

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Vasudev Sadashiv Modak v. The Collector of Ratnagiri, from the High Court of Judicature at Bombay; delivered 2nd March 1877.*

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Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal against a judgment of the High Court of Bombay confirming a judgment of the Judge of First Instance, which, before the settlement of issues in the cause, dismissed the suit of the Appellant on the ground that it was excluded from the jurisdiction of the civil Courts by "The Pensions Act, 1871." The material sections of that Statute are the 4th and the 3rd.

The 4th says, "Except as herein-after provided"—and it is admitted that the case does not fall within any of the statutory exceptions—"no civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or grant for which such pension or grant may have been substituted;" and the 3rd, which is an interpretation section, says, "In this Act the expression 'grant of money or land revenue' includes anything payable on the

“ part of Government in respect of any right,  
“ privilege, perquisite, or office.”

It is to be observed that upon this Appeal it would be impossible for their Lordships to pronounce affirmatively that the suit is not one which under the Act is excluded from the jurisdiction of the civil Courts. The case as put by the learned counsel for the Appellant is simply that the materials before the Courts were insufficient to show that they had not jurisdiction, and that therefore the cause should be remitted to India for a fuller trial there on this issue.

The materials which were before the Court were the plaint, the oral examination by the Judge of the Plaintiff's pleader, the sunnud of the 3rd March 1777, and the judgment in a former suit instituted by the Appellant against the Government before the passing of the Act, which is set out at page 10 of the Record. The question is whether taking all these together, the Judge had not sufficient grounds for saying that the suit was within the meaning and operation of “The Pensions Act, 1871.”

The Plaintiff's case was that he was the hereditary Deshmukh of certain Turufs or districts; that as such, he and his ancestors had long been entitled to receive directly from the ryots a per-centage equivalent to six pie in the rupee upon that part of the revenue which was assessed in cash; a smaller per-centage upon that part which was assessed in grain; and certain other dues which their Lordships think may be dismissed from consideration; because, though the articles in respect of which they were payable were articles upon which revenue was levied under the former native governments, they have long since been abandoned by the British Government as the subjects of revenue, and the rights of the Deshmukh in respect of them are really not in issue in this suit. The

questions arising between the parties may be fully tried and determined upon the first two items of revenue.

These rights of the Deshmukhs were, as the Plaintiff says, confirmed, or, as the other side put it, regranted by the sunnud of 1777. And the Plaintiff alleges that up to the year 1842 he received his dues directly from the ryots, but that since 1842 the Government has received them on his behalf, and become accountable to him for them. It is an undisputed fact that in the year 1868 there was a new revenue settlement, since which the whole of the revenue receivable by Government and assessed upon the ryots has been a money assessment, no part of the revenue being now assessed in grain.

Upon this state of facts, two distinct questions arise ; first, whether in its inception and original character the Deshmukh's right is not one within the scope and operation of the Act of 1871? Secondly, whether, if that be not the case, the right has not been brought within the scope and operation of the Act by the alterations in its character that have subsequently taken place?

The judgment of the High Court of Bombay answers the first of these questions in the affirmative, and proceeds on that finding. It says, "Now according to Plaintiff's own showing, " it is clear that the allowance was, in its incep- " tion, either a pension or a grant of money or " land revenue, or both. It was a pension or " annual sum conferred, and it was a grant of land " revenue made for services to be rendered. The " mode in which it was to be levied appears to be " immaterial. The Government of the time, " having the undoubted right to levy assessment " on all cultivated lands not expressly exempted " from assessment, assigned a portion of such " assessment or land revenue, varying each year " according to the amount of the assessment

“ which the Government reserved to itself for  
 “ the remuneration of the watandars.”

