7/1962

IN THE PRIVY COUNCIL No. 40 of 1958

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

68149

B E T W E E N:

(1) SAIF BIN SULTAN HUSSAIN AL'QUAITI (Original Plaintiff No. 1)

(2) SULTANAH MULUK, widow of Sultan Hussain (Original Plaintiff No. 2)

(3) SULTANAH FATIMAH daughter of Sultan Hussain (Original Plaintiff No. 3 and 19)

Appellants

- and -

(1) H.H.SULTAN AWAD DIN SULTAN SIR SALEH BIN GHALIB

(2) HAMEEDUNNISA BEGUM daughter of SULTAN SIR SALEH BIN GHALIB

(3) SAEEDUNNISA BEGUM daughter of SULTAN SIR SALEH BIN GHALIB

(4) LATEEFUNNISA BEGUM widow of SULTAN SIR SALEH BIN GHALIB

(All four being heirs and legal representatives of SULTAN SIR SALEH BIN GHALIB original Defendant No. 2 brought on record by Order of Her Majesty's Supreme Court of Aden dated 6th day of August 1956).

(5) SHARFUNNISA BEGUM (Original Defendant No.10)

(6) GHORI BEGUM (Original Defendant No. 8)

(7) ZAINAB BEGUM (Original Defendant No. 9)

(8) SALEH BIN MOHSIN (Original Defendant No.11)

(9) MOHAMED BIN OMER (Original Defendant No. 3)

(10) SALEH BIN OMER (Original Defendant No. 4)

(11) HUSSAIN BIN OMER (Original Defendant No. 5)

(12) AWAD BIN OMER (Original Defendant No. 6)

(13) GHALIB BIN OMER (Original Defendant No. 7)

(14) MIR AHMED ALI PASHA (Original Defendant No.13)

(15) ZAIUNNISA BEGUM (Original Defendant No.12)

(16) OMER BIN SULTAN MUNSSAR (Original Plaintiff No. 4)

(17) SULTANAH FATIMAH (Original Plaintiff No. 5)
(18) MOHAMED BIN MOHSIN (Original Plaintiff No. 6)
(19) SALAH BIN MOHSIN (Original Plaintiff No. 7)
(20) AHAMED BIN MOHSIN (Original Plaintiff No. 8)
(21) GALIB BIN MOHSIN (Original Plaintiff No. 9)
(22) NOOR BEGUM (Original Plaintiff No.10)
(23) ABDUL QAVI DIN NASIR (Original Plaintiff No.11)
(24) NUNASSAR BIN NASIR (Original Plaintiff No.12)
(25) NOOR BEGUM (Original Plaintiff No.13)
(26) SALEHAH BEGUM (Original Plaintiff No.14)
(27) MOHAMED BIN ALI (Original Plaintiff No.15)
(28) ESA BIN ALI (Original Plaintiff No.16)
(29) SALEH BIN ALI (Original Plaintiff No.17)
(30) SULTANI BEGUM (Original Plaintiff No.18)
(31) SULTANAH FATIMAH (Original Plaintiff No.19)
(32) SALIM BIN AHAMED (Original Plaintiff No.20)

Respondents

A N D B E T W E E N :

(1) H.H.SULTAN AWAD DIN SULTAN SIR SALEH BIN GHALIB
(2) HAMEEDUNNISA BEGUM daughter of SULTAN SIR SALEH BIN GHALIB
(3) SAEEDUNNISA BEGUM daughter of SULTAN SIR SALEH BIN GHALIB
(4) LATEEFUNNISA BEGUM widow of SULTAN SIR SALEH BIN GHALIB

(All four being heirs and legal representatives of SULTAN SIR SALEH BIN GHALIB original Defendant No. 2 brought on record by Order of Her Majesty's Supreme Court of Aden dated 6th day of August 1956).

(5) SHARFUNNISA BEGUM (Original Defendant No.10)
(6) GHORI BEGUM (Original Defendant No. 8)
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(8) SALEH BIN MOHSIN (Original Defendant No.11)
(9) MOHAMED BIN OMER (Original Defendant No. 3)
(10) SALEH BIN OMER (Original Defendant No. 4)
(11) HUSSAIN BIN OMER (Original Defendant No. 5)

(12)	AWAD BIN OMER	(Original Defendant No. 6)
(13)	GHALIB BIN OMER	(Original Defendant No. 7)
(14)	MIR AHMED ALI PASHA	(Original Defendant No.13)
(15)	ZIAUNNISA BEGUM	(Original Defendant No.12)

