

## PRIVY COUNCIL.

March 1, 2, 1877.

PRESENT:

SIR JAMES W. COLVILLE.		SIR MONTAGUE E. SMITH.
SIR BARNES PEACOCK.		SIR ROBERT P. COLLIER.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT BOMBAY.

VA'SUDEV SADA'SHIV MODAK (PLAINTIFF) *v.* THE COLLECTOR  
OF RATNA'GIRI (DEFENDANT).

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*"The Pensions Act, 1871"—Jurisdiction—Deshmukh.*

A plaintiff alleging that, as the hereditary Deshmukh of certain máhals, he was entitled to be paid directly by the ryots of these máhals a percentage on the revenue thereon assessed, sued to recover a portion of such percentage which had been collected along with the revenue and retained by the Government: *Held* that the claim was "a suit relating to a grant of money or land-revenue," and as such excluded from the jurisdiction of the Civil Courts by Section 4 of "the Pensions Act, 1871."

THE sole question for decision on this appeal was whether the suit brought by the appellant as plaintiff was, as had been held by the Courts below, excluded, by the provisions of Act XXIII. of 1871, from the jurisdiction of the Civil Courts.

The rights which the plaintiff sought to establish in this suit were set forth in a sanad, granted on the 3rd March 1777, by Mádhavráv Peishwá to the plaintiff's ancestors, Sadáshiv Raghunáth and Báláji Govind Modak.

This document, which was addressed to the Máhájans and Khots (officers employed to collect the revenue) of certain máhals therein named, began with a recital that the said Sadáshiv and Báláji had come before the Peishwá, representing that the deshmukhi watan of the said máhals, which had been long enjoyed by their ancestors, and which included a right to levy directly from the ryots of these máhals half-an-anna on every rupee of revenue collected in cash, half a maund on every kandi of revenue collected in grain, half a maund on every kandi of ghee sold by milkmen, half-an-anna on every rupee on articles sold by weight, and two annas and a half on every thousand articles sold by number, had been resumed by Máhárájad Siváji, who had granted in lieu thereof a fixed yearly allowance of Rs. 75, which allowance had afterwards been increased by Kánoji Angria and other rulers. After reciting

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the prayer of the said Sadáshiv and Báláji Modak that the Peishwá would grant letters, authorizing them to levy their desh mukhi haks, as formerly, directly from the ryots, and further reciting that a claim, which had been made by certain other parties to participate in the said haks, had not been substantiated; the sanad proceeded:—“It follows that the hak of the Modaks aforesaid, which is now held in abeyance, should be released to be levied by them directly from the ryots in accordance with the jamábandi. We are, therefore, graciously pleased to release their haks which were credited to the Government, and to grant this ajnapatra (order). Do you, therefore, cause the amount of their hak on the Government jamábandi, whatever it may amount to according to the established practice, to be paid by the ryots to them, their sons and grandsons, &c., from generation to generation.”

It will be noticed that while the dues leviable under this sanad on revenue assessed in cash amount to  $3\frac{1}{8}$  per cent., the dues on the grain assessment were only  $2\frac{1}{2}$  per cent. The dues on both assessments continued, up to the year 1842, to be collected by the plaintiff's ancestors and by himself directly from the ryots. After that year the Government officials collected them with the regular revenue and paid them over to the plaintiff.

In the year 1866 a new revenue settlement came into force. The grain assessments were abandoned, and a consolidated cash assessment was introduced. When this change took place, the present appellant contended that he was entitled to receive half-an-anna in the rupee ( $3\frac{1}{8}$  per cent.) upon the whole consolidated cash assessment; whereas the Government contended that he was only entitled to this percentage upon the amount of the original cash assessment, and that upon the balance he could only claim the percentage ( $2\frac{1}{2}$ ) which he would have received if the amount had been levied in grain under the old system. Finally, in a suit brought by the appellant against the Collector of Ratnágiri, it was decided that as the appellant was deprived of various advantages by the change in the system of assessment, it was equitable that he should be paid his dues on the higher scale. The Collector was accordingly ordered to pay the appellant's dues at the rate of half-an-anna in the rupee on the entire assessment for the years 1866-67 and 1867-68.

