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7, 1962 Aden

IN THE PRIVY COUNCIL No. 40 of 1958

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

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 -

H.H. SULTAN AWAD DIN SULTAN SIR SALEH BIN GHALIB and Others (Heirs and legal representatives of Sultan Sir Saleh Bin Ghalib, Original Defendant No.2)
SHARFUNNISA BEGUM and Others (Original Defendants Nos.3 to 13)
OMER BIN SULTAN MUNSOOR and Others (Original Plaintiffs Nos.4 to 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)
SHARFUNNISA BEGUM and Others (Original Defendants Nos.3 to 13) Appellants

- and -

SAIF BIN SULTAN HUSSAIN AL'QUAITI and Others (Original Plaintiffs Nos.1 to 2) Respondents

CONSOLIDATED APPEALS

R E C O R D O F P R O C E E D I N G S

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

Solicitors for the Appellants in the main Appeal and Respondents Nos.1, 2 and 3 in the Cross-Appeal.

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.

Solicitors for Respondents Nos.1 to 15 in the main Appeal and the Appellants in the Cross-Appeal.

IN THE PRIVY COUNCIL — No. 40 of 1958

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

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 DIN 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

AND 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)
(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)	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 APPEAIS

R E C O R D O F P R O C E E D I N G S

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E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT REPRODUCED SEPARATELY

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Written Statement by the Government of Mukalla	3rd January 1953
Claim Petition by the Government of Mukalla	3rd January 1953
Written Statement of Government of Mukalla	January 1954
List of Documents relied on by Government of Mukalla	11th January 1954
Claim Petition by the Government of Mukalla	Undated
IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA	
Notes of Arguments taken by the Honourable The President	12th, 13th, 14th, 15th, 18th, and 19th March 1957
Notes of Arguments taken by the Honourable The Vice-President	12th, 13th, 14th, 15th, 18th and 19th March 1957
Notes of Arguments taken by the Honourable Mr. Justice Briggs, a Justice of Appeal	12th, 13th, 14th, 15th, 18th and 19th March 1957

No.1

PLAINT

In the Supreme Court of Aden

No.1

Plaint
11th July 1952

THE FINANCIAL SECRETARY OF ADEN

THE HEIRS OF HUSEIN BIN ABDULLA BIN OMER & MUNASSER BIN ABDULLA BIN OMER

AN INTERPLEADER SUIT.

1. In or before the year 1903, a dispute arose between His Highness Awadh Bin Omer Awadh Al Qaiti, the then Sultan of Shehr and Mukalla, and his nephews, Husein Bin Abdulla Bin Omer and Musasser Bin Abdulla Bin Omer, concerning their claims to the estate of their father, Abdulla Bin Omer Al Qaiti.

2. On the 1st August 1903, an award in the said dispute was made by an arbitrator, Sayid Ahmed Bin Salem Bin Saqaf, and, in pursuance of this award, High Highness Awadh Bin Omer Awadh Al Qaiti paid the sum of Rs. 2,14,500 into the National Bank of India to the credit of the then Political Resident of Aden.

3. On the 11th November 1903, this sum was transferred by the said Political Resident of Aden to the Government of Bombay to be invested in trustee securities.

4. On the 11th April 1945, the Sultan of Shihr and Mukalla's Fund Ordinance 1945, received the assent of the then Acting Governor of Aden. This Ordinance provides, inter alia, that the Financial Secretary of Aden and his office shall be created a corporation sole for the purpose of holding and administering the fund created by the deposit made in 1903.

5. By section 4 of the said Ordinance, it is

In the Supreme Court of Aden

No.1

Plaint
11th July 1952
continued

provided that, when the said fund shall have been transferred from the Government of Bombay to the Financial Secretary of Aden, he shall, by pleader appointed by him in that behalf, institute an interpleader suit in the Supreme Court of the Colony in respect of the said fund.

6. By section 5 of the said Ordinance, it is provided that, when such interpleader suit shall have been instituted, the Judge of the Supreme Court shall, with such assistance as he may require from the pleader appointed in the manner aforesaid 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, and that he shall cause such notice to be advertised and served in the manner prescribed by the section.

7. By Section 6 of the said Ordinance, it is further provided that not earlier than 6 months after the service or publication of such notices the Supreme Court shall hear and determine all claims to the fund.

8. By an Order of the High Court of Judicature at Bombay dated the 6th April 1950, the Financial Secretary of Aden was appointed trustee of the fund in place of the Government of Bombay, and directions were given that the securities, in which the Fund was invested, be transferred to him.

9. The said securities, which consisted of 3 per cent Conversion Loan 1946, of a face value of Rs.11,27,900 were in due course transferred in the manner aforesaid.

10. Wherefor, the Financial Secretary of Aden, having appointed Edward Westby Nunn, Barrister-at-Law, a special pleader under the power given him by Section 4 of the said Ordinance, hereby institutes this Interpleader Suit.

11. In accordance with the requirements of Rule 443 of the Rules of Court the Financial Secretary declares :

(a) that he claims no interest in the said

fund other than for charges and costs; &

(b) that there is no collusion between him and any of the defendants

12. In view of the special nature of the suit and the provisions of the Ordinance of 1945, it is not possible nor is it to be deemed necessary to comply with the requirements of Rule 443 (b).

13. The value of the suit for the purposes of Court fee is approximately SHS. (shillings) 1,401,052 this being, as far as it has been possible to ascertain the present market value of the securities in which the fund is invested.

14. The Supreme Court is given special jurisdiction by the Sultan of Shihr and Mukalla's Fund Ordinance, 1945.

15. Wherefore the Financial Secretary of Aden respectfully prays :

(a) that the Judge of the Supreme Court determines, in the manner prescribed by Section 5 of the said Ordinance, who are the persons Governments or bodies corporate to whom notice of this suit should be given and the manner and form in which such notices shall be advertised or served on such persons ;

(b) that the Judge of the Supreme Court gives such directions as he shall think fit and necessary for the advertising or serving of the notices aforesaid;

(c) that the Court discharges the Financial Secretary from all and any further liability in respect of the said Fund;

(d) that the Court orders that the charges and costs incurred by the Financial Secretary in respect of the said funds, including the costs of this suit, be a first charge on the fund.

FINANCIAL SECRETARY OF ADEN.

In the Supreme Court of Aden

No.2

Notice to Claimants to file Claims 15th July 1952

No.2

NOTICE TO CLAIMANTS TO FILE CLAIMS

IN THE SUPREME COURT OF THE COLONY OF ADEN

CIVIL SUIT No.260 of 1952.

THE FINANCIAL SECRETARY OF ADEN Plaintiff.

Versus

THE HEIRS OF HUSSEIN BIN ABDULLA BIN OMER and MUNASSER BIN ABDULLAH BIN OMER. Defendants.

THE SULTAN OF SHIHR AND MUKALLA'S TRUST FUND.

NOTICE

WHEREAS on the 11th November 1903 a sum of Rs. 2,14,500/- was paid to the then Political Resident of Aden by His Highness Awadh bin Omer bin Awadh Qu'aiti, the then Sultan of Shihr and Mukalla in accordance with an award made by Seyid Ahmed bin Saqqaf in favour of his nephews Hussein bin Abdullah bin Omer and Munasser bin Abdullah bin Omer.

AND WHEREAS it is provided by the Sultan of Shihr and Mukalla's Fund Ordinance, 1945, that when this fund shall have been transferred to the Financial Secretary of Aden the said Financial Secretary shall institute an Interpleader suit in the Supreme Court of Aden Colony for the purpose of effecting the proper distribution of the said fund.

AND WHEREAS on the 11th day of July 1952 an interpleader suit, being Civil Suit No.260 of 1952 was instituted by the said Financial Secretary in the said Supreme Court citing as Defendants The Heirs of Hussein bin Abdullah bin Omer and Munasser bin Abdullah bin Omer.

AND WHEREAS by the terms of the said Ordinance the Judge of the Supreme Court of Adcn

No.2

Notice to Claimants to file Claims 15th July 1952 continued

Colony will hear the parties to the said suit on a day to be determined by him, being a day not less than six months after the date of this Notice.