Appellants

- and -

(1)	SAIF BIN SULTAN HUSSAIN AL'QUAITI	(Original Plaintiff No. 1)
(2)	SULTANAH MULUK, widow of Sultan Hussain	(Original Plaintiff No. 2)
(3)	SULTANAH FATIMAH daughter of Sultan Hussain	(Original Plaintiff No. 3 and 19)
(4)	OMER BIN SULTAN MUNSSAR	(Original Plaintiff No. 4)
(5)	SULTANAH FATIMAH	(Original Plaintiff No. 5)
(6)	MOHAMED BIN MOHSIN	(Original Plaintiff No. 6)
(7)	SALAH BIN MOHSIN	(Original Plaintiff No. 7)
(8)	AHAMED BIN MOHSIN	(Original Plaintiff No. 8)
(9)	GALIB BIN MOHSIN	(Original Plaintiff No. 9)
(10)	NOOR BEGUM	(Original Plaintiff No.10)
(11)	ABDUL QAVI DIN NASIR	(Original Plaintiff No.11)
(12)	MUNASSAR BIN NASIR	(Original Plaintiff No.12)
(13)	NOOR BEGUM	(Original Plaintiff No.13)
(14)	SALEHAH BEGUM	(Original Plaintiff No.14)
(15)	MOHAMED BIN ALI	(Original Plaintiff No.15)
(16)	ESA BIN ALI	(Original Plaintiff No.16)
(17)	SALEH BIN ALI	(Original Plaintiff No.17)
(18)	SULTANI BEGUM	(Original Plaintiff No.18)
(19)	SULTANAH FATIMAH	(Original Plaintiff No.19)
(20)	SALIM BIN AHAMED	(Original Plaintiff No.20)

Respondents

CONSOLIDATED APPEALS

C A S E FOR THE APPELLANTS
(Respondents in Cross-Appeal)

RECORD

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1. This is an appeal by special leave from the Judgment and Order of the Court of Appeal for Eastern Africa dated the 6th day of April 1957, allowing in part an appeal and cross-appeal from the Judgment and decree of the Supreme Court of Aden dated the 6th day of September 1955. The Respondents to this appeal bring a cross-appeal by Special Leave from the said Judgment and Order of the Court of Appeal for Eastern Africa.

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2. The action before the Supreme Court of Aden was an interpleader suit instituted by the Financial Secretary of the Colony of Aden in pursuance of the provisions of The Sultan of Shihr and Mukalla's Fund Ordinance, 1945 (Aden Ordinance No.11 of 1945). This Ordinance is annexed hereto and is hereafter called "the Ordinance". By the Ordinance the Financial Secretary was empowered to deal with the Fund referred to in the title of the Ordinance and the Supreme Court to hear and determine all claims to the Fund. At the material date the Court of Appeal for Eastern Africa had been substituted for the High Court of Judicature of Bombay as the appellate Court for the purposes of Section 6 of the Ordinance.

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3. The Fund was originated by a payment of 2,14,500 Rupees to the National Bank of India in Aden on the 1st August 1903, by Sultan Awadh bin Omer (referred to in the proceedings and hereafter as "Awadh"). The claimants to the Fund in this interpleader suit were divided into two classes. On the one hand there were the heirs of Awadh who were made Defendants and who were afterwards Appellants in the Court of Appeal for Eastern Africa. On the other hand were the heirs of Sultan Hussain Bin Abdulla (who is referred to hereafter as "Hussain") and the heirs of Sultan Munasser Bin Abdulla (who is referred to hereafter as "Munasser"). These persons were Plaintiffs in the interpleader suit

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and afterwards Respondents in the Court of Appeal for Eastern Africa. The present Appellants are the only heirs to Hussain and were the three first-named Plaintiffs. In the Supreme Court of Aden all parties apparently agreed that the Court's decision should be limited to a decision upon the rival claims of the Plaintiffs on the one hand and the Defendants on the other. p.151

4. The principal issues to be determined in this appeal are as follows:-

(a) Which group of the rival claimants is entitled to the Fund and the accretions thereto?

(b) Is the Court's jurisdiction limited to determining who is entitled to the Fund and its accretions? And, if so, has the Court of Appeal for Eastern Africa exceeded its jurisdiction?

(c) If the Court's jurisdiction is not so limited, has the Court of Appeal for Eastern Africa correctly apprehended the relevant facts and correctly applied the relevant principles of law?

5. In order to understand how the Fund came to be set up, it is necessary to go into the family history of the parties. This history starts with Omer al Qu'aiti (referred to in the proceedings and hereafter as "Omer I"). In the 19th Century Omer I was head of the Qu'aiti Family and ruled over certain towns and other places in the Hadhramaut in Arabia. He also gave military service to H.E.H. The Nizam of Hyderabad and became a Hyderabad noble. For his service he was granted by the Nizam a number of Crown Grants of land in Hyderabad, such grants being known as "Jaghirs" and "Mukhtars". p.173

Omer I died in 1865 leaving five sons, Abdullah (the father of Hussain and Munasser) Awadh, Saleh, Ali and Muhammed. Ali and Muhammed took their portions after Omer I's death and went their separate ways: these proceedings are not concerned with them or their heirs. p.146

Omer I by his Will left one third of his property to be managed by Abdullah, Awadh and Saleh for the benefit of the provinces in Hadhramaut over which he had ruled. The remaining two thirds of Omer I's property (after p.289

allowing for the portions of Omer's widow and of Ali and Muhammed) were held in equal undivided shares by Abdullah, Awadh and Saleh.

