

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ranee
Sonet Kooer v. Mirza Himmud Bahadoor
from the High Court of Judicature at Fort
William, in Bengal; delivered 11th Feb-
ruary 1876.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE question raised by this Appeal, though short, is somewhat novel, and there appears to be little positive authority upon it.

It appears that Rajah Modenarain Singh, being a Hindoo Zemindar, but having an illegitimate family by a Mahomedan lady domiciled in his house, granted the mokurreree in question in the name of one of the infant daughters of that family, Shurfoonnissa Begum. The grant was clearly intended to create an absolute and hereditary mokurreree tenure, inasmuch as it contains the essential words, "generation to generation," which in documents of that kind have always been considered to have that effect; and their Lordships do not find in the particular document any special terms which would distinguish it from a grant of an ordinary mokurreree istimreree tenure. It is clear on the evidence that Shurfoonnissa Begum died before her father, and not very long after the creation of the tenure; and further, that after her death, the father during his life, and afterwards his widows, who, by the Hindoo law, are his heirs, continued to receive the rent reserved from those in

possession of the lands, the receipts for such rent being, with one exception, taken in the name of Shurfoonnissa, the original grantee, and in that exceptional case in the name of Burratee Begum, her mother. One of the questions raised by Mr. Doyne is, what effect ought to be given to that reception of rent as a recognition of the tenure and an answer to the present claim to resume the lands included in it.

From this receipt of rent after the death of Shurfoonnissa, which must have been well known in the family, an inference may undoubtedly be drawn that the Zemindar either originally intended to make the grant for the benefit generally of his illegitimate family, or after the death of his daughter was willing that it should have that effect; and it is difficult to suppose that the widows were not for some time willing to act on some such view of the transaction. It is impossible, therefore, to treat the parties in possession as mere trespassers. The recognition of their interest by the receipt of rent from them would constitute some kind of tenancy requiring to be determined by notice or otherwise. Their Lordships, however, are not prepared to say that this circumstance is of itself sufficient to defeat the claim of the Plaintiff in this suit. They think that the ground upon which the decision of the High Court is to be supported, if supported at all, is that the Plaintiff in the suit is not the person who, assuming the parties in possession to have no legal title, is entitled to recover the land by the destruction of the tenure. That, of course, raises the question which the High Court has dealt with; namely, whether, on the death of Shurfoonnissa without heirs, the right to the possession of the land reverted to the original grantor, or whether the tenure on such a failure of heirs should be taken to have escheated to the Crown.

The doctrine of escheat to the Crown in the case of a vacant inheritance was much considered by this Court in the case of *The Collector of Masulipatam and Cavalry Fencible Narrainapah*, which is reported in the 8th volume of Moore's Reports, Indian Appeals, page 500. In that case the property in question was a zemindary. The last male Zemindar had died, leaving a widow, who took a widow's estate, and upon her death there were no heirs of her husband to inherit the zemindary. The Zemindar was, however, a Brahmin; and the point raised in the suit was that on that ground the estate was not subject to the law of escheat. This contention was founded on the text of Menu, which says, "The property of a Brahmana shall never be taken by the King; this is fixed law;" and also on a passage in Nareda, where it is said, "If there be no heir of a Brahmana's wealth on his demise it must be given to a Brahmana, otherwise the King is tainted with sin." It seems to have been admitted in that case that the British Government had at least the same rights that the ruling power would have had under the Hindoo law, the question being whether that limitation which the Hindoo law was said to impose on the right of the Hindoo Raja or King was to prevail against or fetter the rights of the Crown. Lord Justice Knight Bruce, delivering the judgment of this Committee, said: — "It appears to their Lordships that, according to Hindoo law, the title of the King by escheat to the property of a Brahmin dying without heirs ought, as in any other case, to prevail against any claimant who cannot show a better title; and that the only question that arises upon the authorities is whether Brahminical property so taken is in the hands of the King subject to a trust in favour of Brahmins." And in a subse-

