

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rao Bahadur Singh v. Mussamats Jawahir Kuar and Phul Kuar, Widows of Balwant Singh, from the Court of the Commissioner of Ajmers; delivered February 16th, 1884.

Present:

LORD BLACKBURN.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS is an action by the Rajah of Masuda, in the Rajputana district, for the purpose of recovering possession of a subordinate estate within the taluka of Masuda, consisting of the village of Nandwara with two or three hamlets appurtenant to it, against the widows of the last owner, Balwant Singh, who died without natural issue. The plaint avers that, — “The subject matter of the claim is that the Plaintiff is the proprietor of the taluka of Masudah, and by old-established custom, like his predecessors, enjoys the right to resume at any time any village assigned to any of his brethren for maintenance, and to provide for them in some other way.” His case is that this sub-taluka, as it may be called (though it is sometimes called a jaghire), had been granted, some hundred years ago, to an ancestor of Balwant, the last owner, for maintenance; and that he is entitled at any time to resume it upon providing pecuniary maintenance for the tenants for the time being. This contention has scarcely been attempted to be supported. The Plaintiff therefore falls back upon the circumstances of

this case and a more limited right; namely, a right to resume upon the death of the tenant without issue. The question is whether he has established this right.

In the suit a question was raised as to whether the widows had adopted a son in pursuance of alleged directions of their husband; and further whether, assuming that no such directions had been proved, the Rajah had by his conduct recognised the adoption. These questions have been found against the Defendant by the Lower Court; and that finding, though not in terms affirmed, appears in substance to have been adopted by the Court above, and it is in favour of the Appellant.

The Defendants denied that the grant was for the purpose of maintenance, alleging it to have been made in pursuance of some family arrangement or partition, and they denied the right claimed by the Rajah and most of the allegations in the plaint. The case came, in the first instance, before the Assistant Commissioner of Ajmere, who gave an elaborate judgement upon a number of issues which have become immaterial. The material finding is upon issue 13, viz.:—
 “Whether the Rao of Masudah, as head of the
 “family, has the right to confiscate the tenure of
 “Nandwara—(a) in spite of a legal adoption?”
 —that may be put aside; “(b) in spite of the
 “existence and presence of a natural heir?”
 Here it may be stated that there is no dispute that Ram Singh, who was alleged to be adopted, would be the next heir to Balwant in the ordinary course of descent. The finding of the Assistant Commissioner is in these terms:—“I feel bound
 “to decide this issue in the affirmative, and to
 “decide that the Thakur of Nandwara, having
 “died without a legitimate heir of the body, the
 “chief of Masuda is entitled to resume the
 “village, making proper provision for the main-

“ tenance of the widows, and if there be any
“ daughters, then of the daughters also, of the
“ deceased. The evidence before the Court goes
“ to show that confiscations have occurred fre-
“ quently in former times, sometimes because
“ the minor chief died childless.” The case
went on appeal to the Commissioner of Ajmere.
The Commissioner, not himself deciding the suit
in the first instance, stated a case for the con-
sideration of the Chief Commissioner. The Chief
Commissioner directed various inquiries to be
made of certain durbars of native princes.
They reported to him; and, after considering
their reports, he expressed his opinion that the
judgement of the Assistant Commissioner should
be reversed, and found that no such custom and no
such right as that which the Rajah claimed existed.
The Commissioner, acting on this opinion, reversed
the judgement of the Assistant Commissioner.
This Appeal is preferred from the judgement of
the Commissioner.

Documentary and oral evidence have been
given, to which it is unnecessary to refer at
great length. The first important evidence con-
sists of certain depositions which appear to have
been taken before Mr. Cavendish in the year
1829, Mr. Cavendish being then Superintendent
of Ajmere, and apparently charged with the duty
of obtaining information with respect to tenure in
Ajmere for the use of the Government. Various
depositions have been put in, which were used
before him. One or two of those depositions,
which are very short, go the length of supporting
the contention of the Plaintiff; but that is by
no means their uniform tenor. There are others
which qualify his right. There are some which
state that, although he has a right to resume
an estate, it must be upon substituting for it
another estate. It is to be observed that Bahadar
Mal, who probably represented him on that

occasion, because he speaks of him as his client, being asked, "What powers does your client (the istimrardar of Masudah) have with regard to the ejection of the jagirdars?" answers, "In case of disloyalty, insurrection, and impriety of conduct on the part of any jagirdar, my client can turn him out of the village; but if he show no disobedience he may be allowed to continue in possession of his village as usual, or at his request my client may exchange his village for another, or fix a cash allowance."

