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It remains now to say one word with reference to the remarks of the learned Judge on the conduct of the assessors in this case. The learned Judge observes in his judgment in two places that the assessors have not given their honest opinion in this case. We do not think that this remark was warranted by the mere fact of the assessors having been of opinion that the accused was innocent. That opinion, no doubt, was an erroneous one. The assessors were certainly wrong in their judgment when they said that the guilt of the accused had not been made out. But between error of judgment, however gross, and moral obliquity, the difference is wide, and a Judge must have very strong reasons before he can be justified in making remarks impugning the moral character of persons associated with him in the trial of cases. We think it due to the gentlemen who acted as assessors in this case that we should say that much as we condemn their judgment, we see no reason to condemn their character for honesty.

H. T. H. *Conviction upheld.*

PRIVY COUNCIL.

P. C.* 1894 *November* 1, 2 & 6.

SAYAD MUHAMMAD (PLAINTIFF) *v.* FATTEH MUHAMMAD AND OTHERS (DEFENDANTS.)

[On appeal from the Chief Court of the Punjab.]

Pleadings—Object of pleadings—Issue not in terms fixed, but afterwards raised—Appointment of the religious superior of a Mahomedan institution—Custom as to such appointment—Undue influence how indicated.

The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued, in order that each may bring forward evidence appropriate to the issues.

The claim here made was that the last preceding sajjadanashin, acting according to the custom of the institution of which he was the religious superior and manager, had appointed the plaintiff to succeed him on his decease. The finding of the first Court that he had this power, by the custom, was affirmed on this appeal.

As to the fact of the appointment, it was not apparent at what stage of the suit the question had first been raised whether the deceased had been of

* *Present*: LORDS HALSBURY, HOBHOUSE, SHAND and DAVEY, and SIR R. COUCH.

sound and disposing mind at the time of making it. The first Court found that he had been of sound mind at the time; but the Chief Court on appeal reversed this finding, and added that he had been, in their opinion, unduly influenced. As these questions, though not formally stated in the issues, had been sufficiently open upon the proceedings to give to each Court a right to form a judgment upon them, the Judicial Committee decided which was correct; and affirmed the finding of the first Court as to the soundness of mind of the deceased.

Upon the question of undue influence, which was an issue different from that of the mental capacity of the deceased in appointing, their Lordships found no evidence of either coercion or fraud, under which such influence must range itself, citing *Boyse* v. *Rossborough* (1). They found no evidence of the exercise of any influence. The decision of the Chief Court was, therefore, reversed; and the decree of the first Court, in favour of the plaintiff, was maintained.

APPEAL from a decree (10th April 1890) of the Chief Court, reversing a decree (28th April 1888) of the District Judge of Montgomery.

This suit asserted the plaintiff's right to the sajjadanashini, or headship, of an ancient khangah, or Mahomedan religious establishment at Pak Pattan in the Montgomery District, valued, with the property attached thereto, at a lakh and a half of rupees. This was dedicated several centuries ago, in memory of its founder Baba Farid-ud-din, whose tomb was there. The principal questions were: First, whether the recently deceased sajjadanashin, who managed the institution, had the right of appointing in his lifetime a person to be his successor, who might be chosen by him from among the founder's kindred, excluding another nearer kinsman upon whom the headship and management would otherwise have devolved. Secondly, whether, as a fact, the plaintiff had been appointed by the deceased, who was paralytic, while the latter was still of disposing mind and capable of such an act.

The appellant, then aged eleven years, brought his suit on the 25th May 1886, by his next friend, and as a pauper (section 401 of the Code of Civil Procedure), claiming to be declared the duly appointed sajjadanashin, and to have a decree for the possession of the village lands, buildings, and moveable property scheduled with the plaint. The main ground of his title was his alleged nomination by the

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preceding gaddinashin, the Diwan Pir Alla Jowaya, deceased, on the 24th December 1884, of whom he was the grandson, being the son of the Diwan's daughter. The defendant was Abdul Rahman, uncle of the deceased Diwan, and his nearest agnatic relation. This defendant, on the fourth day after the death of the late Diwan, obtained possession of the gaddi, and the properties of the institution. The parties were of the chishti kaum, or tribe, and were described as descended from Baba Farid-ud-din, Shakarganj, (name of the sugar market), after whom, down to the Diwan Alla Jowaya, there had been twenty-three occupants of the gaddi which the latter had occupied for forty years. It was alleged that he, having no son, had appointed to be his successor his daughter's son, whom he had associated with himself for some months before his death. It was also alleged that this appointment was attested in a document, filed with the plaint, purporting as follows :—

"Deed of adoption executed by Diwan Sheikh Pir Alla Jowaya on 29th July 1884, corresponding to 5th Shawal 1301 Hijri.