Abdullah had lived in Arabia before his father's death, administering the family property and exercising the power of government there. He continued to do so after his father's death.

Awadh and Saleh had lived in Hyderabad during their father's lifetime and continued to do so after his death. The Jaghirs and Mukhtars which their father had enjoyed in Hyderabad were confirmed and re-granted to Awadh and Saleh in 1866. Abdullah was not mentioned in the regrant.

p.175 In 1873 Abdullah, Awadh and Saleh entered into a partnership deed. The original document is missing, but all parties in these proceedings appear to have agreed that it provided for ownership in common of their properties, each partner having a third share, and for each partner to be the agent of the other two and to look after the interests of the others in Arabia or Hyderabad, wherever each happened to reside.

During the period from 1866 to 1873 the possessions of the family in Arabia were greatly enlarged by conquest and came to be known as the Quaiti Sultanate. In 1881 and in 1888 Abdullah on behalf of himself and Awadh entered into treaties with the British Crown.

p.177 6. Meanwhile in 1878 (probably without the knowledge of his sons Hussain and Munasser) Abdullah entered into a sale deed by which he sold to Awadh for the sum of 186,000 Maria Theresa dollars all his share in the partnership property except for his share in the original possessions in the Hadhramaut. At the time of the sale only 46,000 dollars had been paid and the balance of 140,000 dollars was still unpaid, when Abdullah died in 1888.

7. After Abdullah's death, his sons Hussain and Munasser ruled over the Quaiti Sultanate though when a dispute arose in 1896 between them and Awadh
p.178 they appear to have been regarded by the British Crown as deputies of Awadh. They may well still have been ignorant of the existence of the deed of sale of 1878. In 1896 however, Awadh, relying upon the deed of sale, claimed the Quaiti Sultanate for himself, deprived Hussain and

Munasser of their administrative functions in the Sultanate and installed his son, Ghalib, in their place. Hussain and Munasser were given money allowances and continued for a time to live in the Sultanate. But Hussain and Munasser did not accept the deed of sale as genuine and in 1900 they again put forward claims to share both in the sovereignty and in the property. On the 5th November 1900, the dispute between Awadh and his nephews Hussain and Munasser was referred to the arbitration of a "Mansab". Meanwhile Hussain and Munasser continued to claim and to exercise rights of sovereignty in the Sultanate. Eventually in 1902 Awadh, with the assistance of the British Crown, compelled Hussain and Munasser to deliver up to him the towns in their possession and to leave the Sultanate. Hussain and Munasser were never thereafter allowed to return to the Sultanate. p.178

8. In 1903 the Mansab gave his award. The Mansab held that Abdullah had sold to Awadh his one third share of the partnership property, except for his share of the Hadhramaut properties. The Mansab held that Awadh should pay to the heirs of Abdullah three sums; first, 140,000 dollars being the balance of the purchase price under the deed of sale; secondly, 70,000 dollars as compensation for their share of the Hadhramaut properties; and thirdly, 50,000 dollars as "a matter of sympathy and mercy". This total sum of 260,000 dollars fell to be divided among the heirs of Abdullah, in the following shares. Three eighths (97,500 dollars) were due to Abdullah's daughters. Of the remaining five eighths (162,500 dollars) one eighth was due to Abdullah's widow, two eighths to Hussain and two eighths to Munasser. These 162,500 dollars were the equivalent of Rs. 2,14,500 and were the origin of the Fund, the claims to which are in issue in these proceedings. p.215

9. Hussain and Munasser refused to accept the Mansab's award, and Hussain sought leave to file a suit against Awadh in British India. The Government of India decided that the Mansab's award was to be final and refused Hussain permission to file such a suit. At the same time the Government of Bombay was prepared if necessary to exercise pressure on Awadh to see that Awadh paid the sums awarded by the Mansab. In these circumstances Awadh wrote on the 27th July 1903, to the Political Resident, Aden, in the following terms:- p.192 p.313 p.222

"We inform you regarding the money due to the heirs of the late Abdullah Bin Omer according to the decision of the Mansab is ready and we are prepared to pay it to Government or to whoever Government orders us to pay. The sum amounts to ₹260,000....."

(The letter then went on to detail how this sum should be divided among theheirs).

10. Then, on the 1st August, 1903, apparently upon the Resident's instructions, Awadh paid to the National Bank of India in Aden the sum of Rs. 2,14,500 under cover of the following letter:- p.223

" As per the Resident's instructions I beg to send you per bearer Rs. 2,14,500/- two lacs fourteen thousand and five hundred only, being the amount of M.T. dollars 1,62,500/- one lac sixty two thousand and five hundred only at the rate of Rs. 132/- per 100/- dollars. The amount being the shares of my nephews Munasser bin Abdulla and Hussein bin Abdulla and Hussein's mother, as per the Mansab's decision and agreed to by the Government of India. Kindly receive the same and deposit it in their name. The said sum may not be disposed of without the order of the Political Resident, Aden."

