

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaval Mohansingji Jeysingji v. The Government of Bombay, from the High Court of Bombay; delivered March 8th, 1881.*

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Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS is a suit brought by the Appellant in the District Court of Surat, claiming, as the adopted son of Maharaval Jeysingji Bhagvansingji, to recover from the Government of Bombay certain payments in respect of a To dá Garas Hukk, formerly levied by his ancestors upon certain villages in the Surat District. It appears that the Government has for many years made payments on account of this To dá Garas Hukk (divided into three parts) to three different branches of the Appellant's family; his adoptive father, through whom he claims, being paid one third. The father died in 1865, and upon his death the Government either refused to recognise the Plaintiff as the adopted son, or considered that, as an adopted son, he was not entitled to receive the payments, and discontinued them. The action is brought, in consequence of that discontinuance, to recover the arrears from the time of the father's death.

The Government denied the right of the Appellant to bring this suit in the Civil Courts, relying upon the Pensions Act of 1871. The Courts below, both the District Judge of Surat

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and the High Court on appeal, have held that the Government is entitled to rely upon that Act, and that the Civil Courts can take no cognisance of the suit.

It is unnecessary to inquire at any length into the origin of these To dá Garas Hukks. It would appear that they had their origin in arbitrary exactions made by strong and powerful persons, who obtained the name of Garasiás, upon the village communities; that those arbitrary exactions were in some way commuted into fixed payments by the villagers, in consideration of which the Garasiás gave up their claim to make arbitrary exactions, and also undertook to defend the villagers against the exactions of others. The nature of these hukks has been defined in two cases by this Board, the latter of which only it will be necessary to refer to. In the case of *Maharana Fattehsangji Jaswatsanji v. Dessai Kallianraiji Hekoomutraiji* (L. R., 1 I. A. 46), there is this description of them:—The determination of this question “ involves the consideration of the nature of a “ To dá Garas Hukk. A good deal of learning “ on this subject is to be found in the case of *The “ Collector of Surat v. Pestonjee Rutongee*, and in “ the case of *Sumbhoolall Girdhurlall v. The “ Collector of Surat*, to which their Lordships “ have been referred. They do not think it “ necessary to go at any length into this. It is “ sufficient to state that these annual payments, “ although originally exacted by the Garasiás “ from the village communities in certain terri- “ tories in the West of India by violence and “ wrong in the nature of black mail, had, when “ those territories fell under British rule, acquired “ by long usage a quasi legal character as cus- “ tomary annual payments; that as such they were “ recognised by the British Government, which “ took upon itself the payment of such of them

“ as were previously payable by villages paying  
 “ revenue, and left the liability to pay such of  
 “ them as were payable by inam villages to fall  
 “ on the inamdar. And since the decision of the  
 “ before-mentioned case in the 8th volume of  
 “ Moore, page 1, it cannot be questioned that the  
 “ To dá Garas Hukks of the former class constitute  
 “ a recognised species of property capable of alie-  
 “ nation, and of seizure and sale under an execu-  
 “ tion.” It must therefore be taken, after the  
 two decisions of this Board, that these hukks  
 have been recognised as a species of property,  
 however unlawful their origin may have been.  
 The Plaintiff bases his claim upon that view of  
 the hukk. The Plaint states that his ancestors  
 had certain lands, and “ likewise there has  
 “ continued to us from ancient times the yearly  
 “ cash hukk (right) of To dá Garas as our private  
 “ property.” Then it goes on:—“ Sometime  
 “ after the introduction of the English Govern-  
 “ ment the Government made an arrangement  
 “ (bandobast) to pay from the Government  
 “ Treasury in lieu of the To dá Garas Hukks  
 “ which the Garasiás used to collect or levy  
 “ directly from the village.” It seems that  
 there was a resolution of the Government  
 of Bombay in 1862, which described the  
 position of the Garasiás at that time, and  
 gave them the option of resuming the collection  
 of the former hukks from the villages, or of  
 receiving from the Government allowances of an  
 equivalent amount, the Government in that case  
 discontinuing the further receipt of the hukks. The  
 resolution says:—“ It should therefore be publicly  
 “ declared in every taluka, as the Revenue Survey  
 “ Settlement is introduced, that the new rates of  
 “ assessment do not include any such collections,  
 “ and that the Government will in future not aid  
 “ or take part in the collection of Garas. In  
 “ thus placing the Garasiás in the same position

