# APPEAL FROM ORIGINAL CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Sale and Mr. Justice Pargiter.*

## WATKINS

*v.*

## SARAT CHUNDER GHOSE MOULICK AND OTHERS.*

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*April* 13.

*Commission—Administrator General's Act (II of 1874) ss. 52, 54—Assets, meaning of—Revenue-paying estate.*

The Administrator General is entitled to charge only one commission upon his commission.

He is entitled to commission upon the entire collections of a revenue-paying estate.

He is not entitled to commission on the value of the corpus of such part of the estate as is in the hands of a Receiver, but only on realizations made and handed over to him by such Receiver.

Per Sale J. The entire rents of a revenue-paying estate, when collected by the Administrator General, become the "property" of the estate in his hands, and the application of such property in the payment of revenue is a distribution of such property in due course of administration.

In this sense the property of a deceased person applied in payment of revenue is "an asset" within the meaning of the Administrator General's Act and as such is chargeable with commission.

APPEAL by the defendants, N. S. Watkins and H. Bateson, the executors of the late Administrator General and by the present Administrator General.

In the year 1895 two suits were instituted against the Administrator General, who was acting as the executor of the will of Kumar Inder Chunder Singh of Paikpara for the construction of the said will and for other reliefs. One suit was instituted by Srimati Saraswati, the daughter of the said Kumar Inder Chunder, in which his widow Ranee Mrinalini was joined as co-defendant. The other was by Ranee Mrinalini, to which

* Appeal from Original Civil Nos. 5 and 6 of 1904 in Suits Nos. 675 and 753 of 1895.

Saraswati was made a defendant. These suits were consolidated by an order in the year 1896, and on the 13th day of May 1898 a decree was made declaring the rights of Srimati Saraswati and Ranee Mrinalini in the estate of Kumar Inder Chunder Singh and giving directions for certain accounts set forth in the decree. Pursuant to the decree the Administrator General, as Executor of the deceased, brought in a state of facts, which were objected to on behalf of Ranee Mrinalini.

The Ranee, amongst other objections, contended:—

(1) that the Administrator General was not entitled to charge commission on the amount of the value of such portion of the estate as had not come into his hands, but was with the Receiver;

(2) that he was not entitled to make any charge apart from his commission for the collection of the rents of the estate in the Mofussil or to maintain an establishment in Calcutta for the purpose of supervising the Mofussil Collections;

(3) She objected to commission being charged upon commission, alleging that the Administrator General had been charging commission upon every item of commission he paid to himself, which, she contended, was in contravention of the law;

(4) She contended that the Administrator General was not entitled, as he had done, to charge commission on the gross income of the Mofussil property and charge commission again on the Government Revenue, which he paid on behalf of the proprietor.

The Registrar came to the conclusion that the four objections mentioned above were well founded, and he accordingly directed the Administrator General to bring in a further state of facts, but at the request of the attorneys for the Administrator General he referred the case for the opinion of the Court.

The matter came on before Ameer Ali J., who held that the Administrator General was not entitled to charge commission on the amount of the value of such portion of the estate as had not come into his hands, and that he was entitled to charge commission in respect of the net income paid to the estate by the Receiver appointed in suit No. 41 of 1889, and that he was entitled to all expenses for collection of rents of the estate in

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the Mofussil and to maintain an establishment in Calcutta for the purpose of supervising such collection of rents in the Mofussil, which were legitimately paid in the time of Kumar Inder Chunder and which would have been legitimately incurred by a private administrator and no more, and that the amount of such expenses should be determined by the Registrar on the taking of the Administrator General's account; and that he was entitled to charge his commission on his first commission only and nothing more, and that he was entitled to charge his commission on the income of the estate after deduction of the Government Revenue and that he was not entitled to charge commission upon the amount of the Government Revenue paid by him.

There was an appeal against the above order of Ameer Ali J. by the present Administrator General, and the Appellate Court held that, having regard to sub-section 2 of sec. 3 of Act V of 1902, the executors of the late Administrator General ought to be made parties to the present proceedings and discharged the order of Ameer Ali J. and remanded the case to the Court below with directions that the executors of the late Administrator General should be added as parties. In accordance with the directions of the Appellate Court the executors were joined as parties, and the matter reargued before Ameer Ali J., who made the same order as he had made before. The portion of the judgment of Ameer Ali J., which is material for the purpose of this report and which judgment has been incorporated by his lordship in his second judgment delivered after the case was remanded to him is as follows:—

"Dealing therefore with the reference, I am of opinion that the view expressed by the Registrar on the first objection of Ranee Mrinalini is correct. I hold that the Administrator General is not entitled to charge commission on the amount or the value of such portion of the estate as has not come into his hands. In my opinion, he is only entitled to charge commission on the property, which comes into his hands or the assets realized by him.