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The present suit relates to the deshmukhi dues payable to the plaintiff for the years 1868-69 and the subsequent years up to 1871-72. The plaint was filed in the District Court of Ratnágiri on the 31st March 1873. It set forth that the plaintiff was entitled, as hereditary deshmukh of certain máhals in the Ratnágiri district, to levy from the ryots of these máhals half-an-anna on every rupee of revenue assessed in cash; that this due had formerly been recovered by the deshmukh directly from the ryots, but had latterly been received by the Government on behalf of the deshmukh; that the plaintiff's right to receive the amount in full had been established in the suit recently brought by him against the Collector of Ratnágiri, but that payment of part of his dues being again withheld by Government, the present suit was brought to enforce it. The plaint further alleged that whereas, under the provisions of Act XI. of 1843, a single person might be appointed to discharge the duties of the plaintiff's office, the Government, without the plaintiff's consent, had appointed more than one such person, and had remunerated them out of the dues belonging to the plaintiff. The plaintiff claimed that these persons should be dismissed, and the amount paid to them refunded. The plaint also alleged that certain lands, on which revenue had formerly been assessed, had been planted by the Government as a teak forest on which no fixed revenue was assessed, although the timber grown thereon was cut and sold by the Government. The plaintiff claimed to be paid his dues in respect of the revenue realized by Government through the sale of such timber. He also claimed interest on the various items of his demand.

The Collector of Ratnágiri put in a written statement, in which, among other objections, he submitted that the jurisdiction of the Civil Courts was ousted by the provisions of Act XXIII. of 1871.

The case came on for hearing before the District Judge on the 24th October 1873, when the plaintiff's pleader was examined by the Court, under Section 125, Act VIII. of 1859, as to the nature of his claim, and stated that the hak claimed was an allowance obtained from, and payable by, not the Government but the ryots; and, although the Government at that time collected the amount from the ryots, yet that it did so on the plaintiff's behalf, and as due to the plaintiff; and that the Government merely paid over

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the same to the plaintiff, but did not pay anything out of its own funds. Further, that, according to the practice, the plaintiff could release or alienate his *watan*, and that the Government could not refuse to give effect to such a transaction, nor could it alter the amount payable.

A representation, in writing, to the same effect was on the same day submitted to the Judge, who decided that, on the statements contained in the plaint and made by the plaintiff's pleader on his behalf, the claim was barred by the provisions of the Pensions Act, and that it was, therefore, unnecessary to enter into the merits of the case, or take evidence therein. He accordingly dismissed the plaintiff's suit with costs.

In coming to this decision it would appear that the Judge had before him the record of a suit (referred to in the plaint) in which the plaintiff had established against the Government his right to be paid his entire dues at the rate of  $3\frac{1}{2}$  per cent., and, as part of that record, the sanad of March 1777, the substance of which has been given above.

Against the decision of the District Judge the plaintiff preferred a regular appeal to the High Court at Bombay. He objected that the Judge had erred in holding the suit to be barred by Act XXIII. of 1871, since it did not relate to a pension payable on the part of Government within the meaning of that Act; and that he had erred in refusing to go into the merits of the case, and to take the evidence offered by the plaintiff. He also contended that the Judge's decision was against the weight of evidence.

On the 1st October 1874, the High Court confirmed the decree of the District Judge and dismissed the plaintiff's appeal with costs. The reasons, on which the Court went, were thus stated:—

“The argument for the appellant is, as we understand it, that the grant to the original holder of the *watans* was of a personal nature, conferring upon him and his heirs for ever a right to collect for themselves the emoluments pertaining to their office; that this right was not a pension, or grant of money, or land-revenue, payable on the part of Government. \* \* \* \* After giving the matter, really in dispute, our very careful consideration, we are