On the same day the Bank issued a receipt in the following terms:-

p.224 " Received from H.H. The Sultan of Mukalla, the sum of Rs. 2,14,500/- Two lacs, fourteen thousand and fivehundred only equal to $162,500/- a/c Rs. 132/- per $100/- for credit of the Political Resident, Aden, on account of Munasser bin Abdulla and Hussain bin Abdulla."

And also on the same day the Bank wrote to the Political Resident, Aden, in these terms:-

p.224 " At the request of H.H. The Sultan of Mukalla, on account of Munasser bin Abdulla and Hussain bin Abdulla, we beg to advise having placed to the credit of an account entitled the "Political Resident, Aden" the sum of Rs. 2,14,500/- (Rupees two lacs, fourteen thousand and

five hundred only) being equivalent to $162,500/- (at Rs. 132/- per $100/-)."

On the 8th August 1903, the Political Resident, Aden, wrote to Hussain and Munasser in these terms:-

"..... I am writing this letter to you to inform you that Sultan Awadh Bin Omer Alkaiety, the Sultan of Shehr and Mukalla has deposited in the National Bank of India at Aden the sum of Rs. 2,14,500/- equivalent to Dollars, 1,62,500/-. This is the share which the Mansab had fixed for you and for the mother of Hussain Bin Abdullah Alkaiety. I shall be very much pleased to know when and how you will like to receive the same." p.225

11. From the date of the Mansab's award none of Abdullah's heirs enjoyed any part of their father's possessions. Abdullah's daughters appear to have been paid the 97,500 dollars due to them under the Mansab's award. However, for many years Hussain and Munasser did not accept the Mansab's decision nor did they claim the money, held for them in the Bank. The Rs.2,14.500 was invested by the Government of Bombay in Trustee securities and accumulated from year to year.

12. After leaving Arabia Hussain and Munasser went to Hyderabad where they petitioned the Nizam for a share in the Jaghirs and Mukhtars which had been granted to Omer I. Many years later, when Awadh, Hussain and Munasser were all dead, this petition was granted by the Nizam to some extent in that the Nizam ordered that an allowance of Rs. 5250 a year (with arrears as from 1922) should be paid to the heirs of Hussain and Munasser and that this allowance should be charged on the Jaghirs and Mukhtars held by the heirs of Awadh. In 1948 Jaghirs and Mukhtars were abolished by law in India and the annual allowance of Rs. 5250 was commuted by law to a sum of Rs. 2362.8 annas per quarter to expire in 1960. The total sum which the heirs of Hussain and Munasser would in this manner have received by 1960 was agreed as being Rs. 1,52,771.5.0. p.150 p.150

13. By letter dated the 7th April 1942 the heirs of Hussain and Munasser applied to the Chief Secretary, Aden, for payment to them of the Fund in issue in these proceedings. The Fund was then under the control of the Government of Bombay. In p.234

1945 the Ordinance was passed, so that the Fund should be transferred to the Government of Aden.
p.2 In 1950 the Financial Secretary of Aden was appointed Trustee of the Fund in place of the Government of Bombay. The value of the Fund in
p.151 1955 was Rs. 9,87,808. This interpleader suit was instituted in 1952.

p.145 14. The judgment of the Supreme Court of Aden was delivered by Mr. Knox Mawer, acting Judge of the Supreme Court, on the 6th September 1955. The learned acting Judge held that the heirs of Hussain and Munasser were entitled to the Fund and all accretions thereto. In the course of his judgment he said:-

p.154 " In accordance with the decision of the arbitrator, Awad paid the sum of 162,500 M.T. dollars (Rs. 214,500) to the British Political Resident who was acting as a Conciliator and mediator in this matter. I have no doubt that he had divested himself of all property therein in favour of his nephews upon whose behalf the money was henceforth held by the British Authorities. I am satisfied that this is the position despite the somewhat conflicting expressions of opinion made by various British administrators connected with the matter over the years. The status of the British authorities in holding the money became, in English legal parlance, that of a 'Trustee'. The present plaintiffs, as the legal successors in title of Hussain and Munasser, are therefore entitled, not only to the original sum of money deposited and held for them throughout the years but also to the interest which accrued thereon as a result of the investments made on their behalf by the 'Trustee'."

The Appellants contend that the learned acting Judge was correct in this finding. However, the learned acting Judge went on to hold that the action of Hussain and Munasser in bringing
p.154 proceedings before the Hyderabad authorities was a breach of contract, the contract being their
p.153 agreement with Awadh to forego all their claims against him and to accept the Mansab's decision as
p.155 final. The Judge held that, if it had not been for this breach of contract, the Nizam would not have granted the heirs of Hussain and Munasser the allowances which he in fact did grant, and accordingly the Judge assessed and awarded as

damages against the heirs of Hussain and Munasser Rs.1,52,771.6.0., being the total sum which they would have received by 1960 in respect of these allowances. The Judge also assessed and awarded as damages against them the sum of Rs. 30,000 being a figure conceded by them to be a reasonable estimate of the heirs of Awadh's costs in the Hyderabad proceedings. Thus the Judge assessed and awarded a total of Rs. 1,82,771.6.0. damages and suggested that, to avoid the artificiality of a separate payment into Court by the Plaintiffs in the interpleader suit of Rs. 1,82,771.6.0. and a separate withdrawal by the Defendants of this sum, the sum should be deducted from the trust monies paid into Court and should be paid to the Defendants, and that the balance should be paid to the Plaintiffs. The Judge further ordered that the costs of the Financial Secretary and the Registrar should be paid out of the said trust monies. A decree giving effect to this judgment was drawn up.