It would indeed be an anomaly, if certain properties remained in the hands of the Receiver, he receiving commission thereupon, the Administrator General at the same time charging commission on his own account. I do not suppose the legislature intended that that should be the case, nor is there any provision in law to warrant such a proceeding. The Administrator General is entitled to charge commission in respect of the nett income paid by the Receiver to the estate of Raja Inder Chunder Singh as has been held by the Registrar.

With regard to the second objection, which relates to the Mofussil collection charges, I am not inclined to agree with the Registrar. It seems to me that the costs of collection and management in the Mofussil are necessary incidents for the preservation of the property and due realization of the income thereof, which are not covered by the provision made in Act II of 1874 for the commission of the Administrator General. The collection charges in the Mofussil vary considerably according to the district in which the properties are situated and difficulties are experienced in collecting the rents. Having regard to the provisions of section 54 of Act II of 1874, I think the Administrator General is entitled to reimburse himself for all payments in respect of the estate in his charge, which a private Administrator of such an estate might lawfully have made. I do not overlook the second clause of that section on which stress has been laid by learned Counsel for the objector, which runs as follows:—"Save as aforesaid the commission to which the Administrators General of each of the three Presidencies shall be entitled is intended to cover not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration." As I said before, the costs of the management of the property in the Mofussil and of realizing the income of the estate are in the majority of cases not inconsiderable, and it would be putting too technical a construction upon the section, if I were to hold that the Administrator General should pay all expenses of collection and management out of the one and a half per cent. commission provided for in the Act. In my opinion the Administrator General is entitled to all expenses which were legitimately paid in the time of the owner and which would have been legitimately incurred by a private Administrator, and no more. That is a question which must be determined by the Registrar on taking the accounts. I merely indicate the principle on which the matter is to be dealt with.

As regards the third objection, which relates to the charge of commission upon commission, it is urged by Mr. Hill that in no instance has a third commission been charged by that officer. It is conceded that he is not under the law entitled to any commission other than commission on commission. The view expressed by the Registrar seems to be correct, and, if the Administrator General has not charged a third commission, the matter does not require further consideration. He is entitled to charge commission on commission, and not anything more.

I come now to the most important objection, whether the Administrator General is entitled to charge commission on the gross income of the estate and whether he is entitled to commission again on the payment by him for and on account of Government revenue.

The provision relating to commission is embodied in section 52 of Act II of 1874, which provides as follows:—'The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his official character or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31 shall be entitled to receive a commission at the following rates respectively, namely, the Administrator General of Bengal at the rate of three per centum and the Administrators General of Madras and Bombay, respectively, at the rate of five per centum upon the amount or value of the assets, which they respectively collect and distribute in due course of administration.'

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Mr. Hill has contended, and I think rightly, that the word 'amount' refers to realization in cash, and the words 'value of assets' refer to anything other than cash. In order to judge what is the value of the assets derived from immoveable property or a revenue-paying estate in the Mofussil, one has to understand exactly the nature of the demand of Government for land revenue. The Registrar has considered that Government revenue is a charge on the property. In my opinion he has understated the character of the due of Government. Government revenue represents the share to which the estate is entitled in the gross income or produce of the land, Government has an indefeasible right to that share of produce or income. That right attaches in the hand of all persons to whom it might pass by transfer either voluntary or in invitum. One must understand the whole history of land legislation in order to comprehend properly the position of land revenue. When the Permanent Settlement was made, the liability to periodical assessment was put an end to, and the demand of Government to share in the gross income was settled in perpetuity; but there can be no doubt that Government has a right to a specific share of the gross income. That being so, the gross income from a revenue-paying estate does not form the assets of the owner. He receives his share as well as the share of Government, and then he makes over the share of Government to the estate. If he fails to do so, there are certain penalties attached, the character of which I need not describe.

I am of opinion therefore that the value of the assets upon which the Administrator General is entitled to charge commission is the income of the proprietor himself after deduction of Government revenue, nor do I think is the Administrator General entitled to charge commission upon Government revenue paid by him.

To my mind the view taken by the Registrar seems to be supported by the provisions of the present enactment.

Under Act V of 1902 the State is entitled to all commissions chargeable by the Administrator General, he receiving a fixed salary.

It would be anomalous that the State should not only receive Government revenue, but charge commission upon realization of its own dues and payment thereof to itself.

I therefore uphold the decision of the Registrar on the first, third and fourth objections.

