

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nawab Malka Jahan Sahiba v. The Deputy Commissioner of Lucknow in charge of the Nazul Department, from the Court of the Judicial Commissioner of Oudh; delivered Thursday, January 23rd, 1879.*

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Present:

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE material facts in this case may be shortly stated. The Plaintiff was one of the widows of a king of Oudh, Momuddin Mohommad Ali Shah, who occupied the throne some time before the annexation of Oudh. In the years 1800 and 1840 this lady had four sanads from the king, granting to her a large tract of land within the city of Lucknow, comprising royal palaces, gardens, houses, and shops. The form of those sanads, which are substantially (if not in words) the same, is this:—“ We have graciously  
“ been pleased to grant to Malka Jahan Nawab  
“ Tajun Nissan Begam, according to the details  
“ herein given, the Baradari on the road, together  
“ with the Mohal Sarai belonging to Govern-  
“ ment, containing an area of 38,330 square  
“ yards, situated in Tilpura *alias* Dowlat-pura,  
“ a mohalla of Lucknow city, which is the seat  
“ of Government. All the civil clerks, govern-  
“ ment officers, and daragas, present and future,  
“ are directed to transfer the said houses to the  
“ possession of the said begam and her de-  
“ scendants in perpetuity generation after  
“ generation, to see that this command is durably

“ executed, and to give no annoyance by demanding any tax. Neither shall they call for a fresh deed year after year.”

On the suppression of the mutiny in Oudh the well-known proclamation of Lord Canning was issued on the 15th March 1858. That proclamation, among other things, contains these words :—

“ The Governor-General further proclaims to the people of Oudh that, with above-mentioned exceptions,” (in favour of certain loyal talookdars,) “ the proprietary right in the soil of the province is confiscated to the British Government, which will dispose of that right in such manner as to it may seem fitting.”

It proceeds : “ To those talukdars, chiefs, landholders, with their followers, who shall make immediate submission to the Chief Commissioner of Oudh, surrendering their arms and obeying his orders, the Right Honourable the Governor-General promises that their lives and honour shall be safe, provided that their hands are not stained with English blood murderously shed. But as regards any further indulgence which may be extended to them, and the condition in which they may hereafter be placed, they must throw themselves upon the justice and mercy of the British Government. To those amongst them who shall promptly come forward and give to the Chief Commissioner their support in the restoration of peace and order, this indulgence will be large, and the Governor-General will be ready to view liberally the claims which they may thus acquire to a restitution of their former rights.” It does not appear either that the Plaintiff took any part in the rebellion or that she promptly came forward and gave her support for the restoration of peace and order.

Their Lordships have before now had occasion

to express the opinion to which they adhere, that the effect of the proclamation was to divest all the landed property from the proprietors in Oudh, and to transfer it to, and vest it in, the British Government.

There followed two proclamations of Sir James Outram, dated respectively the 22nd March 1858 and the 25th March 1858. The first is in these terms:—"It is hereby notified for those who have  
 " fled away from the city, having locked up their  
 " houses, that if they would not return within  
 " ten days and re-occupy their houses, the  
 " property with their houses will be confiscated." The second, addressed to the landholders, runs thus:—"The Major-General, Chief Commissioner  
 " of Oudh, in sending you this proclamation,  
 " wishes to inform you that if you at once come  
 " in ready to obey his orders, provided you have  
 " taken no part in the atrocities committed on  
 " helpless Europeans, none of your lands will  
 " be confiscated, and your claims to lands held  
 " by you prior to annexation will be heard." These proclamations of General Outram cannot be taken as changing the effect of the proclamation of Lord Canning, or having any operation, in as far as they may be inconsistent with it. Certainly they could not have the effect of divesting any property from the British Government which had been vested in it. The object of General Outram, doubtless, was to exhibit a conciliatory policy to those who should promptly come in and tender their submission to the British Government.

The next document that it is necessary to refer to is a letter of the 8th April of the same year, addressed by the Secretary of the Chief Commissioner of Oudh to Mr. George Campbell, who was then the Judicial Commissioner of Oudh, in these terms:—"Sir,  
 " the Chief Commissioner requests that you

“ will consider the Nazul Department as under  
 “ you, and that you will at once order lists  
 “ to be made out and carefully prepared of  
 “ all Nazul property.” (Nazul property being  
 State property, which had accrued to the  
 State from forfeiture, lapse, or any other cause).  
 “ The houses and gardens of all rebels should  
 “ be *primâ facie* entered in the lists, and can  
 “ be restored or not, as may hereafter appear  
 “ expedient. The property of the late royal  
 “ family will necessarily all come within the  
 “ lists.”