“ with respect to the village communities which  
 “ they originally held, the Governor in Council  
 “ cannot allow them to resort to other than legal  
 “ means to enforce their claims, and if any  
 “ village communities decline to accede to the  
 “ Garasiás’ demands the latter must resort to the  
 “ Civil Courts. At the same time the Governor  
 “ in Council is not unwilling to make some  
 “ sacrifice of revenue in order to relieve the  
 “ Garasiás from resorting to law; and he is  
 “ prepared whenever the Garasiá may be willing  
 “ to receive from Government his present income,  
 “ instead of collecting it direct from the villagers,  
 “ to continue that income to him, under such  
 “ reasonable rules and restrictions as it may  
 “ seem fit to Government to impose.” Then:—  
 “ The conditions on which this arrangement will  
 “ be entered into are that the Garasiá shall  
 “ consent to abandon for the future his claims  
 “ against the village communities; and in return  
 “ the allowances he has hitherto enjoyed shall be  
 “ continued by the State hereditarily (during good  
 “ behaviour) to the male issue of the first person  
 “ who receives the Garas from the British  
 “ Treasury.” The arrangement with the Plain-  
 tiff’s ancestors, stated in the Pleint, is of the kind  
 described in this resolution, though it appears to  
 have been made before 1862. Payments of money  
 in lieu of the hukk were made before that year,  
 and were continued by the Government down to  
 the death of the Plaintiff’s father, with regard  
 to the three shares, and since that time the  
 Government has apparently continued to pay the  
 two other sharers, though they have discontinued  
 the payment to the Plaintiff.

The nature of To dá Garas Hukk having been  
 adverted to, their Lordships have now to refer  
 to the Statute upon which the question, and the  
 only question, in the Appeal turns. The 4th  
 section is this:—“ Except as herein-after pro-



" vided, 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 be  
 " the consideration for any such pension or grant,  
 " and whatever may have been the nature of the  
 " payment, claim, or right for which such pen-  
 " sion or grant may have been substituted." It  
 has been shown that this hukk, whatever it origi-  
 nally was, had acquired the character of a right,  
 and the Plaintiff bases the claim of the Plaintiff  
 upon its being a right. That being so, it appears  
 to their Lordships that the present suit is one  
 of those which fall directly and plainly within  
 the language of this clause. It is a suit relating  
 to a grant of money conferred by the British  
 Government; and the Civil Courts are prohibited  
 from entertaining any suit relating to such a  
 grant, whatever may have been the consideration  
 for it, and whatever may have been the nature of  
 the payment, claim, or right for which such grant  
 may have been substituted. There is in this  
 case a grant of money by the Government, and  
 a right for which it was substituted. It, there-  
 fore, falls within the language of the fourth  
 clause. The right of the Garasiás was of a  
 peculiar and precarious kind; and allowances in  
 respect of rights of this nature are clearly  
 contemplated by the Act, and intended to be  
 included in it. If there were any doubt, the  
 previous clause, the third, which is explanatory  
 of the expression "grant of money or land  
 revenue," may be looked at. It is as follows:—  
 " In this Act the expression 'grant of money or  
 " land revenue' includes anything payable on the  
 " part of the Government in respect of any right,  
 " privilege, perquisite, or office." Even if the  
 arrangement made by the Government was not  
 strictly a grant, the suit relates to money payable  
 by the Government in respect of a right. It was

argued that the construction should be limited to rights *ejusdem generis* with pensions. But there is no sufficient ground for so limiting the language; and it is to be observed that the words of the Pensions Act of 1871 which include this case are not found in the former regulations relating to pensions. There is no reason, therefore, either in the language of the Act itself or in the antecedent legislation, for construing these words as applicable only to rights of the nature of pensions.

