

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Omrao
Begum and Another v. the Secretary of State
for India in Council, from the High Court of
Judicature at Fort William in Bengal, delivered
March 11th, 1892.*

Present :

LORD MACNAGHTEN.

LORD HANNEN.

SIR RICHARD COUCH.

LORD SHAND.

[*Delivered by Lord Macnaghten.*]

The Appellants, who were Plaintiffs in the suit, claim to be entitled to seven-eighths of a perpetual annuity of Rs. 600 a month, which was granted in 1858 to their father, Syed Mehdi Ali, by the late Nawab Nazim, Syed Mansur Ali. They now demand payment of the annuity with arrears from the Government of India on the ground that the Government holds property on which, as they allege, the annuity was, and is, charged.

If the claim were well founded the charge would apparently extend to all the immoveable property of the Nawab, or at least to all the immoveable property belonging to him which he had power to alienate. But for the purposes of this suit the Plaintiffs limit their claim to Pergunnah Gopinathpore. That Pergunnah was the property of the Nawab in 1858, when the annuity was granted, and it is now held by the Government. The Government holds it "for the purpose of upholding the dignity of the Nawab Nazim for the time being" under the award of

certain commissioners appointed in pursuance of "the Nawab Nazim's Debts Act 1873."

Although their Lordships propose to rest their judgment mainly upon another ground, it appears to them that the award under which the Government holds the property would be an answer to the present demand, even if the Plaintiffs' claim had been well founded originally.

It seems that the affairs of the Nawab had got into a state of hopeless confusion. He was involved in debts and liabilities which he could not meet. The Government intervened, laid hands on his property, and passed the Act of 1873 for his relief. All persons having claims against the Nawab or his property were required to notify them within a limited time to certain Commissioners appointed under the Act. Every debt or liability not so notified was to be barred. The Commissioners were empowered "after due and full inquiry," to determine and certify "the amount which, on the consideration of all the circumstances," they might "consider each claimant ought in fairness and justice to receive." On payment or tender by the Government of the amount certified the debt or liability was to be extinguished. No suit was to be commenced or prosecuted, and no process was to be sued for against the person or property of the Nawab without the consent of the Government, and, lastly, the Commissioners were to ascertain what immoveable property was held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being. They were to certify the particulars, and it was declared that "their finding thereon" should "be binding and conclusive on all persons whomsoever."

Complying with the exigency of the Act of 1873, the Plaintiffs brought in their claim. The Commissioners rejected it altogether. They held

that if there was a contract it was "not binding on the Nawab Nazim either for past years or for the future." They made an award finding that the acquisition by the Nawab of certain specified property including Gopinathpore was, to use their own words, "so to speak official, and that it became an appanage of the office and state of the Nawab Nazim." They held that he was incapable of alienating his interest in such property. And in the terms of the Act they declared that it was "held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim for the time being."

Their Lordships understand that finding applied to Gopinathpore to be that Gopinathpore is held by the Government for the purposes declared in the Act, freed and discharged from all claims and incumbrances including the alleged claim or incumbrance of the Plaintiffs. Such a finding in their Lordships' opinion was within the competence of the Commissioners, and if so, it was, in the words of the Act, "binding and conclusive on all persons whomsoever."

The learned counsel for the Appellants commented severely upon the manner in which the Commissioners discharged their functions. He insisted that they had misunderstood or disregarded the opinion of this tribunal which certainly had held that the Nawab was bound by contract to pay the annuity in question to Syed Mehdi Ali. But their Lordships have no power to review the findings of the Commissioners, nor is it within their province to express any opinion upon their conduct. The Commissioners were invested with arbitrary powers. If they used those powers harshly, or otherwise than in accordance with the principles of fairness and justice, to which they were required by the Act to conform, the only

remedy open to persons who might conceive themselves aggrieved was to appeal to Government. The Government had the power of removing the Commissioners or permitting recourse to be had to Courts of Justice.

