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5 B. 405 = 6 Ind. Jur. 37.

orders of the High Court, and not to order a new trial by another subordinate Magistrate." Whereas, in the present case, the evidence of the complainant and his witnesses was not taken, and the accused was not examined by the Second Class Magistrate, and, therefore, the accused could not have been discharged under s. 215.

The order made by the Court of Session on appeal in this case must be reversed, and the appeal remitted to the Court of Session for disposal on its merits.

We notice that in the judgment of the First Class Magistrate he appears to consider that the facts proved would maintain a charge of adultery, an offence cognizable by the Court of Session only.

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5 B. 408 (P.C.)=8 I.A. 77=5 Ind. Jur. 380=4 Sar. P.C.J. 230.

PRIVY COUNCIL.

PRESENT:

Sir B. Peacock, Sir M. E. Smith, Sir R. P. Collier, Sir R. Couch and Sir A. Hobhouse.

[*On appeal from the High Court of Bombay.*]

MAHARAVAL MOHANSINGHJI JEYSINGHJI (*Plaintiff*) *v.* THE GOVERNMENT OF BOMBAY (*Defendant*). [8th March, 1881.]

Toda-giras hak—The Pensions' Act XXIII of 1871.

In part of Western India annual payments, known as *toda-giras hak*, made by village communities and commuted by them into liabilities to *girasias*, have been recognized as a species of property, however unlawful their origin.

In 1862 a resolution of the Government of Bombay described the position of the *girasias* at that time, and gave them the option of resuming the collection of the *toda-giras hak* formerly levied, resorting only to legal proceedings to enforce their claims, or of receiving, from the Government, allowances of an equivalent amount; the collections, in the latter case, being discontinued on all hands. The ancestors of the adoptive father of the plaintiff formerly levied *toda-giras hak*; and after 1862 the Government in respect thereof made payments under the resolution, to three brothers, of whom one was the plaintiff's father; the latter receiving a one-third share; which, on his death in 1865, was no longer paid.

Held that a suit against the Government for payment of this third share with arrears fell under the Pensions' Act XXIII of 1871, s. 4, which prohibits cognizance, save as in the Act provided, "of 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 [409] for such pension or grant, or whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted."

Held that there was no reason, either in the language of the Act itself or in any antecedent legislation, for construing these words as applicable only to rights in the nature of pensions.

[R., 17 A. 1=4 M.L.J. 272=21 I.A. 148=6 Sar. P.C.J. 489; 4 B. 432; 16 B. 537; 22 B. 496 (499); 29 B. 480=7 Bom. L.R. 497; 4 M. 341 (343); 31 M. 12=17 M. L.J. 549=3 M.L.T. 104.]

APPEAL from a decree of the High Court of Bombay (10th October, 1877), affirming that of the District Judge of Surat (1st December, 1876).

The question raised on this appeal was whether the Civil Courts were prohibited by the Pensions' Act, 1871 from taking cognizance of the suit, without having first received from the Collector of the district the certificate required for the institution of claims falling under that Act.

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The Courts below decided that they were so prohibited, and that they, consequently, had no jurisdiction.

The ancestors of the plaintiff's adoptive father, Maharaval Jeysinghji, deceased, levied *toda-giras hak* from certain villages in the Broach Collectorate of the Surat District. After 1862, in accordance with a resolution, dated 27th November of that year, relating to *toda-giras hak*, the Bombay Government made payments to three brothers, of whom Maharaval Jeysinghji was one in consideration of their relinquishment of the collection of this *giras*. Maharaval Jeysinghji, after adopting the plaintiff, died in 1865, since which time the Government had ceased to pay his share. This suit was brought by the plaintiff, as his adopted son entitled to inherit it, for a declaration of his right, and to recover the arrears.

The following is the judgment of the High Court (Chief Justice Sir M. R. WESTROPP and Mr. Justice M. MELVILL) in which are set forth the paragraph of the Resolution of the Government of Bombay, dated 27th November, 1862, relating to *giras*:—

"The District Judge of Surat having held that by the Pensions Act (XXIII of 1871) he was deprived of jurisdiction to entertain this suit against Government for *toda-giras*, the plaintiff, Mohansinghji, has appealed to this Court.

