Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gulabdas Jugjivandas and others v. *The Collector of the District of Surat and another, from the High Court of Judicature at Bombay; delivered Friday, December* 13*th*, 1878.

Present:

SIR JAMES COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT COLLIER.

THIS case, which has been argued necessarily at considerable length, in their Lordships' opinion resolves itself into the construction of a single document; but in order to make the question which arises intelligible a short statement of facts is necessary.

In the year 1800, on the cession of Surat to the East India Company, the then governor of Bombay granted a sunnud to Najamooddin Khan, who was the commander-in-chief of the forces of the Nawab, and was called the Buckshee. That document was dated the 22nd June 1800. Their Lordships think they are bound to accept the only translation of it in the Record which appears to be properly authenticated, although a somewhat different version of a passage in it is to be found in the judgment of the subordinate Judge. After reciting that whereas by virtue of a compact and a convention made between the Government of the East India Company and the then Nawab, dated the 12th May 1800, to which also the seal of Najamooddin Khan had been affixed by way of attestation—Najamooddin

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being the person above referred to as the Buckshee—the management and collection of the land revenue, &c. of Surat, and the administration of the city, has been delivered over to the East India Company, the sunnud proceeds as follows: "Under these circumstances it has "appeared incumbent and proper, in the view "of the chief authority (Hoozoor), that some "suitable provision should be made as a subsidy "for the expenses of the above-named Mir "Najamooddin Khan and his descendants; that "is to say, by reason of close relationship, and "being descended from the same ancestors as "those of the Nawabs of the maritime city of "Surat. Therefore, this has been settled by "the instrumentality of the governor, who is "the ruler of the maritime city of Bombay, &c., "as follows:—That Mir Najamooddin, with his "children or descendants, after the deduction "of the income of the jaghire according to the "particulars given at the foot hereof, that is "now in the possession of the above-mentioned "Khan, shall receive from the Valiant English "Company's Government the sum of Rs. 24,000 "per annum by four equal instalments, com-"mencing from the 15th of the month of May, "corresponding with the 21st of Zilhaj in the "above-mentioned year. Hereafter should it be "necessary for the Government to resume the "above-mentioned jaghire, given on account of "maintenance or otherwise, the amount of the "income thereof shall be received by the above-"mentioned Khan, and his children or descendants, "from the Treasury of the Valiant English Com-"pany." There is a further provision that "on "account of the merit and laudable qualities of "the above-mentioned Khan, he is to receive "during his lifetime Rs. 6,000 per annum by "four equal instalments;" and then are appended the particulars of the jaghire, consisting of nine

mehals, the revenue from which altogether amounts to Rs. 6,264. 4. It has been said that another sunnud or other sunnuds of the same kind were given at the same time relating to other jaghires. That may have been so, but in their Lordships' view the question to be considered would not thereby be altered.

Najamooddin on his death was succeeded by his son Sudrooddin. Sudrooddin on his death, in the year 1826, was succeeded by his son Moinooddin, at that time 16 years of age. Fatima, one of the sisters of Moinooddin, was 7 years old. There were also other minor children, and sisters and a widow of Sudrooddin. In 1828, Moinooddin executed a mortgage to a banking firm—whose representative is the Plaintiff in the present action—of some of the mehals in the schedule to the sunnud, on behalf not only of himself but of his brother Ameenooddin, a minor aged 11 years (who died soon after), "and "on behalf of his minor sisters on his father's "side" (including Fatima), "and as agent having "full power in respect of all matters below-men- "tioned on behalf of his step-mother and step- "sisters, and other heirs" of Sudrooddin. The mortgage was to secure repayment of an advance of Rs. 39,000. There is a power of redemption at the end of five years, and other stipulations customary in mortgages of this kind, and a provision that the banking firm shall receive the proceeds of the mehals either through the Sircar or by collecting them themselves. In the year 1845, Moinooddin executed another mortgage, professing to act on his own behalf only, confirming the previous mortgage of 1828, and further charging the property mortgaged for the repayment of another sum of Rs. 1,000, which he then borrowed. It would appear that the banking firm up to the year 1840 themselves collected the rents of the villages; but in 1840

the Government made an order whereby they took the collection into their own hands, paying over the rents—with some interruptions which it is not now material to consider—to the banking firm under a mooktearnamah so directing executed by Moinooddin until the year 1857, when they ceased making the payments upon receiving a letter from Moinooddin stating that the mortgage had been satisfied, and prohibiting any further payments being made. In the year 1860 Moinooddin died, and was succeeded by his sister Fatima, who received the income of the jaghire, and was recognised as Buckshee by the Government.