The Plaintiffs it seems did apply to the Government for leave to enforce a Decree of the High Court for payment of arrears of their annuity. This application, however, was refused. Thus through the action of the Government the Plaintiffs were deprived of legal rights which had been recognized by this Board, and successfully vindicated in the highest Court in India, while at the same time the property renounced in consideration of those rights was placed for ever beyond their reach.

Passing from the consideration of the Act of 1873 and the findings of the Commissioners, their Lordships will now direct their attention to the terms of the contract which was made between the Nawab Nazim and Syed Mehdi Ali and which is the foundation of the Plaintiffs' claim. In January 1858, Amirunnissa, the widow of a former Nawab Nazim, died without issue. She was a lady of great wealth and the proprietor of Gopinathpore which she had purchased in the name of Syed Mehdi Ali. On her death the Nawab claimed to succeed to all her property to the exclusion of her heirs, of whom Syed Mehdi Ali was one. Not caring at the time to dispute the matter with the Nawab, Syed Mehdi Ali approached him with a petition dated the 12th of February 1858, admitting in terms the Nawab's claim and soliciting from him an allowance for maintenance. Thereupon the Nawab passed the following order:—"Out of the properties, mehals and zemindaris of the Begum Sahiba, deceased, let a monthly allowance Rs. 600, besides the sum given in the report,

“ be fixed for Syed Mehdi Ali, and nothing
 “ further shall be allowed to him by the Sircar
 “ at any time or in any way.”

Then after about a fortnight's interval, during which, no doubt, communications passed between the parties, Syed Mehdi Ali executed a *ladavinama*, or agreement of disclaimer, dated the 24th of February 1858, in which in the most unqualified terms he renounced every claim and all pretension to the property of the late Begum. Thereupon the Nawab executed the following *perwana*:—“The late Nawab
 “ Amirunnissa Begum, deceased, my grand-
 “ mother, adopted you as her son, and maintained
 “ and supported you, and she died on the 21st
 “ January 1858. After the death of the deceased,
 “ you along with your children and dependents
 “ appeared before me and made application for
 “ support and maintenance from the *sirkar*.
 “ Consequently for the purpose of your support
 “ and maintenance, posterity after posterity, and
 “ generation after generation, the sum of Co.'s
 “ Rs. 600 per mensem, being the annual sum
 “ of Co.'s Rs. 7,200 will be paid to you out of
 “ the *tehbil* of the *sirkari* *mehals*. You and your
 “ heirs shall be supported and maintained one
 “ after another out of the said stipend. It is
 “ incumbent on you never to prove faithless to
 “ the *sirkar*. And as for the expenditure of the
 “ 10 days of the *Mohurrum* connected with you,
 “ *mehal* *Ningram*, lying in *pergunnah* *Bhalul*, a
 “ *mehal* in the name of *Zahura Begum*, is granted
 “ by the Government.” That document is dated
 “ the 25th of February 1858.

The learned counsel for the Appellants contended that the four documents are parts of one transaction. That is perfectly clear. But it is equally clear that the first set, the two documents of the 12th of February, are introductory to the second set, the documents of the 24th and 25th

of February which were intended to be the operative and governing instruments. Even if the matter rested on the order of the 12th of February, their Lordships would be prepared to hold that no charge was created on any part of the Nawab's property. It is not a legal charge. In equity no charge can be created unless there is an intent to charge. Taking all the documents together it is plain that no charge was contemplated by either party. The order of the 12th of February is, in their Lordships' opinion, nothing more than a mandate by the Nawab Nazim to his own officials for their convenience. The Perwana of the 25th of February 1858 does not even purport to charge any property. It simply says that the amount is to be paid out of the Nawab's State Treasury.

Upon these grounds, and especially upon the last, which goes to the very root of the matter, their Lordships hold that the appeal must fail. They express no opinion as to the particular ground on which the High Court rested their judgment. They would not have been prepared to have concurred in that view without further argument.

Their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. But having regard to all the circumstances their Lordships do not think fit to make any order as to costs.