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obliged to concur with the Judge below in thinking that the Collector's objection was a valid one, and that the claim preferred was one that the Civil Courts have, under Act XXIII. of 1871, no power to entertain, the suit having been instituted after the said Act became law. The wording of Section 4 of the Pensions Act is most clear and comprehensive. It provides 'except as hereinafter provided, 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 have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right, for which such pension or grant may have been substituted;' and Section 3 interprets the expression 'grant of money or land-revenue' to include 'anything payable on the part of Government in respect of any right, privilege, perquisite, or office.' Now, according to plaintiff's own showing, it is clear that the allowance was, in its inception, either a pension, or a grant of money, or land-revenue, or both. It was a pension or annual sum conferred, and it was a grant of land-revenue made for services to be rendered. The mode in which it was to be levied, appears to be immaterial. The Government of the time having the undoubted right to levy assessments on all cultivated lands, not expressly exempted from assessment, assigned a portion of such assessment or land-revenue, varying each year, according to the amount of the assessment which the Government reserved to itself for the remuneration of the wátandárs. It is argued for plaintiff that the grant was not an assignment of money or land-revenue payable on the part of Government; but it is impossible to regard it in any other light, and it is clear that it has been so treated both before 1842 and after that year, when the Government assumed to itself the right, with the assent apparently of the holders, of itself levying the assigned portion and paying the wátandárs. The wording of the sections quoted, leaves no room for doubt that this is a claim which the Civil Courts cannot entertain. Moreover, looking at the preamble to the Pensions Act and to the course of previous legislation (it is unnecessary to enumerate the various Acts here), it is perfectly clear that the intention of the Government of India, in consolidating and amending the laws on the subject, was to reserve to itself the right of considering the validity of claims in

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all parts of India to pensions and similar allowances conferred and granted by itself instead of allowing them to be submitted for adjudication to its own Courts. The plaintiff has his remedy, but not in a court of law."

The plaintiff appealed from the decisions of the Indian Courts to Her Majesty in Council.

*Mr. Cowie, Q.C., and Mr. J. D. Mayne* for the appellant:—The Courts below were wrong in considering that the dues claimed by the appellant were either a pension, or a grant of money, or land-revenue, within the meaning of Act XXIII. of 1871. They were fees payable by the ryots and not by the Government, but which, since the year 1842, the Government had taken upon itself to collect. The suit was of the nature of a claim for money had and received to the use of the plaintiff, which the Government was bound to pay over.—*Rangoba Naik v. The Collector of Ratnagiri.* (1) The plaintiff's hak was something distinct from revenue. Down to the year 1842 he would have been entitled to come upon the ryots. It could not be understood that his right had been taken from him and compensation given for it. If the plaintiff had continued after 1842 to levy his hak direct from the ryots, and he were now suing for arrears, could it be objected that, under Act XXIII. of 1871, the suit would not lie? The inception of the plaintiff's right was not of the nature of a grant by Government out of revenue. [*Sir Montague Smith*:—The right must have originated either in an agreement with the ryots, or in an appointment by Government.] We should have had an opportunity given us of offering evidence that the right was not by grant [*Sir Robert Collier*:—Can you say that this allowance was not payable in respect of a right granted by a former government?] We say, we do not derive our right under the sanad, that was not the creation of our right. It was required to get rid of the previous action of the Government in taking the collection of our hak into its own hands. The sanad merely restores the deshmukh to his previous position. The question is whether on the plaint, or on the statement of the plaintiff's pleader, or upon the sanad, it must necessarily be taken that the plaintiff's hak was a charge upon the Government revenue. We say that the materials before the Court were in-

(1) 9 Bom. H. C. Rep. 112, A. C. J.

sufficient to show that it had not jurisdiction, and we ask that the case be remitted for further trial on this issue.

*Mr. J. F. Stephen, Q.C., and Mr. Graham* for the respondent:—The provisions of Act XXIII. of 1871 apply. In its inception the right of the deshmukh was a grant by Government out of the land-revenue. The function of the deshmukh was to collect the revenue for the Government. To remunerate him for his services, it was open to the Government either to pay him directly out of revenue actually received, or to remit some portion of the revenue to the ryots with the view that the expense of collection should be defrayed by them. There is, in reality, no difference in principle between these two modes of payment. The Government is entitled to the whole revenue. The expense of collection is paid out of the revenue by the Government, directly or indirectly, to the Collector. Whatever may have been the nature of the deshmukh's rights originally, it is clear, from the recital of the sanad of 1777, that they had been resumed by Government, and the allowances connected with them treated as a part of the general land-revenue. When, therefore, the Peishwá, by his sanad, restored to the deshmukh his former allowances, that was plainly a grant to him out of the land-revenue. In the sanad the deshmukh's right is spoken of as a "hak on the Government jamábandi."

*Mr. Cowie* replied.

At the close of the argument, their Lordships' judgment was delivered by

SIR JAMES W. COLVILLE:—This is an appeal against a judgment of the High Court of Bombay, confirming a judgment of the Judge of first instance, which, before the settlement of issues in the cause, dismissed the suit of the appellant on the ground that it was excluded from the jurisdiction of the civil Courts by "The Pensions Act, 1871." The material sections of that Statute are the 4th and the 3rd.