In the year 1866 the present action was brought by the then representative of the banking firm against the Collector of Surat, Fatima, and three other persons, descendants of the sisters of Moinooddin, of whom one has died and two have disclaimed, and with regard to whom therefore no question arises. The claim is in substance for an order against the Collector, that he do pay the revenue of the villages to the Plaintiff, as mortgagee, the contention being that the mortgage bound the property in the hands of Fatima; and against Fatima for the payment of a lac of rupees minus one, alleged to be due for interest and principal upon the mortgage. The answer of the Collector is that he has a sum in his possession which he pays into Court, and that this is all which he had in the lifetime of Moinoddin, after satisfying certain other creditors, and he denies his liability to make any payments to the Plaintiffs after the death of Moinooddin.

Fatima answers, among other things, that Moinooddin had only a life estate in the property, and therefore could not charge it beyond the term of that estate, and it is upon that answer of Fatima that the question in the cause arises.

Both of the Courts in Bombay have found in favour of the Defendant, that Moinooddin had only a life estate. The same finding has also been come to in another suit brought by other creditors against Fatima, in the High Court of Bombay, decided in 1874, in which the same question arose, and which has not been appealed against. The Appellants now contend that all these decisions are wrong, and that Moinooddin took an absolute estate.

This question depends upon the construction of the sunnud; but that construction may be aided by a consideration of the surrounding circumstances, and of the occasion on which it was granted. The circumstances under which it was granted appear to be clearly and sufficiently set out in a minute of the then Governor of Bombay, which is referred to in the judgment of Mr. Kemball, the subordinate Judge, and is in these terms:—"Besides these official "advantages, the Buckshee had for many years "past been in the possession of various jaghires; "that his relations, the nabobs of Surat, at "different times (but all above 20 years ago), "alienated in his favour from various parts of "the Mogullae or assigned revenues on the neighbouring pergunnahs for the support of the "nabobship, in like manner as they have (as far "as depended on them) done to various other "individuals. These estates or assignments, "which the Buckshee appeared to be very "desirous of retaining, amount yearly, according to the valuations expressed in the "pergunnahs or grants, to Rs. 16,810, respecting "which the present nabob declared, on being "separately consulted, that he considered them as "having from the original grants and the length "of possession become the Buckshee's property; "on all which grounds I have settled that,

" including the said jaghires, the Buckshee shall " receive from the Company an annual stipend " of Rs. 30,000, to be continued to his children " and family after his decease at the reduced " rate of Rs. 24,000, with a clause inserted in the " grant in conformity to the instructions to that " effect from the most noble the Governor " General in Council; that in event of its be- " coming expedient for Government to resume " the jaghires the parties shall be satisfied to " receive their value of produce from the " Treasury in like manner with the residue of " their pension."

The terms of the sunnud are in accordance with this minute. It appears to their Lordships that it was the intention of the East India Company not merely to give a reward to the buckshee for any personal services which he had rendered (a reward which he would be able to dispose of as he thought fit), but to make a permanent provision for the maintenance of an important family in Surat. This object is indicated by the expression " by reason of close " relationship and being descended from the " same ancestors as those of the Nawabs of the " maritime city of Surat." The specific benefit given to the individual for his own services is subsequently stated as Rs. 6000 per annum, in addition to that which was intended for the permanent maintenance of the family.

