

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Thakur Shere Bahadur Sing v. Thakurain Dariao Kuar, from the Court of the Commissioner of Rae Bareilly, Oudh; delivered November 10, 1877.

Present:

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS case has not been tried in a manner altogether satisfactory. Without, however, referring to the previous proceedings, their Lordships think it enough to advert to the final judgment appealed against. The learned Commissioner gave his judgment in these terms:—

“ Busant Sing died during the Rebellion of 1857,
“ and the alleged adoption of the Plaintiff is said
“ to have taken place in April 1858. Before this
“ the general confiscation of the land of Oudh
“ had been declared by the British Government.
“ and it was only in May 1858 that a summary
“ settlement was made with the Defendant. At
“ the time, therefore, of the alleged adoption, the
“ title to the estate vested neither in the deceased
“ Busant Sing nor in the Plaintiff, nor in the
“ Defendant, but in the British Government.
“ Even if it be allowed that there was adoption
“ of Plaintiff, and that this, in accordance with
“ Hindoo law, conferred upon him all the right
“ of a posthumous son of Busant Sing, still
“ neither he, nor Busant Sing himself, if he were
“ to rise from the dead, can assail the title under
“ which the Defendant holds.” So far their Lordships agree with the learned Commissioner, but they are not able to agree with him in the view

which he expresses in the second paragraph of his judgment. The learned Commissioner appears not to have been sufficiently acquainted with the tenor of some recent decisions, whereby, although undoubtedly the doctrine is affirmed that the title conferred by the Government is absolute and overrides all other titles, nevertheless it has been held that the grantee under the Government may, by an express declaration of trust, or by an agreement to hold in trust, constitute himself a trustee. The learned Commissioner proceeds in these terms:—"It has, however, been held by the Courts
 " on various occasions that a free gift was made
 " by the Government, and I am entirely of this
 " opinion. The adoption of two letters, said to
 " have been written by the Defendant, both of
 " which are set forth in the plaint, placed, it is
 " contended, the Defendant in the position of
 " trustee. One letter addressed to the Plaintiff
 " implies nothing more than a promise to put
 " him in possession of the estate on his becoming
 " of age. The second letter, addressed to Babu
 " Amrez Sing, between whose daughter and
 " Plaintiff a marriage was arranged, is to the
 " same effect as the letter addressed to the Plaintiff.
 " I can see nothing in these letters to
 " place the Plaintiff and Defendant in the
 " position respectively of beneficiary or cestui que
 " trust and trustee."

Their Lordships are of opinion that the letters here referred to, if proved (and, as far as they are at present informed, they do not seem to have been proved or disproved), may, coupled with surrounding circumstances, constitute sufficient evidence on which the Court would be justified in holding that the Defendant had declared herself or had agreed to be a trustee on behalf of the Plaintiff. They think it desirable, therefore, that the suit should be sent back to the Courts in Oudh for the purpose of determining this question. Those Courts will inquire, in the first place,

whether the letters are genuine ; in the next place, as to the date on which they were written ; and, thirdly, as to the circumstances under which they were written and other surrounding circumstances ; and among those circumstances undoubtedly will be the question of the adoption or non-adoption by the Defendant of the Plaintiff under the will of her husband ;—this question being, as before explained, material only as a circumstance bearing upon the question of whether or not she has agreed to be or declared herself to be a trustee, but not in itself constituting any title on the part of the Plaintiff.

Their Lordships, in the imperfect acquaintance which they have at present with the facts of the case, think it more convenient to remand the case in these general terms than to settle issues themselves. Either party will be at liberty to propose for the consideration of the Court any issues which they may think material to raise the questions which have been just indicated, and the Court will doubtless raise the proper issues, and determine the questions according to the law as now laid down.

Their Lordships think it right to add that the delay of the Plaintiff in not having brought the action until 10 years had passed after he had become of age, and his laches in this respect, will not entitle him to an account for a period before the commencement of this suit.

Their Lordships will therefore humbly recommend Her Majesty to discharge the decree and orders appealed from, and to remand the suit to the Court of the Commissioner of Rai Bareilly for him to re-try and determine the same, each party being at liberty to propose such issues as they may think material to be settled for trial by the Commissioner.

The costs of both parties of the Appeal will be taxed, and a certificate sent with a direction to the Court below to deal with them as costs in the cause.

