

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for India v. Mussamat Khanzadee, from the High Court of Judicature, North-Western Provinces, Agra, delivered 1st March, 1870.*

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Present:

SIR JAMES W. COLVILLE.

THE JUDGE OF THE HIGH COURT OF ADMIRALTY.

LORD JUSTICE GIFFARD.

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SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that there is no ground whatever for this Appeal. The Respondent's title rests upon the decree of the Commissioners, and it has not been alleged on the part of the Government in their pleadings or otherwise that that decree was other than a proper and binding decree; their Lordships certainly see no reason why it should not be binding, the Plaintiff on which it is founded is for actual possession of the land, but it is quite consistent with that Plaintiff that a decree should be made, falling short of the extent to which the Plaintiff went. The decree is in these terms:—"A decree is passed, assigning to "the Plaintiff for her food and maintenance five "villages in Zillah Boolundshahur equal in area, "Government assessment, and income, to Mouzas "Lukhawlee and Soobee, and Ramghur and Dow- "lutabad, of Pergunnah Seana; and Seorampoor, "Pergunnah Achar, which were given in gift to "Beebee Muriam, agreeably to a deed of gift, dated "the 22nd of July, 1854. This decree is to be "carried into execution, and the Plaintiff put into "possession of the villages; and she is, moreover, "to receive the mesne profits from the date of action "brought up to the date of being put into pos- "session."

At the date of the decree the Government was in possession, and the proper person to give possession, and to carry out this decree, was the Collector. Their Lordships cannot at all come to the conclusion that the regulation or the circular to which reference has been made in any way affected the authority of the Collector. If the matter stood simply on the act of the Collector, their Lordships would hesitate long before they could accede to the view which has been advanced on the part of Government; but on turning to page 27 of Appendix, what actually appears is,—that there were proceedings in the Civil Court founded on the decree—that the Government appeared in the Civil Court; raised no objection whatever, except as to a certain particular portion of the land of which possession was given, and that there was a decision by the Civil Court against the Government; consequently, the Respondent's title was confirmed by the decree of a competent Court.

For these reasons their Lordships are of opinion that the Government was much in the wrong in taking possession as they did, and that this Appeal never ought to have been brought. Their Lordships will, therefore, humbly advise Her Majesty that it be dismissed. The dismissal should be with costs.