As regards the second, I am of opinion that the matter must be dealt with in view of the principle I have laid down."

The judgment of AMEER ALI J., after the case was reargued before him on remand, is as follows:—

"This matter came before me on a previous occasion and was decided on the 23rd of May 1902. There was an appeal from my order.

The Appellate Court being of opinion that the executors of the late Administrator General were necessary parties to this proceeding set aside my order and remanded the case in order that the questions involved might be reargued after the executors of Mr. Broughton had been brought on the record. It appears that in accordance with the directions of the Appellate Court the executors have been joined as parties to this proceeding and the matter has been reargued before me.

Mr. Jackson, who appeared for the executors of the late Administrator General, took up the same grounds as were taken up on the previous occasion by counsel for the present Administrator General. He contended with considerable earnestness that the Administrator General was entitled to commission on every penny of the collections. In dealing with the question, whether the Administrator General was or was not entitled to commission on Government Revenue, Mr. Jackson referred chiefly to the trouble and responsibility for collecting the income of the estate. He also contended that the Administrator General was entitled to charge commission upon realizations by the Receiver, who had charge of that portion of the estate, which had vested in the Administrator General; there was also the usual question relating to commission on commission. I have given every weight to the arguments advanced by learned Counsel on behalf of the executors of the late Administrator General and of the present Administrator General, but I see no reason to modify the view which I expressed on the previous occasion. I therefore desire to incorporate my former judgment with the present one.

As, however, there are certain points, which require elucidation, I think it is necessary to add a few remarks. In the first place, there must be no misapprehension regarding the question of commission upon commission. I say this, as the observation made by me in my judgment of the 23rd May 1902 seems to have been somewhat misunderstood.

The contention on the part of the Administrator General and the executors of the late Administrator General is that they have not charged more commission than what they are entitled to under the law. Mr. O'Kinealy on behalf of Ranee Mrinalini pointed to various entries which indicated, as he contended, that commission had been charged not twice, but three or four times over. Mr. Dunne mentioned that it was only a form of book-keeping, which made the difference, but that, as a matter of fact, the Administrator General had taken less than he was legally entitled to. I am not concerned with the form of book-keeping adopted in the office of the Administrator General, which Mr. O'Kinealy characterizes as somewhat devious, if not tortuous. What I have to see is whether more commission has been charged than is warranted under law.

It is admitted that under the law the Administrator General is entitled to one commission upon his commission: he has no right to any further commission. In taking the accounts the Registrar will have to see, if the Administrator General has in the aggregate charged more than the law warrants. If he has not charged more, as I said in my former judgment, there is an end of the contention. If it appears on the taking of the account that he has taken more, of course there must be a refund.

The important question, however, relates to Government Revenue. The argument is that the Administrator General is entitled to charge commission upon the entire collections of a revenue-paying estate in his hands.

It is urged that the whole of the income receivable by the proprietor forms part of the assets of the deceased. The contention must go to that extent in order to entitle the Administrator General to charge his commission upon that portion, which is paid as Government Revenue.

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As I pointed out in my previous judgment, the argument is founded on a total misconception of the land laws of the country. I have given my reasons, and I only wish to add a few further remarks to make my views clear. Under the previous Government, land was the exclusive property of the State. The revenues arising therefrom were farmed out for limited periods to particular people. Generally speaking, the farm was continued to the same person or his heirs time after time. This system continued in vogue after the East India Company succeeded in obtaining the Dewani of the Province. The persons to whom the revenues were farmed out were mere collectors, and they certainly remained in that condition, until the time of Lord Cornwallis. At that time it was considered expedient as a matter of policy to give a certain degree of permanency to the interests of the persons, who were previously revenue collectors. With that object the share of Government was distinctly ascertained and fixed on a permanent basis. The people, who held the land, at that time obtained what is now called their zemindaries on the distinct understanding that they were to make the collection and pay to Government its share, and that whatever increment happened to take place from time to time in the income of the estate would belong to them.

The labour and the trouble, to which Mr. Jackson referred, undertaken by the proprietors in the matter of collecting the share of Government was in lieu of the permanency given to what now became the proprietary interest. The proprietor received the zemindary upon that agreement, and when a property vests in the Administrator General, it vests on that basis: he is in the position of the deceased proprietor, and he takes the property with that responsibility.

