

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
Administrator General of Bengal v.  
Anundo Chunder Bose from the High  
Court of Judicature at Fort William in  
Bengal; delivered 27th February 1874.*

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Present:

SIR JAMES W. COLVILE.  
SIR BARNES PEACOCK.  
SIR M. E. SMITH.  
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

This was a suit brought by Mr. Hogg, the Administrator General of Bengal, and joint executor of the estate of Mr. Henry Adams, deceased, and also in his capacity as attorney for Mrs. Adams, the widow of Mr. Adams, against Anundo Chunder Bose, the holder of a certain mokururee pottah. The suit seeks to set aside that pottah, upon these grounds: first, that it was obtained by the Defendant, Anundo Chunder Bose, who was a naib of the estate, acting under Mr. Shaw, who was agent or attorney for Mrs. Adams, by collusion between the Defendant and Mr. Shaw; and, secondly, for the reason that Mr. Shaw had no authority to grant any such lease. It was not a suit for reforming the lease, but simply for setting it aside; and the effect of it would be to turn the Defendant out of possession, and to put the plaintiffs in it, without any recompense to the Defendant of any kind, for any improvements he may have made, if he made any.

The facts necessary to make the suit intelligible may be very shortly stated. Mr. Adams, the owner of a considerable tract of land in the Soonderbuns, died in the year 1845, leaving a will made not long before his death, whereby he devised his estates to his wife for life, with remainder to her children, and appointed her and Sir Thomas Turton, who was then acting as Administrator General of Bengal, joint executors of the will. Mrs. Adams has ever since resided in England, giving authority from time to time to various persons, to Mr. Steers, and Mr. Vos, and Mr. Shaw, at different times, in 1847, 1861, 1862, and 1868, under powers of attorney to manage the estate and collect the rents, though not in terms to grant leases. The lease in question was a mokururee lease granted to the Defendant, who was the naib of the estate, in December 1862. He obtained this lease upon the terms of paying no rent at first, but the rent to be increased until it rose to the maximum of ten annas per beegah.

It has been contended that the rate of rent in this case was lower than was usual in leases of a similar character in the neighbourhood, and that the Defendant, who acted as a naib, obtained it improperly, and in collusion with Mr. Shaw.

The issues, which it is not immaterial to look at, were these: "1. Had the agents who used to be appointed and who were appointed on behalf of Mrs. Adams in the Sunderbun lots left to her by her husband, any authority to make mouroosee settlements? Had the agent, Mr. Shaw, any such authority?" Then the next is,—“The said agent, Mr. Shaw, created on the 15th Pons 1269, a mouroosee jumma in favour of the Defendant; did he act collusively in settling it at an inadequate rent, or act in a *boná fide* and staightforvard

“manner?” Then the third issue is,—“After taking the said land did the Defendant enhance its value?” Upon that, their Lordships understand, there is no specific finding; and that may be put out of the question. The fourth issue is,—“Were Mrs. Adams and her agents, subsequently appointed, cognizant of the pottah granted by Mr. Shaw, or not? Did they by their conduct confirm the Defendant’s jumma, or not? If they did then, can the Plaintiff now bring the present action?” Those were the issues.

The case in the first instance came before the subordinate Judge of the Twenty-four Pergunnahs; and their Lordships understand him to have found in favour of the Defendant on the first issue:—“Had the agents authority to make mouroosee settlements? Had the agent, Mr. Shaw, any such authority?”

With respect to the second issue, namely, whether there was collusion between Mr. Shaw and the Defendant, that case was withdrawn, and a totally different case was set up, which is not pointed to by any of these issues. The case set up,—what may be called the substituted case,—was, not that Mr. Shaw and the Defendant colluded, but that the Defendant, the under agent, imposed upon Mr. Shaw, the superior agent, and induced Mr. Shaw to grant this lease without Mr. Shaw being aware of its contents. Now their Lordships understand the subordinate Judge to have found that there was no misrepresentation; that the Defendant did not impose upon Mr. Shaw.

With reference to the fourth issue,—“Were Mrs. Adams and her agents subsequently appointed cognizant of the pottah granted by Mr. Shaw, or not? Did they, by their conduct, confirm the Defendant’s jumma, or not?”—their Lordships understand the subordinate

Judge to have found that they were cognizant of it, and that they did confirm it. It appears to their Lordships that there was evidence upon which all of these findings might have been properly supported.

The case then came before Mr. Beaufort, the Judge of the Twenty-four Pergunnahs, upon appeal to him, the case not being of sufficient magnitude and value to admit of its being taken by way of appeal to the High Court. Mr. Beaufort, as their Lordships understand his decision, did not reverse the finding in point of fact of the subordinate Judge, that Mr. Shaw granted this lease, acting within the general scope of his authority as agent. He certainly does not find that the lease was granted without authority. Upon the fourth issue,—whether or not this grant was subsequently confirmed by Mr. Shaw and Mr. Steers (who acted with him) with cognizance of the facts,—there is no specific finding on the part of Mr. Beaufort; but he does not, upon that either, reverse the decision of the Lower Court.

Their Lordships may observe upon this, that that decision does appear to them to be in a great degree confirmed by an Ikrar executed in 1866, whereby the former lease to the Defendant, in their Lordships' view, must be taken to have been recognized, and by recognition confirmed by Mr. Steers and by Mr. Shaw; and their Lordships understand that it has been further confirmed by the receipt of rent from the Defendant to the present time.

The Judge of the Twenty-four Pergunnahs differs from the finding of the Judge of the Court below, and reverses his findings upon these grounds. With respect to the substituted issue, as to whether the Defendant imposed upon Mr. Shaw, he finds that the Defendant did impose upon Mr. Shaw, in obtaining this lease; and he

states the ground upon which he comes to that conclusion. These are his words:—"As he obtained it at an unusually low rate and at a rissudi jumma, the maximum rate of which is this unusually low rate, I must presume that he fraudulently misled the manager for his own benefit." That, as far as their Lordships are able to understand it, is the ground of Mr. Beaufort's judgment.

Upon this there was a special appeal to the High Court; and the High Court in effect reversed the judgment of Mr. Beaufort, and confirmed the judgment of the subordinate Judge, upon this ground:—that Mr. Beaufort was not justified in presuming, as he appears to have done, from the mere fact that the land was let at an unusually low rent, that therefore the Defendant had obtained it by a fraud practised upon Mr. Shaw.

It appears to their Lordships that the High Court were right in that view, that there was no such legal presumption; and that is the main ground, if not the only ground, upon which the High Court appear to have reversed the decision of Mr. Beaufort. They also refer to one matter which is alluded to in the grounds of appeal, namely, that Mr. Beaufort had not dealt with the question of subsequent ratification by Mr. Steers and Mr. Shaw; and their Lordships are unable to say that the remarks which have been made by the High Court on that subject are open to any substantial objection.

On these grounds their Lordships are of opinion that the High Court was justified in point of law in reversing upon special appeal the judgment of Mr. Beaufort; and consequently they think it their duty humbly to advise Her Majesty that the judgment of the High Court be affirmed, and the Appeal dismissed.