So it appears that the person who represented the Rajah on that occasion claimed no such right as that on which he bases his present suit, but simply a right of resumption for cause. Further it would appear that all these depositions are given upon the hypothesis of its being shown that the grant originally made to the jagirdar was a grant merely for maintenance; but that appears to their Lordships not to be established, the finding of the Assistant Commissioner on that subject being at least ambiguous, viz. :—"That the grant of Nandwara to the ancestors of the deceased Thakur was an ordinary grant in 'gras' or 'hawalah' tenure: no evidence has been produced to rebut this natural presumption. The word 'bhai-bat' has not been exactly defined or interpreted by the defence, and is a term which is vague in its meaning." Such a finding does not appear to show that the grants were necessarily grants for maintenance, neither of these terms necessarily importing maintenance. If that be so, the evidence does not directly bear upon the question. However, assuming that the grant was made for maintenance, still these depositions do not, as a whole, amount to proof of the right claimed.

The next documentary evidence relates to a proceeding in 1853 before Colonel Dixon, which arose in this way: The tenant of Jamola, one of

the dependent jagirdars, had refused to pay road cess, and had in other ways offended the Rajah. The Rajah thereupon claimed to resume possession of Jamola;—and, in order to establish his case, he applied to various other jagirdars,—among others, he applied to the father of Balwant,—to give a deposition or statement in his favour. He wrote to them this letter:—“ You need not “ entertain any apprehension on account of the “ letter which I got you to write in the Jamola “ case. The signature formerly attached (to “ certain writings) by Bhopal Singh (the grand- “ father of the present Thakur of Shergarh), both “ at the time of the dispute regarding Ramgarh “ and the assessment made by the Honourable “ R. Cavendish, shall be respected. Moreover, “ you will be put to no inconvenience whatever; “ don’t think it otherwise. I am at one with “ you. Should I act otherwise, God is between us, “ *i.e.*, between yourself and myself.” The substance of this letter, which is spoken to by one of the witnesses, rather points to this, that the Rajah asked these persons, who were to a certain extent dependent upon him, to sign a paper on the understanding that it would be of advantage to him and no detriment to themselves. Under those circumstances they did sign a paper, which is to this effect:—“ After usual compliments. By the grace “ of God we are all well, and trust that, by the “ blessing of God, this will also find you in good “ health. You are (our) master. You ask for “ our opinion in the matter of the application “ filed by the Thakur of Jamola. We accordingly “ beg to state that we are all members of your “ family, and look to you for our support. We “ have no (adverse) intention as regards the “ villages which you may confiscate, if you intend “ to do so, as you are our master. What we “ ask is only bread; you may confiscate the “ villages if you like.” This and the letter

which has just been read are nearly contemporaneous. Their Lordships, under the circumstances, do not attach any great importance to this declaration.

A great deal of verbal evidence also has been adduced; but it is by no means of uniform character or all of it supporting the contention of the Plaintiff. The first witness, a zemindar, who seems to be a man of position, aged 60 years, gives this view of the right claimed: "For fault shown, the Masudah patwi has power to resume villages given as hawalah. I cannot say what power the patwi has to so resume in the absence of fault."

Without going through all this evidence, it appears to their Lordships that, although several cases of what is called confiscation or resumption are shown, they have been, in almost every instance, from some fault or other. There is one instance indeed in which a jager is resumed upon the owner dying without issue, but in that case it happened that the Rajah was the nearest heir.

There appears to their Lordships no sufficient evidence to support the finding of the Assistant Commissioner that the Rajah had the right in the first of the three cases which he puts, namely, in the case of the minor chief dying childless, to confiscate or resume the estate. The opinions of the durbars, which were taken by the Chief Commissioner, are, on the whole, adverse to any such right; two are distinctly adverse to it, and two are equivocal. Their Lordships, having regard to the opinion of the Chief Commissioner, who states that "In Rajputana no positive rule of law exists on the matter, but there is no doubt that the Patwi Thakur is not entitled to resume an estate held as Nandwara was held merely because the holder died without adopting an heir,"—supported as that finding is, to some extent certainly, by the answers which were

received from the neighbouring durbars, and, on the whole by the balance of evidence in the case,—are of opinion that the judgement of the Commissioner of Ajmere should be affirmed.

They will therefore humbly advise Her Majesty that that judgement be affirmed, and that this Appeal be dismissed.

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