Government Revenue has been sometimes called a charge on the estate. As I have said before, it is more than a charge. The State has an indefeasible right to that portion of the income which was ascertained and fixed as its share, when the Permanent Settlement was made. The proprietor can transfer and alienate his property, but he can never release the estate from the liability which is attached to it, *viz.*, that every transferee into whose hands it came takes it subject to the obligation to realize the entire income of the property and give a fixed share to Government. To call that portion of the income which is received and which is paid as the share of Government and which is technically called Government Revenue, as assets of the deceased proprietor, is in my judgment a mistake. This seems to me to be the view of the Legislature as would appear from a close examination of the Statute. Section 52 declares that the Administrator General is entitled to a certain commission upon the assets of the deceased, which 'he collects and distributes in due course of administration.' To my mind these words give an indication of the intention of the Legislature that commission is chargeable only on the distributable assets of a deceased proprietor—what he collects and what he distributes in due course of administration. It cannot in my opinion be contended that the share of the income received by the Administrator General as the legal representative of the deceased proprietor for the specific purpose of paying to Government can in any way be distributed by him in due course of administration.

I find Mr. Justice Sale *In the goods of Courjon*(1) took the same view with regard to the meaning of the words 'assets collected and distributed in due course

(1) (1897) I. L. R. 25 Calc. 65.

of administration.' Various sections of the Act were referred to in the course of the argument for the purpose of shewing that in some places the words 'gross collections' were used, in other places simply 'assets' and so forth. To my mind they furnish no indication as to the intention of the Legislature. Section 44 refers to the keeping of accounts, and has nothing to do with commission, nor does section 55A throw any light on the question under discussion. In considering the meaning attached to the word 'assets,' so far as those assets are chargeable with the commission of the Administrator General, we must have regard to the nature of the subject on which commission is sought to be charged and allowed to be charged, and then come to a conclusion. I hold therefore that there is no validity in the present argument, and that, for the reasons which I have now given and which I gave before, I must overrule the contention.

I am also of opinion, for the reasons given in my previous judgment, that the Administrator General is only entitled to commission on realizations made and handed over to him by the Receiver. The Receiver was appointed to take charge of the joint estate, a portion of which I understand has vested in the Administrator General. The Receiver is entitled under the law to recover all collections. The Administrator General cannot take possession of that portion. He can only receive what the Receiver realizes for and on behalf of the particular share, which vested in the Administrator-General.

It is absurd to ask the Court to consider that collections made by the Receiver are collections made by the Administrator General.

With these remarks I make the same order as I made before. The matter must go back to the Registrar for the enquiry directed."

The present Administrator General and the executors of the late Administrator General preferred two separate appeals, which were heard and disposed of together.

*Mr. Hill* (*Mr. Graham* with him) for the executors of the late Administrator General. The accounts will show that only one commission on commission has been charged and no more With regard to the commission on the revenue payable to the Government, the learned Judge has entirely misconceived the position of zemindars in this country. Before the Permanent Settlement according to him, the zemindars were mere collectors of revenue on behalf of the Government, and after the Permanent Settlement the same state of things continued; but that is not so. By the Permanent Settlement the right of the Government on a share of the produce was commuted to a fixed sum, and the zemindars were no longer the agents of the Government for the purpose of collecting revenue. The income of the zemindary properties formed part of the assets of the estate, and the Administrator

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General was entitled to charge commission on the whole of it, before deducting what had to be paid for revenue. He has to manage and protect the estate, and for that purpose has to pay the Government Revenue, and yet it has been said that he has to do all the labour for collecting rent for paying the Government Revenue free of charge. As to the commission on the properties in the hands of the Receiver, the Administrator General is entitled to it under the provisions of s. 52 of the Administrator General's Act (II of 1874). As to the position of the Receiver, see *Wilkinson* v. *Gangadhar Sirkar*(1). The proprietor continues to be the owner of the properties, although the Receiver may be in possession. The fact of the Administrator General not being in possession does not disentitle him to charge commission on the value of the properties. *In the goods of Simpson*(2); the Receiver is the agent of the Administrator General for the purpose of possession. He is liable for the management of the properties, and would be liable for devastavit, if he neglected to do so.

*Mr. Dunne* (*Mr. Sinha* and *Mr. Morrison* with him) on behalf of the Administrator General. The learned Judge was in error in considering two classes of assets as the same; assets for the purpose of the valuation of the estate are different from assets, which are the income of the estate. "Assets" in s 16 are different from "assets" as contemplated by s. 52 and s. 54 of the Act (II of 1874). I support Mr. Hill's argument on the other points.

*Mr. Garth* (*Mr. O'Kinealy* with him) on behalf of Ranee Mrinalini:—It is not correct to say that after the Permanent Settlement the zemindar became the absolute owner of the land. Government Revenue is not like an ordinary debt recoverable from the properties of the zemindar other than his land in respect of which there has been default in payment of revenue. That shows that the Government has not parted with the proprietorship over the land out and out, but that the revenue forms a charge upon it. The amount payable as revenue, when collected, cannot be considered as assets of the estate.