"The plaint states as follows:—'In the villages of Pargana Ankleswar, in the Collectorate of Broach, in the Surat District, **[410]** there are lands belonging to the *vantas* of my ancestors (meaning *vanta*-lands which belong to my ancestors). Likewise there has continued (to us) from ancient times the yearly cash *hak* (right) of *toda-giras* as (our) private property. The same having descended as an inheritance from the original owner of the family, came down to be shared by lines (families) of three sons. These (*i.e.*, the members) of each of the (said three) lines used to collect (levy) separately (the) *toda-giras* of their respective shares from the villages (mentioned above). Sometime after the introduction of the English Government, the Government made an arrangement (*bandobast*) to pay (moneys) from the Government treasury in lieu of the *toda-giras haks* which the *girasias* used to collect (levy) directly from the village.' The plaint then proceeded to state that up to its date the payments of *toda-giràs* continued to be regularly made by Government to two out of the three branches of the family of the original proprietor, but that the last payment made to the third branch was made to its representative, Jeysinghji, who died on the 5th December, 1865, having first adopted the plaintiff as his son and heir. The plaintiff alleged that the *vanta*-lands and other property of Jeysinghji had come into his (the plaintiff's) possession, but the Collector of Broach stopped the payment of Jeysinghji's share of the *toda-giras* ever since his death; and that, on the 16th of July, 1873, Government, by a resolution of that date, refused to recognize the plaintiff as adopted son of Jeysinghji, and, as Jeysinghji had not left a widow, resumed his share of the *toda-giras*. The plaintiff next alleged in the plaint that, assuming that he was not the adopted son of Jeysinghji, he nevertheless was now his heir, inasmuch as his natural father, Chandersinghji, was the next heir, as cousin of Jeysinghji, whom he survived until Samvat 1929 (A.D. 1873-74), when he died, leaving the plaintiff, who, if not then adopted son, and, as such, heir of Jeysinghji, was his heir as son of Chandersinghji. The plaint claimed for the plaintiff (as Jeysinghji's share of the *toda-giras hak*) Rs. 2,694 *per annum* thenceforward, and ten years' arrears thereof with interest. He alleged

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the cause of action to have accrued on the 16th of July, 1873, the date of the Government resolution resuming the *toda-giras*. The plaint was presented on the 27th February, 1876,—*i.e.*, about eleven years [411] after the last payment made to Jeysinghji,—and there is nothing to show that since the death of Jeysinghji, in 1865, either Chandersinghji or the plaintiff took any legal proceedings to recover the *toda-giras* from Government until the filing of the present plaint.

"The written statement, filed in defence pleaded—first, that Act XXIII of 1871 prevented the Civil Court from having jurisdiction to hear the suit. Secondly, that this *toda-giras hak*, having originated in wrong and violence, a suit for it would not lie.

