

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Municipal Council of Sydney v. The Austral Freezing Works, Limited, from the Supreme Court of New South Wales; delivered the 22nd February 1905.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR FORD NORTH.

SIR ARTHUR WILSON.

[*Delivered by Sir Ford North.*]

This is an Appeal from a Judgment of the Supreme Court of New South Wales, dated the 10th of August 1903, in an action brought by the Appellants to recover a sum of 826*l.* 19*s.* 9*d.* for market fees on sheep and cattle of the Respondents. Two of the three Judges who heard the case held that the Appellants were not entitled to make such charge, and judgment was given for the Respondents. The third Judge (Simpson J.) was of opinion that the Appellants were entitled to succeed. There is no dispute as to the facts, which are set forth in a Special Case.

The Respondents carry on business in Sydney as exporters of frozen meat. They purchase sheep and cattle in various parts of the State of New South Wales, and drive them to their yards for slaughter there prior to export. After being slaughtered the carcasses are cleaned and frozen, and brought to Sydney, and thence exported. None of them are sold on the Respondents' premises or within the said State. The Respondents' yards are not sale-yards.

By the Act 57 Vict., No. 21, the regulation of premises used for slaughter purposes in any part of the State of New South Wales (not being within the City of Sydney or within three miles thereof) is committed to the Council of the Municipality in which such premises are situate, and it is provided that annual licences at prescribed fees must be obtained from such Council by the persons so using the premises.

The yards of the Respondents are more than three, but less than 14, miles from the City of Sydney, and are within the Municipal District of Granville, in the said State; and the Respondents have obtained and hold a licence from the Council of that District to slaughter sheep and cattle upon those premises, and have paid the prescribed fees in respect thereof. Such premises are not in any way under the control or jurisdiction of the Appellants; they are the private property of the Respondents.

The case of the Appellants is based upon the 10th of their bye-laws; and this does at first sight give some colour to their claim; but, as the Respondents' contention is that such bye-law is not warranted by the Act under which it purports to be made, and that such Act gives no power to charge the Respondents with the fees in question, it is necessary to consider its provisions with some care.

That Act is "1879, 43 Vict., No. iii.," the short title of which is the "Sydney Corporation Act of 1879." The headnote to Part vii. (Sects. 126-140) of that Act is "Markets, Parks, Cattle Sale-yards, &c."

Section 132 provided that it should be lawful for the Municipal Council of the City of Sydney to establish in such place or places as they might determine adjoining the Great Southern and Western Railway not more than 14

On this point, as well as on the question of champerty, the Court of the Judicial Commissioner differed from the Court of First Instance, which held the sale-deed void and the adoption not proved.

The sale-deed is dated 11th August 1888. In it Ardawan states his title by succession, the impossibility of recovering possession from Achal Ram without a suit, and his own inability to sue owing to want of money. "So therefore," he goes on to say, he has sold half the estate to the Raja for a lakh and a half of rupees. He acknowledges the receipt of one lakh. The balance of Rs. 50,000 is to remain on deposit with the Raja to be expended in prosecuting the proposed suit and in paying a monthly stipend of Rs. 50 to himself and Rs. 20 to a mukhtar. On the termination of the litigation he is to receive the balance. In the suit the Raja and he are to act and work jointly and the Raja is given full power to conduct the litigation and manage the expenditure.

Now, at the date of the sale-deed the position of things was this. Achal Ram was in possession. A suit to recover the estate had been brought against him by one Narendra who apparently would have been entitled as the heir of his father Harbhagat Singh if the succession had opened on the death of Pirthi Pal's widow. That suit had been dismissed by the Subordinate Judge on the ground of limitation. The dismissal had been affirmed by the Judicial Commissioner on a different ground and an appeal was then pending to the Privy Council. It seems that the Raja had bought one moiety of the estate from Narendra under a deed of sale framed on the same lines as Ardawan's deed while Narendra and Ardawan had come to some arrangement for dividing the estate between them in case

either the one or the other should succeed against Achal Ram.

