) 17 Cal. W. R. 497.

the defendants on account of 14,000 bamboos purchased by defendant 2 from their shop at Ránder for plague purposes on May 3rd and May 9th, 1897, respectively.

The plaintiffs stated that defendant 2 was an overseer in the Local Fund Department in the Surat District, and that he stated that he purchased the bamboos under orders from the Assistant Collector, Mr. Seddon, and the Mámlatdár of the Chorási Táluka, and that he would get the price paid by Government.

The first defendant, the Secretary of State for India, replied that Government had never authorised defendant 2 or any other person to purchase from plaintiffs any building materials whatever; that defendant 2 did not obtain the bamboos on the representation that he had orders from the Assistant Collector and the Mámlatdár or that Government would pay for them; that neither of these officers had ever authorised defendant 2 to purchase any materials on behalf of Government or to pledge the credit of Government for the bamboos in question; that no sheds were built by Government at Ránder during the plague epidemic in 1896-97, but that the Ránder Municipality had built some for the poorer classes, and that a public subscription was raised for the purpose of providing sheds for some whom the Municipality had declined to assist; that one Lallubhai, now deceased, took a leading part in the organization of this scheme; that one Bai Ganga promised a donation of Rs. 1,000 and that Lallubhai on her behalf bought certain materials, and in making these purchases Lallubhai made use of the services of defendant 2, who was then acting as agent for the Municipality in similar dealings; that the goods supplied to Lallubhai on behalf of Bai Ganga were inferior in quality to the sample for which the rate had been fixed, and that both Lallubhai and Bai Ganga were dead.

The second defendant replied that he did not admit the statements of plaintiffs in the plaint, and was not liable for the claim.

The District Judge found that defendant 2 purchased the bamboos from plaintiffs on credit; that he was authorised by Government to purchase them, and that Government is responsible for the price of them; that at the time of purchase he

1902.

---

SECRETARY  
OF STATE  
FOR INDIA  
v.  
SULEMANJI.

1902.

SECRETARY  
OF STATE  
FOR INDIA  
v.  
SULEMANJI.

represented himself as authorised by Government to purchase them on its behalf, and that the Mámlatdár ratified such representations thereafter; and that Government was liable to pay for the bamboos in question.

The principal contentions urged in appeal are that there is no evidence to show that defendant 2 was authorised to purchase the bamboos by Government and to pledge the credit of Government for their payment; that even if Mr. Seddon and the Mámlatdár did give such authority, it would not bind Government, as they themselves had no authority to pledge the credit of Government; that the Court erred in holding that the Mámlatdár ratified the acts of defendant 2 so as to bind Government by making use of the bamboos in question.

The lower Court has relied on the evidence of the plaintiffs and their Mehta, on the entries in their account books and on the *tumar* or correspondence which originated with plaintiffs' petition to the Collector in September, 1897, and was carried on between the different Municipal officers. The evidence of the plaintiffs is that the second defendant, Makan, represented to them that bamboos were required for plague purposes at Ránder and that he had been ordered to buy them by the Assistant Collector and the Mámlatdár. The Mehta, Dayabhai, who states that he was present at the interview, adds that on plaintiff asking defendant 2 whence he should get the money for the goods, the latter replied, "I will cause the money to be paid to you by the Mámlatdár at Ránder in a few days."

The second defendant, Makan, states that the Municipality of Ránder demanded materials of him to build the segregation camps; that the Secretary, the Mámlatdár and Lallubhai used to tell him to produce the materials. He says further:

When I received the samples from the plaintiffs, I did not tell them that Mr. Seddon or the Mámlatdár had told me to order the bamboos for Government. I did not tell the merchants to debit the Mámlatdár or the Assistant Collector with the price of the goods, nor did they ask me whether they should do so. A sepoy brought me a chit from Lallubhai. I sent this sepoy to bring the goods from the plaintiffs, and in this way he brought the goods from the plaintiffs. Afterwards I went to the plaintiffs. I said, "Write an invoice and send the goods to the Mámlatdár Sáheb."

1902.

SECRETARY  
OF STATE  
FOR INDIA  
C.  
SULEMANJI.