The 4th says, "except as hereinafter provided"—and it is admitted that the case does not fall within any of the statutory exceptions—"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 have been the consideration for any such pension or grant, and

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whatever may have been the nature of the payment, claim, or grant for which such pension or grant may have been substituted;" and the 3rd, which is an interpretation section, says, "In this Act the expression 'grant of money or land-revenue' includes anything payable on the part of Government in respect of any right, privilege, perquisite, or office."

It is to be observed that upon this appeal it would be impossible for their Lordships to pronounce affirmatively that the suit is not one which under the Act is excluded from the jurisdiction of the civil Courts. The case, as put by the learned counsel for the appellant, is simply that the materials before the Courts were insufficient to show that they had not jurisdiction, and that, therefore, the cause should be remitted to India for a fuller trial there on this issue.

The materials which were before the Court were the plaint, the oral examination by the Judge of the plaintiff's pleader, the sanad of the 3rd March 1777, and the judgment in a former suit instituted by the appellant against the Government before the passing of the Act.

The question is, whether, taking all these together, the Judge had not sufficient grounds for saying that the suit was within the meaning and operation of "The Pensions Act, 1871."

The plaintiff's case was that he was the hereditary deshmukh of certain turufs or districts; that as such he and his ancestors had long been entitled to receive directly from the ryots a percentage, equivalent to six pie in the rupee, upon that part of the revenue which was assessed in cash; a smaller percentage upon that part which was assessed in grain; and certain other dues which their Lordships think may be dismissed from consideration; because, though the articles in respect of which they were payable were articles upon which revenue was levied under the former native governments, they have long since been abandoned by the British Government as the subjects of revenue, and the rights of the deshmukh, in respect of them, are really not in issue in this suit.

The questions arising between the parties may be fully tried and determined upon the first two items of revenue.

These rights of the deshmukhs were, as the plaintiff says, confirmed, or, as the other side put it, regranted by the sanad of 1777. And the plaintiff alleges that up to the year 1842 he received his dues directly from the ryots; but that since 1842 the Government has received them on his behalf, and become accountable to him for them. It is an undisputed fact that in the year 1868 there was a new revenue settlement, since which the whole of the revenue receivable by Government and assessed upon the ryots has been a money assessment, no part of the revenue being now assessed in grain.

Upon this state of facts, two distinct questions arise: first, whether in its inception and original character the deshmukh's right is not one within the scope and operation of the Act of 1871? Secondly, whether, if that be not the case, the right has not been brought within the scope and operation of the Act by the alterations in its character that have subsequently taken place?

The judgment of the High Court of Bombay answers the first of these questions in the affirmative, and proceeds on that finding.

It says: "Now, according to plaintiff's own showing, it is clear that the allowance was, in its inception, either a pension or a grant of money or land-revenue, or both. It was a pension or annual sum conferred, and it was a grant of land-revenue made for services to be rendered. The mode in which it was to be levied, appears to be immaterial. The Government of the time, having the undoubted right to levy assessment on all cultivated lands, not expressly exempted from assessment, assigned a portion of such assessment of land-revenue, varying each year, according to the amount of the assessment which the Government reserved to itself for the remuneration of the wátandárs."

Their Lordships, without adopting every word of that judgment as their own, are of opinion that the general conclusion is correct, and think it is established by the sanad of 1777. That document recites the representation or petition of the appellant's ancestors, from which it appears that, whatever may have been the nature of the original right, the right of receiving these haks from the ryots had at all events for a considerable number of years been suspended;