"I, Diwan Sheikh Pir Alla Jowaya, son of Sheikh Qutb Din, caste chishti, sajjadanashin of Pak Pattan, do hereby declare that as my son Sheikh Muhammad Akbar has died by the will of God, and I am left sonless, and as this transitory life is unstable, I, while in the enjoyment of my right senses, have adopted Sheikh Sayad Muhammad, son of Sheikh Fatteh Muhammad, my own daughter's son, and have associated him with me, and have with my own hand performed the ceremony of dastarbandi (putting on turban) in token of my adopting him as my son in presence of respectable persons of the town of Pak Pattan. The aforesaid Sheikh Sayad Muhammad is thus made my heir and owner of my property. After my death the entire property, moveable and immoveable, and the sajjadanashini of the holy shrine of Kutab-ul-Aktab, Farid-ul-bar-wal-Bahr Hazrat Baba Farid-ud-din, Masud Ganj Shakkar (may God throw light on his tomb), together with the property attached to the above sajjadanashini, shall belong to the above adopted son. I have already executed a will for the maintenance and other expenses of my wives. According to that will my wives shall remain in possession of the property noted therein during their lifetime, and no one shall interfere with that arrangement. It will be incumbent on my adopted son to dutifully render service to my wives, and thus obtain a reward in both worlds. After their deaths their property specified in the will shall be inherited and owned by my aforesaid adopted son, and no relative and heir of mine shall have any claim to it. These few lines have therefore been written by way of a deed of adoption, in order that it may serve as an authority.

"Dated 29th day of July 1884, corresponding to 5th Shawal 1301 H. Written by Ghulam Mohy-ud-din, Kazi.

Seal of Diwan Sheikh Pir Alla Jowaya, sajjadanashin, executant of the deed."

This bore the signatures or seals of forty-three witnesses, residents of Pak Pattan and neighbouring places.

The defence of the principal defendant, Abdul Rahman, was that there had been no appointment of the plaintiff to be sajjadanashin, and that the deceased Diwan had no right to appoint a successor, or power to alienate property belonging to the endowment. It was also part of the defence that no right of inheritance passed by the alleged adoption of Sayad Muhammad.

The plaintiff, however, did not long insist on the assertion of a title by adoption. This was abandoned, it being admitted that no right of succession, as a consequence of adoption by the deceased, could be supported by Mahomedan law. The plaintiff took his stand on the custom of the institution to give each sajjadanashin the power to appoint his successor, within certain limits of kinship to the founder.

In the District Court several issues were fixed, of which some were no longer in dispute when the appeal to the Chief Court was filed. Those that remained material were to this effect: 1st, whether the late Diwan was empowered by the custom of the institution to appoint his successor; 2nd, whether there was upon this power, if exerciseable, any restriction, limiting the choice to agnatic descendants of the founder, and preventing preference by the appointing superior of a more remote kinsman over a nearer one, or of a descendant through a female over one in the male line; 3rd, whether the late Diwan had effected the appointment of the plaintiff.

The District Judge, the Deputy Commissioner of the District, as to the customary authority of the sajjadanashin of this and other similar institutions examined, among many other witnesses, seven from Haiderabad in the Deccan.

In regard to the late Diwan's power to appoint his successor the Judge referred to a printed copy on the file of a book called the "Jowahir Faridi" professing to record chishti customs in

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respect of this institution. This had been printed in 1884, and there was a manuscript copy of the book on the file written in the Hijri year 1172 (A. D. 1755). The printer was called, and stated the accuracy of the printed copy, and the source of the manuscript supplied by the late Diwan. Witnesses on both sides declared this to be trustworthy. The manuscript was written in Persian. The Judge understood the meaning of the passages cited, which he partly transcribed in his judgment, giving the translation here and there. He found that the extracts showed clearly that the succession to the headship was regulated by the spiritual head for the time being. He also recorded oral evidence to the same effect. On this, he decided that there was no reasonable doubt that "Jowahir Faridi" was "an authoritative compendium of the history and customs of the descendants of Baba Farid, who had held the office of Diwan of the Pak Pattan shrine." Other books were also referred to.

