ORIGINAL JURISDICTION. (*a*)

GHULÁM MUHAMMAD NAIAMUT KHÁN *against* DALE and another.

By Mhuammadan law *semble* the dominion of the sovran is equally absolute and uncontrolled over all his possessions of every kind.

But *quaere* whether all his possessions are necessarily subject to the ordinary rules of inheritance and partition among descendants.

A reigning Muhammadan prince may possess property held *jure coronae* as well as property acquired by some other title.

1863. *February* 24, *March* 27.

THIS was a special case raising questions respecting the validity and extent of gifts made in 1845 by the last Nawáb of the Carnatic to the plaintiff, (the daroghah of his kitchen) of a garden called 'Ali Bágh situate near Arcot and a garden called Amir Bágh and certain other lands situate at Oraiyur near Trichinopoly, which questions it was agreed should be adjudicated upon by the High Court, provided the Court should be of opinion that the premises were not public or state property, but the private and personal property of the Nawáb in his private capacity.

So far as it is necessary to state them, the facts agreed upon for the purposes of the special case were these. The Nawábs of the Carnatic were independent sovereign Princes in alliance with the British Government. They had palaces at Trichinopoly and Arcot and *baghs* or gardens attached thereto, including the two gardens and lands the subject of this litigation. At the time of signing the treaty of 1781, these were part of Wálájáh the then Nawáb's territorial possessions, and were not included in the exceptions contained in article 3 of the treaty of 12th July 1792. They were, however, included in the districts mentioned in schedule No. 2 to the same treaty, the management of which districts the Company was to assume in case the Nawáb's share should not be paid at the times therein specified. Nawáb Wálájáh died on the 13th October 1795, and was succeeded by his son, Umdut ul-Umra, who died on the 15th July 1801—when, on discovery of correspondence of the Nawábs Wálájáh and Umdut with Haidar and Tipu, the East India Company seized all the Na-

(*a*) Present : Scotland, C. J. and Bittleston.

1863. *February* 24, *March* 27.

wáb's possession, including the gardens and lands in question. Umdut ul-Umra's eldest son, "Ali Husain, was not allowed to succeed him: but, on the 31st July 1801, a treaty was entered into by the East India Company with Azim ud-Daula, nephew of Umdut ul-Umra, under which he became the Nawáb of the Carnatic. In June 1802, the gardens and lands were, at the desire of the Nawáb Azim ud-Daula, restored to him by the Government of Madras, and from that time have descended in succession to his successors. On the restoration of the premises, the Nawáb appointed officers to manage them, who forwarded their accounts to his Diwán-i-mahál (Revenue Board). The collections from these gardens were inserted as "revenue" in the accounts of the Diwán-i-mahál from 1802 to 1845-6. From that time no entries appear in such books, save one of rupee 1-10 for 26 cocoanut trees sold in 1855-6, but the rents or revenues were remitted to the Diwán of the Carnatic Darbár at Madras. On the 3rd August, 1819, Ázim ud-Daula (the nephew) died, and was succeeded by his eldest son Ázim Jáh, who died on the 13th November 1825, and was succeeded by his son, Ghulám Muhammad Ghaus, the last Nawáb. Ázim ud-Daula left five widows, six sons and four daughters, but the gardens and lands descended to his eldest son and successor. Azim Jáh left two widows, one son and two daughters, but again the property descended to his son and successor. The 26th and 27th paragraphs of the case were as follows:—

"26. The Nawábs of the Carnatic kept the accounts affairs of the State perfectly distinct from their private and personal transactions. Separate and distinct kachhahris or departments were kept in respect of each. The kachhahris for conducting the accounts and affairs of the State were called "the Darbár," "the State" or "the Sarkár" kachhahris, and were from fifteen to twenty in number, while that for conducting his own private or personal affairs was called "Jeb-i-khás departments." Sums were transferred monthly to the Jeb-i-khás, from other departments for the private and personal purposes of the Nawáb; and although the servants of the Jeb-i-khás were all (equally with those of the departments) Sarkár servants, yet the Darbár or State departments never took cognizance of the expenditure

1863. *February* 24, *March* 27.

of any sum transferred to the Jeb-i-khás; while, on the other hand, the whole of the other departments were all under the general control of the Diwán of the Durbár, and the entries in the accounts of the Durbár kachhahris were confined exclusively to Sarkár matters."

"27. The daftars of the Diwán-i-mahál, as also those of the Diwán of the Carnatic Darbár referred to in this case were "Darbár," "State" or "Sarkár" accounts, and were in no way connected with the Jeb-i-khás departments. No entry in respect of the rents or revenues of the gardens and lands in dispute was ever made in the daftars of the Jeb-i-khás department."

The Nawáb died on the 7th October 1855, and on the 21st September 1858 the first defendant, Mr. Dale, was appointed the Receiver of the Carnatic property under Act XXX of 1858.