NOTICE IS HEREBY GIVEN to all or any persons claiming to be the heirs of Hussein bin Abdullah bin Omer and Munasser bin Abdullah bin Omer and to all or any other persons who may claim to be entitled to a share in the said Fund to enter an appearance in the said suit at the Supreme Court of Aden Colony on the 15th day of September 1952.

GIVEN under my hand and the seal of the Court, this 15th day of July 1952.

By Order

V.D. Tripathi,
ASSISTANT REGISTRAR.

No.3

Advertisement for Claims 15th July 1952

No.3

ADVERTISEMENT FOR CLAIMS

ATTACHED COPY OF THE NOTICE PUBLISHED IN HYDERABAD (INDIA) DAILY PAPERS (ENGLISH) AS UNDER :-

(a) "THE HYDERABAD BULLETIN" SECUNDERABAD, dated
  (i) August 6, 1952 at page 5
  (ii) August 9, 1952 at page 2

(b) "THE DECCAN CHRONICLE" SECUNDERABAD, dated
  (i) August 5, 1952 at page 4
  (ii) August 7, 1952 at page 4.

IN THE SUPREME COURT OF THE COLONY OF ADEN

CIVIL SUIT NO.260 of 1952

(TITLE AS NO.2)

THE SULTAN OF SHIRH AND MUKALLA'S TRUST FUND

NOTICE

WHEREAS on the 11th November 1903 a sum of Rs. 2,14,500/- was paid to the then Political

In the Supreme Court of Aden

No.3

Advertisement for Claims 15th July 1952 continued

Resident of Aden by His Highness Awadh bin Omer bin Awadh Qu'aiti, of then Sultan of Shirh and Mukalla in accordance with an award made by Sayid Ahmed bin Sawwaf in favour of his nephews Husain bin Abdullah bin Omer and Munasser bin Abdullah bin Omer.

AND WHEREAS it is provided by The Sultan of Shirh and Mukalla's Fund Ordinance, 1945, that when this fund shall have been transferred to the Financial Secretary of Aden the said Financial Secretary shall institute an Interpleader suit in the Supreme Court of Aden Colony for the purpose of affecting the proper distribution of the said Fund.

AND WHEREAS on the 11th day of July 1952 an Interpleader suit, being Civil Suit No.260 of 1952 was instituted by the said Financial Secretary in the said Supreme Court citing as Defendants The Heirs of Hussain bin Abdullah Bin Omer and Munasser bin Abdullah bin Omer.

AND WHEREAS by the terms of the said Ordinance the Judge of the Supreme Court of Aden Colony will hear the parties to the said suit on a day to be determined by him, being a day not less than six months after the date of this Notice.

NOTICE IS HEREBY GIVEN to all or any persons claiming to be the heirs of Husain bin Abdullah bin Omer and Munasser bin Abdullah bin Omer and to all or any other persons who may claim to be entitled to a share in the said Fund to enter an appearance in the said suit at the Supreme Court of Aden Colony on the 15th day of September 1952.

GIVEN under my hand and the Seal of the Court, this 15th day of July 1952.

By Order,
V. D. Tripathi.

No.4

Statement of Mohamed Bin Omer & Others Undated

No.4

WRITTEN STATEMENT OF MOHAMED BIN OMER & OTHERS.

(TITLE AS NO.2)

WRITTEN STATEMENT

The Claimant submit the following written

statement to the plaint submitted by the Financial Secretary in the Interpleader Suit as follows :-

Para.1. Admitted.

Para.2. Admitted, but these claimants state that Mohsin and Hussein did not act according to the Award and now they are estopped by their act and conduct to claim the suit amount as stated in the claim petition attached herewith.

Para.3. Admitted.

Para.4 & 5 In view of the fact that the Award terms were not accepted or acted by Mohsin and Hussain, the proper course was to refund the money to the heirs of Abdulla Bin Omer. The Interpleader suit was necessary if at all there was any dispute among the heirs of Sultan Awad and not otherwise. In any case a notice was and is necessary to Husein and Mohsin or their heirs.

Para.6. As stated above these notices referred to in the Section are meant for the heirs of Sultan Awad and for no body else.

Para.7. Requires no reply.

Para.8. Admitted.

Para.9. Not denied.

Para.10. The powers were given to appoint a pleader to Institute Interpleader suit.

Paras.11, 12,13 & 14. Requires no reply and admitted.

Para.15. The prayers of Financial Secretary of Aden to give the amount to the person or persons may be determined and reasonable costs for this suit to be first on the suit amount.

Sd. Mohamed Bin Omer,and Others.
Signature of Claimant.

The Claimant state that the facts stated in

In the Supreme Court of Aden

No.4

Statement of Mohamed Bin Omer & Others Undated continued

the above paras. are true to the best knowledge of the claimant.

(Sd.) Mohamed bin Omer and Others
Claimants.

(Sd.) H.M. Handa,
Pleader.

No.5

Claim Petition of Mohamed Bin Omer and Others. 16th December 1952.

No.5

CLAIM PETITION of MOHAMED BIN OMER and OTHERS

(TITLE AS NO.2)

CLAIM PETITION REGARDING THE SULTAN OF SHEHR & MUKALLA'S TRUST FUND.

The Petitioners, who are the heirs of the late Sultan Omer Bin Awad, Ruler of Shehr and Mukalla, submit their claim to the Trust Fund of Shehr and Mukalla in the Interpleader suit instituted by the Financial Secretary of Aden before the Honourable Court as follows :-

1. The genealogical table necessary for the purpose of this case is submitted herewith as annexure (A), mentioning as far as possible the dates of demise of the respective heirs of the late Abdulla Bin Omer & Sultan Awad Bin Omer.

2. In the year 1903, a dispute arose between His Highness Awad Bin Omer, Sultan of Shihr and Mukalla and his nephews Husain Bin Abdullah and Munasser Bin Abdullah, with reference to their claims to the estate of their father Abdulla Bin Omer.

3. Sultan Awad Bin Omer and the sons of Abdulla Bin Omer, Husein and Munasser, ultimately agreed to appoint Syeid Ahmed Bin Salem Bin Sakaf as an arbitrator to determine and settle the disputes that had arisen regarding the claims of th

the sons of Abdulla to the estate of their deceased father in Arabia and in India, against Sultan Awad Bin Omer and the claims of Sultan Awad against the sons of Abdulla.

4. In the year 1903, after fully going into the respective claims of Sultan Awad Bin Omer on the one hand and Hussain and Munasser, sons of Abdullah Bin Omer on the other hand, and after examining the evidence, oral and documentary, submitted by the parties and after consulting the learned persons in Muslim Law, gave a very exhaustive and learned award, declaring the heirs of Abdulla Bin Omer entitled to receive Rupees two lakhs fourteen thousand and five hundred in lieu of all their rights to the estate of their father Abdulla, as regards all properties in Arabia and in India and dismissed their claims to the third of the property in view of the undertakings and agreements entered into by the parties concerned and also dismissed the claims of Sultan Awadh as regards the huge amounts claimed to have been advanced to Abdulla and his heirs as a first charge on the amount or the property that the sons of Abdulla may be held entitled to.

5. This award was brought to the notice of the Government of Bombay through the Government of Aden and was ratified by the Secretary to the Government of Bombay by a telegram to the Resident, Aden, on 22nd July 1903.

6. His Highness Sultan Awad Bin Omer, in pursuance of this Award deposited on 1st August 1903, the sum decreed, Rupees two lakhs fourteen thousand and five hundred in the National Bank of India, Aden, to the credit of the then Political Resident. This amount was transferred to the Government of Bombay for investment in trustee securities, which has ultimately been transferred with all accretions and profits etc., to the Financial Secretary, Aden who has in pursuance to the terms of the Sultan of Shehr and Mukalla Fund Ordinance 1945 has instituted the Interpleader Suit, before this Honourable Court.