quent passage of the Judgment he went on to say:—"Their Lordships, however, are not satisfied that the Sudder Court was not in error when it treated the Appellant's claim as wholly and merely determinable by Hindoo law. They conceive that the title which he sets up may rest on grounds of general or universal law. The last owner of the property in question in this suit derived her title under an express grant from the Government to her husband, a Brahmin, whom she succeeded as heiress-at-law. If upon her death there had been any heirs of her husband, those heirs must have been ascertained by the principles of the Hindoo law; but by reason of the prevalence of a state of law in the mofussil, which renders the ascertainment of the heirs to take on the death of an owner of property a question substantially dependent on the *status* of that owner. Thus the property being originally and remaining alienable might have passed by acts *inter vivos* in succession to British subject, to foreign European owner, to Armenian, to Jew, to Hindoo, to Mahomedan, to Parsee, or to any other person, whatever his race, religion, or country. According to the law administered by the Provincial Courts of British India, on the death of any owner being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner. This system is made the rule for Hindoos and Mahomedans by positive regulation; in other cases it rests upon the course of judicial decisions." And the final conclusion of the Committee was this:—"Their Lordships' opinion is in favour of the general right of the Crown to take by escheat the land of a Hindoo subject, though a Brahmin, dying without heirs; and they think that the claim

“ of the Appellant to the zemindary in question
“ (subject or not subject to a trust) ought to
“ prevail, unless it has been absolutely, or to
“ the extent of a valid and subsisting charge,
“ defeated by the acts of the widow *Lutchme-*
“ *davamah* in her lifetime. In the latter case
“ the Government will of course be entitled
“ to the property, subject to the charge.” In
a subsequent case relating to the same estate,
and reported in the 11th Moore’s I. A., p. 619,
the question was between the Collector, repre-
senting the Government, and a person claiming
to have a valid and subsisting charge by an act
of the widow, a charge which the widow was
competent to create; and it was held that the
Government took subject to the charge, [and the
suit was dismissed, but without prejudice to the
right of the Collector, as representing the Crown,
to redeem the charge and recover the estate.
The property, no doubt, in this case was a
zemindary; but the decision seems to establish
the principle, that where there is a failure of
heirs, the Crown, by the general prerogative,
will take the property by escheat, but will take
it subject to any trusts or charges affecting it.
There, therefore, seems to be nothing in the
nature of the tenure which should prevent the
Crown from so taking a mokurreree, subject to
the payment of the rent reserved upon it.

It has been argued, however, that this mokur-
reree, not being an independent zemindary, but
being carved out of a zemindary, stands upon
a peculiar footing, and that, upon the failure
of heirs, the Zemindar takes by right of rever-
sion, or, if not strictly by right of reversion,
that the tenure escheats to him as the superior
lord, rather than to the Crown. The mokurreree
was clearly an absolute interest. It was also
an alienable interest. It might have been
seized and sold, as Mr. Doyne has shown, under
Act 10 of 1859, even in a suit for rent. It could

not have been forfeited for the nonpayment of rent; for in such a case the Zemindar could only have caused it to be seized, put up for sale, and sold to the highest bidder. It is, therefore, property which, like that in the case above cited, might have passed to any purchaser, whatever his nationality, or by whatever law he was to be governed. It cannot, their Lordships think, be successfully argued that, having so passed, the estate would have determined upon the death of Shurfoonnissa (supposing it had been sold in her lifetime) without heirs; for the grant contains no provision for the lessee of the estate created in such event. There seems, therefore, to be no ground for saying that the lands have reverted in the proper sense of the term to the Zemindar; and the only question is, whether, on the failure of heirs of the last possessor, he is entitled to take a tenure subordinate to and carved out of his zemindary by escheat.

Their Lordships are of opinion that there is no authority upon which the power of taking by escheat can be attributed to the Zemindar. The principles of English feudal law are clearly inapplicable to a Hindoo Zemindar. On the other hand, it is clear that, if the Zemindar has not such a right, the general right of the Crown subsists, and must prevail.

On the whole, therefore, their Lordships think that the High Court have come to a correct conclusion in holding that, supposing the parties in possession have nothing but their possession to depend upon (a question on which their Lordships give no opinion), the superior title, under which alone they can be ousted from possession of the lands, is not in the Zemindar or his representatives, but in the Crown. They will, therefore, humbly advise Her Majesty to affirm the decree under appeal, and to dismiss this Appeal with costs.