

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Honourable Sri Maharajah Meerja Vijaya Rama Gajapati Raz Manea Sultan Bahadur Garu, of Vizianagram, K.C.S.I., sued as Sri Rajah Vijayarama Gajapati Raz Bahadur, Zemindar of Vizianagram, v. Sri Rajah Lakshmi Challaya, Ranee of the Zemindary of Bobbili, widow, and heiress of the late Respondent, Sri Rajah Sitaramakristna Rayudappa Ranga Row Bahadur Garu, Zemindar of Bobbili, from the High Court of Judicature at Madras; delivered 25th June 1872.*

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Present :

SIR JAMES W. COLVILLE.

LORD JUSTICE JAMES.

SIR BARNES PEACOCK.

LORD JUSTICE MELLISH.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THIS is an appeal against the judgment of the High Court, which reversed the decision of the judge of the Civil Court of Vizagapatam, dated, —and the date is material for the decision of the present question,—the 5th July 1865. The question which the appeal raises is the effect to be given to the 26th and 29th articles of the Code of Procedure. The 26th article requires that the plaint shall contain the name, description, and place of abode of the Defendant, as far as they can be ascertained, and the 29th section provides that if the plaint does not contain the several particulars therein-before required to be specified therein the court may reject the plaint,

or, at its discretion, may allow the plaint to be amended.

In the present case a plaint was filed by the Rajah of Bobbili, against the Appellant, whom I may shortly describe as the Maharajah of Vizianagram. The objection taken to the plaint was that the Defendant was described on the face of that plaint by titles which did not correspond with the full titles to which he was entitled, and by which he ought to have been described. The judge thought that objection was made out, and he directed that the Plaintiff should have liberty to amend his plaint by amending the description of the Defendant, in accordance with the description which had been given to him in the Gazette, by which he was appointed a member of the Governor-General's Council for making Laws, namely, the "Honourable Maharajah Meerja " Vijaya Rama Gajapati Raz Manea Sultan " Bahadur Garu, of Vizianagram." He gave the Plaintiff a "week's time to amend his plaint " by entering the name and distinction of the " Defendant as above set forth, and in default " the plaint will stand rejected." The Plaintiff, the Respondent, declined to amend his plaint, and failed to do so. The judge then rejected the plaint under the 29th section, and upon appeal to the High Court that order of rejection was reversed, and it was held that the identity of the Appellant having been ascertained by the imperfect description, the order to reject the plaint ought not to have been made.

The dispute between these parties seems to have been a very ancient one. There appears to have been a feud between these two great proprietors for a considerable time as to the titles to which they were respectively entitled. It further appears, however, that as early as 1861 the then agent of the Governor of Madras in Vizagapatam had ascertained what titles were the titles by which these parties were respectively known. I

think the phrase is what titles "were in vogue," and he ordered that in all official documents those titles should be given by the one to other. The Respondent or his father raised an appeal against that order. There was an elaborate report made by a Mr. Carmichael to the Government, and the Government of Madras passed an order upon that, which is dated the 26th April 1865, by which they ruled that the order of the agent should stand, and that those titles should be treated as the titles necessary to be given in official documents. That, therefore, was a recognition by the Local Government of Madras that the Appellant was entitled to the titles specified in the order of the agent, Mr. Fane. It was also something more, because, while this question was pending before them, the Government of India, by the then Viceroy, had formally conferred upon the Appellant the title of Maharajah. Therefore, if there had been any question upon his claim to that title at an earlier date, that doubt was entirely removed by the formal act of Government, and the grant of the title from that which must be taken to be in India the fountain of honour.

Now it is no doubt the fact that the plaint in the present case was filed before that order of the Government of Madras to which I have just referred. It was, however, filed after the grant of the title of Maharajah; and after the appointment of this gentleman to be a member of the Governor-General's Council for making Laws, by the notification in the Gazette in which he received his full titles, and was described in the manner in which the judge afterwards required the Respondent to describe him; and further it is certain, that the order of the Government of Madras was passed and issued before the question raised upon this objection *under the Code* came to be tried and the decision of the judge upon it was passed, because that, as I stated, was not until July 1865.