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15. The Defendants appealed to the Court of Appeal for Eastern Africa, against this judgment. The Plaintiffs cross-appealed against the award of damages upon the grounds stated in their Notice of Cross-Appeal. The Appellants contend that the award of damages by the Supreme Court of Aden was incorrect and in support of this contention will rely upon the grounds stated in the said Notice of Cross-Appeal.

16. The Court of Appeal judgment dated the 6th April, 1957, was delivered on the 16th day of April, 1957. It is a very long judgment, the main conclusions of which may be summarised as follows:-

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(1) The Defendants' contention that they and not the Plaintiffs were entitled to the Fund was rejected.

(2) It was held that Awadh had deposited the Fund for the purpose of discharging his obligations under the Mansab's award, but that Awadh did not intend to deprive himself of all power to recall the money if the Government did not succeed in persuading Hussain and Munasser to accept the award.

(3) The money was held by the Political Resident on behalf of Awadh with irrevocable authority to pay it to Hussain and Munasser or their heirs but only on condition they should accept the

award and receive the money in full discharge of Awadh's obligations under it.

(4) Until Hussain or Munasser or their heirs indicated that they were willing to receive the money deposited as money due under the award, the money and interest accruing thereto belonged to the Defendants.

(5) On the 7th April 1942 the heirs of Hussain and Munasser made an unconditional demand for the Fund and the Plaintiffs were entitled to any accretion to the Fund after that date. But any accretion before that date belonged to the Defendants.

(6) That there was no jurisdiction in the present suit to award damages against the Plaintiffs but that the "Judge's object can be achieved by a method other than the one he adopted".

(7) That the allowances ordered to be paid by the Nizam to the Plaintiffs was a clear case of "unjust enrichment" and that the Plaintiffs "must as a condition of enforcing their claim account for such part of the sum of Shs. 274.157" (Rs. 182,771.6), as was attributable to the period prior to 7th April 1942.

17. The Court of Appeal made an elaborate order to carry out the effect of their Judgment. The Fund was to be valued as at the 7th April 1942. The amount of the allowances paid to the Plaintiffs up to that date was also to be ascertained. The amount of the allowances received by 1942 together with the sum of Shs. 37,500 (Rs. 25,000) as the Defendants' costs incurred before 1942 in resisting the Plaintiffs' claims were to be deducted from the original value of the Fund namely Rs. 2,14,500. The resultant figure was to be deducted from the 1942 value of the Fund and the balance was deemed to be the Defendants' share of the Fund in 1942. The present Fund was to be divided between the parties in the same proportion as they were deemed to hold in 1942 except that the remainder of the figure of Rs. 182,771.6. for allowances and costs should be added to the Defendants' share.

18. The Appellants' main contention is that the Court of Appeal was wrong in holding that the Defendants had any right to the Fund after 1903 or were entitled to any accretion of the Fund

thereafter. There was no evidence to support the findings stated in sub-paragraphs (2), (3) and (4) of Paragraph 16 hereof. Such findings are inconsistent with all the relevant contemporary documents and were based upon pure speculation by the Court of Appeal. The Appellants contend that the learned Trial Judge was correct in his finding on this issue, and that once Awadh had paid the sum of Rs. 2,14,500 to the Bank he divested himself of all property therein in favour of Abdulla's heirs, namely, Hussain, Munasser and Hussain's mother. The Appellants contend that the Fund and all accretions thereto belong to the Plaintiffs.

19. The Appellants' alternative contention on this issue is that in any event the accretion to the Fund between 1903 and 1942 does not belong to the Defendants. Even if the Court of Appeal were correct in holding that Hussain and Munasser (or their heirs) were not entitled to the Fund until they made an unconditional demand for it in 1942, nevertheless the Court was wrong in holding that the accretion to the Fund before 1942 belonged to the Defendants. Once the heirs of Hussain and Munasser accepted the award, they became entitled to the Fund including all accretions thereto. For the Fund represented the balance of the purchase price paid for Abdullah's properties. Awadh and his heirs have enjoyed these properties and all income therefrom from 1903 onwards. It is manifestly inequitable that Awadh and his heirs should also at the same time have the benefit of nearly 40 years' accumulated income on the purchase price.

20. The Appellants further contend that the jurisdiction of both the Trial Judge and the Court of Appeal was limited to that conferred by the Ordinance. The jurisdiction so conferred was to "hear and determine all claims to the Fund". The Trial Judge's said award of damages was made without any jurisdiction. Similarly the Court of Appeal had no jurisdiction to require the Plaintiffs to account for the sum of Rs.1,82,771.6 as a condition of enforcing their claim to the Fund. The Court of Appeal's sole proper function was to determine the ownership of the Fund, to award the Fund to the person or persons held entitled thereto, and to provide for costs.

