

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharanee Inderjeet Kooar v. Mussumats Ismudh Kooar and Soonneet Koonwur, from a Decree of the late Sudder Dewanny Adawlut at Calcutta ; delivered 1st December, 1865.

Present :

LORD CHELMSFORD.

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR JAMES W. COLVILE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR LAWRENCE PEEL.

THIS is an Appeal from four Decrees of the Sudder Court of Calcutta, reversing four Decrees of the principal Sudder Ameen of Zillah Behar in favour of Maharajah Heetnarain Singh, whose widow and heiress is the Appellant. The Respondents are the widows and heiresses of the late Modenarain Singh, who was the brother of Heetnarain Singh, and the Plaintiff in one and Defendant in three of the suits in which the Decrees now under appeal were made.

The four suits involved the same question, which is shortly and accurately stated in the Appellant's case as follows :—

“ Whether Heetnarain Singh and Modenarain Singh were entitled to the annual sum of 17,212 rupees 9 annas 5 pice, in the proportions of $\frac{9}{18}$ ths and $\frac{7}{18}$ ths respectively, in accordance with the contention of Heetnarain Singh, or in the proportions of the amounts of sudder jumma payable by them respectively on account of the nineteen mehals in the pleadings mentioned in accordance with the con-

tention of Modenarain Singh." The two brothers were sons of the Maharajah Mitterjeet Singh, who died on the 3rd October, 1840. During the lifetime of the Maharajah an agreement was entered into for a division of the property between his two sons after his death. The particulars of this agreement are stated in a former suit between the brothers, which was brought by appeal before their Lordships and is reported in 7 Moore, 312, to this effect: "Family dissensions having arisen during the lifetime of Mitterjeet Singh, certain proceedings were instituted, and on an appeal to the Sudder Dewanny Adawlut in a suit in which Mitterjeet Singh and the Appellant and Respondent were parties, a compromise was entered into, and a razinamah and ikrarnamah, dated the 7th February, 1824, was filed by Mitterjeet Singh, which instrument was to the effect that the real and personal estates held by him after his death were to be divided between the Appellant and the Respondent; the former was to take a 9 annas share and the latter a 7 annas share. Partition deeds of the same tenour were also filed, and on the 4th March, 1824, the Sudder Court decreed that the parties should act up to the terms entered into by them in the above mentioned instruments."

The Maharajah Mitterjeet was entitled to a tax levied upon pilgrims resorting to the Temple at Gya. This tax was abolished by the Government in the month of January, 1840, and a compensation was awarded to the Maharajah in lieu of it in the shape of a perpetual annual payment of 17,212 rupees 9 annas 5 pice. The grant of this compensation was the subject of a Government letter of the 16th January, 1840, which, unfortunately, is not printed in the proceedings.

On the death of the Maharajah, his property, whether moveable or immoveable, had to be divided between the sons according to the proportions of $\frac{9}{16}$ ths and $\frac{7}{16}$ ths settled by the Agreement and Decree of 1824. And the compensation tax, as part of that property, was divisible in these proportions. His immoveable property, which was very extensive, consisted partly of nineteen mehals which were held by him in severalty, and partly of mehals which he held conjointly with other persons. Disputes arose between his sons immediately after his

death. The Commissioner of the district intervened and induced them to make a partition of the immoveable property. Under his advice and with his approbation, the deeds of partition were executed on the 30th December, 1840, and that which was executed by Modenarain is at page 76 of the Record. It specifies the different villages which fell to the lot of Heetnarain and Modenarain respectively; and also the sums which each, as between him and his brother, was bound to pay in respect of the sudder jumma or Government revenue. The partition, however, was not made upon the principle of dividing each mehal, with the burthen of the public revenue assessed thereon, in the proper proportions, but of assigning certain villages and parcels according to their real or supposed value to each share, so as to give to Heetnarain $\frac{9}{16}$ ths in value, and to Modenarain $\frac{7}{16}$ ths in value of the whole immoveable property. In consequence of this mode of division, in six out of the nineteen mehals which had been held by Mitterjeet Singh in severalty, Modenarain took more than a nine annas share (his share in some of them being absolutely much larger than that of his brother), with the liability of having to pay a corresponding share of the public revenue assessed on those mehals. This deed of partition, which was confined to immoveable property, made no mention of the compensation for the pilgrim's tax; and the jumma or revenue stated therein to be chargeable on the different mehals, and to be apportioned between the brothers as therein mentioned, was the full amount of jumma assessed upon them under the perpetual settlement. It follows, then, that as far as this partition went, the compensation for the pilgrim's tax was not included therein, and presumably continued to be one of the assets of Mitterjeet Singh divisible between his sons in the proportion of nine to seven annas.

