mises, the property of the said J. Bodry, but the Official Assignee claimed to be in possession on behalf of the creditors of the said J. Bodry.

It also appeared that prior to the seizure by the bailiff, J. Bodry had filed his petition of insolvency, but that no vesting order had been sealed, signed, or deposited with the Assignee; and that no schedule had been filed or presented by the said insolvent, nor was there then filed or presented any order or petition for time to file the schedule.

Mr. Hyde, in support of the application, contended that the 6th Section of the Insolvent Act made it necessary for the insolvent, at the time of presenting his petition, to present his schedule also, or to obtain further time from the Court in which to file it; that neither of those alternatives having been complied with in this case, the vesting order made therein was invalid; and that a distress made between the filing of the petition of insolvency, and the making of the vesting order, was valid as against the Official Assignee.

The effect of the vesting order, made under Section 7 of the Insolvent Act, is to vest all the property in the Official Assignee; and at Common law, a distress made on the property, while left on the premises, would be a perfectly legal one. But by Section 22 of the Insolvent Act, it is enacted that, "after the making of the vesting order, no distress shall be made for rent due before the vesting order;" the section does not preclude a distress being made between the filing of the petition and the making of the vesting order. The words of the English Act, 7 & 8 Vict., c. 96, s. 18 are different; there the filing of the petition is the time fixed, after which no distress levied would be valid. If the Legislature had intended the Indian Act to be the same, the same words would have been introduced as in the English Act. Such distress was valid, even though no sale had taken place under it.—*Wray* v. *The Earl of Eyremont* (1), a case decided on the Insolvent Act, 7 George IV, c. 57, s. 31.

Mr. Ingram, for the Official Assignee, contended that the distress having been made after the filing of the petition, was invalid. Section 22 of the Insolvent Act makes it invalid if made after the vesting order; and by Section 7, the filing of the petition and the making of the vesting order are contemporaneous, and date from the same time; the words are :—"upon the filing of any such petition as aforesaid, it shall be lawful for the Court, and the Court is hereby authorized and required to order, &c.;" and the vesting order must be taken to be made and operative when delivered orally by the Court, and not only after the time occupied in writing it and signing and sealing it.

Mr. Hyde in reply.

Norman, J.—The vesting order must be deemed to have been made, at the time when it is given by the Court, and not from the time when it is possibly drawn up. The distress, having been made after the time when the vesting order was thus made, was invalid. The application is refused with costs.

Application refused.

Attorney for Applicant : *Mr. Fink.*

Attorneys for the Official Assignee : *Messrs. Carruthers & Co.*

(1) 4 B. & A., 122.

B. L. R. Vol. V, p. 312.

(Privy Council.)

The 1st March 1870.

Present :

The Right Hon'ble Sir James Colvile, Sir R. Phillimore, Lord Justice Giffard and Sir Lawrence Peel.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (*Defendant*),

versus

MUSSAMUT KHANZADI (*Plaintiff*).

On Appeal from the High Court, North-Western Provinces.

Acts of Government Officials Binding Government—Act IX of 1859.

Where, by a decree of the Special Commissioner's Court, established under Act IX of 1859, a decree was made directing property to be made over to a claimant, the proceedings of officials of making over that property were, when followed by a suit against Government to obtain possession of a portion of that property, in which suit the Government

raised no question as to the propriety of the decree, or of the making over the bulk of the property under it, *held* to bind the Government as to the right of the decree holder to the property.

In 1852, one Sheikh Mahomed Abdulla Khan died, leaving a son, Abdul Latif Khan, and two daughters, Bibi Mariam and the respondent. To the former, Abdul allotted five villages as her share of their father's estate; but as he made over nothing to the respondent, she in April 1857 sued for her share.

Abdul was, pending the suit, convicted of rebellion, and the property was confiscated under Act XXV of 1857.

The respondent in 1860 applied to the Court of Special Commission, appointed under Act IX of 1859, for a revival of the suit against Government, so as to establish her right to the share of her father's estate. The Court refused the relief prayed, but gave the following order:—"Further, a decree is passed assigning to the plaintiff for food and maintenance five villages at, &c., equal in area, Government assessment, and income to" the villages given to Bibi Mariam by her brother. They then ordered possession to be given with mesne profits from the date of the action.

The Government authorities then determined to allow her to select the five villages, subject to approval of the Revenue authorities; and she having done so, the Collector held a proceeding as follows:—

"Copy of a letter of the Sudder Board of Revenue was received, dated the 28th July, as per docket No. 361, bearing date the 3rd August of the same year, sanctioning the grant of mauzas (naming them) bearing a jumma of rupees 2,476 4, agreeably to a decree of the Court of Special Commission to Mussamut Khanzadi Begum.

"It is ordered that the tehsildar be directed to put the aforesaid lady in possession, and thereafter forward the usual *dakhilnama*, and that her name be entered in the Government papers as proprietor. The tehsildar is also to make the usual demands from her for the payment of Government revenue."

She was then put in possession, received the mesne profits from the date when Government had entered into possession, and gave *dakhilnamas* on the 14th August 1860. There was one little portion as to which the Collector doubted its belonging to the property, whereupon the respondent brought a summary suit for possession in execution of the order, and the Judge decreed in her favor.