It has been argued on the part of the Appellants that this sunnud was not a grant of a jaghire, but merely a confirmation to the Buckshee of a jaghire which he before held by hereditary tenure, and had power to alienate; and that this grant ought not to be construed as cutting down his rights. But it appears to their Lordships that the foundation of this argument fails the Appellants. They agree with the High

Court that a jaghire must be taken *primâ facie* to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. There is no evidence that the jaghires held by the buckshee had come to him from his ancestors or were hereditary. On the contrary, they appear to have been granted to himself, although more than 20 years before the date of the sunnud, and there is no statement that they were granted on terms which would make them hereditary. It is true that the Nawab speaks of them having belonged to the Buckshee so long that they might be considered as his property, but their Lordships cannot regard this statement as anything more than a recognition that in all probability upon his death the jaghires might, as no doubt was often the custom, have been continued to his heirs or to some of his successors by the Native Government, possibly on the payment of a fine; and they agree with the High Court, that, so far from the presumption being that the Buckshee had an hereditary and alienable estate, the presumption is the opposite.

That being so, their Lordships do not regard the grant as cutting down his right, but as extending it so that his successors would be necessarily treated as the owners of the jaghire unless and until resumed; but having regard to the object and terms of the grant, they have come to the conclusion that each of the descendants of the Buckshee, who took the jaghire, took it for life only.

It should be observed that the main object of the grant is to secure a pension (that is the proper term for it) of Rs. 24,000 per annum to this family. A portion of that pension is to be paid out of the revenues of certain mehals constituting the jaghire stated in the schedule; the proceeds of the jaghire are thus in effect

but a part of the pension. It has been scarcely contended on the part of the Appellants that the pension was alienable. But, if the pension was unalienable, and the jaghire was alienable, this conclusion would appear to follow. If the jaghire had been sold, and the Government had at any time chosen to resume it, as they expressly reserve to themselves power to do, they would have been obliged to pay to each of the purchasers of the mehals constituting the jaghire, who would be strangers, and to their successors in perpetuity, a portion of the pension of Rs. 24,000 per annum granted especially for the support of the family of Najamooddin. It appears to their Lordships that this result cannot reasonably be supposed to have been contemplated at the time the sunnud was entered into, unless it was contemplated that the whole of the Rs. 24,000 by way of pension could be alienated, a supposition wholly inadmissible.

On the whole, therefore, their Lordships, having regard to the peculiar character of this grant from the Government under the circumstances which have been related, and with the objects which it expresses, have come to the conclusion that the Court of Bombay was right in treating it as conferring upon the descendants of Najamooddin, who would be entitled under it, an estate for life and for life only.

Their Lordships having come to this opinion on the grounds above stated, do not think it necessary to refer at length to some cases which have been quoted, having little bearing upon the present. They may observe that the case which was referred to in the 9th Moore, Ind. App., of *Rajah Nursing Deb* v. *Roy Koylasnath Roy*, decided no more than that where a zemindar had made a grant vesting property in the grantee and his descendants from

generation to generation,—terms well known in India as conferring an hereditary estate, that hereditary estate was not cut down and made unalienable merely by a direction that certain persons should be maintained. Their Lordships may observe that this was a grant from a private individual, and they are not prepared to affirm that all the considerations applicable to grants from private persons apply to grants from the State. It should be borne in mind that the present is not the case of the State merely granting a jaghire, and declaring that that grant shall be hereditary, but it is a grant of a jaghire accompanied with the grant of a pension, under circumstances which indicate that the intention was that the grant of the jaghire and the grant of the pension should be subject to the same conditions.

A case has also been referred to, decided in the North-West Provinces, of *Bithul Bhut* v. *Lalla Raj Kishore and others*, 2 Agra Reports, A.C. 284, with reference to which their Lordships think it enough to say that the decision there turned upon the construction of regulations which had force in the North-West Provinces, but have no application to Bombay, and further, that the grant in that case was the grant of a private person.

The only further question which has been argued is whether Fatima ratified the execution of the mortgage by her brother Moinooddin after she became of age, and if so, what is the effect of that ratification. Upon this subject their Lordships think it enough to say that they see no reason for differing from the conclusion which the High Court have come to, upon what is in a great measure a question of fact, viz., that she did not ratify that execution with knowledge of her rights, and that therefore she cannot be bound thereby.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the High Court should be affirmed, and this Appeal dismissed with costs, such costs to include the costs of both Respondents.