

1893 the second defendant do bear his own costs thereof. Further directions  
 JUNE 12. and further costs reserved. Leave to all the parties to apply as advised.  
 — Attorney for the plaintiff:—Mr. *Khanderao Moroji*.  
 ORIGINAL Attorneys for the first defendant:—Messrs. *Crawford, Burder & Co.*  
 CIVIL. Attorneys for the second defendant:—Messrs. *Bhaisankar and*  
 17 B. 600. *Kanga*.

17 B. 620-N.

[620] NOTE:—

ORIGINAL CIVIL.

*Before Mr. Justice Bayley.*

SHRIMAN GOSWAMI SHRI 108 SHRI GOVARDHONLALJI GIRDHARLALJI (Plaintiff)  
 v. GOSWAMI SHRI GIRDHARLALJI GOVINDRAJI (Defendant)\*  
 [5th December, 1878 and 29th April, 1879..]

*Act of State of foreign power—Effect of such act on title to property outside foreign State—  
 Idol—Property of idol—High priest and manager of shrine—Deposition of high-  
 priest by act of State—Appointment of new high-priest—Suit by latter for property  
 belonging to shrine.*

For thirty years prior to 1876 the defendant had been the high-priest of the shrine of Shri Nathji at Nathdwara in the territory of His Highness, the Maharana of Oodeypore, and as such was manager of the property of the shrine. This shrine is held in great veneration by the Vaisnava sect of Hindus, and large bequests and offerings of money, land, &c., are made to it by members of that sect. To facilitate the collection of such offerings and the employment of the funds belonging to the shrine, *pedhis* or firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of Navnitdas Purshottam, and the house in which it was carried on was built with monies belonging to the shrine. On the 8th May, 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the *gadi* as high-priest. In 1878 the plaintiff brought this suit praying for a declaration that as high-priest of the shrine he was entitled to the property in Bombay belonging thereto, and for delivery of the same to him, and for an injunction against the defendant, and for a receiver, &c. He obtained a rule nisi calling on the defendant to show cause why he should not be restrained from receiving or dealing with the monies of the said firm of Navnitdas Purshottam and from tampering with books, &c.

*Held*, discharging the rule, that the plaintiff had shown no title to the property in question. The defendant was in possession and had been for many years in possession of the property. His deposition by a foreign power and the election of the plaintiff to the *gadi* in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State, it could not be made the basis of an action, and it could not be regarded as a foreign judgment.

[R., 17 B. 600 ; D., 20 B. 495 (500).]

THE plaintiff sued for a declaration that he was entitled to all the monies and moveable property of the firm of Navnitdas Purshottam, which carried on business in Bhoiwada in Bombay.

The plaintiff was the son of the defendant, and he claimed the possession and management of the property in question in right of his being high-priest of the shrine of Shri Nathji at Nathdwara in Meywar, in the territory of His Highness the Maharana of Oodeypore.

The plaint alleged that the said shrine was held in general esteem and veneration by the Vaishnava sect of Hindus, and large bequests and presents of land, money and other things were made from time to time to the said shrine by members of that sect in various parts of India and the adjoining countries; and offerings called *logas* and *bheyts* were made by Hindus to the shrine. In order that the said *logas* and *bheyts* might be more easily collected and the said bequests and presents received, and in order that the funds of the shrine might be properly [621] employed, *pedhis* or firms were established in various parts of India including Bombay. The firm in Bombay was carried on

under the name of Navnitdas Purshottam, and the house in which it was carried on was built with monies belonging to the shrine.

The plaint further alleged that up to the year 1876 the defendant had been the high-priest of the shrine and the manager of all the property attached to or belonging to it; that on the 8th May of that year the defendant was by order of the Political Agent of Meywar and the Rana of Oodeypore deposed from that office and deported from Nathdwara, and that the plaintiff (the son of the defendant) was then placed on the *gadi* of Nathdwara as high-priest in place of the defendant.

The plaintiff then took possession of the shrine and of its property and had been ever since recognized by the Vaishnava sect as high-priest, and had been duly acknowledged by the firm in Bombay as owner and master of the firm.

The plaintiff complained that the defendant had come to Bombay and had taken possession of the house in which the firm was carried on, and the monies, moveable property, books, papers, &c., of the firm, and had caused the books to be tampered with, &c. The plaintiff prayed for a declaration that he was entitled to the said property, and for delivery of the same to him, for an injunction against the defendant, and for a receiver, &c.

The defendant filed a written statement in which he alleged that he was the high-priest of the said shrine, and that as such he was the absolute owner and was entitled to the exclusive possession and management of all the property belonging to the shrine, and that the plaintiff had no title thereto.

The fifth and sixth paragraphs of the written statement were as follows:—

"5. The defendant believes that the plaintiff has not willingly brought this suit, but has been constrained to bring the same by the Darbar at Oodeypore aforesaid, who since the year 1876 have usurped, and still usurp, the conduct of all the affairs of the said shrine, including the custody of the treasury of the said shrine and the control of its finances.

