

*Reasons for the Report of the Lords of the
Judicial Committee of the Privy Council on
the Appeal of The Municipal Officer, Aden,
v. Hajee Ismail Hajee Allana and others,
from the High Court of Judicature at Bombay ;
delivered the 28th November 1905.*

Present at the Hearing :

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

At the conclusion of the arguments in this case their Lordships intimated that they would humbly advise His Majesty to dismiss the Appeal, and added that the costs of the Appeal would be paid by the Appellant. It only remains for their Lordships to state their reasons.

The suit in which the Appeal was presented concerns land in Aden. It was brought, and properly brought, in the Court of the Political Resident there. The High Court of Judicature at Bombay has made an order for the transfer of the suit for trial and determination by the High Court itself.

The authority on which the High Court assumed to act is contained in Clause 13 of the Letters Patent of 1865 for the High Court of Judicature for the Presidency of Bombay, which ordains that “the High Court of Judicature at
“Bombay shall have power to remove and to try
“and determine as a Court of Extraordinary
“Original Jurisdiction any suit being or falling

“ within the jurisdiction of any Court whether
 “ within or without the Presidency of Bombay,
 “ subject to its superintendence, when the said
 “ High Court shall think proper to do so, either
 “ on the agreement of the parties to that effect
 “ or for purposes of justice, the reasons for so
 “ doing being recorded on the proceedings of
 “ the said High Court.”

The High Court has duly recorded its reasons for the order of transfer. The propriety of the order is not disputed if there was power to make it. The only question, therefore, is whether the Court of the Resident at Aden is “ subject to the superintendence ” of the High Court at Bombay. To answer that question it is, in their Lordships’ opinion, sufficient to refer to Act II. of 1864 of the Governor-General in Council. By that Act, subject to certain amendments contained in Act IX. of 1887, the administration of Civil Justice at Aden is now regulated. The preamble of the Act contains a recital to the effect that certain judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of Justice except so far as they are subject to appeal to His Majesty in Council, and that it is expedient to provide for “ the superintendence ” or revision of such judgments and proceedings by the High Court at Bombay. No appeal is to lie from any decision or order of the Resident. But provision is made for a reference to the High Court at Bombay in a great number of cases, and in every case the Resident is bound to dispose of the matter before him conformably to the decision of the High Court. Then Section 31 declares that the High Court shall have power to make general rules for regulating the practice and proceedings of the Court of the Resident, and also to frame forms for every proceeding for which the High Court shall think it necessary

that a form should be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident, and from time to time to alter any such rule or form, provided that such rules and forms shall not be inconsistent with the provisions of the Act or any other law in force.

The learned Counsel for the Appellant, while admitting that the Court of the Resident was to a certain extent subject to the superintendence of the High Court of Bombay, contended that the superintendence, such as it was, was not so thorough or complete as to satisfy the requirements of Clause 13 of the Letters Patent of 1865 when rightly understood. In support of this view they asked their Lordships to compare and contrast the language of Clause 13 with the language of Section 15 of 24 & 25 Vict. c. 104, usually called "The Charter Act," and to notice in Section 15 the stress laid on the existence of appellate jurisdiction which ought, they said, to be imported into Clause 13 of the Letters Patent, and, at the same time, to observe the omission from that clause of the power of transfer conferred by Section 15 of the Charter Act. The answer to this ingenious, though somewhat contradictory, argument is simple enough. The power of transfer contained in the Charter Act has nothing to do with the power of removal conferred by the Letters Patent, and the Letters Patent make superintendence, not appellate jurisdiction, the condition of the exercise of the power of removal which the High Court at Bombay has put in force.