In support of the probability that the custom should exist reference was made to the authorities indicating that a mutwali might entrust in his last illness the tauliyat to another person. The Judge found that the late Diwan, having the right to pass over a nearer collateral relation in favour of another whom he might select, had appointed the plaintiff. Long before the nomination of the latter, the Diwan had expressed his intention to the Haiderabad group of witnesses of appointing his grandson, if he should be directed, by the spirit of Baba Farid-ud-din, so to do. The nature of a paralytic seizure from which the Diwan had suffered was considered, and the Judge's conclusion was thus stated :—

"There is evidence on the record that long before the nomination was made, the Diwan had expressed his intention to make it; that he was attached to his grandson; and that he was averse to Abdul Rahman. After considering the evidence, I think that the defendants have failed to prove that, when the nomination was made, the Diwan's mental faculties were impaired, or that he was unable to know what he was doing, or that he made it otherwise than of his own free will. That the nomination was made is clear from the deed of nomination for the dastarbandi ceremony, in which the plaintiff was invested with the pagri, with appropriate rites and ceremonies; from the entry made in the due course of business by Mohan Lal, patwari, in his diary, dated 30th July 1884; from the evidence of several witnesses

who proved that, after the nomination, the boy, Sayad Muhammad, was continually associated with the Diwan, and went with him to the opening of the "Gate of Paradise" ceremony in October 1884; and by the fact that, after the dastarbandi ceremony, various letters were sent to the leading supporters of the shrine announcing the fact, and congratulatory messages were received from them. If, as I have held, the Diwan was in possession of his faculties when the nomination was made, it is not unreasonable to suppose that he was fully aware of, and acquiesced in, the measures taken to make the nomination widely known. On the evidence, I then decide that the late gaddinashin did appoint the plaintiff, Sayad Muhammad, as his successor to the gaddi."

On appeal to the Chief Court, the decree in favour of the plaintiff, which followed the above judgment, was reversed, and the suit was dismissed. This was on the ground that the late Diwan, (although, so far as the execution of the document of the 29th July 1884 went, he had executed it) was not, at the time, capable of the volition, or judgment, required by the act of nominating a successor to take the place of the person who would otherwise obtain the succession. The Judges were unable to find that he was capable of realizing that, by diverting the succession, he was doing an act which would almost certainly lead to strife and litigation, but yet resolved on incurring these evils for reasons which he considered sound. They were further unable to feel satisfied that "he came to this resolution unbiassed by undue influence." They could not say affirmatively that he appointed the plaintiff his successor when he was in full possession of his faculties, and free from the influence of those about him who wished that the plaintiff should succeed him.

Whilst the appeal to the Privy Council was pending Abdul Rahman died, and Fatteh Muhammad, his son and heir, was put upon the record as respondent in his father's place.

On this appeal,—

Mr. *M. Crackanthorpe, Q.C.*, and Mr. *Theodore Ribton*, argued that the decree of the Chief Court should be reversed. The fact of the document having been executed, attesting the nomination having been established to the satisfaction of the Chief Court, and that Court having based its judgment on the state of the Diwan's mind, it was necessary, if that judgment could be supported, that there should have been evidence, (and to produce that evidence would properly have been incumbent

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on the defence) that the Diwan's faculties had been impaired to such a degree that he could not nominate his successor. This had not been shown at all; and as the whole evidence was now upon the record, irrespectively of the onus of proof, the result was that strictly according to that evidence the Diwan's ability to nominate had been shown to have remained, notwithstanding the paralysis which had effected one-half of his body. Reference was made to the medical evidence on the record, and to that of witnesses who were about the Diwan during the last few months of his life, as well as to that of witnesses to the act of appointment. It was argued that the judgment of the District Judge was correct, both as to the authority of the Diwan to appoint, and as to his competence to select his successor, within the permitted limits. The defence of undue influence had not, at any stage of the proceedings, been distinctly raised. The burden of sustaining this defence was altogether upon the defendants; and it was in no way necessary for the plaintiff to give evidence in disproof of it. There was no evidence whatever of undue influence on the part of any one over the Diwan. Of the reasons given in the judgment of the Chief Court for their conclusion, those which were drawn from the tehsildar's refusal to register the document of 29th July 1884, and from the absence of any application to the Deputy Commissioner to hold an inquiry as to the state of mind of the Diwan, were derived under a mistaken view. The document did not require registration, and it was by no means a clear probability that the Deputy Commissioner would have interfered.