In Mitterjeet Singh's lifetime the payment of this annuity would have been very simple; he had annually to pay a very large sum (upwards of three lacs of rupees) for Government revenue, and would naturally have retained the 17,212 rupees by way of deduction or set-off. It would seem, however, that in his lifetime, or very shortly after his death, the revenue authorities of the district entertained the notion of putting, in some way or other, this payment

against the sudder jumma, in respect of the nineteen mehals held by him in severalty, distributing the whole sum of 17,212 rupees amongst the different mehals according to the jummas assessed upon them respectively. This appears from the letter of the Accountant of the Revenue Department, which is at page 198 of the Record, and purports to be in answer to a letter from the Collector of the 22nd October, 1840, which is not in evidence. The Accountant's letter is dated the 26th December, 1840, and is in these terms: "I have the honour to acknowledge the receipt of your letter No. 344 of the 22nd October last, and with reference to the seventh paragraph thereof I beg to acquaint you that on examining the items rateably distributed by you among the several mehals in your statement, trifling errors have been discovered to exist in almost every item. I accordingly transmit herewith a copy of your statement with an additional column added to it, showing the calculations made in this office, agreeably to which you will have the goodness to allow the remissions in favour of the several mehals. I have used the term *remissions*, though, as far as the course of entry is concerned which the settlement with the Rajah will render necessary, no remissions in account will appear; for the compensation in question to the Rajah's heirs you will be pleased to recollect will have to be charged under the head of sayer compensation, subordinate to pensions, the charge being balanced by a distinct credit *per contra* 'to land revenue' (the estates being in your district towjee). This course of entry you will observe will prevent you from exhibiting the transaction in account as a 'remission.'"

By a proceeding dated the 23rd March, 1841, the Collector directed that effect should be given to the letter of the Accountant, and that the 17,212 rupees 9 annas 5 pice should be credited on the 1st April of the current and of every future year to the mouzas of each lot, as was specified in the letter of the Accountant, that is, on the list of mehals annexed to it; but it appears that in April 1841, and again on the 31st of March, 1842, a warrant was written for the whole sum of 17,212 rupees 9 annas 5 pice, and this settlement of accounts was therefore in the nature of a set-off of one independent demand against another, and did not imply the permanent

remission or deduction of part of the jumma originally assessed on the several mehals.

On the 6th June, 1842, the Secretary of the Government wrote to the Accountant that the remission of the 17,212 rupees 9 annas 5 pice was to be adjusted by reduction of the jumma. The letter is in the following terms:—"With reference to the communication made to your office from this Department under date the 16th January, 1840, I am directed to inform you that the Honourable the Deputy-Governor of Bengal has this day been pleased to determine that the remission granted to Rajah Mitterjeet Singh shall be adjusted by a reduction of the sudder jummas of the estates recorded in his name on the Behar Collector's towjee." And a letter to this effect, of the date of 14th June, 1842, was sent to the Collector of Behar. Whether that Court was right in this statement, their Lordships, not having the letter of the 16th January before them, are unable to determine.

This Order of June 1842, for adjusting the remission by a reduction of the jumma, apparently rendered a change in the mode of stating the accounts necessary; but, in fact, no alteration was made in them down to the year 1850. This appears from a letter to the Collector of Behar of the 17th of September, 1850. Part of that letter is in these terms: "As regards the mode of adjusting the remission still observed by you, I beg to remark that instructions from this office based upon the Orders of Government of the 6th of June, 1842, were, under date the 14th idem, issued to you, wherein you were requested to account for the remission by a reduction of the sudder jumma of the estates recorded in the name of Rajah Mitterjeet Singh on the towjee of your district, which instructions apparently set aside those contained in letter No. 426 of the 26th December, 1840. It would seem that after this communication the Government accounts were kept in accordance with the Government letter of the 6th of June, 1842, which is obviously treated as having introduced a mode of accounting for the compensation for the pilgrims' tax differing from that established by the Accountant's letter of the 26th of December, 1840, in that it proceeded less upon the principle of set-off, and more directly upon that of remission of revenue.

Assuming, however, that the Order so to deal with the compensation was within the competence of Government, as a direction to their officers for the more convenient mode of keeping their accounts, or otherwise, how could that affect the rights of Heetnarain Singh and Modenarain Singh *inter se*?