Their Lordships, without adopting every word of that judgment as their own, are of opinion that the general conclusion is correct, and think it is established by the sunnud of 1777. That document recites the representation or petition of the Appellant's ancestors, from which it appears that whatever may have been the nature of the original right, the right of receiving these haks from the ryots had at all events for a considerable number of years been suspended; that as early as the time of Sivaji the haks were resumed by the Government of the day, and the value of them credited to the Government—that is, treated as part of the general revenue of the country—certain fixed salaries being paid to the Deshmukhs; and that this system, with some variation as to the amount of the salary, continued during the time of Kanoji Angria, and was in force when the country again came under Mahratta rule. The petition of the then Deshmukhs to the Peishwa prayed to have the old and suppressed allowances restored to them; stating however that there was a dispute between them and certain other parties as to who were the proper watandars. The result was that the Peishwa recognized the right of the Appellant's ancestors as between them and the rival claimants, and made an order upon the mahajans and the khots of the villages of the Mahals or Turufs in question, enjoining them to cause the amount of the hak on the Government jamabandi, whatever it may amount to, according to the established practice, to be paid by the rayyats to the petitioners, their sons and grandsons. Now the original right of these Deshmukhs, the beginning of which seems to be lost in antiquity, was substantially, as the High Court has put it, in the nature of a grant

of revenue. Their functions were those of a collector of revenue for the Government. They were authorized to retain out of what they received from the ryots, a certain percentage upon that which was fixed as the Government revenue for themselves, paying the balance to the Government. It is difficult to see how the Government could impose upon the ryots the obligation of paying these allowances to their officers, except by the exercise of their sovereign right of imposing and receiving a revenue from all lands which were not in their nature rent free. The land revenue system in India is founded upon the notion that the State is entitled to receive a certain portion of the produce of all lands not especially exempted from assessment. Of course some governments have been more exacting than others, but the general action of native governments was to take a certain proportion. From the gross amount assessed the expenses of collection must necessarily be deducted; and whether the collectors were paid by salary, or allowed to receive a commission on their collections directly from the ryots, the sum which went into the coffers of the government was equally reduced by the amount of their allowances.

Their Lordships are of opinion that whatever the foundation of the Deshmukhs' rights originally was, the sunnud must now be treated as the foundation of those rights as they exist. At the date of that document the receipt of the old allowances had long been interrupted. The whole of what was received from ryots went into the coffers of the State, which paid its collectors by salaries; and consequently the restoration of the old allowances by the Peishwa was in substance a grant by him of part of his land revenue, and therefore falls within the terms of the 4th section without the aid of the

3rd as a grant of money or land revenue, conferred by a former government. Therefore their Lordships agree with the High Court in the conclusion to which they came upon the first question; and that is, of course, sufficient to dispose of the present Appeal.

If it were necessary to go further and to consider whether the claim, however it might have stood on the sunnud, has been brought within the Act by what has since taken place, their Lordships would be of opinion that the judgment in the former suit affords sufficient grounds for so deciding.

That suit proceeded upon the alteration made under the revenue settlement of 1868. The Plaintiff appears to have claimed six pie in the rupee upon the total amount of the assessment, which then consisted wholly of money. The Government met that claim by a contention that upon so much of the existing assessment as might be considered to represent the former grain assessment he was entitled only to the smaller percentage. The Judge decided this question in the Plaintiff's favour, and allowed him the larger percentage upon the whole of the assessment; and did so upon this, among other grounds, viz., that by the change in the system of assessment his interest might have been affected, and therefore that it was equitable to allow him the larger percentage upon the whole of the then assessment.

His claim in the present suit adopts this definition of his rights, and seeks to enforce them accordingly. The former judgment therefore seems to show that what is now payable by Government is so payable out of the general land revenue in respect of a right, privilege, perquisite, or office formerly enjoyed within the meaning of the 3rd section of the Act; and to negative the statement in the plaint to the

effect that since 1842 the Government has received the Deshmukh's allowances as something distinct from revenue from the ryots on his behalf and as his agent, under circumstances which would make them liable to him as for money had and received.

It appears, therefore, to their Lordships that no ground has been made for disturbing the judgment of the Court below, and they must humbly advise Her Majesty accordingly. They would have been extremely sorry if they had had to remand the cause, because though it might have been satisfactory to have fuller information on some points raised in the argument, they are satisfied upon the materials before them that a fuller trial would equally result in the conclusion that the suit is within "The Pensions Act, 1871," and that the Plaintiff must seek his remedy by the procedure thereby provided.

Their Lordships will humbly advise Her Majesty to dismiss the present Appeal, and to confirm the judgments below, with the costs of the Appeal.