In his first petition dated 27th September, 1897, addressed to the Collector, the plaintiff No. 1 stated that the goods had been taken by the Mistri Makan Haribhai "by order of the Assistant Collector." The petition was referred by the Collector to the officers of the Ránder Municipality, and the entire correspondence has been filed in the case (Exhibit 92).

The District Judge has relied on that correspondence and remarks that "the true history of the case can be made out with sufficient completeness from the *tumcr* beginning with Exhibit 74, the first petition made by the plaintiffs to the Collector in September, 1897"; and further on he observes:

The true story, therefore, is what Mr. Bulakhidas (the Mámlatdár) has told us in his evidence:—Certain poor people had had their houses unroofed during the plague, and Bai Ganga and Bai Dahi had promised Rs. 1,000 to enable these poor people to rebuild their huts. The money was to be spent, and a portion of it actually was spent, in purchase of materials. The Government officers who had rendered these repairs necessary accepted the offer with alacrity, and interested themselves in it so far that they actually settled the kind of bamboos that were to be ordered, and ordered them in Lallubhai's presence. Defendant 2 was charged with the order, and he ordered them in the name of Government of the plaintiffs

Now the Mámlatdár states distinctly:

I gave no order to have these bamboos ordered. Mr. Seddon never in my presence ordered bamboos to be ordered. The Government afforded no pecuniary help from the treasury in the plague operations, because that would have been the business of the Municipality, inasmuch as the persons to whom the aid was given were within municipal limits. Makan Haribhai was not ordered to buy goods on behalf of Government by Government. Neither I nor any other Government officer ratified any order that Makan Haribhai may have made of goods to be delivered to Government. . . . The goods in suit were not used to build *mandawas* with . . . Neither plaintiff nor plaintiffs and Makan Haribhai ever came to me to demand money from Government, nor did I ever tell them that I would pay them money from Government funds.

The District Judge proceeds:

The question is, are the officers, and therefore Government, responsible, or can the plaintiffs only come down upon Lallubhai's heirs for the money? I pronounce unhesitatingly in favour of the former alternative. I do not think that defendant 2 would have been so rash as to order the goods at the request of a private individual like Lallubhai.

1902.

SECRETARY  
OF STATE  
FOR INDIA  
v.  
SULEMANJI.

Now, in his statement dated 16th December, 1897, addressed by Makan (defendant 2) to the Vice-President of the Municipality (Exhibit No. 92), he distinctly says that Mr. Seddon, the President of the Taluka Board, divided the bamboos into classes and settled the prices and approved of the samples, and that thereupon Meherban Lallubhai sent notes to him (defendant 2) whenever he required bamboos, asking him to send bamboos of the particular number. He adds, "Lallubhai says that these bamboos were purchased for public use and that the moneys thereof are to be taken from the lady and paid." Exhibit 43 is a notice, dated 7th November, 1898, from the plaintiffs to defendant No. 2 in which the plaintiff says :

He stated the goods were required under the orders of his honour the Assistant Collector and of Rao Sahab the Mamlatdar.....You sent for the goods, having assured us that you would get us the moneys thereof from Government.....Since I do not get any relief from Government I hold you too liable. You should within four days from the receipt of this notice show cause why you too should not be sued for the said amount. If you fail to write a reply accordingly, rest assured that I will file a suit against you too, reserving my right as against Government itself or any other party whatever.

Exhibit 44 is the reply thereto of the second defendant dated 8th December, 1898. He writes :

I did not send for the said goods for my private use and likewise there is nothing payable by me in connection with the same. In this connection I hear that probably Bai Ganga, a resident of Rander, widow of Moti Dulabhdas, sent for the said goods, and gave to the poor people by way of charity. If it be so, you should seek relief against her in a Civil Court.