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that as early as the time of Siváji the haks were resumed by the Government of the day, and the value of them credited to the Government—that is, treated as part of the general revenue of the country—certain fixed salaries being paid to the deshmukhs; and that this system, with some variation as to the amount of the salary, continued during the time of Kánoji Angria, and was in force when the country again came under Mahrátta rule. The petition of the then deshmukhs to the Peishwá prayed to have the old and suppressed allowances restored to them; stating, however, that there was a dispute between them and certain other parties as to who were the proper wátandárs. The result was that the Peishwá recognized the right of the appellant's ancestors as between them and the rival claimants, and made an order upon the máhájans and the khots of the villages of the máhals or turufs in question, enjoining them to cause the amount of the hak on the Government jamábandi, whatever it may amount to, according to the established practice, to be paid by the ryots to the petitioners, their sons and grandsons. Now the original right of these deshmukhs, the beginning of which seems to be lost in antiquity, was substantially, as the High Court has put it, in the nature of a grant of revenue. Their functions were those of a collector of revenue for the Government. They were authorized to retain, out of what they received from the ryots, a certain percentage upon that which was fixed as the Government revenue for themselves, paying the balance to the Government. It is difficult to see how the Government could impose upon the ryots the obligation of paying these allowances to their officers, except by the exercise of their sovereign right of imposing and receiving a revenue from all lands which were not in their nature rent free. The land-revenue system in India is founded upon the notion that the State is entitled to receive a certain portion of the produce of all lands not especially exempted from assessment. Of course some governments have been more exacting than others, but the general action of native governments was to take a certain proportion. From the gross amount assessed the expenses of collection must necessarily be deducted; and whether the collectors were paid by salary, or allowed to receive a commission on their collections directly from the ryots, the sum which went into the coffers of the government was equally reduced by the amount of their allowances.

Their Lordships are of opinion that, whatever the foundation of the deshmukhs' rights originally was, the sanad 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 Peishwá was in substance a grant by him of part of his land-revenue, and, therefore, falls within the terms of the 4th section, without the aid of the 3rd, as a grant of money or land-revenue conferred by a former government. Therefore their Lordships agree with the High Court in the conclusion to which they came upon the first question; and that is, of course, sufficient to dispose of the present appeal.

If it were necessary to go further and to consider whether the claim, however it might have stood on the sanad, has been brought within the Act by what has since taken place, their Lordships would be of opinion that the judgment in the former suit affords sufficient grounds for so deciding.

That suit proceeded upon the alteration made under the revenue settlement of 1868. The plaintiff appears to have claimed six pies in the rupee upon the total amount of the assessment, which then consisted wholly of money. The Government met that claim by a contention that upon so much of the existing assessment as might be considered to represent the former grain assessment he was entitled only to the smaller percentage. The Judge decided this question in the plaintiff's favour, and allowed him the larger percentage upon the whole of the assessment; and did so upon this, among other grounds, viz., that by the change in the system of assessment his interest might have been affected, and, therefore, that it was equitable to allow him the larger percentage upon the whole of the then assessment.

His claim in the present suit adopts this definition of his rights, and seeks to enforce them accordingly. The former judgment, therefore, seems to show that what is now payable by Government is so payable out of the general land-revenue in respect of a right, privilege, perquisite, or office formerly enjoyed within the meaning of the 3rd section of the Act; and to negative the statement in the

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plaint to the effect that since 1842 the Government has received the deshmuks' allowances as something distinct from revenue from the ryots on his behalf and as his agent, under circumstances which would make them liable to him as for money had and received.

It appears, therefore, to their Lordships that no ground has been made for disturbing the judgment of the Court below, and they must humbly advise Her Majesty accordingly. They would have been extremely sorry if they had had to remand the cause, because though it might have been satisfactory to have fuller information on some points raised in the argument, they are satisfied, upon the materials before them, that a fuller trial would equally result in the conclusion that the suit is within "The Pensions Act, 1871," and that the plaintiff must seek his remedy by the procedure thereby provided.

Their Lordships will humbly advise Her Majesty to dismiss the present appeal, and to confirm the judgments below, with the costs of the appeal.

*Decree affirmed.*

### [APPELLATE CIVIL.]

*Before Sir M. R. Westropp, Knight, Chief Justice, and Mr. Justice Nandbhai Haridas.*

April 4.

THE COLLECTOR OF THA'NA' (DEFENDANT AND APPELLANT) v. BAL PATEL (PLAINTIFF AND RESPONDENT).\*

*Right to free pasturage—Bombay Act I. of 1865, Section 32.*

Plaintiff erected a hut on public ground, in a village in the district of Thaná, and lived there annually for a few months, while his cattle grazed on the public grazing ground in that village. He was not the owner or lessee of any land in the village. On being prevented, by the Collector of Thaná, from thus grazing his cattle, plaintiff brought a suit against that officer for a declaration of his right to graze his cattle within the limits, not only of that village, but of any other village in the District of Thaná.

*Held* that plaintiff was not entitled to any such right.

The phrase "village cattle" in Section 32 of Bombay Act I. of 1865 does not include the cattle of any roving grazer, who may choose to squat for a few months on the public ground of a village. That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained.

\* Special Appeal No. 279 of 1876.