"6. The Oodeypore Darbar acted in the manner described in the last preceding paragraph, because the defendant as such high-priest as aforesaid refused to acknowledge the temporal supremacy of the said Darbar in the territory of Nathdwara and to admit the right of the said Darbar to review and exercise appellate jurisdiction in the said territory, and the defendant will contend that he was justified in such refusal."

The plaintiff obtained a rule calling on defendant to show cause why he should not be restrained from receiving or dealing with the monies of the said firm and from tampering with the books, &c., and for receiver.

The rule came on for argument on the 5th December, 1878, and the hearing lasted for eight days.

Latham, Macpherson and Inverarity, for defendant, showed cause.

[622] They cited *Frankland v. M'Gusty* (1); *The Tanjore case* (2); *Aitchison's Treatise*, Vol. IV, pp. 4 to 7—21; *Sree Brijbhooksunjee Muharaj v. Sree Gokoolotsaojee Muharaj* (3); *Todd's Annals and Antiquities of Rajasthan*, Vol. I, Chap. XIX, p. 474 (2nd Ed.); *Forester v. Secretary of State* (4); *Raja Saligram v. Secretary of State* (5); *Castrique v. Imrie* (6); *Godard v. Gray* (7); *Copin v. Adamson* (8); *Meyer v. Ralli* (9); *Messina v. Petrocchino* (10).

*Gill, Starling and Telang*, for plaintiff, in support of the rule.

They referred to *Talbot v. Hope Scott* (11); *Sirdar Bhagwan Singh v. Secretary of State for India* (12); *Ladkuvarbai v. Ghoel Shri Sarsangji* (13); *Forester v. Secretary of State* (4); *Aitchison's Treatise*, Vol. III, p. 10; *Todd's Annals, &c., of Rajasthan*, Vol. I, (3rd Ed.), p. 474; *Vattel*, p. 2, s. 4; *Wheaton's International Law*, ss. 20, 21, 23.

*Cur. adv. vult.*

#### JUDGMENT.

29th April, 1879. BAYLEY, J. —In this case the plaintiff, who is now seventeen years of age, alleges that he is high-priest of the shrine of Shri Nathji at Nathdwara, and, as such, claims to be entitled to all the property dedicated to the shrine.

From the affidavits it appears that the shrine is in receipt of an annual revenue, arising from rents and offerings and other sources, of upwards of seven lakhs of rupees,

\* NOTE.—The judgment delivered was not written. This report has been prepared from notes taken by counsel.

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| (1) 1 Knapp. 300.                               | (2) 7 M.I.A. 476 and 13 Moo. P.C.C. 22. |
| (3) 1 Borr. 202.                                | (4) 12 B.L.R. 120. (5) 12 B.L.R. 167.   |
| (6) L.R. 4 H.L. 414.                            | (7) L.R. 6 Q.B. 139.                    |
| (8) L.R. 9 Ex. 345, and on appeal, 1 Ex. D. 17. | (9) 1 C.P.D. 353.                       |
| (10) 8 Moo. P.C.C. (N.S.) 375.                  | (11) 4 Kay and Johnson. 139.            |
| (12) 2 I.A. 38 (43).                            | (13) 7 B.H.C.R., (O.C.J.) 150.          |

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and that the daily expenses incurred in connection with the maintenance of the shrine and the worship there is about Rs. 2,000.

The defendant is the father of the plaintiff, and until the year 1876 he had been upon the *gadi* as high priest of the shrine and the manager of all its property.

It appears that the office of high-priest is hereditary, and that the defendant occupied the position for thirty years. The affidavits show that he is a lineal descendant (through the eldest branch of the family) of the person who in consequence of the persecution of the Emperor Aurangzebe fled to Rajputana, settled there and ultimately founded at Nathdwara the shrine in question, placing in it the most sacred of all the images worshipped by the numerous and influential sect of Vaishnavas or Vallabha-Charyas.

On the 8th May, 1876, the defendant, for some alleged misconduct, was deposed and deported from Nathdwara by order of the Political Agent of Meywar and of the Rana of Oodeypore. The plaintiff, his son, was then placed upon the *gadi*, and, as high-priest took possession of the shrine, and as such has ever since been recognized by the Vaishnava sect. A copy of the certificate of Colonel Impey, the Political Agent at Meywar, was annexed to one of the affidavits, and is as follows:—

[623] "This is to certify that Girdharilalji was deposed from the office of the high-priest [Mahara] of Nathdwara shrine in Meywar by the order of the Political Agent and the Darbar on the 8th day of May, 1876, and was deported from Nathdwara, and that Govardhanlal, son of the said Girdharilalji, was placed on the *gadi* of Nathdwara as the high-priest of the shrine, to enjoy all the revenue and emoluments pertaining thereto in the room of his father, the said *ex-Maharaja* Gosayee Girdharilalji, and is now Maharaja of Nathdwara."

It is to be presumed that the authorities of the State of Oodeypore considered that the conduct of the defendant justified his deposition. They granted him, however, out of the revenue of the shrine an allowance of Rs. 1,000 per mensem. Immediately upon the deposition of his father the officials placed the plaintiff upon the *gadi* as high-priest, and he has ever since held that position.

