Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Salig Ram and others v. *the Secretary of State for India, from the Punjaub: delivered 2nd August*, 1872.

Present:

Sir James W. Colvile.
Lord Justice James.
Sir Barnes Peacock.
Lord Justice Mellish.
Sir Montague Smith.
Sir Robert P. Collier.

Sir Lawrence Peel.

THE Appellants in this Case are the heirs and representatives of Rajah Salig Ram, and Rajah Davee Singh, the Plaintiffs in the suit. The Respondent, the Secretary of State for India in Council, is the Defendant. The suit was commenced on the 28th of November, 1864, in the Court of the Deputy Commissioner of Delhi, to recover the sum of 68,853 rupees odd, alleged to be due for principal and interest on certain bonds, which, in the plaint, are called mortgage bonds, executed by the late King of Delhi.

It was correctly stated by Mr. Justice Boulnois, in delivering his Judgment in the Chief Court of the Punjaub, that the bonds all acknowledged debts, but that all did not mention the property by which the debts were secured.

The plaint, after stating that the claim is on four mortgage bonds of which the dates and amounts are specified, proceeds to describe the grounds of the Defendant's liability in the following words:—

"The Defendant, owing to the late mutiny, confiscated all the landed estate of the late king, *but* by

a Circular, No. 112, of the Judicial Commissioner of these provinces, under the orders of the Supreme Government, all mortgages effected by the late king on those estates which the Defendant has confiscated are to be paid. The Plaintiffs having failed in their application to be reimbursed, as will be seen by the proceedings regarding their claim, and referred to law to obtain their remedy, are necessitated to file this suit, and pray that a summons may issue against the Defendant, and he be declared to pay the amount claimed with interest at the rate specified in the bonds up to realization of decree with costs.

The plaint, as pointed out by Mr. Forsyth, the learned counsel for the Defendant, is not a suit for ejectment or foreclosure, nor does it pray that the Defendant may be declared a trustee for the Plaintiffs of the revenues collected from the hypothecated villages. It does not even allege that the Defendant, at the time of the commencement of the suit, was in possession of the property. The claim appears in its terms to be founded entirely on a right alleged to have been created by the Circular, No. 112, of the Judicial Commissioner. It is to be remarked that the Plaintiffs do not claim merely the value of the property mortgaged, for, in the VIIth Article of their written statement, they say "the Defendant is liable to the full amount of claim though it may exceed the value of the property mortgaged, or return the same to them."

It was in consequence contended by the Respondent's Counsel, with great force, that the claimant must be held to the claims actually made by him, and that unless he could succeed in showing that the Circular had given him the right alleged, his claim must necessarily be dismissed. Having regard, however, to the written statement of the Defendant to the issues raised, and the mode in which those issues were disposed of in the Courts in India, their Lordships have in this case thought it right to consider the whole matter as it was presented to those Courts and at their Lordships' Bar.

It must be taken upon the evidence that the late King was, at the time of the confiscation, indebted to the Plaintiffs upon the bonds set forth in the plaint, and that either by the terms of the bonds or by his letters to Sir Thomas Theophilus Metcalfe,

the Resident at the Court of Delhi, the King had, so far as he lawfully could, assigned and appropriated to the discharge of the bond debts, certain amounts which the Resident was requested to pay yearly out of the revenues of certain of the royal Taiyool villages. It is admitted, in the 1st and 2nd Articles of the Defendant's written statement, that the property so alleged to have been mortgaged to the Plaintiffs, was, together with all rights and interests in and in respect of it, seized and appropriated on behalf of the British Crown.

Several defences were set up in the written statement of the Defendant but for the purpose of this Appeal it is not necessary to consider any of them except the Ist, IInd, Vth, and VIth. The IIIrd, which relied upon sec. 20, Act 9 of 1859, and the IVth which set up that the Defendant was, by Act 34 of 1860, indemnified from all liability of every kind in respect of seizure and appropriation of the property alleged to have been mortgaged, were abandoned by the learned Counsel for the Defendant upon the argument of this Appeal.