7. This Honourable Court has summoned petitioners and all other persons who could lay claim to the above-mentioned fund so that a final adjudication may be made about the

In the Supreme Court of Aden

No.5

Claim Petition of Mohamed Bin Omer and Others. 16th December 1952 continued

respective rights of the parties concerned and the Financial Secretary may be relieved of the trust responsibility by giving the fund to the persons who may be held entitled to it by this Honourable Court, but the claimants submit that no other person except the heirs of Sultan Awad are necessary and proper parties to this suit.

8. His Highness Sultan Awad had deposited this amount on the express understanding that Husain and Munasser, sons of Abdulla will abide by the award given by Saiyed Ahmed Bin Salem Bin Sakaf and will not claim any right in the properties of the late Sultan Omer Bin Awad father of His Highness Sultan Awad whether situated in Arabia or in India. The Government of India under whom the Resident of Aden Colony was working had also approved of this arrangement, but in contravention of the terms of the Award and the directions of the then Government. Husain and Munasser, sons of Abdulla Bin Omer, applied to the Government of Hyderabad the Inam Department for a share in the Jaghirs and Makhtas (Immoveable property) fetching a large income by their application on 15.7.1319 Fasli (1909). See the certified copy of the application attached as annexure (B). Sultan Omer Bin Awad the ex-Ruler of the Mukalla and Sultan Ghalib, the father of the present ruler of Mukalla in their reply of -6-1321 Fasli (1911) denied the claims of the sons of Abdulla Bin Omer and one amongst other reasons disputing the claim was that the rights of the sons of Abdulla were finally disposed of by the Award of 1903 and they have no right to claim any share from the property in Hyderabad Deccan, India, See para (12) of the written statement, attached herewith as enclosure (C). Husain and Munasser sons of Abdulla Bin Omer clearly repudiated the award as illegal and not binding on them in their rejoinder dated -6-1321 Fasli (1911) in para.(14), attached herewith as annexure (D).

9. The heirs of Abdulla Bin Omer have by their act of submission of petition in Hyderabad Deccan, infringed the terms of the Award and cannot be held entitled to the deposit amount even if their claim had not been accepted in Hyderabad, because the crucial condition regarding their claim to the said fund was that the heirs of Abdulla should abide by the terms of the award and as they failed to do so they are not entitled to the fund deposited by His Highness Sultan Awad Bin Omer. But the

matter has gone beyond this, as Hyderabad Government in Inam Department (Courts dealing with immovable property estates) has not accepted the award and granted Rs. 7,000/- per year to the heirs of Abdulla from the income of the Estate in Hyderabad-Deccan, India. The decision of Mr. Dunlop the then Director General of Revenue and Inams dated 15.8.1913 and the decision of Colonel Sir Richard Trench, the Revenue and Inam Minister and letter of Inam Department dated 16.3.1337 Fasli (1928 A.D.) directing the payment of R. 7,200/- sanctioned by the Prime Minister of Hyderabad are submitted herewith as enclosures E. F, & G. As the heirs of the other two brothers of Sultan Awad, viz. heirs of Ali and Mohammed had also appeared for their shares, the final decision regarding the rights of all these persons to the Jaghirs and Makhtas was pronounced finally by the Firman of 9th Shawal 1367 Hijri -- the heirs of Abdulla's sons Husain and Munasser were given an allowance of Rs. 5,250/- per annum (See appendix H). These decisions establish that the heirs of Husain and Munasser sons of Abdulla have received the amount in contravention of the terms of the award and have forfeited their rights to receive the amount kept in trust with the Aden Government to be given to them on condition that they do not agitate their claims as regards their rights in the property in Arabia or in India. Further the claimant's father and after his death the present claimants have incurred huge expenditure to defend the case which was fought for nearly forty years.

10. In january 1924, His Highness Sultan Omer requested the Resident of Aden to return the trust money to him as ruler of Mukalla, as the heirs of Abdulla have repudiated the Award and as such are not entitled to the said amount and further requested the Government of Aden to inform the National Bank of India not to pay the amount to the heirs of Abdulla under any misunderstanding. Ultimately the Chief Secretary to the Government of Bombay replied by his letter No.2215 dated 30th October 1926 stating "I am directed by the Governor in Council to state that Government understands that Sultan Saleh (present Ruler of Mukalla) his three sisters and also the three widows of Sultan Galeb propose to claim a share in the inheritance of Sultan Awad and that the Government therefore regret that they cannot

In the Supreme Court of Aden

No.5

Claim Petition of Mohamed Bin Omer and Others 16th December 1952.
continued

accept the responsibility of the payment of the amount to His Highness Sultan Omer unless His Highness can produce a written consent of the other heirs to his receiving it, as the Head of the family on their behalf". This reply of the Government of Bombay clearly indicates that the Trust amount belongs to His Highness Sultan Awad and if all the heirs of the late Sultan Awad who lay claim to the inheritance of Sultan Awad request the Government jointly -- the Government has no objection to pay this amount to the heirs of the late Sultan Awad. In other words the Government of Bombay implicitly accepted that the heirs of Abdulla Bin Omer have forfeited their right to the trust fund deposited by the late His Highness Sultan Awad and it further made clear that if all the heirs of the late Sultan Awad who are entitled to his inheritance according to Muslim Law represent to the Government they are prepared to hand over the trust amount to the heirs of His Highness Sultan Awad. The matter however remained pending and finally on 11th February 1945 an Ordinance was promulgated by the Government of Aden - The Sultan of Shehr and Mukalla's Fund Ordinance 1945. By the Ordinance the Government of Aden decided to institute an Interpleader suit in the Supreme Court of Aden in respect of this fund so that the persons declared entitled to this amount by this Honourable Court may be given the amount of the Trust Fund accordingly.

11. The genalogical table attached as annexure (A) will indicate that His Highness Sultan Awad left as his heirs two sons His Highness Sultan Ghalib (Father of Sultan Saleb, the present Ruler of Mukalla) and His Highness Sultan Omer Bin Awad (the propositus of the petitioners) who left us as his heirs, the two daughters Mahboob Begum and Shazadi Begum. In 1936 - His Highness Sultan Omer died leaving five sons, one daughter and four widows. The daughter, Sardar Begum died leaving one son and one daughter. Habeeba Begum died leaving her brother Saleh Bin Mohsin as his heir. According to Muslim Law, when His Highness Sultan Awad died the two sons Sultan Ghalib and Sultan Omer were entitled to 1/3rd of the deposit amount each and each daughter of the late Sultan Awad Mahboob Begum and Shazadi Begum was entitled to 1/6th of the Trust Fund.

12. The two daughters Mahboob Begum and Shazadi Begum of His Highness Sultan Awad executed

a Release Deed dated 9th Thir 1339 Fasli corresponding to 14th Zilhej 1348 Hijri (approximately 1929 A.D.) in favour of His Highness Sultan Omer Bin Awadh regarding their share in the Trust Fund in lieu of Rs. 40,000/-. This Deed was duly registered, a copy of which is enclosed herewith as enclosures (1) and by virtue of this Deed of release the late Sultan Omer is entitled to 2/3rd share of the Trust Fund - 1/3rd by virtue of the release Deed executed in his favour by the two ladies mentioned above. This deed was also communicated to the Government of Aden by the late His Highness Sultan Omer.

13. Shazadi Begum died on September 1931 issueless, leaving the late Sultan Omer Bin Awad and her sister Mahboob Begum as her heirs. According to Muslin Law His Highness Saleh and his sisters are not entitled to the share of Shazadi Begum as their father His Highness Sultan Ghalib had died long before the demise of Shazadi Begum. By virtue of Muslim Law the late His Highness Sultan Omer is entitled to 2/3rd share of the share of Shazadi Begum and Mahboob Begum to 1/3rd of the share of Shazadi Begum. Accordingly irrespective of the deed of release the late His Highness Sultan Omer and after his death his heirs are entitled to 1/3rd in their own right and further 2/3rd of 1/3 i.e. 2/9th as the heir of Shazadi Begum and by virtue of the release deed referred to above Sultan Omer and his heirs are entitled to 2/3rd of the whole trust amount including all profits, accretions, interests, etc. and His Highness Sultan Saleh and his sisters and mothers (widows of Sultan Ghalib) are entitled to 1/3rd of the trust amount including all profits, accretions, interests etc.