Mr. *R. V. Doyne* for the respondent argued that the judgment of the Chief Court was right on its result. The document of the 29th July 1884 was, on its true construction, not an attestation of the exercise of a power by the Diwan to appoint a successor, but was a declaration that an adoption had taken place. If, moreover, the finding was right that the document was duly executed by the Diwan, and if he had authority to nominate his successor, still it was open to question whether it was possible to consider that document to be evidence of such a nomination. It amounted to nothing more than an assertion of an attempt to adopt —an impossibility on the Diwan's part, according to Mahomedan law; an attempt to do an act by which no right of succession

would arise. Adoption failing, the document had no operation to confer a right. On the other hand, there was no doubt that on the 27th December 1884, the late defendant Abdul Rahman had obtained possession of the gaddi, with the approbation of the general body of the worshippers at this khangah. In regard to the main dispute in this case, the Diwan's state of mind at the time of the alleged appointment, it was argued that the Diwan was not in the full possession of his senses and faculties, and was not free from undue influence, or from liability to be unduly influenced, at the time when he was alleged to have made the appointment. Also the evidence had not proved a custom empowering the Diwan to appoint his successor.

Counsel for the appellant were not called upon to reply.

Afterwards, on the 6th November, their Lordships' judgment was delivered by

LORD HALSBURY.—This is an appeal against a judgment of the Chief Court of the Punjab, reversing a judgment of the District Judge of Montgomery, by which it had been ordered that the appellant, who was the plaintiff in the suit, should be appointed gaddinashin of the shrine of Baba Farid Shakarganj, and should get possession of certain property attached thereto.

The forms of procedure in the suit are not very clearly stated, but their Lordships think it must be assumed that the questions which have been in debate before them were in debate before both the Courts below. It does not quite appear at what period of the suit the question of the sound disposing mind of the Diwan, Pir Alla Jowaya, was raised, nor is it very material, excepting in one aspect. Whatever system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued, in order that they may have an opportunity of bringing forward such evidence as may be appropriate to the issues; and it may perhaps not be altogether immaterial to observe that the question of the capacity of the Diwan does not appear to have been prominently raised, at all events in the first instance. Their Lordships are, however, of opinion that they must assume that the question of his capacity was open upon the proceedings sufficiently to give each Court below the right to form a judg-

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ment upon the matter. The question is, which of those judgments is right?

The decision of this appeal turns really upon two questions of fact. The first question is, the right of the Diwan to appoint his successor in his lifetime, according to the custom of the worshippers of the shrine. On behalf of the defendant Abdul Rahman, the father of the first and second respondents, it was contended that there was no proof of the alleged custom, and that the general Mahomedan law would carry to the defendant, as the nearest agnate, the right to occupy the gaddi. For the plaintiff it was said that the only question was whether or not the custom of the shrine permitted the Diwan to appoint any one within certain limits, and whether he did in fact appoint the plaintiff. That is a question to be determined by the evidence applicable to the custom, and their Lordships are of opinion that the evidence overwhelmingly establishes the right of the Diwan to appoint, within certain limits, within which limits the plaintiff was, inasmuch as he was both an agnate and a worshipper. Their Lordships think that the right so to appoint is established both by documentary evidence and by the history of the shrine itself, and conspicuously in the case of the Diwan himself, seeing that it has been proved that he was not the person who would have succeeded to the office of gaddinashin according to the Mahomedan law. The evidence which was produced on the other side does not appear to their Lordships to be either as valuable, or indeed as consistent with itself, as either the documentary evidence in favour of the right to appoint, or as the evidence in fact. In truth the witnesses for the defendant seem to alternate between a strict application of the Mahomedan law of succession to realty, and a sort of popular choice which must be ascertained by the wishes of the worshippers. In that state of things it is impossible to give the same effect to the latter evidence as to the coherent and perfectly reasonable evidence given for the plaintiff.