"It will be observed that the plaint does not aver that Government undertook to collect *toda-giras*, or had collected it, but simply asserted that, after the introduction of the English Government, that Government made an arrangement (*bandobast*)—*i.e.*, an agreement,—to pay moneys from the Government treasury in lieu of the *toda-giras haks* which the *girasias* used to levy directly from the villages. This statement of the nature of the claim against and liability of Government appears to coincide exactly with the language of Her Majesty's Privy Council in *Maharana Fatesangji* v. *Desai Kallianraiji* (1), where it is said that the *toda-giras* annual payments 'were recognized 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*.' Similarly, in *The Collector of Surat* v. *The Heiresses of Kuverbai* (2) Forbes, J., said: 'By an arrangement with the *girasias*, the Government has agreed to satisfy their claims from the public treasury, on the condition of their abstaining from making a direct levy on the villagers. If, then, this description of the nature of the liability of Government given by Her Majesty's Privy Council and Mr. Justice Forbes, and put forth by the plaintiff himself in his plaint, be correct, it would seem to us to fall within the prohibition, contained in s. 4 of the Pensions' Act (XXIII of 1871), to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature [412] of the payment, claim, or right for which such grant may have been substituted—enlarged as the term 'grant of money' is by the third section, which brings within the scope of that term 'anything payable on the part of Government in respect of any right,' &c. That word 'right,' although it well may be limited to claims *ejusdem generis* with the objects of the Act, would appear to us to include a *hak* or periodical payment by Government in respect of such an arrangement as that alleged by the plaint to have been substituted for the levy, by *girasias*, on their own account, of black mail from villagers. This was the view taken in *Parbhudas Rayaji* v. *Motiram Kaliandas* (3), and, as we think, correctly taken, and we are of opinion that the same view holds good here if the plaintiff's claim has been rightly set forth in his plaint. As there set forth, what he seeks, as of right, is an annual payment from the Government treasury, which annual payment he substantially treats as the purchase-money or consideration for the abstinence, by his ancestors, himself, and his successors, from the levy of *toda-giras* in the villages of Anklesvar.

(1) 1 I. A. 34 (47)=10 B. H. C. R. 281.
(2) 2 B. H. C. R. 239 (242).
(3) 1 B. 203.

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There is between the present case and that of *Vasudev Sadasiv Modak* v. *The Collector of Ratnagiri* (1) this distinction, that the inception of the *deshmukh's* right to his percentage on the revenue collected by him was legal, whereas *toda-giras*, having generally been black mail, can scarcely, whatsoever it may have since become, be regarded as of lawful origin; but Her Majesty's Privy Council, having first given their opinion in the Ratnagiri case upon the *deshmukh's* claim, as it stood in its inception, and upon the *sanad*, proceeded, in the latter part of the judgment, to view that case independently of the origin of the claim and of the *sanad*, and stated their opinion to be that the plaintiff Modak had put forward his claim in such a manner as to show that what was payable to him by the British Government was so 'in respect of a right, privilege, perquisite, or office within the meaning of s. 3 of the Pensions' Act, and to negative a statement in his plaint to the effect that, since 1842, the British Government has received the *deshmukh's* allowances, as something distinct from revenue, from the rayats on his behalf and as his agent under circumstances which would make them liable to him as for money [413] had and received,' and accordingly their Lordships affirmed the decision of the High Court, which held the case to fall within the third section of the Pensions' Act and, therefore, not within the jurisdiction of a Civil Court. In the present case the plaintiff has put his case so as to bring it within that enactment, and has not incumbered his plaint with any allegation as to the agency of Government.

"The learned counsel for the plaintiff, however, endeavouring to take this case out of the scope of the term 'a grant of money,' as defined or described in the Pensions' Act, contended, at the hearing of the appeal before us, that Government merely filled the position of agent to collect *toda-giras* from the villagers on behalf of the plaintiff, and assumed that position for the purpose of recovering that black mail, or whatsoever else it may be, in an orderly and peaceable manner, and preventing the riotous and violent mode of levy by the *girasias* themselves which had preceded the intervention of Government. Assuming that argument to be historically true, it presents a case quite different from that stated in the plaint, which contains no allegation of agency on the part of Government. The plaint neither avers that Government ever promised to collect *toda-giras* on behalf of the plaintiff, or asserted that it would collect it on its own behalf; nor does it aver that Government had hitherto collected *toda-giras* from the villagers, or that any moneys of that nature have since the death of Jeysinghji in 1865, as heir to whom the plaintiff claims, been received by Government from the villagers on behalf of and to the use of the plaintiff. It was not very clear, in the argument on behalf of the plaintiff, whether the agency contended for was a perpetual agency, or an agency determinable at the pleasure of either party, or of Government alone on reasonable notice. But whichever species of agency it be, if agency at all, it is manifest that, if the plaintiff seriously intended to rely upon such a case, it was incumbent on him to have amended—in fact reframed—his plaint. An application for liberty so to do ought to have been made to the District Judge. The plaintiff had, from the written statement in defence filed by the Collector on behalf of Government, timely notice that, at the hearing before the District Judge, the Pensions' Act would be relied on [414] as a bar to the maintenance of this suit in a Civil Court; so there cannot

(1) 4 I. A. 119.