14. The Petitioners respectfully submit that the claim if any of the heirs of Hussein and Munasser sons of the late Abdulla Bin Omer or any other person be rejected and the claims of the Petitioners the heirs of the late His Highness Sultan Omer Bin Awad be held entitled to 2/3rd of the whole trust amount and His Highness Sultan Saleh and his sisters and mothers be held entitled to 1/3rd of the trust amount after deducting a reasonable expense of the Interpleader Suit instituted by the Financial Secretary to the Government of Aden and the Petitioners may be granted such other relief which the Honourable

In the Supreme Court of Aden

Court may deem proper in law and equity to grant in this case.

Sd. Mohamed Bin Omer etc.
and 10 Others.
PETITIONERS.

No.5

Claim Petition of Mohamed Bin Omer and Others 16th December 1952. continued

The petitioners affirm and declare that what is stated above is true to their knowledge.

PETITIONERS.

Sd. H.M. Handa,
Pleader for Petitioners.

Filed on: 16-12-52.
Sd. V.D.T.

No.6

Written Statement of Sultan Sir Saleh Bin Galib 3rd January 1953

No.6

WRITTEN STATEMENT OF SULTAN SIR SALEH BIN GALIB

(TITLE AS No.2)

WRITTEN STATEMENT

Sultan Sir Saleh Bin Galib of Mukalla begs to state as follows :-

Para 1 Admitted.

Para 2 Admitted; the said Award was approved by the then Resident of Aden and the Government of India and accordingly His late Highness Sultan Awad paid into the Bank Rs. 2,14,500/- as trust out of the revenues of the State of Mukalla.

But, both Husein and Munasser refused to accept the Award and finally filed a suit or

No.6

Written Statement of Sultan Sir Saleh Bin Galib 3rd January 1953 continued

petition in Hyderabad Court in contravention to the terms of the Award and hence they or their heirs forfeited their rights to claim the trust fund.

Mr. Rashid S. Chenai, the defendant No.12, being a creditor of Husein and Munasser or their families, has no right whatsoever to claim the trust fund. Similarly, as the trust was made out of the State revenue the heirs of His late Highness Sultan Awad have no right or claim to the fund but if it be held to be the personal property of Sultan Awad then Sultan Sir Saleh as an heir claims a share

Para	3	Admitted
"	4	Admitted
"	5	Admitted
"	6	Admitted
"	7	Admitted
"	8	Admitted
"	9	Admitted
"	10	Not denied
"	11 to 15	Not denied.

Sultan Sir Saleh bin Ghalib, of Mukalla, herewith begs to submit the attached petition of his claim to trust fund and prays that the same be given to him.

(Sd.) A.E.Kazi, ADVOCATE. 12-1-53.

(Sd.) Saleh bin Ghaleb.

I, Sultan Saleh Bin Galib affirm and say that the above contents are true to the best of my knowledge and belief. Verified at Mukalla this 3rd day of January 1953.

(Sd.) Saleh bin Ghaleb.

No.7

No.7

Claim Petition of Sir Saleh Bin Ghaleb 3rd January 1953.

CLAIM PETITION OF SIR SALEH BIN GHALEB

(TITLE AS NO. 2)

CLAIM PETITION BY SIR SALEH BIN GHALEB, AND HEIR OF SULTAN AWAD.

Sultan Sir Saleh Bin Ghaleb, Mukalla, as an

In the Supreme Court of Aden

No.7

Claim Petition of Sir Saleh Bin Ghaleb 3rd January 1953 continued

heir of Sultan Awad, the deceased, begs to submit his claim as follows :-

1. Sultan Umar died leaving one widow Salema and five sons (1) Sultan Awad (2) Sultan Abdulla (3) Saleh (4) Mohamed and (5) Ali.

2. Sultan Umar made a Will and by the said Will he gifted one third of all his possessions in Arabia and one third of his properties in India as Wakf for the benefit of the Government and people of Mukalla.

3. The widow Salema and two sons Mohamed and Ali received their shares out of the residuary estate, after deducting one third for Wakf, and the remaining three brothers entered into a partnership.

Sultan Abdulla sold his one-third share in the partnership to Sultan Awad and received $ 46,000/- M.T. Dollars as part payment from Sultan Awad.

Sultan Awad also paid the share of Saleh.

4. After the death of Sultan Umar Sultan Awad succeeded him as the Chief of the State of Hadhramaut (now the Government of Mukalla) and he, on the death of Saleh in 1880 and Abdulla in 1888 became the sole trustee of the Wakf for the State. The estimated revenues of the Government of Mukalla was about $ 50,000 M.T. Dollars equivalent to Rs. 75,000/- approximately per year.

5. Sultan Awad deposited Rs.2,14,500/- into the Bank in 1903 under the Award. This amount was wholly taken out of the State Treasury.

6. Both Husein and Munasser did not accept the Award and finally disputed the validity of the said Award in Hyderabad Court. Husein and the heirs of Munasser or heirs of both received large sums of money under orders of Hyderabad Court.

Thus, both Husein and Munasser and their heirs forfeited their rights to claim the said sum of Rs.2,14,500/- under the Award.

7. As the said sum of Rs.2,14,500/- was paid out of the State Treasury and not out of the personal estates of Sultan Awad, the heirs of

Sultan Awad cannot claim shares in the trust fund, but the said fund together with all interests and accretions be returned or paid to the Government of Mukalla only.

8. (a) Sultan Awad had made a Will on 1st Shaban 1310 Hijri corresponding to 1893 A.D. by which he confirmed and gifted as Wakf for the State of Mukalla 1/3 one-third of all possessions and properties in Arabia and India.

(b) If it be held that Rs.2,14,500/- were not taken out of the State Treasury, one-third of the trust fund with all interests and accretions, being Wakf for the State under the said Will of Sultan Awad, be paid to the Government of Mukalla.

(c) The petitioner, Sultan Sir Saleh Bin Ghaleb, is the only son of Sultan Ghaleb. One sister of the petitioner is alive. Both the petitioner and his sisters are entitled to 1/3 one-third out of the 2/3 two-third of the trust fund and the heirs of Sultan Umar Bin Awad are entitled to the balance i.e. 2/3 two third out of 2/3 two-third of the trust fund

The petitioner, therefore, prays, that in case if it be held that the trust fund be divided amongst the heirs of Sultan Awad Bin Umar, for (a) His share according to the Muslim Law be paid to him AND for (b) any other relief which the Court deems just and proper.

(Sd.) A.E.Kazi,
ADVOCATE. 12-1-53.

(Sd.) Saleb bin Ghaleb.

I, Sultan Sir Saleh Bin Ghaleb, the petitioner, do hereby declare that the above statement is true to the best of my knowledge and belief. Verified at Mukalla this 3rd day of January 1953.

(Sd.) Saleh bin Ghaleb.

In the Supreme Court of Aden

No.8

Claim Petition of Saif bin Sultan Hussain Al Quaiti and 19 others 15th August 1953.

