

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sayad
Muhammad Yusuf-ud-din v. The Queen
Empress, from the Chief Court of the Punjab ;
delivered the 7th July 1897.*

Present :

THE LORD CHANCELLOR.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD JAMES OF HEREFORD.
SIR RICHARD COUCH.
MR. WAY.

[*Delivered by the Lord Chancellor.*]

IN this case their Lordships are called upon to pronounce their opinion as to whether the arrest of Yusuf-ud-din, a native of the Nizam's State, was lawfully executed by a warrant issued by a Magistrate at Simla.

The alleged offence for which the accused was arrested was the abetment in British territory of the offence which we may call compendiously bribery. Their Lordships have nothing to do with the question whether or not, if the accused had been found within British territory, he could have been lawfully tried and convicted of that offence, because the question reserved for their Lordships here to consider is whether or not the arrest of the man, while he was at the station on a railway which is locally situated within the dominions of the Nizam, was a lawful arrest; nor, except for the purpose of this particular case, have their Lordships anything to do with the consequences of that arrest being lawful or

" (22)118. 125.—S.97. Wt. 7613. E. & S. A

otherwise. The one question which they have to determine is whether the arrest was lawful.

Now, the offence which was charged against the accused was an offence committed, if committed at all, in British India, and, subject to what is said hereafter, their Lordships are of opinion that the territory on which the railway is locally built has been, and has continued to be, part of the dominions of the Nizam. It is important to observe this, because crime is in its essential nature local, and if the accused had been arrested in British territory there is no doubt that the British authorities would have ample jurisdiction to try and punish him for crime. But their Lordships are of opinion that the railway territory has never become part of British India, and is still part of the dominions of the Nizam. The authority, therefore, to execute any criminal process must be derived in some way or another from the Sovereign of that territory, and the only authority relied on here is the authority given in the correspondence, which constitutes the cession by the Nizam of jurisdiction to the British Government. It is important to observe that the notification upon which the learned Judges in India appear to have relied could itself give no such authority. Even if in more extensive terms than in fact are included in the notification it had purported to give jurisdiction, as the stream can rise no higher than its source, that notification can only give authority to the extent to which the Sovereign of the territory (the Nizam) has permitted the British Government to make that notification. Their Lordships are not prepared to differ from the construction which has been placed by the learned Judges in India on the notification, if the notification was itself the source of authority, but the notification is not the source of authority. The authority, of which this is only the notification, is derived from the

Sovereign Power of the Nizam himself. It becomes therefore necessary, as there is no express treaty and no words which in themselves precisely define the amount of jurisdiction intended to be conveyed by the Nizam, to revert to the correspondence which passed between those representing the two Governments—to see in the first place what was asked for and what was ultimately conceded.

Now, the authority which was asked for was the authority to exercise civil and criminal jurisdiction over the railway lands and premises; and if there is one thing manifest in the course of the correspondence more than another, it is that the Nizam jealously refused anything in the nature of a cession of territory such as would confer by itself local jurisdiction. It is the one thing which all through the correspondence appears to have been refused. The result is that one must look and see what was ultimately conceded, and when one comes to look at that which was asked for and that which was granted, it seems to be very plainly set forth in the additional papers, which their Lordships understand not to have been placed in the hands of the Chief Court, whose judgment is appealed from.

On the 28th March 1887 the British resident stated that the thing desired by the Government of India was sufficient power “over the railways” to enable a Magistrate and Police Officer, recently appointed with the Nizam’s assent, to perform their duties; that at present their action was irregular because the Nizam had never formally transferred to the Government of India “full jurisdiction over the railways,” and that “a few laws of British India which are necessary for the ordinary administration of criminal and civil justice should be regularly applied to the railways.” Upon these grounds he suggested a transfer of “full criminal and civil jurisdiction over the railway lands.”

He pointed out that the thing asked involved no sort or degree of encroachment on the Nizam's prerogative or independence; that it was only doing formally what had been done practically ever since the commencement of the railway, and what had been done by every other Native Chief as railways were made. He ended by writing: "The jurisdiction is not *assumed* by the British Government in its own right, but is conceded by his Highness, of his own free will, for the sake of legal and administrative convenience, over an area limited by the railway fences in which the difficulties that may occur are likely to be occasioned by Europeans."

The Nizam's Minister demurred even to this limited proposal, lest it should encroach on his Sovereignty, and he made a counter-proposal to pass by his own authority such British Indian laws "as are necessary for the ordinary administration of civil and criminal justice."

These objections were met by the resident by pointing out that he had not asked for the cession of any territory, and that the Nizam could hardly intend to assert "that the grant of the means for carrying on a small piece of administration in a more legal and efficient mode than has hitherto been found possible, can possibly be viewed as a 'commencement of annexation of large tracts in his Highness's dominions' by the English Government." And he concluded thus: "I hope that this letter will serve to 'clear the air' a little about what really is only a matter of administrative convenience, and is absolutely free of any such far-reaching consequences or designs as the draft letter would seem to prognosticate from it."

The concluding letter, No. 21 of the additional papers, is from the Nizam's Minister: "In reply to your letter dated the 6th instant, I beg to state that his Highness's Government is willing to accede to the wishes of the Govern-

“ ment of India regarding the civil and criminal
“ jurisdiction along the line of railway as is the
“ case on other lines running through independent
“ States.” If that is the only jurisdiction which
is given, and there is no evidence of any other
jurisdiction whatsoever given by treaty or usage
or otherwise, it is manifest that the jurisdiction
conferred is a criminal and civil jurisdiction
“ along the line of railway as is the case on other
“ lines running through independent States.”
The only question therefore that remains is
whether the act complained of in this case was
one which can in any sense be regarded as coming
within the jurisdiction “ along the line of railway.”
It is not suggested that the particular offence
charged was committed on the railway, or that
it was in any way connected with the adminis-
tration of the railway. What is suggested is that
in another part of India (at Simla) an offence was
committed in British territory and because the
Appellant was physically present on a portion of
that line of railway over which jurisdiction is
given for the purpose of criminal and civil juris-
diction, he was open to criminal procedure for
an offence committed elsewhere. Their Lordships
are of opinion that there is no foundation for any
such claim, that the arrest was illegal, and that
the petition therefore ought to have been granted,
and that the judgment of the Chief Court of the
Punjab ought accordingly to be reversed. Their
Lordships will therefore recommend to Her
Majesty that the warrant and arrest, and pro-
ceedings thereon, should be set aside. There will
be no order as to costs.