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have been any surprise in the matter. It does not appear that, even when the District Judge announced his opinion that the case comes within the prohibition contained in the Pensions' Act, the plaintiff made any application for leave to amend. Even here, on appeal, the amendment of the plaint was rather suggested than formally applied for. Looking, however, at what was said as intended to amount to an application, we could not perceive any good ground for allowing an indulgence of that nature to the plaintiff at so advanced a stage of the litigation. Ten years have elapsed since the death of Jeysinghji, who, of his branch of the family, was the last recipient of the Government commutation for *toda giras*. If the plaintiff's claim be regarded as a *hak* or other immoveable property, it may not be barred by the law of limitation (see Act IX of 1871, sch. II, arts. 131, 132, 145; and L.R., 1 Ind. App., 34; S. C., 10 Bom. H. C. Rep., 281). But, if it be a *hak*, it would seem to come within the Pensions' Act. If the true nature of the claim be a contract for a perpetual agency, and we were asked to permit the plaint to be converted into a suit for a specific performance of such a contract, we not only doubt that a suit for its specific performance would lie—Fry on Specific Performance, pp. 22, 245; *Fitzpatrick* v. *Nolan* (1)—but we doubt that any such contract could be proved. So far as we can perceive, it has not been alleged, in any of the *toda giras* cases hitherto decided, that Government was bound perpetually to act as agent for collection of *toda giras*. In *The Collector of Surat* v. *Pestanji Ratanji* (2) where the history of *toda giras* was examined very fully by Mr. W. E. Frere, then Zilla Judge of Surat, who had considerable experience in Gujarat, he seems to have thought that Government could only be liable when it had collected the *giras*; and the case of *SambhulalGirdharlal* v. *The Collector of Surat*(3) does not seem to go beyond that. Lord Kingsdown said (p. 40): 'The question here is not whether the Government can be compelled to receive and hand over these sums, but whether, actually receiving them, and having been in the receipt of them for [416] very many years, it is entitled to say that it will not pay them to the alienee of the person to whom, but for the alienation, they would have been paid.' Agencies alleged to be undeterminable have been discountenanced by the Court: *Rhodes* v. *Forward*(4); *Kavasji Nanabhai* v. *Lalbhai Vallabhai* (5); *Shaw* v. *Lawles* (6). To a suit for specific performance the period of limitation would be three years from the denial of the right; Act IX of 1871, sch. II, art. 113, Again, if the suit be converted into an action for the recovery of damages for misconduct as an agent in ceasing to make the collection of *toda giras*, the period of limitation would be three years from the time when the neglect or misconduct occurs (Act IX of 1871, sch. II, art. 91). Lastly, if the suit were transformed into an action for money had and received to the use of the plaintiff, it is manifest from an exhibit put in evidence by the Advocate-General on behalf of the Government, with the consent of counsel for the plaintiff, that such an action must fail, inasmuch as Government has, since the introduction of the survey into Gujarat, declined to collect *toda giras* from the villages.

"In *Sambhulal Girdharlal's* (3) case it was established, to the satisfaction of Her Majesty's Privy Council, that the *toda giras* had been collected by, and was in the hands of, Government. In *Umedsangji* v. *The*

(1) 1 Ir. Chan. Rep. 671.
(2) 2 Morris's S.D.A. Rep, 291.
(3) 8 M.I.A. 1.
(4) 1 Ap. Ca. 256.
(5) 3 I.A. 200.
(6) 5 Cl. & F. 129.