The first ground of defence was that the property alleged to have been mortgaged to the Plaintiffs was, together with all rights and interest in and in respect of it, seized and appropriated by the Defendant on behalf of the British Crown, on political grounds, as an act of State, and that consequently no claim against the Defendant as having thus taken possession of the said property was cognizable in the Court in which the suit was instituted, or in any other Municipal Court.

The IInd was similar to the Ist with the addition that the seizure was "during the continuance and in the prosecution of war."

The Vth and VIth were as follows:—

"V. That the Circular, No. 112, on which the Plaintiffs grounded their right to demand from Defendant the debts they sued for, was simply a private order addressed by one officer of Government in his executive capacity to others, directing them as a matter of mere grace and favour to relax in certain cases, where they would have operated hardly, the laws under which Government was free from legal liability in respect of debts secured on the Delhi Crown property, and certain other property, which had come into its possession as a consequence

of the rebellion and war of 1857, and that the issuing of such an order could be of no effect whatever to bind the Government as Defendant in a Municipal Court.

"VI. That the said Circular did not authorize the exercise of this grace and favour in respect of the debts claimed by the Plaintiffs, as was clear from the wording of the said Circular, and as was further clear from the Circular 5 of 1861."

Several issues were raised; of these the only important ones to be considered are, the Ist, IVth, Vth, and VIth.

They are as follow:—

"I. Was the seizure of these properties by Government such an act of State or act of war as is not cognizable by a Municipal Court?

"IV. Has the Circular in question the force of a legislative enactment?

"V. Do the Circulars issued by the Judicial Commissioner of the Punjaub, in his executive capacity, bind the Courts of the Punjaub or not?

"VI. Does Circular 112 apply to the debts claimed by the Plaintiff?"

The case was tried by Mr. Coldstream, the Deputy Commissioner of Delhi, who, in a very elaborate and well considered judgment, found those issues for the Defendant, and gave jndgment in his favour. A regular appeal was preferred from that judgment to the Commissioner of Delhi, who upheld the decision of the Assistant Commissionsr.

A special appeal was then presented to the Chief Court of the Punjaub. That appeal was dismissed, upon the ground that the suit was not cognizable in a Municipal Court. The appeal to Her Majesty in Council is expressed to be against the judgment of the Chief Court of the Punjaub, and the several judgments of the Commissioner and Deputy Commissioner of Delhi. There is no dispute, however, as to the facts, and the questions now to be considered are whether the seizure or confiscation of the property of the late King was an act, in respect of which the Municipal Courts have jurisdiction; whether the Circular Order of the Judicial Commissioner, No. 112, vested a right of action in the Plaintiffs which can be enforced against the Government by a Court of Law; and whether the Plaintiffs had a right or interest

in the property which was not affected by the confiscation of the King's domains. The last was the proposition mainly relied on by the Appellant's Counsel before their Lordships.

The Commissioner of Delhi remarked in his judgment "that in the use of the words 'confiscation' and 'seizure' and 'appropriation,' the Court did not perceive any material distinction or difference, and one of the grounds of appeal to the Chief Court was, that the ruling of the Commissioner as to the meaning of those words was erroneous. The Appellants say, in the second ground of their appeal, 'the King of Delhi's property was confiscated,' and the Appellants do not dispute the right of Government to confiscate it; but the King had only a right to that which remained after satisfying the Appellant's claim, and to this alone is the Defendant entitled by virtue of confiscation. The Appellant's property was not confiscated."

Mr. Kay, in his argument, treated the word "confiscated" as if it were used in the sense of forfeited for a crime, and he cited cases to show the distinction between "forfeiture" and "escheat."

The former, he urged, did not affect *bonâ fide* incumbrances created by the offender before forfeiture. He admitted that the confiscation was an act of State, but he denied that it affected the rights which the Plaintiffs had derived from the King by virtue of the mortgages.