The statement in the sale-deed to the effect that one lakh had been paid to Ardawan was not in accordance with the fact. Indeed it seems inconsistent with the scope of the deed. It is hardly conceivable that anybody in the position of the Raja would pay down without any security so large a sum to a man confessedly without means. And besides it is obvious that if it had been intended that Ardawan should receive a lakh of rupees at once, there would have been no occasion to provide a monthly allowance for his "personal expenses." Probably the statement was introduced by the draftsman under the notion that it might impart some additional solemnity to the instrument. Of course, at the first blush, the untrue statement throws suspicion upon the whole transaction. But after all, so long as the deed stands, it is no concern of Achal Ram's that Ardawan may have a grievance on the score of a misstatement in an instrument to which Achal Ram is no party. Ardawan himself has taken no steps to impeach the deed. On the contrary, in the course of the two years that elapsed between the date of the deed and the institution of the suit (which was delayed as long as possible in order to await the result of Narendra's appeal) Ardawan more than once affirmed the transaction, claiming and receiving his monthly allowance under the deed and urging the Raja's agent to commence proceedings without delay. It is not enough for Achal Ram to make out that the sale-deed is voidable at the option of Ardawan. He must show that it was and is absolutely void. But now Achal Ram is in this further difficulty, that, according to Ardawan's petition of compromise which he puts forward as part of his case, Ardawan has nothing

to complain of, for he had nothing to sell. It may be added that the Raja did all in his power to procure the attendance of Ardawan at the trial, but he was kept out of the way.

Apart from the untrue recital in the sale-deed there seems to be no flaw in the transaction. Without assistance Ardawan could not have prosecuted his claim. There was nothing extortionate or unreasonable in the terms of the bargain. There was no gambling in litigation. There was nothing contrary to public policy. Their Lordships agree with the Judgment of the Court of the Judicial Commissioner that the transaction was a present transfer by Ardawan of one moiety of his interest in the estate, giving a good title to the Raja on which it was competent for him to sue.

The question of Azmat's adoption is not quite so simple a matter. The adoption, if it took place, occurred before the year 1681 A.D., when Azmat succeeded to the Mankapur Raj. At this distance of time it is of course impossible to prove that all the requisite ceremonies were duly and regularly performed. On the one hand, it is not disputed that Azmat and his descendants, successors in the Raj, remained Bisains, though the adoption, if it took place, was an adoption into the Bandhalgoti clan, a clan much inferior in social position to the Bisains. It appears that on the death of a member of the Mankapur family, the ceremonies usual on the death of a relative are observed among the Bisains of Birwa Mehnou, a circumstance unusual in the case of an adoption out of the family, though, it is said, not unprecedented.

On the other hand, there is a body of tradition strong and persistent in favour of the adoption, and there is a story still current which may possibly serve to throw some light on the transaction. It is said that on Azmat's birth there was a

prophecy put about to the effect that the child would become a Raja within eight days. His father, Dutt Singh, alarmed for the safety of himself and his eldest son, contemplated removing the danger in a summary manner, but a better way was found of defeating or fulfilling the prophecy. The Rani of Maukapur, a sister of Dutt Singh's wife, whose son, Partab Singh, the last of his line, had recently died without issue, leaving a wife who became a Satti with her husband, out of affection for her nephew or her nephew's mother or through fear of her powerful neighbour, was ready to adopt the child to succeed her in the Raj of Maukapur.

The tradition of the adoption is preserved in the Wajib-ul-arz of Mouza Ashrafpur, Pargana Maukapur, and is to be found recorded in the Oudh Gazetteer and the Gonda Settlement Report.

It is to be observed that in no previous litigation did Achal Ram ever suggest that collaterals nearer in degree were to be found in Azmat's line. On the contrary, he filed evidence tending to show Azmat's adoption. It is still more significant that no claim to the Taluq Birwa Mehnou has ever been set up by any member of the Maukapur family.

On the whole their Lordships see no reason to differ from the conclusion at which the Court of the Judicial Commissioner has arrived. It seems to them that the evidence in favour of adoption preponderates.

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

The Appellant will pay the costs of the Appeal.

---