It has been contended on the part of the Appellant that for “royal family” should be read “king,” but their Lordships do not adopt that construction. The question is, what was done by the Government? And looking to this document, coupled with others which will be referred to, it appears to their Lordships that the intention of the Government, which was carried into effect, was to put upon the Nazul Register all the property which in any sense could be considered property of the royal family, or royal property, including the property in question.

The next document to be referred to is a letter of the Judicial Commissioner of Oudh to the Commissioner and Superintendent, Lucknow Division, dated July 26th, 1858. “ Sir,  
 “ in settling what buildings, &c. are to be  
 “ retained as Nazul and what restored to the  
 “ former possessors it will be necessary to dis-  
 “ tinguish between estates made over in full  
 “ proprietary right to the proper owners, and  
 “ those which are in fact Nazul as belonging  
 “ to the former Government, but are held as  
 “ residences by the begams and others con-  
 “ nected with the court. The latter are clearly  
 “ not transferable, but will in most instances  
 “ eventually lapse to Government, and I trust

“ that you will see that the distinction is  
 “ maintained. For instance, the great palace  
 “ hitherto held by the Begam Malka Jahan  
 “ is evidently a mere jointure house in which  
 “ she lived when all Lucknow was in possession  
 “ of the court, but it is in no way her private  
 “ property, nor can it be said that her house  
 “ has been taken from her. She is merely  
 “ in the altered circumstances of Lucknow and  
 “ of the royal family, the occupation by British  
 “ troops and destruction of so many buildings,  
 “ assigned accommodation more reasonable and  
 “ moderate than the enormous palace of other  
 “ times. In other cases similar arrangements  
 “ may be made so that those who have lost  
 “ all by the demolitions may be provided for  
 “ and those who happen to escape may not unrea-  
 “ sonably monopolise the accommodation to the  
 “ exclusion of others. In the Nazul list there  
 “ should be first statement of estates in imme-  
 “ diate possession, and second, statement of those  
 “ in which the Nazul has a reversionary interest.”

It would seem that the Deputy Commissioner  
 acted upon this letter of the Judicial Commis-  
 sioner, for we find this account of “ Proceedings  
 “ of the Collector’s Office of the Lucknow District  
 “ recorded by Mr. Simson Nicholas Martin,  
 “ Deputy Commissioner, on the 3rd August 1858.  
 “ A letter dated 28th July 1858, No. 212, giving  
 “ cover to Judicial Commissioners, letter No. 206,  
 “ dated 26th idem, has been received from the  
 “ Commissioner directing a distinction to be  
 “ made in the Nazul Register between those  
 “ houses which are in reality Nazul, but which  
 “ were given to begums to live in; for instance,  
 “ the large house which was formerly in the  
 “ possession of Malka Jahan, the *Judicial*  
 “ Commissioner says that this house certainly  
 “ belonged to the king, and was given by the  
 “ King of Oudh to the begam merely to live in.

" Where such is the case a note will be entered  
 " in the column of remarks to the effect that  
 " the house will be regarded as Nazul property  
 " after the death of the party at present in pos-  
 " session. Ordered that an injunction be issued  
 " to the Nazul Daroga, directing him to make the  
 " required note in the column of remarks where  
 " such a large house is in the possession of any  
 " begam." Whether or not that entry in the  
 Nazul was immediately made is not very clear:  
 it would perhaps be the better opinion that it  
 was made subsequently in June 1859, because on  
 the 2nd June 1859 we find the following letter  
 from Mr. A. Abbott, the Commissioner and  
 Superintendent, to the Deputy Commissioner.  
 " With reference to your letter No. 598, dated  
 " 23rd ultimo, I have the honour to forward for  
 " your information and guidance the annexed  
 " copy of a letter, No. 1,049, dated the 31st idem,  
 " from the Secretary to the Chief Commissioner  
 " sanctioning the grant to Mohsan-ud-dowla of  
 " that portion of the house of Malka Jahan made  
 " over to him by the Judicial Commissioner in  
 " full satisfaction of all claims on account of  
 " houses demolished, and to request that you will  
 " file an acknowledgment of the Nawab to the  
 " effect stipulated, and see that that portion of  
 " the premises in the occupation of Malka Jahan  
 " is in the Nazul list. The building was declared  
 " Nazul by the Judicial Commissioner in his  
 " letter No. 206, dated the 26th July 1858,  
 " declaring Malka Jahan to have only a life  
 " interest in it. On her death it will lapse to the  
 " Government."