In the present suit the plaintiff seeks, as high-priest of the shrine, to recover property which is situate, not within the jurisdiction of the Darbar at Oodeypore, but in the town of Bombay and within the jurisdiction of this Court. The present rule *nisi* has been obtained by the plaintiff calling on the defendant to show cause why he should not be restrained from receiving or in any way dealing with the monies and the moveable property of the firm of Navitdas Pureshottamdas and from tampering with or altering the books of account and also why a receiver should not be appointed. It is of course clear that the plaintiff must show a title to the property which he claims, and that he is bound to the case which he has set forth in his plaint—*Eshenchunder Singh v Shamchurn Bhutta* (1).

Two main questions have been discussed: first, whether the defendant's removal from the *gadi* was valid, and, secondly, whether that removal by order of the authorities of Oodeypore affected the title of the defendant to the property in Bombay, of which he had long been in possession, and operated in any way to transfer the title of that property from him to the plaintiff.

These two questions lead us to consider what was the *status* of the defendant as high-priest and what was his relation to the Oodeypore Darbar. (His Lordship referred to the history and character of the shrine as described in Todd's History of Rajputana and in the works of Horace Hayman Wilson, and continued:—) The Bombay property was attached to the office of high-priest of Shri Nathji, which had existed long before the foundation of the shrine at Nathdwara. The evidence before the Court shows that the defendant's position, his sacerdotal character and the singular reverence which is paid to him arise from his descent, and that he is regarded by his followers or at least by many of them as an incarnation of the Deity. The defendant states, and the affidavits appear to corroborate him, that he and his ancestors were originally independent of all interference and control by the Darbar of Oodeypore. This appears to have been the state of things up to the year 1826. (His Lordship then referred at length to the affidavits with reference to the cause of the defendant's deposition, and continued:—) The defendant was not deposed for misconduct, but because he claimed rights which were distasteful to the Darbar and to the Political Agent. He was really deposed because he would not acknowledge the jurisdiction of the Darbar. I do not intend to give any opinion as to the legality or illegality of his deposition from the *gadi*, either regarding it as an act of State or [624] looking at it as analogous to a foreign judgment, because I consider that in any case the plaintiff is not entitled to have this rule made absolute. If it was an act of State, no authority has been cited to show that such an act can be the ground of an action in a Court of

law or equity. In all the cases in which an act of State has been before the Court in India, it has been the defendant who has set it up. The deposition cannot, in my opinion, be regarded as at all analogous to a foreign judgment. No Court has given any decision in the matter. We have only the decision of the Darbar, and as the dispute was one between the Darbar and the defendant, the Darbar assumed to be a judge in its own cause. Its decision, therefore, could not be regarded as analogous to a judgment. The case of *Godard v. Gray* (1) sets forth the principles to be regarded by a Court in enforcing a foreign judgment.

The plaintiff having brought his suit in Bombay must take the law as he finds it, and he must show that by the law as administered in this Court he has a better title to the property which he claims than the defendant who is in possession. He has shown no equity to have the rule made absolute, and I cannot find from the affidavits or exhibits annexed to them that he has any right to the property in Bombay, which he can enforce against the defendant. The rule must be discharged with costs.

*Rule discharged.*

The plaintiff appealed against the above decision, but on the 2nd August 1879 the appeal was dismissed with costs by Westropp, C. J., and Sargent, J., and the order of Bayley, J., confirmed.

Attorney for plaintiff:—Mr. *Bhaishanker Nanabhai*.

Attorneys for defendant:—Messrs. *Rimington, Hore and Conroy*.

17 B. 625 (F.B.).

FULL BENCH.

*Before Mr. Justice Bayley, Chief Justice (Acting),  
Mr. Justice Jardine and Mr. Justice Candy.*

BAI KANKU (*Petitioner*) v. SHIVA TOYA (*Respondent*).\*  
[21st July, 1892.]

*Divorce—Husband and wife—Decree based merely on admissions and without recording evidence—Adultery—Collusion—Practice—Procedure—Indian Divorce Act (IV of 1869), s. 3, cls. 3, 14, and 17.*

A decree for dissolution of marriage cannot be made merely on admissions and without recording any evidence.

[F., 2 L.B.R. 67 (70).]

THIS was a reference made by G. McCorkell, District Judge of Ahmedabad, under s. 17 of the Indian Divorce Act (IV of 1869).

The plaintiff, Bai Kanku, a Christian resident of Shahvada in the Ahmedabad District, filed a suit against her husband, Shiva [625] Toya, under the provisions of the Indian Divorce Act (IV of 1869) to obtain a decree for dissolution of marriage on the ground of his adultery and desertion. The plaintiff alleged that she was legally married to the defendant on the 14th January, 1875, that they had lived together as husband and wife for about ten years after the marriage, and that subsequently in 1886-87 the defendant eloped with a widow, and lived in adultery with her in a different village. The suit was filed in the year 1891.

The defendant, Shiva Toya, appeared and admitted the correctness of the allegations made against him in the plaint.

The plaintiff consequently did not produce any evidence on her behalf.

\* Reference, No. 17 of 1891.

(1) L. R., 6 Q.B. 139.