

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Nawab Ibrahim Ali Khan v. Ummat-ul-Zohra,  
from the High Court of Judicature for the  
North-Western Provinces, Allahabad; de-  
livered 9th December 1896.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Appellant in this case, who was the Defendant in the original suit, is the eldest son of the late Nawab General Muhammad Hasan Khan, who in these proceedings has been commonly called "The General." The Respondent, who was Plaintiff below, and who does not now appear, is his eldest daughter. He died on the 25th June 1886, leaving also another son and another daughter. This suit was instituted by the Plaintiff to obtain her legal share of the General's estate. The Defendant does not dispute her right to that, but as regards a sum of Rs. 1,01,000 secured by Government promissory notes, and a sum of cash the produce of those notes, he contends that they form no part of the General's estate, but are his own property by virtue of a gift made by the General in his lifetime.

The other son and daughter also sued for their shares, and were met by the same plea. They obtained decrees in their favour from the

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then Subordinate Judge of Agra, but pending appeals to the High Court compromises were effected; and these previous suits are of no importance now except for the circumstance that evidence taken in them has by consent been used in this suit.

As regards the overt acts of the parties there is not much dispute; but the Courts below have drawn different inferences from the proved facts. Notes of the stated value were undoubtedly transferred by the General to the Defendant on the 5th March 1885, and were afterwards renewed by the Defendant in his own name. The question is whether this transaction was intended to be a transfer of the true ownership, or was a benami transaction leaving the true ownership in the General. To determine that it is necessary to see first what was the position of the parties at the time, and secondly how they conducted themselves between that time and the General's death.

It is mentioned by both the Courts below that in the year 1876 the General executed a registered deed conveying to the Defendant his whole property including the promissory notes. In the former suits the Defendant rested his title on that deed. But it was shown that at the same time the General made a will, showing that his heirs were still to get their shares out of the transferred property. The Defendant then gave up his claim under that deed, and he has not renewed it. But he and his legal adviser Mr. Willis have in their evidence represented the General's endorsement of the notes as being a completion of the gift left imperfect by the transfer-deed of 1876. The High Court on the other hand have referred to the same transfer as showing that the General then intended that a transfer, on the face of it complete, should not interfere with the claims of his other heirs.

On the 28th September 1880 the General executed a deed by which he appointed the Defendant to be his attorney in the Treasury Office at Agra to realize interest under promissory notes, and to get the specified notes renewed. The Defendant after that drew the interest, but the General had the disposal of it. Such was the position of affairs up to the 5th March 1885. It should be added that the notes were at this date, and continued to be, the sole source of income to the General. He had some other property, but it produced no income, and it was worth less than Rs. 20,000 to sell. It is also clear that the General had become very infirm in more than one way.

The only material witnesses who speak to the circumstances of the endorsement are the Defendant himself, his pleader Mr. Willis, and Mr. Holingbery the Treasury officer in whose presence it was made. There is indeed another witness called, one of the clerks of the Treasury, who professes to have been present, and who relates particulars more in the Defendant's favour. But his story is on the face of it suspicious; it is not consistent with the accounts either of the Defendant or of Holingbery; and both the lower Courts pass it over in silence. Their Lordships do the same.

Mr. Willis was consulted by the General about his affairs at various times prior to March 1885. He was informed of the transfer-deed of 1876, and of the power of attorney. He pointed out that endorsement was required for complete transfer of the notes. Then he says:—

“ I suggested to him that after he had endorsed the promissory notes he should make over possession of the notes to his son, Ibrahim Ali Khan, and in the presence of Mr. Holingbery and his son to say that he had gifted

“ them to him of his own free will, and that  
 “ they formed his exclusive property, and that  
 “ neither the General nor his heirs or relatives  
 “ have any claim or right over them. From  
 “ what I knew of the Muhammadan Law I  
 “ thought that that would be sufficient for a  
 “ gift.”

The Defendant says that he and his father went alone to Holingbery's office and stayed half-an-hour. He further states:—

“ When my father went to Mr. Holingbery  
 “ there was no talk with him, but when my  
 “ father's hand was shaking at the time of  
 “ signing Mr. Holingbery said to me ‘ Guide  
 “ ‘ your father's hand.’ In reply to the question  
 “ regarding the conversation which the witness'  
 “ father had in the office before Mr. Holingbery,  
 “ in respect of the gift, (the witness, stated),  
 “ ‘ This conversation did not take place between  
 “ ‘ me and my father, but it took place between  
 “ ‘ my father and Mr. Holingbery. My father  
 “ ‘ was asked by Mr. Holingbery whether he  
 “ ‘ wanted to give the notes in gift, and my  
 “ ‘ father replied, yes, he wanted to give them  
 “ ‘ in gift. This conversation took place in  
 “ ‘ English. My father could speak broken  
 “ ‘ English. I was all the time sitting there  
 “ ‘ quite silent.’ ”

A little afterwards he says: “ All that Mr.  
 “ Holingbery said to me is what I have stated  
 “ above in English. Besides this there was a  
 “ talk in English between my father and  
 “ Mr. Holingbery, and what is usual in a gift  
 “ was also done.”