Assuming therefore that it was within the power of the Diwan to exercise the power of appointing a successor within certain limits, and that the plaintiff was within those limits, the next question is, whether he in fact appointed the plaintiff. The first event in order of date was an expression made by the Diwan, about

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the year 1882, that he intended to appoint the plaintiff as his successor. He so expressed himself two years before he actually made the appointment. The evidence on this point was not credited by the Judges of the Chief Court, but their Lordships are wholly unable to understand upon what ground they rejected it. The evidence that the Diwan did so express himself was given by persons against whom no imputation was made, and the sole ground, so far as their Lordships can see, for the rejection of the evidence was because in his will, made in 1884, he expressed a hope that he might yet be granted a son of his own. That would seem to be a wholly inadequate reason for disbelieving the evidence of persons who stated in the plainest possible terms that the Diwan had expressed his intention to appoint his daughter's son as his successor, if he had a revelation.

Their Lordships are then brought to the question of the actual appointment. The appointment is said by two witnesses to have been made in their presence. If the matter had remained entirely upon that state of the evidence, and nothing had been done afterwards, some observations which are made by the Chief Court perhaps might have some force in them, but it is a mistake to look at each part of this evidence as if it were to be taken only by itself. The evidence of the deed of appointment itself is very powerful evidence that something had previously taken place. Mr. Doyne, indeed, strenuously contended that the deed was only intended to have reference to something that was yet to be done. But he was met by the fact that the deed speaks throughout in the past tense of something which had already been done. He then ingeniously suggested that the deed did not really intend to appoint a successor, but was something in the nature of an adoption of a son. The answer appears to be very manifest upon the deed itself. It uses phraseology which is only applicable to the appointment of a successor. It is not a deed purporting to make the appointment, but witnessing and testifying to the fact that the appointment had already been made. Therefore, if their Lordships should ultimately come to the conclusion that the deed was executed by the Diwan when in his right mind, it is about the strongest possible evidence that could be given in confirmation

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of the evidence of those persons who alleged that an appointment had previously, in their presence, been in fact made.

That brings their Lordships to the question which is really the only question that has been substantially argued for the respondents, namely, whether the Diwan, when he executed the deed, was in a state of mind capable of appreciating the nature of the act that he was performing. There are some witnesses who say that the Diwan was senseless, that he did not know what he was doing, that he was wholly incapable of managing himself or his concerns. On the other hand, there are several witnesses who give exactly contrary evidence. In that condition of things, without proceeding to the extreme length of assuming that one side or the other were committing perjury, their Lordships prefer to look about to see, not perhaps whether it is possible to reconcile in a reasonable way the extreme views of each set of witnesses, but whether there are not some circumstances which may account for differences of opinion, and honest differences of opinion, on the matters on which the witnesses have given evidence.

Now the undoubted fact is that the Diwan was suffering from paralysis. It is equally certain that he was affected by difficulties of speech which sometimes attend that disease. Their Lordships think it very likely, in that condition of things, that there would be differences of opinion as to the extent and degree of intelligence that he exhibited. But this is certain, that the execution of the deed was not a thing done in a corner, that the fact that the Diwan was alleged by some people to be about to make a deed declaratory of his already having made an appointment of a successor was known in the village, and that there were many people who were anxious to insist upon the right of Abdul Rahman, the uncle of the plaintiff, to succeed, and were consequently anxious that the Diwan should not execute the deed. Accordingly a number of persons, a sort of deputation, came to him, and endeavoured to persuade him not to execute the instrument which it was supposed he was about to execute, for the purpose of establishing his grandson's rights. There can hardly be a more forcible argument in a matter of this kind, than to see, not what people say at a considerable distance of time

after the events have happened, but what their conduct was at the time, to see the hypothesis upon which they were there, and what they were doing; and in this view, it is impossible not to be struck by this, that in the transaction to which the different witnesses speak, it seems to be assumed on both sides that the Diwan was open to persuasion, but that, if he would insist upon executing the deed, the party who supported the claims of the uncle could not help it, and that although some of them remonstrated against his doing so, and were anxious that he should not do so because it would give rise to dispute, yet they were so satisfied that he was exercising his own will on the subject, and that it was his will which was being followed in the execution of the *instrument and the attaching of the seals, that when they failed* to succeed in making him abstain, they actually, many of them, attached their seals in verification of the execution of the document.