It was contended further that this case is founded upon a contract, and it was said that if it is embraced by the Act all contracts for the payment of money must be held to be included in it. But that is not so. The Act applies to grants of money in respect of or in substitution for some right, privilege, perquisite, or office. Undoubtedly, in some sense it may be said that the arrangements made between the Government and the Garasiás were in the nature of contract; but that contract, if it were one, resulted in the abandonment on the part of the Garasiás of their claim to make collections from the villagers, and in the allowance of money by the Government in lieu of them. It is that allowance which falls within the operation of the Statute.

It was contended in the Courts below, and appears to have been the principal contention there, that the Government were in the position of agents for the Appellant to receive the collections, and were therefore bound to pay over to him the amount of the former hukk. But this argument entirely fails of foundation, for the Government since 1862 have abandoned the collection of the hukk from the villagers; therefore, having received no money, they have nothing to account for to anybody. Their Lordships think it right to observe that this argument was not

pressed at the bar to-day, though it appears to have been very strongly relied upon in the Courts below.

This is not the first time that the Pensions Act of 1871 has come before this Board. In the case of *Vasudev Sadashiv Modak v. The Collector of Ratuagiri* (L. R., 4 I. A., 119) an action was brought to recover certain payments on account of a grant which had been made to a Deshmukh in consideration of some ancient dues which his ancestors had received. It seems that the Deshmukh was a collector of Government revenue, the office being hereditary, and that the Deshmukhs had been accustomed to receive a certain share of the revenue which they collected. The suit was brought against the Government for payments representing the old allowances, which it appears the native Government undertook to make; but the Board held that, by the terms of the Act in question, the Civil Courts were prevented from taking cognisance of the suit. It is said in the judgment:—"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 fourth section, without the aid of the  
 " third, as a grant of money or land revenue  
 " conferred by a former Government." It seems to their Lordships that this decision very nearly governs this case, if any authority were wanted for an interpretation of the plain language of the Act.



Their Lordships find that the High Court of Bombay, in the case of *Parhudas Rayaji v. Motiram Kalyandas* (1st Indian Law Reports, Bombay, 206), give a like construction to the Act. The observations, however, of the Judges can only be treated as dicta, since they decided the case upon the ground that, the suit having been brought upon a decree obtained before the Act had come into operation, it was not a bar to the suit.

The only case which at all looks the other way is one in the High Court of Bengal (*Shahzadee Hazara Begum v. The Collector of Burdwan and another*, 23 W. R., 378). The head note is:—

“ One Khajah Anwar Shahad, a servant of the  
 “ Delhi emperor, having been killed in Burdwan  
 “ while fighting for his master, the emperor  
 “ built a tomb over his remains and made a  
 “ grant of land (five mouzahs) to his family for  
 “ the purpose of maintaining it in the manner  
 “ usual amongst Mahomedans. This grant was  
 “ subsequently confirmed to a descendant of  
 “ Shahad and his heirs. Some years later the  
 “ land came into the possession of the rajah of  
 “ Burdwan, who paid to the grantees a certain  
 “ sum of money annually. When the perpetual  
 “ settlement was made the British Government  
 “ continued the payment on account of the  
 “ rajah, in whose zemindaree four of the five  
 “ mouzahs were incorporated.” It seems that  
 the yearly payment was a sum of Rs. 3,690.  
 Mr. Justice Glover says:—“ It is an admitted  
 “ fact that this annual payment was made by the  
 “ rajah on account of these mouzahs,”—that  
 is, the five mouzahs referred to—“ and it seems  
 “ to us that such payment was, to all intents  
 “ and purposes, the rent of the land transferred.”  
 After the permanent settlement the Government  
 continued this payment, whether as of right or  
 as an act of generosity may be a question.  
 However, supposing the payment to have been



obligatory, the nature of the obligation is treated by Mr. Justice Glover as an obligation to pay rent, He says:—"And if the Rs. 3,690 paid to the " family of Anwar Shahad by the zemindar of " Burdwan was the rent of the five mouzahs, how " was the payment changed in its nature by being " made through the British Government?" Their Lordships cannot help saying that it was a violent assumption that the Government were paying rent for these mouzahs. However, having made that assumption, the learned Judge decided that the payments were not within the Act. The decision, thus explained, does not affect the question in the present Appeal.

For these reasons their Lordships think that the judgments below are correct; and they will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this Appeal with costs.

