Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakur Nawab Ali Khan v. *Wahid Ali, from the Court of the Judicial Commissioner of Oudh; delivered the 2nd December*, 1909.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD COLLINS.
LORD SHAW.
SIR ARTHUR WILSON.

[*Delivered by Lord Shaw.*]

The question between these parties can be stated in short compass. The Plaintiff (Appellant) is Talukdar of Akbarpur, within which is included the village of Daryapur. As such Talukdar he holds superior proprietary rights in the village.

The Defendant (Respondent) holds, under the "provision for maintenance" which falls to be construed, the sub-proprietary rights in the village. His mother, Abadi Begam, enjoyed such provision for maintenance, being a sub-proprietor in the second generation. The ~~Plaintiff~~ Defendant holds similar rights, being a sub-proprietor in the third generation. The payments due from these sub-proprietors to the Talukdar are, it is admitted, governed by the terms of the provision for maintenance.

The document so falling to be construed is of some interest. It is a translation by the Court translator of "Copy of Rules of Practice, framed

[55] P.C.J. 166.—L. & M.—125—11/11/09. Wt. 98.

by the British Indian Association with regard to suits instituted and decrees passed therein," dated the 25th September, 1867. Under it "the Talukdars agree to make the following provisions for the maintenance of their relatives provided that their doing so be sanctioned by the Government and be considered as a final disposal of the question in the classes of cases detailed below." The Officiating Chief Commissioner at Fyzabad dealing with its terms states : "I think they are in every way as liberal as we could expect to obtain for the relatives of the Talukdar." It is plain that the settlement of the very important questions of the title to and interest in the land of this portion of India was thus put upon a substantial and permanent foundation, and the decision of the questions in this case, involving a construction of this portion of these Rules of Practice framed by the British Indian Association, has been represented to their Lordships as of general importance. The provision for maintenance, which it is agreed by the parties applies and falls to be construed, is, in the language of the translation, as follows ;—

> This class will remain in possession of what they actually had at annexation "rent-free" during their life-time, but subject to payment in the second generation of 25 per cent., to the Talukdar, and in the third 50 per cent., and will not have transferable rights. If such persons pay the Government Revenue, plus 10 per cent. to the Talukdar, they will have heritable rights in addition.

It is, of course, fundamental to ascertain what is the bulk sum out of which these percentages are to be struck. The Government Revenue is 50 per cent. of such bulk sum. For this and its regular payment the Talukdar is responsible. The Government valuation is made at intervals of thirty years and is struck, not, of course, upon the actual receipts for a particular year, but upon an

assumed rental which represents the fair average of the Talukdar's annual receipts. A fixed datum is thus arrived at for the payment of Government Revenue. From the documents produced in this case it is manifest that the actual receipts of rental vary greatly from year to year and that, were the Government Revenue to be fixed upon this varying basis, the greatest difficulties would emerge in administration. And, so far as the Talukdars are concerned, it appears to be much in their interest that the charges upon their property should be upon a fixed basis.

If the provisions for maintenance of relatives agreed to by the Talukdars and sanctioned by the British-Indian Association are upon the same fixed basis, then all parties, including relatives, the Talukdars, and the Government, can understand year after year, and be able to forecast, their exact financial position.

Taking it, accordingly, that the Government revenue is 50 per cent. of the assumed rental; that the provision for maintenance of relatives in the second generation is the enjoyment of the property, subject to a payment of 25 per cent. of the assumed rental to the Talukdar; and that in the third generation the enjoyment of the property, subject to a payment of 50 per cent. to the Talukdar, the result would simply be that in the third generation the sub-proprietors in actual possession would relieve the Talukdar of the Government revenue which is the very same sum, viz., 50 per cent. of the assumed rental. They would, however, according to the Rule, as applicable to a provision for maintenance of a perpetual or heritable character, pay to the Talukdar an additional sum of 10 per cent. As the payments to the Talukdar might not be regular, and, in any view, the Talukdar's responsibility to the Government

is full and direct, whether he received such payments or not, this 10 per cent. may be accounted for as a reasonable commission or insurance, and it is accordingly sanctioned by the Rules of the British-Indian Association under construction, as well as by the Rules regarding sub-settlements and other subordinate rights of property in Oudh scheduled to Act No. 26 of 1866.

The whole of the above depends on the fundamental bulk figure being the assumed rental as described, and, if that bulk figure be so treated, it does not appear to their Lordships that there is much left to construe in the Rule.

The Talukdar, the Plaintiff (Appellant) in the present case, however, maintains that what ought to be paid by the relatives of the second and third generations is not 25 per cent. and 50 per cent. respectively of the bulk figure mentioned, but of the actual rent for the particular years; and not merely of the rents as received or ingathered for those years, but of the amount of the rents demandable, whether received or not.

Certain contentions were put forward as to an alleged mistranslation of one clause in the Rule. That clause reads :—

> If such persons pay the Government revenue, plus 10 per cent. to the Talukdar, they will have heritable rights in addition.

It is said that the words translated "Government revenue" really mean any payment to a superior, such as the Talukdar, and that accordingly the translation should read: "If "such persons pay (not the "Government "revenue," but) the amount due to the "Talukdar, plus 10 per cent. to the Talukdar, "they will have heritable rights." It is somewhat difficult to follow such an argument, and the proposed correction would appear to confuse, rather than to clarify, the clause. But it is not

necessary, in their Lordships' opinion, to make any separate pronouncement on that subject. The basis of the Rule would, in any view, fall to be arrived at; and their Lordships have little doubt that the assumed rental which is used in fact for the Government purpose is, by the Rule, meant to be used for maintenance purposes.

The Court below—viz., the Court of the Judicial Commissioner of Oudh—has pronounced a Decree upon this footing, and their Lordships are of opinion that the Decree is sound.

Their Lordships do not think that the claim of the Talukdar for a contribution of 25 per cent. and 50 per cent. respectively of the rents demanded for the years in question (plus 10 per cent. in the sense of the Rule) can be sustained. Payments on this scale might conceivably far exceed, not only the Government revenue, but the entire receipts of rental actually obtained for particular years. The rights of the relatives in possession as sub-proprietors might thus be reduced to a shadow, and the provisions for these large classes of society rendered precarious.

A construction which would bring about such a result is not, in their Lordships' opinion, warranted on a sound reading of the terms of the maintenance provision.

Another point was argued. It appears that the Appellant, who during his minority was represented by the Court of Wards, objects to certain payments made by that Court on account of maintenance to the Respondent. Their Lordships agree with the view taken by the Judicial Commissioner in his Judgment of the 27th March, 1906, that these transactions cannot be opened up in this case; and, in their Lordships' opinion, he rightly held that "it is not within the province of a Rent Court to determine whether the maintenance was or was not payable."

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellant must pay the costs of the Appeal.

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