The Government might keep their accounts in any manner they pleased, but the 17,212 rupees would still continue to be the property of the brothers in the settled proportions, unless they acquiesced in the course adopted by the Government, and acted upon it in such a way as to indicate a fresh agreement between them. Now there is no evidence that Heetnarain Singh ever assented to this arrangement, or that he ever agreed to alter the proportions in which the property was originally divided. On the contrary, on the 15th April, 1843 (and no action can have been taken on the letter of June, 1842, until the 1st of April, 1843) he presented a petition to the Collector, in which he complained of his being called upon to pay a larger sum than was due from him for the jumma, and praying relief. That petition was rejected. He then appealed to the Commissioner, and the Commissioner in refusing to interfere said: "It appears that the malikanah allowance has been rateably credited to the revenue of the mehals of both the parties. If there is a diminution in their respective shares as opposed to the fixed allotment of share, let them adjust the differences among themselves; Government has nothing to do with this. The Collector is to communicate this to both the parties." Accordingly from the date of this order until the commencement of these suits in 1853, Heetnarain continued to assert his right to $\frac{9}{16}$ ths of the 17,212 rupees 9 annas 5 pice, by retaining so far as he could, out of the sums which under the partition he was bound to pay as his share of the jumma assessed in the different mehals, his proportion of the remission allowed in respect of each particular mehal. The suit of Modenarain is brought to recover the sums which, according to his contention, were in this manner improperly retained by Heetnarain in satisfaction of his full proportion of the remissions allowed in respect of three of the mehals, whilst the three suits of Heetnarain are for the recovery from Modenarain of the differences between the sums actually returned

by him, and his full $\frac{9}{16}$ ths of the remissions allowed in respect of three other mehals. The deed of partition, as has already been shown, made no alteration in the original rights of the parties, and the observations of the Principal Sudder Ameen in this respect are perfectly correct. It is to be observed also that Modenarain Singh, in his plaint filed on the 8th April, 1853, as to the three mehals of which Heetnarain had received his $\frac{9}{16}$ ths, does not found himself upon any new agreement between them, but upon the authority of the Government order of June, 1842. The ground upon which the Sudder Court proceeded in overruling the Decree of the Principal Sudder Ameen in Appellant's favour was, that the parties were aware that the remission of the jumma had been made, and that there was a deduction from certain specified mehals, and that the amount of remission from each of these mehals had been ascertained and determined, and that it was therefore a reasonable inference from the silence of the deed of partition on the subject that the parties believed and were willing that the amount of remission on each estate should be apportioned to the amount of jumma for which each of the contracting parties was responsible." There is, however, not the slightest proof that when the deed of partition was in preparation (the consent to an amicable adjustment in which it resulted having been given on the 24th December, 1840), or even at the time of the execution of the instrument on the 30th December, 1840, the parties were aware of the mode in which the Government accounts had at that time been made out. The letter of the Revenue Accountant of the 26th December, 1840, can hardly have reached the Collectorate of Behar before the 30th December, and the proceeding of the Deputy Collector, at page 197 of the Record, shows that that letter was not taken into consideration by him until the 4th January, 1841, and that no final orders were passed thereon until the 23rd March, 1841. But even if the parties at the time when the deeds of partition were executed had known of the letter of the 26th December, 1840, they would have had no notice of the determination on the part of the Government to settle the account by way of reduction or remission of jumma. The arrangement was effected by the letter of Government of the 6th June, 1842, and it

is treated throughout the proceedings as differing materially from that contemplated in the letter of December, 1840. It is in the letter of 1842 that Modenarain in his plaint founds his claim, and the sums which he sought to recover were those retained by Heetnarain after the date of it.

The Sudder Court puts the case of the sale for arrears of revenue of one of the lots on which a reduction of jumma had been allowed, and the danger of the Government revenue suffering from a doubt whether the parties would consider themselves obliged to give up so much of a remission which they now enjoy, or would expect the Government to submit to the loss of revenue consequent on treating the jumma on the Mehal as permanently reduced by the amount of the remission now allowed. But it is difficult to understand how, because in a supposable case the Government may be thrown into a state of uncertainty with respect to the mode of dealing with the reduction, this can have any influence on the rights of the parties between themselves.

Their Lordships are of opinion that the view of the case taken by the Sudder Court cannot be adopted, but that the 17,212 rupees was divisible between the brothers in the proportion of nine-sixteenths and seven-sixteenths, and that, in whatever mode the Government may think proper to deal with this sum with reference to the jumma, the rights of the parties cannot be affected without their consent, but will continue to be adjusted according to the proportions originally established.

Their Lordships will, therefore, humbly recommend Her Majesty to reverse the Decrees of the Sudder Court in all the four suits, and to affirm the Decrees of the Sudder Ameen in all those suits, and with costs.

Mr. Rolfe.—The costs of the Court below and the costs here?

Lord Chelmsford.—All costs.