His argument as regards the effect of a forfeiture upon a regular conviction for a crime would have been correct if he could have shown that the confiscation of the King's property was an act in the assertion of a right conferred by the law of forfeiture.

But such was not the case. Neither was the law of forfeiture in force in the case of natives of India convicted of crimes beyond the limits of the Supreme Court, whatever might have been the case within those limits (as to which it is not necessary to express an opinion), nor did the Government affect or purport to act under any such law.

The word "Confiscation" as used by the Commissioner of Delhi, in his proceeding of the 3rd of October, 1857, does not import that the appropriation to the public use was for a crime. He says the confiscation of all the Crown villages, &c.,

having been deemed proper, &c., it is ordered, &c., that perwannahs be issued to the Tehseeldahs, &c., to confiscate all the villages, &c. In other words, the revenues were to be brought into the public treasury. The word "confiscation" does not, *per se*, necessarily import that the appropriation is to be made as a penalty for a crime; and even when used in that sense, it does not necessarily imply that the forfeiture has accrued upon conviction, but may also be properly used as applicable to appropriations by Government as an act of State of the property of a public enemy, or of a subdued or deposed ruler.

The Deputy Commissioner found as a fact, that which is well known as a matter of history, that the King was not tried by a regular Court, and that his trial by a Court under a Special Commission did not take place for some months after the attachment had taken place.

Mr. Justice Boulnois in his Judgment (p. 80), says, "after the mutiny in 1857, on the 18th of September in that year the King of Delhi was captured by the British Government, and made a prisoner of war, having been for some time the nominal head of the insurgents in Delhi. On the 3rd October in that year, the Commissioner of Delhi, on behalf of the Government, attached and took possession of the ex-King's lands. This appropriation accompanied the extinction of the political existence of the representative of the Delhi line of kings. It did not affect to justify itself on any ground of Municipal Law; and it seems to have been (considering the person who had owned the property seized) an act of power on the part of the British Government exercised in a matter of State. There is, however, additional evidence to show that the authority of Government in that character, which renders it superior to positive law, was brought to bear in this act, for the seizure of the King's lands, was an appropriation of an enemy's property, *flagrante bello*."

It is not necessary to express an opinion as to what is the effect of the seizure of property of a subject by a Government in the exercise of the powers of war in putting down an insurrection, especially in those cases in which the subject has not joined in the insurrection: nor is it necessary to deal with the cases which have been cited from the

American Reports in regard to acts which took place during the late war in that country. The case of the Plaintiffs, who claim under grants from the King, is very different from that of a subject deriving title under an ordinary tenure.

It is necessary to consider under what circumstances the late King of Delhi acquired a title to the property charged with the payment of the bond debts, if, indeed, he can be held to have had any legal title whatever to the same, beyond the mere will of the British Government, As to this point, it appears that, after the Emperor Shah Anlum, the grandfather of the late King, had been rescued from the power of Dowlut Rao Scindia, and placed under the protection of the British Government, it became a matter of political expediency to determine the nature and extent of the provision to be assigned for the support of His Majesty and of the Royal household.

The subject was fully discussed in the notes of instructions transmitted by Mr. Edmonstone, the Secretary to Government, to Colonel Ochterlony, the Resident at Delhi, in a letter dated the 17th November, 1804 (4 Wellesley Despatches, 237), of which notes a copy was also dispatched to his Excellency the Commander-in-Chief. Subsequently, on the 23rd May, 1805, the final determination of the Governor-General in Council upon the subject was communicated to the Resident at Delhi, by letter, from the Secretary to Government of that date (see same vol., p. 542).

That arrangement was as much an act of State as if it had been carried into effect by formal Treaty signed by the British Government.

Municipal Courts have no jurisdiction to enforce engagements between Sovereigns founded upon Treaties. (East India Company *v.* Syud Ally, 7 Moore's Indian Appeals, c. 555. The Nabob of the Carnatic, 2 Ves. Junr. Repts., p. 56). The Government, when they deposed and confiscated the property of the late King, as between them and the King, did not affect to do so under any legal right. Their acts can be judged of only by the law of nations: nor is it open to any other person to question the rightfulness of the deposition, or of the consequent confiscation of the King's property.