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Collector of Surat (1) the High Court limited its decree against the Collector to the *toda giras* admitted to have been collected by Government, *i.e.*, up to 1862, the date of the survey; and Couch, C.J., said: 'We cannot declare the plaintiff to be entitled in perpetuity, because, if Government were to cease to collect the *giras*, it might be that his remedy would not lie against the Government but against the villagers.' We have not any doubt that, in the case before us, the plaint was filed in its present form without any averment that Government had collected the *toda giras* sued for, because it is notorious that Government had long since ceased to collect *toda giras* in Gujarat; and that, although payments are made out of the Government treasury to many of the ancient recipients of *toda giras*, there [416] is not, since the new revenue survey, any assessment in respect of *toda giras* in Government villages made upon the villagers or their lands, and, accordingly, no collection made by Government in that respect. The exhibit to which we have referred, as put in by consent, contains extracts (paragraphs 17 to 19 inclusive) from a resolution, No. 4309, dated 27th November, 1862, of the Government of Bombay, and is as follows:—

"'17. Government did not initiate these payments, but found them, on obtaining possession of the country, generated by the disorder of the previous rule. The holders were treated with unexampled indulgence, but the peace of the country called for the policy then adopted, and faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared in the strictest sense to do; but he cannot allow that a tax, at first so irregularly imposed on the community, should now be extorted by the aid of legal proceedings from the public purse by others than those in whose favour the original arrangements were made, or that Government should be compelled to continue its good offices between the *girasias* and the village communities in a manner to which it never pledged itself. It should therefore, be publicly declared in every taluka, as the revenue survey settlement is introduced, that the new rules of assessment do not include any such collections, and that Government will, in future, not aid or take part in the collection of *giras*.

"'18. In thus placing the *girasias* 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 *girasia's* 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 *girasias* from the necessity of resorting to law, and he is prepared, whenever the *girasia* may be willing to receive from Government his present income instead of collecting it direct from the villages, to continue that income to him under such reasonable rules and restrictions as may seem fit to Government to impose.

[417] "'19. The conditions on which the arrangement will be entered into, are that the *girasia* 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 received the *giras* from the British treasury. The *giras*, or any portion of it, may further be continued to the lineal male issue of a brother of the first

(2) 7 B.H.C.R.A.C.J. 50.

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British recipient in any case in which, on inquiry, the Revenue Commissioner may find that hardship would be felt by the discontinuance of the *giras*. If in any case, however, the allowance has been enjoyed on condition of service, that condition will not be abandoned, although it is not expected that such service can now be taken with advantage to the public.'

"For the reasons which we have above assigned, we think it is doubtful whether we should confer any benefit upon the plaintiff by granting to him permission to amend his plaint. Whether, however, those reasons deserve much weight or not, we are of opinion that we ought not to grant to him any such permission, he not having made any application for leave to amend in the Court of first instance, although he had timely warning, before the hearing of the cause there, that the Indian Pensions' Act would be pleaded as excluding the jurisdiction of that Court.

"We affirm the decree, and direct the parties respectively to bear their own costs of this appeal."

Leith, Q.C., and *R. V. Doyne*, for the appellant.

Scoble, Q.C., and *J. D. Mayne*, for the respondent.

The argument for the appellant was: that this suit was one to enforce a contract made by the Government which had agreed to pay to the predecessors in estate of the appellant, an equivalent for the *toda giras* formerly levied. This contract was founded on the consideration of the *girasias* ceasing to levy *giras*. On this contract the suit was based, and was, therefore, not a suit relating to "any pension or grant of money or land revenue" within the meaning of the Pensions' Act XXIII of 1871 The construction of that Act, which was in restraint of the right conferred by the regulations, of resort to the Civil Courts for redress [418] in claims against the Government, should be strict. According to its true construction, the Act should be limited to suits *ejusdem generis* with "grants and pensions" taken in the sense indicated by the context.

Reference was made to *Maharana Fatesangji Jasvatsingji* v. *Desai Kallianraiji Hekoomutraiji*(1), *Parbhudas Rayaji* v. *Motiram Kaliandas*(2), *Vasudev Sadasiv Modak* v. *The Collector of Ratnagiri* (3), *Shahzadee Hazara Begum* v. *The Collector of Burdwan*(4).