The Defendant's examination extended over eight days between the 22nd November 1887 and the 11th January 1888. He gave the evidence above quoted on the 28th November. By the 10th January it occurred to him to say something more. On that day he was examined by Willis and

answered a question about the endorsements. The following is the Judge's note :—

“ After having given this answer to the question, he also added : ‘ He made them over before  
 “ ‘ Mr. Holingbery, the Deputy Collector, and  
 “ said : ‘ I make a gift of these to Muhammad  
 “ ‘ Ibrahim Ali Khan. They belong to him, and  
 “ ‘ in them I or any member of the family has no  
 “ ‘ right.’ ”

Their Lordships cannot believe that the Defendant did not give at first a full account of what was said ; or that the important addition he made six weeks afterwards was not a repetition of what was said by or to Mr. Willis, rather than of his father's declaration.

Mr. Holingbery was examined on the 19th January 1888. He deposes as follows :—

“ General Muhammad Hasan Khan appeared  
 “ before me when he signed the endorsements.  
 “ I cannot recollect what conversation passed  
 “ between us at the time. I remember his son  
 “ (pointing to Ibrahim Ali Khan) was with him  
 “ at the time. I remember so far that I understood the transferrer to say that, owing to his  
 “ extreme old age, he had transferred the notes  
 “ to his son. Judging from the renewal certificate, the son must have taken renewed  
 “ Government notes instead of these. General  
 “ Muhammad Hasan Khan signed the endorsement in my presence. He did so in my official  
 “ capacity as Treasury Officer.

“ To Court (Mr. Ball) :—To the best of my  
 “ recollection the General signed the endorsements unaided. If any one had held his hand,  
 “ and he had written with his assistance, I would  
 “ have refused, or at least certainly noted that  
 “ fact in making the certificate.”

He was examined again on commission in this suit, but added nothing. It is clear that he

knew nothing about the important declaration comprised in the Defendant's afterthought.

If the history of the case stopped at this moment, it would present some doubtful considerations. In 1876 the notes were the subject of a benami transfer to the Defendant. In 1880 he received power to draw the interest, but when drawn it was distributed by the General. In 1885 the General under Willis's advice perfected the legal transfer to the Defendant. He did so, as Holingbery understood from him, on account of his extreme old age. Old age may be a good cause for transferring such dominion as enables the transferee to deal with others; but whether it would induce the General to strip himself bare, and to leave himself and the rest of his family at the mercy of his eldest son is another consideration. If, as Willis avers, he was then advised to make a formal public declaration disclaiming all interest for himself and his heirs, he did not do it. Considering the extreme readiness of Indian owners of property to admit the idea of benami transfers, and considering what the General had already done with this very property, it would be at least very doubtful whether the transaction of 1885 was not of the same character with that of 1876. Then comes the question what light is thrown on the transaction by the subsequent conduct of the parties.

Immediately after the endorsement the General set about making a will, which was prepared by Mr. Willis. That gentleman (Rec. p. 37) tells us that the General and the Defendant came to his office, where the parties conferred.

“The General wound up by saying: ‘Bear  
 “ ‘ witness Mr. Willis that I have gifted the notes  
 “ ‘ to Nawab Ibrahim Ali Khan, and that these  
 “ ‘ are his property and that neither I nor my

“ ‘ *khandan* have any right or claim over them.’  
 “ These words he repeated twice. On both  
 “ occasions the eldest son, Ibrahim Ali Khan,  
 “ had come with his father.”

He is substantially corroborated by the Defendant (p. 67). If these declarations could be taken as they are stated, and as being a true expression of the General's mind, they would be very important. But they are so inconsistent with the overt acts which followed that they cannot be relied on; and neither of the Courts below has relied on them.