21. Even if the Court of Appeal's function was not limited, as the Appellants contend in

Paragraph 20 hereof, nevertheless the Court of Appeal was incorrect in its findings of fact and applied incorrect principles of law.

(a) The Court of Appeal was incorrect in holding that any interest which Abdulla might have had in Jaghirs and Mukhtars in Hyderabad was part of the subject matter of the 1878 sale deed.

(b) The Court of Appeal was incorrect in holding that the Mansab's award included any interest which Abdulla might have had in the Jaghirs and Mukhtars in Hyderabad.

(c) The Court of Appeal was incorrect in holding that the bringing of the proceedings by Hussain and Munasser in Hyderabad constituted a breach of their contract with Awadh.

(d) The Court of Appeal was incorrect in holding that Awadh's heirs had suffered actionable damage as the result of wrongful conduct on the part of Abdulla's heirs.

(e) The Court of Appeal had no jurisdiction to enquire into the correctness of the Nizam's decrees awarding allowances to the Plaintiffs. Such decrees were acts of state and as such could not found a claim for damages against the Plaintiffs.

(f) Even if the action of Hussain and Munasser in bringing the proceedings in Hyderabad were a breach of contract, any cause of action founded upon such breach was statute barred long before the institution of this inter-pleader suit and was therefore irrelevant and should have been ignored by the Trial Judge and the Court of Appeal.

(g) Even if the action of Hussain and Munasser in bringing the proceedings in Hyderabad were a breach of contract, the Defendants made no claim for damages in their pleadings and pleaded no special damage. Nor was any issue on a claim for damages framed by the Trial Judge or by the Court of Appeal. In the premises neither Court could properly hold that the heirs of Awadh were entitled to damages against the heirs of Hussain and Munasser. Nevertheless the Trial Judge

incorrectly awarded such damages against the heirs of Hussain and Munasser and the Court of Appeal must impliedly have approved the Trial Judge's finding that the heirs of Awadh were entitled to damages against the heirs of Hussain and Munasser, although holding that the Trial Judge had no jurisdiction to award such damages in this interpleader suit. For otherwise the Court of Appeal would not have sought to achieve (and indeed purported to achieve) the Learned Judge's object by another method.

(h) The Court of Appeal was incorrect in law in its purported application of the doctrine of "unjust enrichment". Even upon the facts found by the Court of Appeal, this doctrine does not justify the Court of Appeal's requirement that the Plaintiffs must account to the Defendants for Rs.182,771.6.0. as a condition of enforcing their claim to the Fund.

(i) The Defendants did not raise a plea of unjust enrichment in their pleadings nor was any issue thereon framed by the Trial Judge or by the Court of Appeal. In the premises the Court of Appeal should not have partially allowed the Defendants' appeal upon a plea which was not pleaded at all, and which had not been raised by the Defendants or by the Trial Judge.

(j) The Court of Appeal was incorrect in law in its purported application of the two maxims of equity - "he who seeks equity must do equity" and "he who comes into equity must come with clean hands". The Plaintiffs were not seeking an equitable remedy. They were legally entitled to the Fund and the Court should have given effect to their legal rights. In any event their hands were clean.

(k) The Defendants did not raise in their pleadings any plea based upon the aforesaid maxims of equity nor was any issue thereon framed by the Trial Judge or by the Court of Appeal. In the premises the Court of Appeal should not have partially allowed the Defendants' appeal upon a point which was not pleaded at all, and which had not been raised by the Defendants or by the Trial Judge.

22. The Appellants respectfully submit that this appeal should be allowed and that the Plaintiffs

be declared to be collectively entitled to the Fund in issue in these proceedings together with all interest thereon and all accretions thereto and that the Supreme Court of Aden be required to apportion the Fund between the Plaintiffs (in default of agreement among them as to their respective shares thereof) and that the Respondents be ordered to pay to the Appellants their costs of this appeal and their costs in the Court of Appeal for Eastern Africa and in the Supreme Court of Aden for the following (among other)

R E A S O N S.

(1) BECAUSE the Plaintiffs are entitled to the Fund together with all interest thereon and accretions thereto for the reasons given by the learned Trial Judge and for the reasons stated in Paragraph 18 or 19 hereof.

(2) BECAUSE the Court of Appeal had no jurisdiction to require the Plaintiffs to account to the Defendants for the sum of Rs. 1,82,771.6.0. as a condition of enforcing their claim to the Fund.

(3) BECAUSE Abdullah's interest, if any, in the Jaghirs and Mukhtars in Hyderabad was not sold to Awadh by the 1878 sale deed.

(4) BECAUSE the claim of Abdullah's heirs to share in the Jaghirs and Mukhtars in Hyderabad was not covered by the Mansab's award.

(5) BECAUSE Hussain and Munasser or their heirs were not in breach of any contract with Awadh.

(6) BECAUSE Awadh or his heirs suffered no actionable damage as the result of any conduct by Hussain and Munasser or their heirs.

