

*Special Appeal No. 21 of 1863.*1863.  
Sept. 1.

BHAVA'NI and others ..... *Appellants.*  
 HASAN MIYA' ..... *Respondent.*

*Prescription—Annual Allowance paid for upwards of a century—Inám.*

For upwards of a century the holders of an *Inám* had paid an annual allowance to the parties represented by the appellants, plaintiffs below.

*Held* (Tucker, J., *dissentiente*) that the recipients had acquired a good title to the allowance by prescription, and that an original grant for a sufficient consideration must be presumed.

**T**HIS suit was instituted by Bhaváni and others against Hasan Miyá, the *inámdár* of an *iná*m village, to recover from him the amount of a certain *russum* or annual allowance which they alleged to be a charge on the *iná*m, in arrears for six years, and also to establish their right to recover the same in future.

The defendant contended that payment of the allowance in question was not provided for in the grant of the village; that his predecessors might have paid the money voluntarily, but that plaintiffs had no legal claim against him.

The Munsif of Kadá, A'zam Anándráv Keshav, held the claim proved, and awarded for plaintiffs.

On appeal against this decision, the Assistant Judge of Ahmednagar, W. H. Newnham, found that the allowance in question had for a century or more been paid to the party represented by the claimants by the incumbents of the *iná*m, but there was nothing to show that payment was not optional, or to prove that it was a legally enforceable claim, as it was not contended that any services were rendered in return for the allowance. He held that it evidently belonged to that class of "*maktá russums*" and similar *haks* which were practically abolished, and that if defendant declined to pay it, he could not legally be compelled to do so.

He, therefore, reversed the Munsif's decree with costs.

Plaintiff preferred a special appeal.

The case was heard in the first instance by a Court of two Judges, NEWTON and TUCKER, JJ., but these having differed in opinion recorded the following minutes:—

NEWTON, J.:—The receipt of an annual allowance for a century or more under the circumstances found to have existed

1863. in this case appears to me to give a title by prescription to  
 BHAVA'NI *et al.* the recipient, and to absolve him from the necessity of show-  
 v. ing the origin of the allowance, a sufficient consideration for  
 HASAN MIYA. it being in such a case presumable.

TUCKER, J. :—There is no proof in this case that there was anything but a voluntary payment made by the original holder of the *inám* estate, and continued by his descendants till the succession of the present incumbent. An *inám*dár (Muhammadan) being only a tenant for life, I concur in opinion with the lower Court that no particular incumbent could charge the estate perpetually with a payment of this kind, and that the present holder is not bound to continue the payment merely because it has been received by the original payee and his representatives for a period exceeding thirty years. The present holder of the *inám* appears to have been only thirty-one years of age in A.D. 1858, so that he personally could not have made the payment for thirty years.

The Court thereupon referred the case to a third Judge, under the following written order of reference :—

We refer this case for the decision of a third Judge on the question whether the special appellant has by length of possession obtained a title to the continued payment of the annual allowance against the original grantor and his representatives.

FORBES, J., before whom the case came on this reference, recorded the following minute :—

The Assistant Judge finds it proved that the allowance had been paid probably for a century or more, but that it is not proved that the payment was not optional.

I think that the allowance having been paid for the above period with the cognisance of the original grantor and his ancestor, and without their having taken any steps to protect themselves, special appellant's possession must now be received as proof of sufficient right of property.

PER CURIAM :—The decree of the Assistant Judge is reversed, and that of the Munsif confirmed with costs.

*Decree reversed.*