The will was duly prepared, and on the 15th July it was signed. By it the General gives all his property to the Defendant, subject to payments which he directs the Defendant to consider as a trust or charge on the property bequeathed. These payments consist of life annuities amounting to Rs. 1,700 a year, and of annuities and other payments, either in absolute perpetuity or of a permanent nature, amounting to Rs. 910 a year. The Defendant says that his income from the notes is about Rs. 3,662 a year. Making full allowance for the facts that life annuities to the extent of Rs. 420 a year, given to the Defendant's wife and daughters, may be discontinued at his discretion, and that there was some property which though producing no income might be sold to meet part of the charges, it is clear that the General looked to the notes as the source of payment. Willis can suggest no other source. He says:—“ I have heard of nothing else  
 “ yielding an income except these promissory  
 “ notes. The will mentions no source from  
 “ where the monthly allowances and other  
 “ charges were to be paid. I cannot suggest  
 “ any other income but the interest of the  
 “ notes. The Government promissory notes

“ were excluded from the description of the  
 “ properties given in the will. I asked the  
 “ General from what source these charges and  
 “ allowances were to be paid. He said his son  
 “ would pay them from his own income. At  
 “ that time I did not know if Ibrahim Ali Khan  
 “ had any income independently of the notes. Do  
 “ you now know if he had any ? I don't know.”  
 It is impossible to believe that the General  
 looked on the Defendant as the true owner of  
 the notes when he was making so large an  
 inroad on them. The Defendant says (p. 53)  
 that the will was read out in his presence, and  
 that he did not object to any of the clauses in it.  
 In point of fact the will has never been treated  
 as valid in law. Its importance consists in the  
 light it throws on the intentions of the General.

Then comes another important piece of  
 evidence. The General was in the habit of  
 making out monthly statements of amounts  
 payable to his family and servants, from himself  
 downwards, and of paying those amounts. That  
 practice was continued after the endorsement  
 just the same as before. So far as the recipients  
 could see or know, the money remained the  
 money of the General.

Being examined on this point on the 24th  
 November (Rec. p. 49) the Defendant said:—  
 “ The members of the family and servants used  
 “ to receive their pay from my father, *i.e.* he  
 “ used to pay them with his own hand. So long  
 “ as he was alive he sent for the servants and  
 “ the members of the family and the relations,  
 “ and paid them with his own hands.” That is  
 quite intelligible if the General remained the  
 master of the income; otherwise not so easily  
 intelligible.

Between the 24th November and the  
 11th January the Defendant, probably being



advised that his statement was damaging to him, sought to modify it. In answer to his own pleader Willis he says (Rec. p. 67) :—

“ Dr. Mukand Lal was our family doctor. I  
 “ used to pay his money and used to have it  
 “ paid by my father. Out of reverence and  
 “ respect, I used to have it paid through him.  
 “ Similarly, after the transfer of the notes, I  
 “ used to pay the monthly allowances fixed for  
 “ my brother and other members of the family  
 “ as well as the servants ; but I used to have  
 “ the payment made through my father.  
 “ Besides reverence and respect, there was this  
 “ special reason for making payments through  
 “ my father, that if money had not been paid  
 “ through his hands, those persons should not  
 “ have obeyed his orders.

“ Q. Is there any special reason why they  
 “ should not have obeyed his order ?

“ A. He had transferred the notes to me.”

The truth of those assertions it is impossible to test. As far as overt acts went, the General remained paymaster to the end.

The Subordinate Judge, not the same official who tried the previous cases, found in favour of the Defendant. He thought indeed that the facts subsequent to the endorsement of the notes tell against the Defendant. But he held that they admit of explanation. His theory is that the General, though giving away the notes, reserved to himself the right of using the interest during his lifetime and of charging the income with certain bequests to be paid after his death. He made a decree accordingly, giving the Plaintiff her share of the general estate, but no part of the notes or cash.

The High Court came to a different conclusion. They point out that the Subordinate Judge's explanation is a mere theory without evidence. Their Lordships add that it is against

the evidence of the Defendant and his pleader. Their case throughout has been that the gift was complete on the 5th March 1885. Both were examined closely upon the circumstances of the endorsement, and both asserted an absolute gift divesting the General of all interest in the notes. From beginning to end, neither in pleading nor in evidence, do they give a hint of the very peculiar, and very vague, bargain now suggested. The case actually made has in the judgment of both Courts broken down. It is hardly right to invent a new case when the judgment comes to be delivered. At all events there is no material evidence except such as has been stated above. In their Lordships' judgment the conduct of the parties after the endorsement removes every doubt which might otherwise have affected that transaction, and leaves it certain that the General remained the true owner of the notes.

Their Lordships will humbly advise Her Majesty to dismiss this appeal and affirm the decree of the High Court.

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