(7) BECAUSE the decree of the Nizam awarding allowances to Abdullah's heirs can found no cause of action against Abdullah's heirs.

(8) BECAUSE the heirs of Awadh had no actionable claim for damages against Abdullah's heirs at the date of the institution of this interpleader suit.

(9) BECAUSE any cause of action for damages which Awadh's heirs might have had was statute barred by the date when this interpleader suit was commenced.

(10) BECAUSE no claim for damages by Awadh's heirs was pleaded or raised in any issue framed by the Trial Judge or by the Court of Appeal.

(11) BECAUSE Abdullah's Widow at no time refused to accept the Mansab's Award and accordingly there is no ground for holding the Award at any time invalid between her and Awadh or his heirs and because the Mansab's Award cannot be partially valid and partially invalid and must therefor be valid at all times between all parties.

(12) BECAUSE the doctrine of unjust enrichment does not apply to the facts in this suit.

(13) BECAUSE no plea of unjust enrichment was raised by the Defendants in their pleadings and no issue thereon was framed by the Trial Judge or by the Court of Appeal.

(14) BECAUSE the Plaintiffs were seeking a legal and not an equitable right, and accordingly the maxims of equity stated by the Court of Appeal were not applicable to the Plaintiffs' claim.

(15) BECAUSE the Defendants on their pleadings raised no plea based on the said maxims of equity, nor was any issue thereon framed by the Trial Judge or by the Court of Appeal.

23. As to the Cross-Appeal by the Respondents, the Appellants respectfully submit that this cross-appeal should be dismissed with costs for the following (among other)

R E A S O N S.

(1) BECAUSE if the Court of Appeal is correct in holding that Hussain and Munasser or their heirs were not entitled to the Fund until they made an unconditional demand for it, the Court of Appeal was right in holding that such demand was made in the said letter of the 7th April 1942, for the reasons given by the Court of Appeal.

(2) BECAUSE Awadh and his successors have at all times enjoyed the property, for which the sum awarded by the Mansab was the purchase price, and could not be entitled both to the income from the property and to the income derived from the purchase money lodged with the Bank by Awadh at the same time.

DAVID KEMP

PUBLISHED AS A LEGAL SUPPLEMENT TO THE OFFICIAL GAZETTE No. 18 of the 12th of April, 1945.

THE ADEN COLONY

No.11 of 1945.

I ASSENT.

A.L. KIRKBRIDE,

Acting Governor.

Date of Assent. 11th April, 1952.

THE SULTAN OF SHIHR AND MUKALLA'S FUND ORDINANCE, 1945.

WHEREAS in and before the year nineteen hundred and three a dispute arose between His Highness Awadh bin Omer bin Awadh Al Qu'aiti the then Sultan of Shihr and Mukalla and his nephews Husein bin Abdulla bin Omer and Munasser bin Abdulla bin Omer with reference to their claims to the estate of their father Abdullah bin Omer Al Qu'aiti.

AND WHEREAS on the first day of August nineteen hundred and three, pursent to the award of an arbitrator Seiyid Ahmed bin Salim bin Saqqef His said Highness paid into an account at the National Bank of India the sum of Rupees two lakh, fourteen thousand and five hundred, to the credit of the then Political Resident:

AND WHEREAS the said sum of Rupees two lakhs, fourteen thousand and five hundred was on the eleventh day of November, nineteen hundred and three transferred by the then Political Resident of Aden to the Government of Bombay for investment in trustees securities.

AND WHEREAS it is intended to make an application to the High Court of Judicature at Bombay for an order directing the transfer of the said securities and the unexpended balance of interest thereon whether invested in further securities or not, and the unexpended balance of interest on these further securities and generally all securities and unexpended monies arising from and representing the said Rupees two lakhs fourteen thousand and five hundred and all accretions thereto:

NOW THEREFORE BE IT ENACTED by the Governor of the Colony of Aden as follows:-

Short title.

1. This Ordinance may be cited as the Sultan of Shihr and Mukalla's Fund Ordinance, 1945.

Definition of "the fund".

2. In this Ordinance "the fund" means and includes all the securities in which the amount of Rupees two lakhs, fourteen thousand and five hundred deposited with the then Political Resident of Aden by His Highness Awadh bin Omer bin Awadh Al Qu'siti, the then Sultan of Shihr and Mukalla, on the first day of August, nineteen hundred and three, or any part thereof have been and remain invested, the uninvested and unexpended balance thereof, if any, all unexpended interest on the said securities, all securities in which any of such interest has been and remains invested all unexpended monies realised by the sale of the aforesaid securities and generally all securities and unexpended monies arising from and representing the said Rupees two lakhs, fourteen thousand and five hundred and all accretions thereto.

Financial Secretary to be trustee in respect of the Fund.

3. (1) The Financial Secretary and his office shall be deemed from the commencement of this Ordinance to be corporation sole for the purpose of holding, and, subject to the provisions of this Ordinance, administering the Fund.

(2) Any personal liability which may be incurred by the Financial Secretary in the course of his administration of the Fund shall be charge on the funds and revenues of the Colony.