If, shortly after the arrangement had been made,

the British Government had found it necessary as a matter of political expediency to alter without the consent of Shah Anlum the arrangements introduced into the assigned territory, it is impossible to conceive that a Court of Law would have had jurisdiction to enforce the arrangement in a suit brought by His Majesty, either by granting a specific performance or by awarding damages for the breach of it.

The King of Delhi having joined in hostilities against the British Government, having renounced their protection and having endeavoured to regain his former absolute rights of sovereignty, the British power over those territories which had been assigned for his support, was for a time suspended. Delhi fell before the British arms, the territories were recaptured, the power of the British Government was restored, and the King of Delhi was taken as a prisoner of war. The revenues and territories which in 1804 were by an act of State assigned for the maintenance of Shah Anlum and his household, were in 1857 also by an act of State resumed and confiscated.

The seizure and confiscation were acts of absolute power and were not acts done under colour of any legal right, of which a Municipal Court could take cognizance.

The status of Shah Anlum was that of a King. He was treated and recognized by the British Government as a King and not merely as a Jagirdar holding under an ordinary grant from the British Government. He was the grandson of Shah Anlum and neither he nor any of his ancestors had ever been deposed by his own subjects or by the British Government or by any other power. Shah Anlum was described, by Lord Wellesley in his despatches, sometimes as the "unfortunate Representative of the house of Timour," sometimes as "the Moghul" and, again, as "the Emperor." It is unnecessary here to refer more particularly to the extracts from the despatches which have been pointed out in the exhaustive arguments in the Lower Courts. If further arguments were necessary, with reference to the status of the late King, and of his grandfather Shah Anlum, the despatch of Lord Wellesley to the Secret Committee of the Court of Directors of the East India Company of the 13th

July, 1804 (4 Wellesley despatches, page 132), might be referred to.

The status of the King of Delhi and that of the Begum Sumroo, were very different. The latter was held not to be a Sovereign Princess, but a mere Jaidadar under Scindia; and this fact distinguishes the present case from that of Forrester and others *v.* the Secretary of State for India, in which the judgment of the Judicial Committee was pronounced on the 13th of May last. In that case it was also held that the act of Government was not the seizure by arbitrary power of territories, which up to that time had belonged to another sovereign State; but that it was the resumption of lands previously held from the Government under a particular tenure, upon the alleged determination of that tenure. It was said "the possession was taken under colour of a legal title, that title being the undoubted right of the Sovereign Power to resume and retain or assess to the public revenue all lands within its territories upon the determination of the tenure under which they may have been exceptionally held free. If by means of the continuance of the tenure or for other cause a right be claimed in derogation of this title of the Government, that claim like any arising between the Government and its subjects, would, *primâ facie*, be cognizable by the Municipal Courts of India."

The seizure of the Royal Targool villages for the reasons above given, does not fall within the ruling of Forrester and others *v.* The Secretary of State for India, but is governed by the principles laid down in the Secretary of State in Council *v.* Kamachee Boye Sahiba, 7 Moore's Indian Appeals, 476, &c. The East India Company *v.* Syud Ali, id., 555, and in other cases in which the same principle is affirmed. But it is contended that these considerations do not necessarily determine the right of the mortgagees, who are British subjects, to what they claim. It is argued that the British authorities had given Shah Anlum estates in British territory to be dealt with at his free will and pleasure, so that the charges *bonâ fide* created by him while in possession, *de facto* and *de jure*, as owner, survived his deposition. But their Lordships are clearly of opinion that no such ownership or power of disposition was con-

ferred upon Shah Anlum or his successors. The territories were assigned to him for the support of his royal dignity, and the due maintenance of himself and family in their high position. If he had died or abdicated his successor would have taken the property in the same way, free from all charges. It was a tenure (so far as it was a tenure at all) *durante regno*, and on his deposition his estate and interest ceased, and all charges and incumbrances created by him out of that estate fell with the estate itself.