The respondent then applied to the authorities for the mesne profits between the date of her instituting the suit, until Government took possession according to the decree. The Sudder Board of Revenue demurred to this payment; and in a letter of 7th October 1861 to Government, expressed a doubt as to whether the decree of the Commissioner's Court was legal. To this the Lieutenant-Governor replied, saying that the decree was not one which the Commissioner's Court had power to make; they having dismissed her suit as claiming a share of the estate, but granting her a maintenance for which she had not sued. His Honor also found fault with the district officers of Government in carrying out the decree, as the property, the respondent was put in possession of, was more valuable than she was entitled to, and ordered her to be dispossessed, and other villages of the same value, as those given to her sister, to be given to her. He also refused to pay the balance of mesne profits. The Collector ousted her in January 1862.

She then instituted a summary suit to enforce the decree, but the Judge dismissed it, which dismissal was on appeal affirmed, on the ground that the decree did not appear to have been properly carried out.

She then brought this suit to establish her right to the property, and for possession and mesne profits.

The Government, by way of defence, set up a case that the villages were made over to the respondent, subject to the confirmation of Government which had not been obtained, a defence which the Judge considered to be established.

On appeal, the High Court (1) adopting the principle that the acts of a Government officer acting within his authority binds the Government (2), reversed the decision.

The Government now appealed to Her Majesty.

Mr. Forsyth, Q. C., and *Mr. Merivale* for the Appellant.

Sir Roundell Palmer, Q. C., and *Mr. Leith* for the Respondent.

The Judicial Committee, without calling on the counsel for the respondent, gave the following judgment:—

(1) Sir Walter Morgan, C. J., and Mr. Justice Pearson.

(2) Collector of Masulipatam *v.* Cavali Venkata Nurrainapah, 8 Moo. E. I. Ap., 554.

Their Lordships are of opinion that there is no ground whatever for this appeal. The respondent's title rests upon the decree of the Commissioners, and it has not been alleged on the part of the Government, in their pleadings or otherwise, that that decree was other than a proper and binding decree; their Lordships certainly see no reason why it should not be binding; the plaint on which it is founded is for actual possession of the land, but it is quite consistent with that plaint that a decree should be made, falling short of the extent to which the plaint went. The decree is in these terms:—"A decree is passed, assigning to the plaintiff for her food and maintenance five villages in Zilla Bulandshahar, equal in area, Government assessment, and income, to Mauzas Lukhwali and Subi, and Ramghar and Dowlatabad of Pergunna Siana; and Siorampur, Pergunna Achar, which were given in gift to Bibi Mariam, agreeably to a deed of gift dated the 22nd of July 1854. This decree is to be carried into execution, and the plaintiff put into possession of the villages; and she is, moreover, to receive the mesne profits from the date of action brought, up to the date of being put into possession."

At the date of the decree, the Government was in possession, and the proper person to give possession, and to carry out this decree, was the Collector. Their Lordships cannot at all come to the conclusion that the regulation or the circular to which reference has been made in any way affected the authority of the Collector (1). If the matter stood simply on the act of the Collector, their Lordships would hesitate long before they could accede to the view which has been advanced on the part of Government; but on turning to page 27 of the Appendix (2), what actually appears is,—that there were proceedings in the Civil Court founded on the decree—that the Government appeared in the Civil Court, raised no objection whatever, except as to a certain particular portion of the land of which possession was given, and that there was a decision by the Civil Court against the Government; consequently, the respondent's title was confirmed by the decree of a competent Court.

(1) Circ. Ord., Rev. Dep., N. W. P., No. 293, 10th April 1858.

(2) This was the summary suit to recover the portion of the land which the Collector doubted being included in the land assigned to the respondent.

For these reasons their Lordships are of opinion that the Government was much in the wrong in taking possession as they did, and that this appeal never ought to have been brought. Their Lordships will, therefore, humbly advise Her Majesty that it be dismissed. The dismissal should be with costs.

Appeal dismissed.

Solicitors for Appellant: *Messrs. Lawford and Werburham.*

Solicitor for Respondent: *Mr. Wilson.*

B. L. R. Vol. V, p. 321.

(Appellate Civil.)

The 10th February 1870.

Before Mr. Justice Bayley and Mr. Justice Markby.

BHAWABAL SING *(Defendant)*,

versus

MAHARAJA RAJENDRA PRATAP SAHOY BAHADUR *(Plaintiff)*.*

Review—Grounds on which it may be applied for.

On application for review of judgment, *held* a party applying for a review of judgment must show that there is good and sufficient cause for granting the review before he can be heard to argue that the decision is erroneous. In so showing cause *(first)* no point can be raised, which has been already discussed and decided on the original hearing of the appeal; and *(secondly)* no new point, which has not been raised at the hearing of the appeal, can be argued on the application for review.

On the 6th July 1870, the plaintiff applied for a review of the above judgments upon the following grounds, which were filed with the petition for review:—

1. According to several precedents of this Honorable Court, it has been distinctly ruled that the benami system being well known and recognized in this country, it is open to all persons claiming a beneficial

* This case has also been reported in XIII W. R., p. 157 but the application for a review of the judgment passed by the High Court on appeal with the arguments of Counsel & the judgment of the High Court *on such application*, as given in the Bengal Law Reports, have been omitted from the Weekly Reporter. They are therefore reproduced here from the Bengal Law Reports.