No.8

CLAIM PETITION OF SAIF BIN HUSSAIN AL QUAITI AND 19 OTHERS

(TITLE AS NO.2)

THE HUMBLE PETITION OF

1. Saif Bin Sultan Hussain Al Quaiti (son of Sultan Hussein Bin Sultan Abdullah), aged 47 years.

2. Sultanah Muluki widow of the late Sultan Hussain Bin Sultan Abdullah, aged 65 years.

3. Sultanah Fatimah, daughter of the late Sultan Hussein Bin Sultan Abdullah, aged 49 years.
(Heirs of Sultan Hussain Bin Sultan Abdullah) and

4. Omer Bin Sultan Munasser Bin Sultan Abdullah, aged 55 years.

5. Sultanah Fatimah, daughter of Sultan Munasser Bin Sultan Abdullah, aged 49 years.

6. Mohamed, son of Mohsin Bin Sultan Munasser Bin Sultan Abdullah, aged 40 years.

7. Saleh, son of Mohsin Bin Sultan Munasser Bin Sultan Abdullah, aged 35 years.

8. Ahmed, son of Mohsin Bin Sultan Munasser Bin Sultan Abdullah, aged 30 years.

9. Galib, son of Mohsin Bin Sultan Munasser Bin Sultan Abdullah, aged 25 years

10. Noor Begum, widow of Mohsin Bin Sultan Munasser Bin Sultan Abdullah, aged 50 years.

11. Abdul Qavi, son of Nasir Bin Sultan Munasser Bin Sultan Abdullah, aged 39 years.

12. Munasser, son of Nasir Bin Sultan Munasser Bin Sultan Abdullah, aged 25 years.

13. Noor Begum, daughter of Nasir Bin Sultan Munasser Bin Sultan Abdullah, aged 45 years.

14. Salehah Begum, widow of Nasir Bin Sultan Munasser Bin Sultan Abdullah, aged 50 years.

15. Mohamed, son of Ali Bin Sultan Munasser Bin Sultan Abdullah, aged 40 years, of unsound mind.

16. Essa, son of Ali Bin Sultan Munasser Bin Sultan Abdullah, aged 35 years.

17. Saleh, son of Ali Bin Sultan Munasser Bin Sultan Abdullah, aged 22 years.

18. Sultanah Begum, daughter of Ali Bin Sultan Munasser Bin Sultan Abdullah, aged 30 years.

19. Sultanah Fatimah, widow of Ali Bin Sultan Munasser Bin Sultan Abdullah, aged 49 years.

(Heirs of Sultan Munasser Bin Sultan Abdullah),

and

20. Amir Salim Bin Ahmed Al-Qu'aiti', Ex-Minister of Shehr and Mukalla, inheritent in the share of Sultan Munasser Bin Sultan Abdullah, aged 52 years.

MOST RESPECTFULLY SHOWETH AS UNDER :-

1. That, as per a decision of an Arbitrator, Syed Ahmed Bin Salim, for the compensation of all the properties in Shehr, Mukalla and Hadhramaut, belonging to Sultan Abdullah Bin Omer Al-Qu'aiti', the late Sultan of Shehr and Mukalla and Hadhramaut, grandfather of the petitioners' heirs of Sultan Hussain and Munasser, and compensation of the Sultanate of the entire State as well, and Award was made in the year 1318 Hijri. This Award was made in favour of Sultan Awadh Bin Omer, the younger brother of Sultan Abdullah Bin Omer entitling Sultan Awadh Bin Omer to have for himself and for his heirs all the said properties of his elder Brother Sultan Abdulla Bin Omer, together with the Sultanate of the State, depriving the heirs of Sultan Abdullah Bin Omer the claims of even their national rights in their own mother land. The heirs of Sultan Abdullah Bin Omer were,

In the Supreme Court of Aden

No.8

Claim Petition of Saif bin Sultan Hussain Al Quaiti and 19 others 15th August 1953 continued

accordingly, forced to leave all the properties of their father together with their own personal properties and the Sultanate for Sultan Awadh Bin Omer and for his heirs and were forced to leave their country altogether to stay in a foreign place. The compensation for all that, as was fixed by the said Arbitrator in his Award, was the petty amount shown in the Award deed. A part of this amount was said to have been paid to Sultan Abdullah in his life time and out of the remaining balance, the shares for his only two sons, namely Sultan Hussain and Sultan Munasser and the share of his only widow, Sultanah Salma, the mother of Sultan Hussain, a sum of Rs.2,14,500/- was deposited in the National Bank of India at Aden, which is the sum under reference in the present case. The shares of the three daughters of Sultan Abdullah, namely, Sultanah Fatimah, Sultanah Maznah and Sultanah Hayah, was however, not paid but remained in the hands of Sultan Awadh bin Omar all along.

2. That, on the basis of the said Award, Sultan Awadh deposited the above mentioned sum in the said Bank in 1903 A.D. as shares of Sultan Hussain Bin Abdullah, Sultan Munasser Bin Abdullah and mother of Sultan Husain as stated. The sum was credited in the Bank through the British Government and through its Political Resident of the time of Aden. Petitioners herewith submit a photograph of the original Arabic Letter of the Aden Residency No.172 dated the 8th August 1903 with its English translation marked A.1 and A.2 respectively. The original letter is in the possession of the petitioners and will be submitted when required. In the letter, it is stated in clear terms that the sum of Rs.2,14,500/- deposited in the National Bank of India at Aden, as per the said decision of the Arbitrator and is for Sultan Hussain and Sultan Munasser, the two sons of Sultan Abdullah, and for the mother of Sultan Hussain and for nobody else.

3. That, as the said amount was in itself less than what was actually fixed as shares for the two sons and widow of Sultan Abdullah in the said Award and as the properties of Sultan Abdullah throughout the State, leaving alone the Sultanate, were, in actual value, very much more than the little sum fixed by the Arbitrator as a compensation at par, the sons of Sultan Abdullah, therefore, asked the British Government for a reconsideration and revalue of the property. This reconsideration was,

however, not accepted and the British Government held the decision of the Arbitrator as final. In this particular petitioners herewith submit a photograph of another Arabic Letter of the Aden Residency No.7009 dated 20th November 1906 with its English translation marked B.1 and B.2 respectively. The original is with the petitioners and will be submitted in due course. In the last paragraph of this letter the decision of the British Government holding the said Award to be final is stressed upon. In the letter it is also stated that the amount under reference is safe with the British Government and under the Government's custody and it will be paid to Sultan Hussain andSultan Munasser, (and accordingly to their heirs, the petitioners) whenever demanded. This is final settlement of the entire question made regarding the amount by the British Government long long ago. According to which nothing more than demand is needed for the payment of the amount to the petitioners.

4. That the petitioners, the heirs of Sultan Hussain and Sultan Munasser, in view of the said final decision of British Government have forwarded their demand for the amount first through their application dated 7th April 1942 made to the Government of Aden, copy of this application together with the copy of the Government's reply received are herewith submitted and marked C. and D. respectively. Again on the 16th of January 1945, the petitioners above-mentioned, forwarded another application to the Aden Government for the same purpose. Copy of which along with a copy of the Government's reply are submitted herewith and marked respectively E. and F.

After the receipt of this last reply from the Government, the only response to the petitioners was the notice issued by this Honourable Court in the present case. This notice came to the knowledge of the petitioners through news papers only.

5. That, in view of the previous final decision of the British Government stated above, the amount in question was specifically credited in the Bank for Sultan Husain, Sultan Munasser and for the mother of Sultan Hussain. These are all now dead, and the only person entitled to claim and receive the amount with all its interests and profits which have accrued to date and

In the Supreme Court of Aden

No.8

Claim Petition of Saif Bin Sultan Hussain Al Quaiti and 19 others 15th August 1953 continued

may accrue right up to the time of payment, are the petitioners.

6. That, the petitioners are the only surviving heirs of Sultanah Salama, the mother of Sultan Hussain Bin Sultan Abdullah, Sultan Hussain and Sultan Munasser, the two sons of Sultan Abdullah Bin Omer.

Sultan Hussain was the only child and heir of his late mother, and, therefore, the shares of Sultanah Salma will be payable exclusively to the heirs of Sultan Hussain Bin Sultan Abdullah. The heirs of Sultan Munasser Bin Abdullah will have no share in it.

The attached Geneological Table together with the following para. will further clarify the statement.

7. That Sultan Abdullah died leaving, surviving him, six heirs, two sons namely (1) Sultan Hussain and (2) Sultan Munasser, three daughters namely (3) Sultanah Fatimah (4) Sultanah Muznah, and (5) Sultanah Hayah and one widow, namely (6) Sultanah Salma, the mother of Sultan Hussain.

That Sultan Munasser died leaving, surviving him, twelve heirs of whose seven were sons namely (1) Mohsin, (2) Nasir, (3) Ali, (4) Omer, (5) Galib, (6) Abdul Majid and (7) Abdul Hamir; and three more daughters, namely (8) Seeniyah; (9) Alviyah, (10) Fatimah and two were widows, namely (11) Qamar and (12) Jamilah. Qamar was the mother of Nos.3, 4 and 7 and Jamilah was the mother of Nos.5 & 9 of the heirs abovementioned.