Financial Secretary to institute interpleader suit in respect of the Fund.

4. When the Fund shall have been transferred from the Government of Bombay to the Financial Secretary, he shall, by a pleader appointed by him in that behalf, institute an interpleader suit in the Supreme Court in respect of the fund, and save as otherwise expressly provided in this Ordinance, such suit shall be instituted and proceed as if all the requirements necessary under Section 74 of the Civil Courts Ordinance, 1937 for the institution of an interpleader suit, was satisfied.

Judge to issue notices.

5. (1) The Judge of the Supreme Court shall, with such assistance as he may require from the pleader referred to in Section 4, and after such examination as he may deem necessary of all the documents relating to the case in the possession of the Government, order such notice in writing to be given to each and every person, Government or body corporate who or which may, in his opinion have a claim to any part of the Fund, or any interest in the disposition thereof.

(2) The Judge of the Supreme Court shall cause such notice to be advertised and served in such manner as he deems necessary and the law of service of process allows to each and every such person, Government or body corporate and in particular he shall cause notice of the interpleader suit to be published in three successive issues of the Colony and Aden Protectorate Gazettes as soon as practicable after the institution of such interpleader suit.

Hearing six months after notices.

6. The Supreme Court shall, not earlier than six months after service, or publication of all the notices referred to in section 5, proceed to hear and determine all claims to the Fund made by persons before the expiration of such period of six months, and the findings and orders of the Supreme Court in respect of claims shall, subject to the law concerning appeals to the High Court of Judicature at Bombay and to His Majesty in Council, be final.

When part of the Fund remains undisposed of.

7. If no claim is made within the period of six months referred to in Section 6, or if, after the determination of any claim or claims under the provision of Section 6, the Fund or any part of the Fund, is undisposed of by any order of the Supreme or any Appellate Court and further appeal against every such order is barred, the Judge of the Supreme Court shall, as early as is practicable, report in writing to the Governor that no claim has been made to the Fund or to a specified part of the Fund or that the Fund or a specified part of the Fund is undisposed of by any order of such Court, as the case may be.

Costs.

8. It shall be in the discretion of the Judge of the Supreme Court to order that the costs or any of the costs incidental to the proceedings in the Supreme Court under this Ordinance shall be paid out of the Fund.

Evidence.

9. (1) The Judge of the Supreme Court may, if he thinks fit and that the justice of the case requires it, hear and record and consistently with the general principles of the law of evidence, give consideration, in determining any claim under Section 6, to the sworn oral evidence tendered by any person making such claim or any other person who can, in the opinion of the Judge of Supreme Court, give evidence relevant to the matters under inquiry.

(2) A witness whose testimony is received under sub-section (1) may, subject to the general principles of the law of evidence, produce documents relevant to the matters under inquiry.

(3) A witness whose testimony is received by the Judge of the Supreme Court under this section may be cross-examined by or on behalf of any person whose claim is under inquiry under the provision of section 6.

Powers of Governor as to part of Fund undisposed.

10. The Governor, on receiving the report of the Judge of the Supreme Court under section 7 that no claim has been made all or some part of the Fund or that all or some part of the Fund remains undisposed of by any Court order, shall by writing under his hand direct the payment of the Fund, or unclaimed or undisposed part of the Fund, as the case may be to any persons, Governments or bodies corporate to whom notice has been issued under section 5 whether such notice has been served on them or not, and on such conditions as he, after perusal of the documents in the case thinks fair and reasonable on the merits, and such direction of the Governor shall be final and shall not be subject to appeal or liable to be restrained by, or inquired into, in any Court in the Colony.

Protection of Governor and Judge and those carrying out their directions or the provisions of the Ordinance.

11. No civil or criminal suit or proceeding shall be entertained in any Court in the Colony against the Governor, or the Judge of the Supreme Court, or the Financial Secretary or any public officer or any person for exercising or carrying out any of the powers, obligations or duties imposed on him by the provisions of this Ordinance, or, in the case of a person other than the Governor or the Judge of the Supreme Court, for carrying out any lawful direction of the Governor or of the Judge of the Supreme Court consistent with the provisions of this Ordinance.

No augmentation of jurisdiction in respect of Act of State.

12. Nothing in this Ordinance shall be deemed to confer on the Supreme Court any jurisdiction in respect of Adjudication upon an Act of State which it would not have had if this Ordinance had not been passed.

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN :-

SAIF BIN SULTAN HUSSAIN AL'QUAITI and OTHERS ... ... Appellants

- v -

H.H. SULTAN AWAD BIN SULTAN SIR SALEH BIN GHALIB and OTHERS ... Respondents

AND BETWEEN :-

H.H. SULTAN AWAD BIN SULTAN SIR SALEH BIN GHALIB and OTHERS ... ... Appellants

- v -

SAIF BIN SULTAN HUSSAIN AL'QUAITI and OTHERS ... ... Respondents

CONSOLIDATED APPEALS

CASE FOR THE APPELLANTS

(Respondents in Cross-Appeal)

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.