In these circumstances the question for their Lordships' consideration is, whether the order of the Judge, which he was competent to pass, and indeed ought to have passed, under the Code of Procedure, or whether the decision of the High Court reversing it, is the correct one.

No doubt the question which is now brought before their Lordships might by some persons be considered frivolous. It does not appear to their Lordships, however, to be by any means a light question. It is certainly (as one of their Lordships remarked in the course of the discussion) strongly against the policy of the law that anything should be done which tends to increase that which has been always one of the great social evils of India, *i.e.*, the indisposition of persons of consequence to appear as suitors in courts of justice. It appears to their Lordships that upon the proper construction of the Code the description contemplated by the 26th article includes all those titles by which the party is generally known; and that if a Plaintiff from animosity, from pique, or anything in fact but a *bonâ fide* dispute as to the right to a title, obstinately refuses to give his adversary that title by which he is generally recognised, the Court ought not to permit or sanction that species of insult, as insult no doubt it would be treated not only in India, but even in other countries.

In the present case it is not necessary for their Lordships to consider whether if there were a *bonâ fide* dispute in the suit, or otherwise, as to the existence of the title, or as to the right of the party to bear a particular title, that the judge would in every case exercise a sound discretion in rejecting the plaint. For it appears to their Lordships that here the matter was entirely put by the proceedings already referred to beyond dispute, and that it was impossible to say that the titles, if properly treated as falling within the term of description, could not be ascertained. An order had been passed in the

district, with the view, apparently, of keeping the peace between these great proprietors, that in all official documents each should describe the other by a certain title; that order had been recognised after appeal and discussion and inquiry by the Government of Madras; the titles themselves had been recognised by the highest authority in India,—by the Governor-General in Council, and confirmed by a distinct grant of the principal title, that of Maharajah,—and therefore there could be no pretence or excuse for saying that there was any doubt whatever as to the legal right of the Appellant to bear those titles which he claimed to bear. Their Lordships are therefore of opinion that the Judge of the Civil Court was competent to pass the orders which he passed; and that he exercised a sound discretion in first requiring the Respondent to amend his plaint, and afterwards in rejecting that plaint when the first order had been contumaciously disobeyed.

The only point on which their Lordships have entertained a doubt is whether it was essential for the judge to require the term "Honourable," which seems to be less matter of description than a mere honorary distinction, applying to those who are members of the Council, to be stated in the plaint. It is, however, to be observed that the Respondent, when he appealed to the High Court, did not raise any point as to that. He raised broadly the question whether he was bound to give the Appellant what he called his honorific titles, or whether it was not sufficient simply to describe him in a way in which he could be distinguished from any other person.

Their Lordships are aware that in coming to the before-mentioned conclusion they are ruling that which is in some degree in conflict with a decision passed by the High Court of Bengal in the case cited from the 12th Weekly Reporter, page 450. It is to be observed, however, that,

as it was fairly admitted at the bar, that case is in one particular distinguishable from the present, inasmuch as there the Defendant had not taken the objection in the first instance, but had asked for further time, and afterwards took the objection by way of afterthought. It is, however, scarcely necessary to observe that even if the case had been on all fours with the present it would not have been a decision, passed as it was by a division bench of the High Court, which would have been binding upon their Lordships; and for the reasons which I have stated, their Lordships are of opinion that it is not the true construction of the Act in question to say that where a man has titles, the claim to which titles cannot rationally be disputed, and by which he is generally known, all that the Code requires is that he should be described in such way as has been contended for by the Respondent.

Their Lordships, under these circumstances, will humbly advise Her Majesty that the decree under appeal be reversed, that the order of the Zillah Judge be affirmed, and that the Respondent do pay the costs of this Appeal, and in the High Court.