Seeniyah died first after her father's demise, leaving behind only one daughter, named Mulukah. Mulukah was married to Amir Salim Bin Ahmed and died as his wife. The heirs of Seeniyah were her daughter, Mulukah, her husband Abdul Qavi and her mother, Qammer. Mulukah's father died in her lifetime and, therefore, she inherits him. After Mulukah has died, her heirs were, Salim Bin Ahmed, and her grandmother Qamer, aunt to Salim Bin Ahmed. After Qamer has inherited her daughters, Seeniyah and her grand daughter as well.

After Seeniyah, Jamilah died leaving behind Nos. (5) and (9) as her heirs. Then Alviyah died

unmarried. Her heir was her own brother No.(5). After her Galib died unmarried. His step brothers and sister became his heirs. Brother getting two shares and sister one. After Galib, Mohsina died leaving behind him four sons and one widow who are shown in the Geneological Table annexed. All are now surviving. After Mohsin, Abdul Majid died before marriage. Half of his share will go to his own sister No.(10) and the other half to his step brothers Nos.(2), (3), (4), and (7) in equal proportion. After Abdul Majeed, Abdul Hameed died before marriage and whose heirs were his own brothers Nos. (3) and (4) and his mother No.(11). Then Nasir died leaving behind him three sons and two daughters and one widow. One son and one daughter died and the rest are surviving, as shown in the chronolegical table attached. Then Qammer died and her share goes to her two sons Nos.(3) and (4). The last to die was Ali who left behind him three sons, one daughter and one widow. These are all alive as shown in the Chronological chart.

Sultan Hussain died leaving behind him one son Saif Bin Hussain, one daughter, Fatmah (married to Ali No.3 of the sons of Sultan Munasser) and one widow Muluk. All are alive. Fatimah, besides her share in that of her father's, gets 1/8 share also from that of her husband Ali, out of the share of the heirs of Sultan Munasser.

All the surviving heirs of Sultan Hussain and Sultan Munasser, as explained above and as shown in the geneological tree annexed, together with claimant No.20 (Amir Salim Bin Ahmed), will get shares according to the Rules laid down by Shariat of Mohamedan Law. A calculated table will be submitted later on.

8. That since the petitioners above named have not made any claim to their shares in the properties of Sultan Abdullah Bin Omar as covered by the said Award as the Award was declared to be final and inforceable by the decisions and orders of the British Government as above explained, the petitioners alone are entitled to the amount deposited in pursuance of this Award and to all its profits accrued thereon from the date of its deposit up to the date of its payment.

In the Supreme Court of Aden

No.8

Claim Petition of Saif Bin Sultan Hussain Al Quaiti and 19 others 15th August 1953 continued

9. That the State of Mukalla, the present ruler of Mukalla and all the heirs of Sultan Awadh Bin Omer Al Qu'aiti' having retained in their possession all the more valuable properties covered by the said Award as explained in the opening paragraphs of this claim petition and have been profited and being profited by them ever since, are not entitled to a refund or to any share in the deposited amount credited and specified for the petitioners as per above statements. They cannot at one and the same time keep and utilise the properties of the petitioners belonging to the petitioners' grand father, Sultan Abdullah and also claim the amount of the Award as well.

10. The state of Mukalla, the Ruler of Mukalla and all the heirs of Sultan Awadh Bin Omer have no locue stand in this suit. Therefore their claims are not entertainable nor admissible in these proceedings. Such claims are to be disallowed in toto and in the preliminary stage before this Honourable Court proceeds to investigate and consider the Shares of the present heirs of Sultan Hussain and Sultan Munasser interse. Who are alone entitled to the amount in deposit under this case.

11. That any representation or grounds by any claimant or party including the Financial Secretary, the Plaintiff in the suit contrary to the statements and facts contained in this claim application of the petitioners or any such representation or grounds leading to contradict them are all denied by the petitions. As the petitioners are submitting a separate application for the stay of the present proceedings as per ground explained in the said application, the petitioners therefore, reserve their right to contradict, counter and attach any such representation or allegation made by any one of the present suit which they will hereafter submit in due course. The petitioners also reserve their right to deal with any such issues or claims accordingly.

12. The question of R.S.Chenai of Secunderabad-Deccan is quite different and it will be dealt with later on when necessity arises.

It is therefore prayed that the sum of Rs. 2.14,500/- which is in credit now with the National Bank of India at Aden for the petitioners

No.8

Claim Petition of Saif Bin Sultan Hussain Al Quaiti and 19 others 15th August 1953. continued

with all its profits and interests which have accrued so far and will accrue for the future should, in the interest of justice and in accordance with the true facts and aspects of the case, as explained above, be kindly ordered to the petitioners, for which act of equity and justice the petitioners shall ever pray.

Dated 15th August 1953.

PETITIONERS

(Sd.) Saif Bin Hussain Al-Quaiti.

SON OF THE LATE SULTAN OF MUKALLA, AND 19 OTHERS.

(Sd.) M.H.Mansoor,
Advocate for Petitioners.
24-8-53.

No.9

Claim Petition of Heirs of Sultan Hussain Bin Abdullah and Sultan Munasser Bin Abdullah and Amir Salim Bin Ahmed Al Qu'aiti 15th August 1953

No.9

CLAIM PETITION OF HEIRS OF SULTAN HUSSAIN BIN ABDULLAH AND SULTAN MUNASSER BIN ABDULLAH AND AMIR SALIM BIN AHMER AL QU'AITI.

(TITLE AS NO.2)

THE HUMBLE PETITION of the heirs of Sultan Hussain Bin Abdullah and Sultan Munasser Bin Abdullah and Amir Salim Bin Ahmed Al Qu'aiti,

MOST RESPECTFULLY SHEWETH,

1. That in the above case the true facts and aspects are submitted through the separate claim application of the petitioners.

2. That, as explained in the claim application, the final sanction and orders of the

In the Supreme Court of Aden

No.9

Claim Petition of Heirs of Sultan Hussain Bin Abdullah and Sultan Munasser Bin Abdullah and Amir Salim Bin Ahmed Al Qu'aiti 15th August 1953 continued

British Government were that the amount in deposit under reference of this suit is specifically for the petitioners and for no one else. No person or persons other than the petitioners can be allowed either to claim anything out of it nor any such claim can be entertainable or acceptable.

3. That the final orders of the British Government as regards the said amount, as stated in the claim petition, are that the amount will be paid to the petitioner when demanded. Nothing more than a demand of the petitioners is needed for the payment of the amount to them. The case cannot now be dealt with in any way or manner contrary to what was already decided. Any method through which any proceedings or enquiry leading to entertain the claims of persons other than the heirs of Sultan Hussain and Sultan Munasser or to represent any decided issue in a way different to its previous final settlement, is a contradiction and infringement of the final orders and decisions of the British Government and that of the British Crown made previously and therefore, cannot be worked out. The sum being for the petitioners is a question closed and a fact res-judicata some fifty years ago, and therefore the sum was kept for the petitioner since a half century.

4. That almost all the words and sections of the Ordinance of 11th April 1945 made in connection with the sum under reference, in trust for the petitioners and which govern the present case and its proceedings are practically contrary to the stated final orders and decisions of the British Government and contrary to the real facts and aspects of the case and its true records. The Ordinance as a whole leads to turn the case into a different channel altogether and creates for the petitioners great complications and unnecessary litigation effecting very seriously their decided claims. If at all any proceedings through a regular case are required, it should, in principle and as per the true facts of the case, be limited to only the determination of the heirs of Sultan Hussain bin Abdullah and Sultan Munasser bin Abdullah and to the fixation of their respective shares in the amount in accordance with succession law concerned. Such proceedings or enquiry should not go to anything beyond that. If at all, any Ordinance is required in the matter, it should, in principle,

be on the above said basis and on no other. In the Ordinance even the name to the Fund is given incorrectly. This leads to a basis misunderstanding and to a divertion of true facts and records. The sum, in principle, ought to have been called "The trust fund of Sultan Hussain and Sultan Munasser".