Branson (*Arthur Branson* with him) for the plaintiff.

The Advocate General, *Norton* and *Mayne* for the defendants, the Receiver of Carnatic property and the Secretary of State in Council for India.

The Court took time to consider, and on the 27th March the following judgment was delivered by

BITTLESTON, J.:—The first question which we are called upon to answer in this case is, whether the gardens in question or any of them were public or state property of the Nawábs of the Carnatic since the year 1800, or their private property.

This, it seems to us, is a question of fact, in disposing of which we cannot derive any assistance from the consideration, presented by Mr. Branson, that the Muhammadan law recognizes no distinction between the private and state property of the Sovereign.

If by this he meant that the dominion of the Sovereign is equally absolute and uncontrolled over all his possessions of every kind, the proposition is probably correct.

The absolute sovereignty of the Prince, would doubtless in the view of a Muhammadan lawyer, carry with it the idea of the superiority of the Prince to all law, the Prince himself being a living law, as it was expressed in the Roman Law (Nov. 105) "*Omnibus imperatoris excipiatur fortuna, cui*

1863. February 24, March 27.

et ipsas leges Deus subjecit, legem animatam eum mittens hominibus." Indeed, the right of the Sovereign to alienate the hereditary possessions of the Crown was formerly recognized by the law of England and freely acted upon by English Sovereigns (*a.*)

But if it be meant that all the possessions of a Sovereign Prince—his gardens and palaces, his state-jewels, his jewelled throne and all the appanages of his royalty—are, according to Muhammadan law, necessarily subject to the ordinary rules of that law with regard to inheritance and partition among his descendants, it would require very high authority and many well established precedents to support the proposition. However, be the right of the Prince over the property which he holds, however acquired, ever so absolute, it is clear that in the case of any Sovereign Prince there may be in his possession certain property which he holds as the reigning prince "jure coronae," and other property which he has acquired by some other title, and from the statements in the case as well as the recital in Act XXX of 1858, it appears that the Nawábs of the Carnatic had property of the nature of state or public property as distinguished from private property.

The only question in this case is, whether in fact the property claimed by the plaintiff was of the former or the latter kind. Now it appears that the gardens in question were attached to the palaces of the Nawábs and were kept and retained under the immediate enjoyment of the Nawábs themselves; that on the death of the Nawáb, Umdut ul-Umra, the East India Company took possession of these gardens with the other possessions and property of the said Nawáb;—that the course of succession was then altered, and that instead of the son of Umdut ul-Umra, his nephew Ázim ud-Daula was placed on the masnad by the East India Company under the provisions of the treaty of 1801. It further appears that in the following year, the said gardens were restored by the Government of Madras to the Nawáb, Ázim ud-Daula, from whom they have descended in succession to his successors.

It appears to us difficult to conceive any circumstances stronger than this, to show that the possession of the gar-

(*a*) Before 1 Ann. stat. I. c. 7.

1863.
February 24,
March 21.

dens by Azim ud-Daula, and his successors has been a possession and enjoyment incident to, and connected with the sovereignty of the Carnatic, and not a possession by them as private persons. Accordingly we find that though the Nawab Azim ud-Daula left widows, sons and daughters, and his successor Azim Jáh left widows, and daughters, as well as one son, yet no division of this property took place on either occasion amongst the surviving relations, but the whole descended to the successor

It was observed by Mr. Branson that the other relatives may have received an equivalent for their shares ; but there is no statement to that effect in the case ; and we cannot infer that it was so.

The mode of making the accounts and of making the entries therein respecting these gardens set forth in the case is altogether favourable to the same view. We refer to paragraphs 26 and 27 of the case, which state, that the Nawábs kept the accounts and affairs of the State property distinct from their private or personal transactions. That the kachharis or departments, for the former were called the Darbár, the State, or the Sarkár kachharis ; while that for the other was called the Jeb-i-khás department, the two being quite distinct, and the former being entirely under the control of the Dawán of the Darbár : and that the entries relating to the gardens in question were made in the daftars of the Diwán-in-mahal belonging to the former, and not in the daftars of the Jeb-i-khás. We are unable, therefore, to come to any other conclusion than that the property in question was public or state property, and not the private or personal property of the Nawáb. This property is now with the consent of Government in the hands of the Receiver appointed under the Act XXX of 1858. But his taking possession under the authority of Government being asserted as an act of state, and the submission of Government to our jurisdiction being expressly limited to the event of our being of opinion, that the property in question was not public or state property, but the private or personal property of the late Nawáb in his private capacity—we are precluded from further entertaining the case or expressing any opinion on the other question raised thereby.

NOTE.—See *Adv. Gen. of Bombay* v. *Amerchund* (cited in a note to *Eliphintione* v. *Bedreechund* 1. Knapp. 329.)