Now these statements made by defendant 2, two or three years before his deposition was made in the present enquiry, are admitted by him to be true and are quite inconsistent with his story that he ordered the goods by the orders of Mr. Seddon and the Mamlatdar; and there can be no doubt whatever that his previous statements, agreeing as they do with the facts as set forth in the correspondence (Exhibit 92), were correct, and that the story now told by him is not worthy of belief. It is improbable that he knew nothing of the Bai Ganga fund. There is no evidence of a satisfactory character throughout the case to show that any officer of Government, either expressly or by

implication, authorised defendant No. 2 to purchase these goods and to pledge the credit of Government, or that any officer was authorised to grant such authority. The fact that the Assistant Collector and the Mámlatdár took the trouble to personally examine the goods in order that the charitable fund might be expended to the best advantage, and that the Mámlatdár took the trouble to count the bamboos and compare them with the samples, or that the Mámlatdár superintended the hutting arrangements of the poor people who were unhoused by reason of the operation of the plague rules, is no evidence whatever of ratification so as to bind Government. The Mámlatdár says :

Lallubhai told me Bai Ganga had promised to contribute Rs. 1,000. If she did not contribute the money it would have been necessary to provide the Bhandáris and Machis with bamboos. It was my duty as Government servant to provide these persons with bamboos. It would not have been my duty to provide the bamboos without first making a report to my official superiors.

It was contended by Mr. Rao that defendant 2 not having bought the goods for himself, he must have bought as the agent of somebody, and the evidence shows he was the agent of Government. Now, an agent is a person employed to do any act for another or to represent another in dealings with third persons. The authority of an agent may be express or implied. No evidence is cited to show that defendant 2 was expressly authorised by Government in this behalf, nor are there circumstances existing from which an implied authority can be inferred. It was clearly the duty of the plaintiffs to make enquiries whether defendant 2 was authorised to pledge the credit of Government. It was further contended that a public agent does not bind himself as a private agent does, and that a public officer must be presumed to be contracting on behalf of Government. No authority is cited for such a contention, which would be a most dangerous doctrine to adopt. An agent contracting on behalf of Government is not personally bound by such a contract, but it must be shown that he was acting within the scope of his agency. A Government officer as such has no express or implied authority to pledge the credit of

1902.

---

 SECRETARY  
 OF STATE  
 FOR INDIA  
 2,  
 SULEMANGI.

1902.

SECRETARY  
OF STATE  
FOR INDIA  
v.  
SULEMANJI.

Government for all matters necessary to the performance of the duties imposed on him by Government. It is quite clear that ratification of the acts of a Government officer done beyond the scope of his authority cannot be made by an unauthorised agent; it can only be made by Government itself or with its full knowledge: *Collector of Masulipatam v. Cavalry Venkata Narain.*<sup>(1)</sup> There is no evidence in the case to show that Government has either directly or by implication ratified the acts of any of these officers acting in excess of their authority: *Beer Kishore Sahoy v. The Government of Bengal and others.*<sup>(2)</sup>

It has been contended by Mr. Rao in this appeal that there is no evidence to prove the existence of the charitable fund organized by Lallubhai, the Patel of Rānder, to which Bai Ganga contributed. The correspondence, Exhibit 92, was relied on by the plaintiffs and filed in the case on their behalf and the Māmlatdār was examined as to its contents. He says he derived his information from Lallubhai, who is unfortunately dead and cannot be called. But there is independent evidence. Chhaganlal, who is examined as a witness, says in his deposition that he had heard by report that Bai Ganga had given money in charity. He admits, moreover, that he made the statement, put in as Exhibit 90, before the Patel and Talāti of Rānder. He there says :

Bai Ganga agreed to give Rs. 1,000 for the purpose of supplying by way of charity to poor people bamboos, coir, &c.....I know that a portion of the said amount was given by the said Bai Ganga and a portion remained to be given. I know about Bai Ganga's having agreed to give the said Rs. 1,000 from what she herself told me.

Purshotamdas says :

I gave some tiles to poor people. I got the money for the tiles from Bai Ganga. Patel Lallubhai told me to give tiles to people who brought chits and he settled the price with me. I have been paid by Ganga Bai for the tiles I supplied.

This evidence leaves no doubt that there was such a fund, and that Lallubhai, by whom, according to Makan's own report, chits were sent to him for the bamboos as they were required,

(1) (1861) 2 Cal. W. R. 61.

(2) (1872) 17 Cal. W. R. 497.