Therefore, there is no other way left for the petitioners than to approach the proper authorities for an amendation and correction of the said Ordinance and for any other orders which can be more fit and proper. Such an approach to the authorities concerned is presently being made by the petitioners. The petitioners could come to know about the said Ordinance only a few days ago, and therefore, they were not in a position to deal with the question.

The petitioners, therefore, beg to approach this Honourable Court with the humble request that, in the interests of justice, and with a view to safeguard the petitioners' decided claims in the said amount, and save them from unnecessary litigation, the present proceedings in this Honourable Court, based upon the said incorrect Ordinance, be ordered to be stayed until the settlement of the petitioners request as stated. The petitioners, within a short time, will be able to let this Honourable Court to know direct from the concerned authorities about the proper way of dealing with the case.

The petitioners reserve their right to deal with all the allegations made and claims forwarded by other persons accordingly.

For which act of equity and justice the petitioners shall ever pray.

Dated 15th August 1953.

PETITIONERS

(Sd.) SAIF BIN HUSSAIN ALQUAITI
SON OF THE LATE SULTAN OF
MUKALLA.

In the Supreme Court of Aden

No.10

Claim Petition of Omer Bin Munasser 15th September 1953

No.10

CLAIM PETITION OF OMER BIN MUNASSER

(TITLE AS NO.2)

CLAIM PETITION BY OMER BIN MUNASSER
(PLAINTIFF NO.44)

The Sultan of Mukalla & Shihr's Trust Fund.

Written statement of Omer bin Munasser bin Abdulla bin Omer Al-Quaiti, heir of the said Munasser bin Abdulla.

The defendant (claimant) above-named begs to state by way of written statement as under :-

1. That he is the son of the said Munasser bin Abdulla bin Omer.

2. That as such he is one of the heirs of the said Munasser bin Abdulla.

3. That the said Munasser at the date of his death left him surviving the following heirs arranged in the order of their successive deaths :-

1.	Jamila	Widow	Deceased
2.	Aluyiah bin Munasser	Daughter,	Deceased
3.	Galin bin Munasser	Son	Deceased
4.	Abdul Majid bin Munasser	Son	Deceased
5.	Abdul Hamid bin Munasser	Son	Deceased
6.	Mohsin bin Munasser	Son	Deceased
7.	Nassir bin Munasser	Son	Deceased
8.	Kamar bin Munasser	Daughter	Deceased
9.	Ali bin Munasser	Son	Deceased
10.	Fatima bin Munasser	Daughter	Alive
11.	OMER BIN MUNASSER, (the Claimant)	Son	Alive

4. That the defendant (claimant) claims to be entitled through successive inheritances according to Islamic Law of Succession to 448 shares out of 3328 from the sultan of Shihr and Mukalla's Trust Fund, the subject matter of this Interpleader Suit;

particulars as under :-

PARTICULARS

The defendant inherited:

1.	from Munasser (his father)	182	share out of 3328 of the Fund
2.	" Ghalib (his brother)	58	" " " " " "
3.	" Abdul Majid (brother)	24	" " " " " "
4.	" Abdul Hamid (Fall bros)	110	" " " " " "
5.	" Kamar bin Saleh (mother)	74	" " " " " "
	Total Shares Claimed:	448	

5. The amount claimed, calculated on the Principal sum of the said Fund is Rs.28873/10

RELIEF

The defendant prays that this Honourable Court may be pleased to decree :-

1. Payment to the Defendant the above sum of Rs.28873/10 with interest thereon since 11.11.1908.
2. Such other reliefs as may be deemed just and proper.

(sd.) S.A.Alhabshi,
Advocate, Pleader for Defendant.

DEFENDANT
(Sd.) In Arabic-illegible

I, the defendant above-named do solemnly declare that the contents of para.1,2, and 3 are to my own knowledge and that of rest are stated on information and belief and I believe the same to be true.

(Sd.) In Arabic illegible
DEFENDANT (Claimant)

Solemnly declared at Aden 15.9.53.

Documents filed.

1. Vakalatnama.

Address of defendant for service:
Omer bin Munasser bin Abdulla Al-Quaiti,
C/o Abdulla bin Mohamed Al-Bkri,
Sec. D. St. No.10 House No.9/24,B.
Crater, Aden.

In the Supreme Court of Aden

No.11

Further Pleadings by heirs of Sultan Hussain bin Abdullah and Sultan Munasser bin Abdullah 20th October 1953

No.11

FURTHER PLEADINGS BY HEIRS OF SULTAN HUSSAIN BIN ABDULLAH AND SULTAN MUNASSER BIN ABDULLAH

(TITLE AS No.2)

FURTHER PLEADINGS BY SAIF & 19 OTHERS (PLAINTIFFS - 1 - 20)

FURTHER PLEADINGS

Petitioners:- The heirs of Sultan Hussain Bin Abdullah and Sultan Munasser Bin Abdullah.

The petitioners beg to state that they have filed their claim in details that they are the sole beneficiaries of the Trust Fund, the subject matter of the dispute, and no other heirs of Sultan Awadh Bin Omer or any other heirs or persons have any right, title or interest in the said Fund.

In the alternative, the petitioners submit that the claims of the heirs of Sultan Awadh Bin Omer or other descendants of the same branch together with the claim put forward by the Government of Mukalla, are all time-barred under the Limitation Ordinance.

(Sd.) Saif bin Sultan Hussain and 19 Others.
PETITIONERS

(Sd.) M.H.Mansoor,
ADVOCATE FOR PETITIONERS

We, the petitioners above named, hereby declare that the contents of the above statements are true to the best of our knowledge and belief.

Verified on 20th of October 1953.

(Sd.) Saif bin Sultan Hussain and 19 Others.
PETITIONERS.

No.12

WRITTEN STATEMENT OF SULTAN SIR SALEH BIN GHALEB BIN AWAD.

(TITLE AS NO.2)

WRITTEN STATEMENT OF SULTAN SIR SALEH BIN GHALEB BIN AWAD

In the Supreme Court of Aden

No.12

Written Statement of Sultan Sir Saleh Bin Ghaleb Bin Awad.

January 1954

The abovenamed defendant states as under:-

1. Save and except what is expressly admitted herein the various allegations contained in the Plaint are hereby specifically denied by the abovenamed Defendant. The plaintiffs are put to strict proof thereof.

2. Para.1 of the Plaint.

(a) Admitted that the Award was made in 1903 A.D.

(b) Admitted that the share of Sultan Hussain, Sultan Munasser and Sultan Hussain's mother amounted to Rs.2,14,500/- only.

(c) Denied that the Arbitrator fixed a petty amount for the heirs of Sultan Abdulla as compensation for Sultan Abdulla's properties and Sultanate.

(d) (i) Denied that the sum awarded did not include compensation for Sultan Abdulla's properties including Karkhanas, Jaghirs, Maqtas, etc. situated in Nizam Hyderabad and the properties in Bombay, India. The Plaintiffs are put to strict proof thereof.

(ii) Sultan Abdulla's share in all the properties including karkhanas, Jaghirs,Maqtas, etc. in Hyderabad and those in Bombay, India were included in the said Award and substantial amount was paid to Sultan Abdulla as part of the consideration and the balance was included in the sum awarded by the Arbitrator.

(iii) In addition to the values of the

In the Supreme Court of Aden

No.12

Written Statement of Sultan Sir Saleh Bin Ghaleb Bin Awad

January 1954

continued

properties in Hyderabad, Bombay (India), Shehr, Mukalla, Hadramaut and its dependencies (Arabia) the Arbitrator awarded 50,000 M.T.Dollars (approx. Rs.66,000) to the heirs of Sultan Abdulla not as compensation but by way of assistance and as a matter of sympathy and mercy.

3. Para.2 of the Plaint.

(a) Admitted that Sultan Awad deposited in the Bank Rs.2.14,500/- as per the decision of the Arbitrator.

(b) (i) Sultan Awad was not willing to pay Rs.2,14,500/- to Sultan Hussain and Sultan Munasser as they had already refused to accept the authority of the Arbitrator and also the said Award.