Probably an entry to that effect in the Nazul  
 list was then made. The allusion to Mohsan-  
 ud-dowla in this letter is thus explained. The  
 Government determined to allow the Plaintiff to  
 reside in a large portion of the great aggrega-  
 tion of buildings, but they thought fit to give

a portion of it to Mohsan-ud-dowla, who appears to have deserved well of the Government, in lieu of certain property of his which had been taken for military purposes. Whether or not the Plaintiff assented to this division between herself and Mohsan-ud-dowla may be questioned, but is not material. She does not in the present action claim that portion of the palace which was assigned to Mohsan-ud-dowla.

A good deal of correspondence was read which took place about this time, and their Lordships infer from it that although there does not appear to be any distinct and formal entry of a notification having been given to this lady that she would be allowed to remain only as an occupier for life of the premises, she must have been aware of the terms on which the permission was granted. Indeed, she appears on one occasion to have been heard by her mooktear before the Commissioner or the Deputy Commissioner to state her case.

About this time the lady went on a pilgrimage and remained absent for several years, leaving the palace in the possession of her servants in the interim. Upon her return, some time in 1865, she made a claim for the whole of the palace, and that claim is thus dealt with by the authorities. The Under-Secretary to the Government of India writes thus to the Chief Commissioner of Oudh, from Fort William, on the 22nd February 1866, " Sir,—In reply to your Junior Secretary's " letter, dated 10th instant, No. 563, reporting " on the claim of Malka Jahan Begam to the " whole of the buildings known as ' Malka " Jahan's Estate,' I am directed to intimate " that the Governor-General in Council, concur- " ring in your view of the case, declines to " recognise the claim advanced by the begam, " and desires that she may be informed accord- " ingly."

In the next year she again pressed her claim, and we have, on the 26th July 1867, another letter from the Secretary of the Governor-General to her attorneys, in these terms: "Gentlemen, in reply to your letter dated "1st March last, submitting a petition from "Malka Jahan, in which she lays claim to "the house at Lucknow known as 'Aga Mir Ki "Deorlu,' a portion of which has been made "over to Nawab Mohsan-ud-dowla, I am directed "to inform you that the Governor-General in "Council, after careful inquiry, sees no reason to "modify his previous orders respecting this "claim."

The lady appears to have taken no steps in the matter for six years after this, but on the 7th May 1873 she presented a petition to the Commissioner of the Lucknow Division, asserting her right to the premises in perpetuity, and requesting the Government to allow it. She goes on to say: "That certain farmans, bearing the royal stamp, "relating to the grant of the said houses, "are in my possession, which corroborate the "fact that these houses were granted to me as "my permanent and transferable property for "generation after generation. Notwithstanding "all this a strange thing has happened, that on "the arrival of a letter from your honourable "Court, the said houses have been inserted to "the Nazul Register under the hypothesis that "the King of Oudh, my deceased husband, has "granted me the houses for occupation for life "only." Then she says: "As I had proceeded "on pilgrimage to 'Karbala,' therefore no steps "could be taken from my side to regulate this "error. Whereas the groundlessness of this "hypothesis will be developed to you even by a "perusal of the above-mentioned farmans, in "which it is specifically recorded that the pro- "prietary and transferable right of the houses "has been given to me for perpetuity." Then



she goes on to say: "It is, therefore, essentially  
 " necessary and equitable to correct this mistake  
 " by striking off the words 'for occupation  
 " only'"—which are in italics and inverted  
 " commas—"from the Nazul Register, because by  
 " the existence of such a mistake a considerable  
 " loss shall be sustained by me, my heirs, and  
 " relatives, whose maintenance and protection are  
 " incumbent on Government, in compliance with  
 " the testamentary contracts of the late king, my  
 " husband. In conclusion I respectfully beg  
 " that after the perusal of the farman, and  
 " making other necessary inquiries, you will be  
 " humane enough to correct this mistake, by  
 " making known generally that this property  
 " may remain exempt from all interference after  
 " me as it now is." On the 18th of September  
 following, she seems to have sent copies of  
 these farmans, with a petition (not set out  
 in the Record) which the Commissioner thus  
 deals with on the 18th of October: "Read  
 " a petition dated 18th September 1873 from  
 " Nawab Malka Jahan, submitting certain  
 " sanads, with a view to their genuineness  
 " being tested. Ordered that the sanads be  
 " returned to Petitioner, with the remark that  
 " officiating Chief Commissioner has no power to  
 " inquire into their validity. If she has any  
 " doubts on the subject she had better apply to  
 " the Civil Court for a declaratory decree, or  
 " such other legal advice which the officiating  
 " Chief Commissioner is not competent to give."