The word "assets" mean effective assets in all the sections of the Act, *i.e.*, nett assets, on which the value of the property is calculated.

(1) (1871) 6 B. L. R. 486. (2) (1863) 1 Mad. H. C. 171.

MACLEAN C. J. The questions, which arise upon this appeal, are as to the principle upon which the accounts are to be taken in the suit, in regard to the commission to be allowed to the late Administrator General.

Three questions arise:—

(1) whether he is entitled to charge more than one commission upon his commission;

(2) whether he is entitled to charge commission upon the entire collections of a revenue-paying estate in his hands; and,

(3) whether he is entitled to charge commission upon the estate of his testator in the hands of the Receiver of the joint estate, to a share of which his testator was entitled.

As regards the first question, it is clear that the late Administrator General was only entitled to charge one commission upon his commission. The appellants, however, say that, although upon the face of the accounts of the late Administrator General, it may look as if he had charged more than this, in effect and as regards the amount actually charged, he has not charged more than one commission upon his commission. This being so, the matter resolves itself into one merely of account. If in the aggregate he has not charged more than the law warrants, there is an end of the matter: if he has, he must refund.

Then is he entitled to charge commission upon the entire collections of the revenue-paying estate come to his hands? Under section 52 of the Administrator General's Act (II of 1874), he is entitled to a commission of three per cent. upon the amount or value of the assets, which he collects and distributes in due course of administration, one-half to be payable and retained upon collection of the assets, the other half on distribution. It was his duty to collect the rents and profits of the revenue-paying estate, and, when collected, they clearly became assets of the estate, and for that collection he was entitled to receive $1\frac{1}{2}$ per cent. commission upon the amount. Having received these assets, it was his duty to distribute them in due course of administration and out of them his first obligation was to pay the Governmen

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Revenue. It is said he is not to be allowed the 1½ per cent. commission on the amount he so pays for Government Revenue. It is difficult to see why this argument should prevail. It is clear from section 54 that the Administrator General is to be paid his commission for, "not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration." If the collections of the estate were assets, as they undoubtedly were, and if the Administrator General collected them and then distributed them in due course of administration, why should he not be paid his commission for the trouble and responsibility of such collection and distribution? It is said "assets" in section 52 means "nett assets." If so, you might have an estate of a lakh, and the debts 99,000 rupees; the Administrator General collects the assets and distributes them in payment of the debts, and he is only to be paid commission on the odd 1,000 rupees. This can hardly be. The expression "assets" must be read in their ordinary sense. For these reasons it seems to me reasonably clear that the Administrator General is entitled to commission upon the entire collections of a revenue-paying estate.

As regards the third question, it is conceded that the Administrator General is entitled to commission on realizations made and handed over to him by the Receiver. But he claims more: he claims commission on the value of the corpus of the share of his testator in the joint estate, of which the Receiver was appointed. It would, I consider, be straining the language of the section to say that he had "collected" this asset. I do not see how he can successfully say so. Upon the first and third questions, I agree with the learned Judge in the Court below, but respectfully differ from him on the second.

The case then must go back for the account to be taken upon the footing of our opinion now expressed. As each party has partially succeeded, the costs of all parties of this appeal will be costs in the suit.

SALE J. I agree with the opinion expressed by the Chief Justice on the three questions, which have been argued in this

appeal. I would, however, add one observation as regards the second of these questions. The Administrator General is entitled to charge commission upon all assets collected and distributed by him in due course of administration.

The term "assets" is usually defined as meaning and including "property of a deceased person chargeable with and applicable to the payment of his debts and legacies."

The revenue payable in respect of the estate of a deceased person can hardly be described as a debt of such person. But then, on the other hand, the Administrator General is entitled to charge commission on all assets distributed in due course of administration. The payment of revenue is one of the most important and responsible duties, which the Administrator General has to perform in respect of a revenue-paying estate in his hands, and I think, therefore, it must be conceded that the entire rents of a revenue-paying estate, when collected by the Administrator General, become the "property" of the estate in his hands and the application of such property in the payment of revenue is a distribution of such property in due course of administration. In this sense, the property of a deceased person applied in payment of revenue is an "asset" within the meaning of the Administrator General's Act, and as such is chargeable with commission.

PARGITER J. I agree with the judgment of the Hon'ble the Chief Justice and of Mr. Justice Sale.

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Attorneys for Ranee Mrinalini: *Kally Nath Mitter* and *Sarbadhikary.*