Counsel for the respondent were not called upon.

JUDGMENT.

Their Lordships' judgment was delivered by

SIR M. E. SMITH.—This is a suit brought by the appellant in the District Court of Surat, claiming, as the adopted son of Maharaval Jeysinghji Bhagvansinghji, to recover from the Government of Bombay certain payments in respect of a *toda-giras hak* 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 *toda-giras hak* (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 recognize 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

(1) 1 I.A. 34=10 B.H.C.R. 281.
(2) 1 B. 203.
(3) 4 I.A. 119.
(4) 23 W.R. 378.

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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 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 cognizance of the suit.

It is unnecessary to enquire at any length into the origin of these *toda-giras hak*. It would appear that they had their origin [419] in arbitrary exactions made by strong and powerful persons, who obtained the name of *girasias*, upon the village communities; that those arbitrary exactions were in some way commuted into fixed payments by the villagers, in consideration of which the *girasias* gave up their claim to make arbitrary exactions, and also undertook to defend the villagers against the exaction of others. The nature of these *haks* 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 Fatesangji Jasvatsingji* v. *Desai Kallianraiji Hekoomutraiji* (1) there is this description of them :—The determination of this question " involves the consideration of the nature of a *toda-giras hak*. A good deal of learning on this subject is to be found in the case of *The Collector of Surat* v. *Pestanji Ratanji* (2), and in the case of *Sambhulal Girdharlal* v. *The Collector of Surat* (3), 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 *girasias* from the village communities in certain territories 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 customary annual payments; that, as such, they were recognized 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, p. 1, it cannot be questioned that the *toda-giras haks* of the former class constitute a recognized species of property capable of alienation, and of seizure and sale under an execution." It must, therefore, be taken, after the two decisions of this Board, that these *haks* have been recognized as a species of property, however unlawful their origin may have been. The plaintiff bases his claim upon that view of the *hak*. The plaint states that his ancestors had certain lands, and " likewise there has continued to us from ancient times the yearly cash *hak* (right) [420] to *toda-giras* as our private property." Then it goes on : " Some time after the introduction of the English Government the Government made an arrangement (*bandobast*) to pay from the Government treasury in lieu of the *toda-giras haks* which the *girasias* 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 *girasias* at that time, and gave them the option of resuming the collection of the former *haks* 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 *haks*. The resolution says : " It should, therefore, be publicly declared in every taluka, as the revenue survey settlement is

(1) 1 I.A. 34 (46). (2) 2 Morris's S.D.A. Rep. 291. (3) 8 M.I.A. 1.

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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 *giras*. In thus placing the *girasias* 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 *girasias'* 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 *girasias* from resorting to law; and he is prepared whenever the *girasias* 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 *girasia* 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 *giras* from the British treasury." The arrangement with the plaintiff's ancestors, stated in the plaint, is of the kind described in this resolution, though it appears to have been made before 1862. Payments of money in lieu of the *hak* were made before that year, and were continued by the Government down to the **[421]** 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 *toda-giras hak* 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 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 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 pension or grant may have been substituted." It has been shown that this *hak*, whatever it originally was, had acquired the character of a right, and the plaint 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, therefore, falls within the language of the fourth clause. The right of the *girasias* 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

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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* [422] with pension. 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 *girasias* were in the nature of contract; but that contract, if it were one, resulted in the abandonment, on the part of the *girasias*, 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 *hak*. But this argument entirely fails of foundation, for the Government since 1862 have abandoned the collection of the *hak* 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 Sadasiv Modak* v. *The Collector of Ratnagiri* (1) 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 [423] 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 payment 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 cognizance 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 *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 rayats 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

(1) 4 I.A. 119.

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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 *Parbhudas Rayaji* v. *Motiram Kaliandas* (1), 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* (2)). 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 [424] 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 zemindari 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.

Solicitors for the appellant: Messrs. *West, King, Adams & Co.*

Solicitor for the respondent: Mr. *H. Treasure.*

(1) 1 B. 206.

(2) 23 W.R. 378.