Thereupon she brings the present action, on the  
 30th March 1874. The plaint claims a declaration  
 of Plaintiff's absolute title in the premises, de-  
 scribing them. It states, "That the Plaintiff has  
 " been in absolute proprietary possession of the  
 " above houses by virtue of the aforesaid grants for  
 " last 36 years; that in 1858 the Defendant by  
 " proceedings dated 3rd August 1858,"—that is

the memorandum which has been referred to of the proceedings in the Collector's Office in Lucknow, acting on the letter of Sir George Campbell,—

“ declared that the Plaintiff had a life interest in  
 “ the houses aforesaid, which were to lapse to  
 “ the Nazul Department on the death of the  
 “ Plaintiff, the present holder, as a property of  
 “ the ex-king of Oudh. That the Plaintiff in  
 “ 1873 presented a memorial to the Local  
 “ Government setting forth her legal title to the  
 “ aforesaid houses, on the strength of the royal  
 “ grants mentioned above, and prayed for the  
 “ rectification of the mistakes committed by the  
 “ Nazul Department in respect of the ownership of  
 “ the aforesaid houses, whereupon she (the  
 “ Plaintiff, was directed to seek redress in the  
 “ Civil Court, *vide* Chief Commissioner's No. 581,  
 “ of 28th October 1873, herewith enclosed.  
 “ Plaintiff therefore sues for the declaration of  
 “ her title in the houses aforesaid as the absolute  
 “ owner thereof.” She further asserts that the  
 cause of action arose when she presented her last  
 petition and the Government refused to act upon  
 it.

The Deputy Commissioner pleads first that  
 “ the suit is barred by limitation. The palace  
 “ having been declared to be a State building  
 “ in 1858, and Plaintiff having been then informed  
 “ that it was in no way her private property, and  
 “ that she was allowed to occupy a portion of it as a  
 “ jointure house,” and then he refers to the letters  
 and proceedings which have been read. “ The suit  
 “ in its present form is inadmissible. Plaintiff  
 “ really wants consequential relief of a most valu-  
 “ able nature, and hence the suit should be brought  
 “ on full stamps. The sanads relied upon are of  
 “ no force opposed to the declaration of Govern-  
 “ ment after re-occupation, that the palace was  
 “ State property and the fact of Government  
 “ having dealt with it as such. For these reasons  
 “ the suit should be dismissed, with costs.”

The suit was first heard by Mr. Lincoln, the Civil Judge, who gave judgment in favour of the Plaintiff. An Appeal was preferred to the Commissioner, who gave judgment for the Defendants, on the ground that the act which was complained of, and sought to be set aside, was an act of State, and could not be taken cognizance of in a Civil Court. On further Appeal to the Judicial Commissioner, he affirmed the judgment on the ground that the claim was barred by limitation, and this is the judgment now appealed against. The Commissioner appears to have supposed that Sir George Campbell and the officers who dealt with this property at Lucknow were acting under Regulation 19 of 1810, section 7, which enacts that the general superintendence of all Nazul property is vested in the Board of Revenue. Their Lordships think it right to observe that this regulation, which was never extended to Oudh, was clearly not the authority under which they acted; their authority was the proclamation of Lord Canning, and the other proceedings of the Government which have been referred to.

Their Lordships are of opinion that this suit cannot be maintained. The proclamation of Lord Canning, as has been before stated, had the effect of vesting the property, the subject of the suit, together with all other landed property in Oudh, in the British Government, and all who claim title to it must claim through the Government. The question then is, what interest, if any, has been granted or allowed to this lady by the Government? Their Lordships do not think it necessary to determine the effect of the construction of the sanads under which she formerly held, whether they would, if Oudh had remained under the old dynasty, have conferred upon her a life interest or an interest in perpetuity. It does not

distinctly appear whether or not these sanads were called to the attention of Sir George Campbell, acting as the Nazul Officer of the Government; but whether they were, or were not, or whether Sir George Campbell took a right or a wrong view of what the lady's rights were before the proclamation of Lord Canning, appears to their Lordships immaterial. Those rights, whatever they were, were confiscated, and the sole question is, what interest, if any, was re-granted to her? Looking at the whole of the proceedings which have been quoted, it appears to their Lordships abundantly clear that no more was granted to her than a permission to occupy the palace for her life. If the acts which she seeks to impugn on the part of the officers of the Government were nullities, it would follow she has no interest at all, but that her property remains in the British Government to which it was confiscated.

Their Lordships may further observe that this being a declaratory suit, it is clearly not maintainable on the ground that no possible relief could be given. The suit thus failing on two grounds, it is not necessary to enter into the question of the Statute of Limitations. For these reasons their Lordships will humbly advise Her Majesty that the judgment of the Judicial Commissioner dismissing the suit be affirmed, and this Appeal dismissed, with costs.