Their Lordships are further clearly of opinion that the Circular Order, No. 112, does not amount to a law. It was not enacted as a law, nor did it purport to be a law; and it does not fall within the meaning of the 24 and 25 Vict., c. 67.

The circular was merely a circular from the Judicial Commissioner, forwarding, for the information and guidance of the Commissioners of the several divisions of the Punjaub, a copy of correspondence between the Government of the Punjaub and the Government of India, on the question of the liability of Government for the debts of rebels whose estates had been confiscated for rebellion.

It is clear from the whole tenor of the correspondence which originated out of certain questions referred by the Judicial Commissioner of the Punjaub for the decision of the Lieutenant-Governor of the Province, that the Government did not intend to lay down any rule of law for the breach of which redress might be obtained in a court of law, or to use the words of Lord Kingsdown, in 7 Moore's Indian Appeals, 538, "to submit the conduct of its officers, in the execution of a political measure, to the judgment of a legal tribunal." They intended only to declare the course which a sense of justice and equity would induce them, in their discretion and as an act of favour, to adopt. The correspondence in circular No. 112 did not apply to the Appellants' case. That was treated of in the circular of the 12th January, 1861, *in continuation* of circular No. 112. In that circular of the 12th January, 1861, the correspondence on the subject of the Appellants' claim was forwarded, and amongst other letters one from the officiating Secretary to the Government of India to the Secretary of the Government of the Punjaub, dated 28th December, 1860. In that letter, paragraph 6, it is written:

"6. The general rule is that rent-free estates, secured by grants from Government, are not liable for the debts of deceased grantees. The exception is in the case of such estates which have been confiscated, and this exception is based on the consideration that 'the interests of justice require the protection of creditors from the effects of a political catastrophe which they could not have foreseen.' But creditors who, like Saliqram and Devee Singh, joined the rebellion voluntarily, accepted such security for their claims as the rebel cause might offer. They not only foresaw, but assisted to produce the catastrophe, and therefore the interests of justice do not require that they should be protected from its effects. *They may have all that they are entitled to by the letter of the law; but the Governor-General would deny them that which can be claimed only as a favour, for it is in the essence of a concession by favour that it should be withheld where favour is not due.*

"7. The Governor-General is of opinion that neither Saliqram and Devee Singh's claim, nor that of any other creditor of the ex-King, who has been convicted of rebellion, to the liquidation of their debts from the revenues of the Crown lands should be admitted."

Even if the prior Circular, on which the Appellants rely, could on any fair principles of legal construction be held to be a legislative recognition of the rights of the creditors of the deposed sovereign to be paid out of the revenues of the deposing Government (the only way in which it could avail the Plaintiffs), the last Circular is an act of like character, of equal validity, and equally binding on the Courts of Law.

Their Lordships think it desirable to make a few observations on the case of Narain Doss *v.* the estate of the late King of Delhi, in which this Board came to a conclusion in favour of a claimant under the Circulars in question. The title of the cause itself, in which the estate was named as a party, shows how it came to be a matter of judicial cognizance. The Plaintiff there was admitted to claim against the estate. But he was put to prove that he was such a creditor as he alleged himself to be,—that he was one of the creditors intended to be protected by the Circulars. That issue having been raised, and having been, by the act of the Government itself,

put in a train of judicial investigation by the legal tribunals, had to be determined in the same manner and on the same principles as any other issue legally raised in any ordinary litigation, and the determination was, that the Plaintiff had established his claims under the Circular, as alleged, and that the objections to it had failed. That case has no application to the present, in which the Appellants were peremptorily excluded from the benefit of the Circular.

Their Lordships are of opinion that the Judgments from which this Appeal was preferred were correct, and they will humbly report to Her Majesty that, in their opinion, those Judgments ought to be affirmed, and this Appeal dismissed with costs.

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