The narrative then proceeds with the authority given by the Diwan for the registration of the deed, the application to the Sub-Registrar to register it, the opposition of Abdul Rahman's party, and the refusal of the Sub-Registrar to register it. The Chief Court placed great reliance on the fact that the plaintiff did not appeal to the Registrar against the refusal by the Sub-Registrar to register the deed. But it is admitted now that it did not require registration, and if the plaintiff was so advised, that would be a sufficient reason for taking no further steps. In truth, however, the whole proceeding before the Sub-Registrar was irregular, that officer having no such power under the Registration Act as he seems to have assumed.

As regards the condition of the Diwan after the execution of the deed, there is the evidence of Rup Singh, a sergeant of police, who was sent for by the Diwan to his kacheri, and who speaks to a conversation which took place between the Diwan and himself, and says that the Diwan was in his right senses. Mr. Doyne says the sergeant is not to be believed because he said that the plaintiff was turned out of the kacheri by the defendant's party, whereas Mr. Doyne contends that the plaintiff was not turned out, and that the criminal proceedings brought by him against the

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defendant, in respect of his alleged ejection, were unsuccessful. Their Lordships think that this contention is a little overstrained, because, on looking at the judgment of the District Judge, they observe that the ground on which the criminal proceedings failed was, not because the plaintiff was not forcibly turned out of the property, but because the Indian Penal Code lays down that the violence must be "with intent to commit an offence, or to intimidate, insult, or annoy, any person in possession of such property," and that it was not a case of that kind.

On the whole it seems to their Lordships that the result of the evidence is as follows: That there is a considerable body of affirmative evidence which establishes capacity on the part of the Diwan, and that the evidence on the other side is reconcileable with exaggeration or mistake, or the absence of any testing of the real state of the Diwan's mind on the various occasions to which the witnesses for the defence speak; for it is to be observed that in speaking of the occasions on which they say they went to see the Diwan, nothing could be more loose than their evidence, inasmuch as they give no particulars of any specific interview with the Diwan, but say generally that he did not know what he was about.

Under these circumstances their Lordships are of the clear opinion that the evidence establishes sufficiently that the Diwan was in a state of mind which showed that he knew what he was doing, and that the act which he did was one which he intended to do, and that he was capable of understanding the nature and consequences of the act which he had done.

The Chief Court appear to their Lordships to have mixed up the questions of undue influence and incapacity. They are totally different issues. So far as the question of undue influence is concerned, there does not appear to be a particle of evidence of any influence of any sort exercised towards the Diwan on the part of the plaintiff or his supporters. The question of what is undue influence is sometimes a difficult one. Lord Cranworth, when giving judgment in the House of Lords in the case of *Boyse* v. *Rossborough* (1), gives this definition: "It is sufficient to say that allowing a fair latitude of construction, they must

(1) 6 H. L. C., 1 (49.)

arrange themselves under one or other of these heads, coercion or fraud." It is enough in this case to say that there is not a particle of evidence of either coercion or fraud, or indeed of any influence of any sort or kind exercised on the Diwan by the plaintiff.

Their Lordships will for these reasons humbly recommend to Her Majesty that the decree of the Chief Court ought to be reversed, that the appeal to the Chief Court ought to be dismissed with costs, that the decree of the District Judge ought to be varied by declaring that the plaintiff was duly appointed to the office of gaddinashin of the shrine of Baba Farid Shakarganj by the late Diwan, Pir Alla Jowaya, and was entitled to possession of the property attached thereto from the date of the death of the said Pir Alla Jowaya, and that the said decree ought to be affirmed in other respects.

The first and second respondents will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Hughes & Sons.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Trevelyan.

PROFULLAH CHUNDER BOSE AND OTHERS, MINORS, BY THEIR MOTHER SURBOMONGALA DASI AND GRAND-MOTHER TRIPURA SUNDARI DASI (PLAINTIFFS) *v.* SAMIRUDDIN MONDUL (DEFENDANT.)*

1894 *December* 19.

Bengal Tenancy Act (VIII of 1885), sections 15, 16—Operation of those sections in a suit for rent of land, to which the plaintiff succeeded before the Bengal Tenancy Act came into force.

Sections 15 and 16 of the Bengal Tenancy Act are not retrospective.

THIS was a suit for arrears of rent for the years 1297 (1890) of what the plaintiffs (who were minors) alleged was a perma-

* Appeal from Appellate Decree No. 252 of 1894, against the decree of T. D. Beighton, Esq., District Judge of 24-Parganas, dated the 5th of December 1893, reversing the decree of Babu Nogendra Nath Roy, Munsif of Barasat, dated the 11th of March 1893.