

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Hadji
Mahomed Hady v. The Collector, Rangoon
Town Lands, from the Chief Court of Lower
Burma; delivered the 6th November 1903.*

Present :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

THE question in this case is as to the amount of compensation payable to the Appellant for certain property belonging to him and his mortgagees, which was taken by Government for the erection of a Small Cause Court in Rangoon. The Collector made his Award. The Appellant was dissatisfied with it, and he appealed, as he was entitled to do, to the Chief Court of Lower Burma. The Chief Court confirmed the Collector's Award.

The evidence which the Appellant adduced before the Chief Court was meagre and unsatisfactory. Taking the evidence on both sides together, there are only three persons whose statements are deserving of attention. There is the evidence of Mr. Balthazar, one of the Appellant's witnesses, who says: "I know of "no first-class lot in the European quarter "which has brought Rs. 1,14,000 for the land "only." It was argued before their Lordships that that meant that he was not aware of any case in which so low a sum had been given. It was, however, pointed out by Sir Andrew Scoble that that could not be the meaning of the words,

because the witness had already given an instance in which Rs. 92,000 had purchased a first-class lot.

Then there is the evidence of Mr. Gnanamutu, one of the Respondent's witnesses. Mr. Gnanamutu had valued the whole of this land for the Bank of Bengal, and although he was valuing it for persons who were likely to make advances upon it, it does not appear that he valued it at too low a price. He took the lowest and the highest price that he thought the land might fetch. Having thus ascertained the market value of the property, it would be for the Bank to limit its advances in any manner it might think fit, in order to secure itself. Mr. Gnanamutu's evidence is, in the opinion of this Board, the clearest as to the value of the land, and the Appellant has got the highest price Mr. Gnanamutu put upon it.

Lastly there is Mr. Shircore, another of the Respondent's witnesses, who works out the amount awarded in figures to the square foot, and it appears from his conclusions that the Appellant has got a very liberal allowance for his land.

The Appeal is really based upon this, that at a time when the Appellant was in an insolvent condition, the Bank of Bengal obtained a small portion of his land which abutted on their premises, and they allowed the Appellant Rs. 40,000 for it. It is impossible to treat that as a sale in the market. What the Court had to determine was the market value of the property. This was a transaction between the Bank and a debtor who could not pay. It does not seem to have been an excessive price. Probably as between the Bank and its debtor the price was fair enough. But it does not afford any reason for calculating the rest of the property at a higher

value because it was nearer the main street, as Mr. Phillips endeavoured to persuade their Lordships to do.

On the whole their Lordships are of opinion that the Appellant has been very fairly and very liberally dealt with, and they see no reason whatever for disturbing the Judgment of the Chief Court.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

As the Respondent has not appeared, there will be no Order as to costs.