(ii) But Sultan Awad was willing to deposit the said sum in the Bank to the credit of the Political Re-sident Aden, only, as security for his bonafides and on the condition or understanding that the Political Resident would not pay the said sum to Sultan Hussain, Sultan Munasser and Sultan Hussain's mother unless they had accepted the said Award as final and binding.

(iii) The sons of Sultan Abdulla and their heirs did not accept the said Award but, on the contrary, they filed cases for the properties in Hyderabad. Thus Sultan Hussain, Sultan Munasser and Sultan Hussain's mother were not and their heirs are not entitled to the deposited amount.

4. Para.3 of the Plaint.

(a) Denied that the Arbitrator had fixed less sum than the sum actually fixed as share of Sultan Hussain, Sultan Munasser and Sultan Hussain's mother.

On the contrary, the Arbitrator accepted the same value as was fixed by Sultan Abdulla himself for his properties as per his Sale Deed of 1295 Hijri (1878 A.D.). The Arbitrator's valuation of 70,000 M.T. Dollars for Abdulla's share in the properties in Hadhramaut was more than the actual value in 1903. As stated in para. 2 (d) (iii) above the Arbitrator was very liberal towards the

heirs of Sultan Abdulla in awarding them a sum of 50,000 M.T. Dollars by way of assistance and as a matter of sympathy and mercy.

(b) (i) Denied that the sons of Sultan Abdulla petitioned the British Government only for the purpose of revaluation of the properties. The plaintiffs are put to strict proof thereof.

(ii) Soon after said award was made, the British Government in or about July 1903 approved and sanctioned the said Award as final and binding on the parties. Hence, in 1906 the British Government refused to re-open the question for a second time.

(iii) Denied that the final settlement was made in 1906. The Award was approved by the British Government in or about July 1903 and the sum of Rs.2,14,500/- was deposited in the Bank on or about 1.8.1903. If the sons of Sultan Abdulla had accepted the said Award the said sum would have been paid to them in 1906. This was the only and final settlement made in 1903.

(iv) Denied that according to the said Award nothing more than a demand is needed for payment of the amount to the Plaintiffs. The plaintiffs are put to strict proof thereof.

5. Para. 4 of the Plaint.

(a) Admitted that the plaintiffs on or about 7.4.42 for the first time since the date of the said Award made a claim for the said amount. The correspondence mentioned in the said para. of the Plaint are not denied.

(b) Denied that after 1906 the alleged claim of the sons of Sultan Abdulla or their heirs or plaintiffs was ever admitted or acknowledged. If the plaintiffs allege so they are put to strict proof thereof.

(c) Denied that the sons of Sultan Abdulla or their heirs or plaintiffs had or have any alleged right to claim the said sum deposited by Sultan Awad.

6. Para. 5 of the Plaint.

(a) (i) Denied that the said sum of

In the Supreme Court of Aden

No.12

Written Statement of Sultan Sir Saleh Bin Ghaleb Bin Awad

January 1954

continued

Rs. 2,14,500/- was specifically credited for the two sons and the mother of Sultan Hussain. The plaintiffs are put to strict proof thereof.

(ii) As already stated in Para.3 (b) (ii) above the said sum was deposited to the credit of the Political Resident, Aden, on condition or understanding that if the sons of Sultan Abdulla accepted the said Award the said sum was to be paid to them.

(b) (i) Admitted that the sons and the widow of Sultan Abdulla are dead and that the plaintiffs are their heirs.

(ii) Denied that the plaintiffs were or are entitled to claim and receive the said sum. The plaintiffs are put to strict proof thereof.

7. Paras.6 and 7 of the Plaint. are not denied.

8. Para.8 of the Plaint.

(a) (i) Denied that the Plaintiffs did not make any claim to their shares in the properties of Sultan Abdulla as covered by the said Award. The plaintiffs are put to strict proof thereof.

(ii) In or about July 1903 the British Government approved and sanctioned the said Award as final and binding on the parties.

(iii) Sultan Hussain and Sultan Munasser refused to accept the said Award.

(iv) In or about 1909 in the Inam Department, Hyderabad (India) Sultan Hussain and the heirs of Sultan Munasser filed an application against Sultan Awad for one-half share in the Jaghirs and Maqtas and also in the income.

(v) The said Jaghirs and Maqutas were covered by the said Award. The heirs of Sultan Awad pleaded the Arbitrator's Award.

(vi) Sultan Hussain and the heirs of Sultan Munasser in their Rejoinder dated 9th Ardibehest 1321 Fasli (about 1911 A.D.) inter alia stated that the decision of the Arbitrator was not given in proper legal way and moreover the heirs of Sultan Abdulla did not accept it.

(vii) Mr.A.Y.Dunlop, the Director General of the Revenue Department in his Judgment dated 15.8.1913 held "An Award given in Arabia can not have force in Hyderabad in connection with sovereign grants which are entirely at the disposal of His Highness."

(viii) Again by their application dated 14th Bahman 1331 Fasli (about 1921 A.D.) Sultan Hussain and the heirs of Sultan Munasser stated to the effect that the said Award was rejected by H.E.H. the Nizam as not to be considered at all and that the same was not tenable under the Atiyat Rules.

(ix) The said Award was thus disregarded by the Nizam's Government and Sultan Awad's heirs were ordered to pay Rs.600/- per month to the heirs of Sultan Abdulla and they including the Plaintiffs have already received from the heirs of Sultan Awad more than Rs. 1,46,475/-. Besides, Sultan Awad and his heirs had to incur huge expenses for their defence.

(b) (i) Denied that the said Award is still valid and enforceable. The Plaintiffs are put to strict proof thereof.

(ii) Denied that the plaintiffs are entitled to claim the amount deposited by Sultan Awad. The plaintiffs are put to strict proof thereof.

(iii) Sultan Hussain and Sultan Munasser and their heirs (including plaintiffs) did not only repudiate the said Award but also by such repudiation received benefits by order of the Inam (Revenue) Dept., Hyderabad, and hence they are stopped to allege the said Award to be final and enforceable.

(iv) The Hyderabad Government set aside or disregarded the said Award in connection with the Jaghirs and Maqtas and hence the said Award is no longer valid and enforceable.

(v) Alternatively, the plaintiffs alleged claim for the sum deposited by Sultan Awad on or about 1.8.1903 is barred under the Limitation Ordinance.

In the Supreme Court of Aden

No.12

Written Statement of Sultan Sir Saleh Bin Ghaleb Bin Awad

January 1954

continued

9. Paras.9 and 10 of the Plaint.

(a) Denied that the Government of Mukalla is not entitled to a refund of the said sum together with all profits. The plaintiffs are put to strict proof thereof.

(b) Denied that the Government of Mukalla has no locus stand in this suit and that the claim of the Government of Mukalla is neither entertainable nor admissible. The Plaintiffs are put to strict proof thereof.

(c) Denied that the Government of Mukalla retained in its possession more valuable properties of Sultan Abdulla. The plaintiffs are put to strict proof thereof.

(d) (i) Denied that the plaintiffs are either sole or joint beneficiaries of the Trust Fund and that the said sum was credited and specified for the plaintiffs. the plaintiffs are put to strict proof thereof.

(ii) Sultan Hussain, Sultan Munasser and Sultan Hussain's mother or their heirs (including the plaintiffs) had or have no legal or equitable ownership or interest in the sum deposited by Sultan Awad. Sultan Awad did not create a trust of Rs.2,14,500/- in favour of Sultan Hussain, Sultan Munasser and Sultan Hussain's mother. The plaintiffs are put to strict proof about trust in their favour.

10. Para.11 of the Plaint is denied.

The plaintiffs except with leave of the Court have no reserved right as alleged in the Plaint.

11. The plaintiffs, for the reasons stated above, are not entitled to the reliefs prayed for in the plaint and therefore, their alleged claim may kindly be dismissed with costs.

12. (a) The amount deposited belonged to the Government of Mukallaas the same was received by Sultan Awad from the Treasury of the Government of Mukalla and immediately paid into the Bank at Aden. Sultan Awad in his capacity as His Highness the Sultan (Ruler) of Shaher and Mukalla (now known as the Government of Mukalla) deposited the

said sum into the National Bank of India Ltd. Aden, as per his letter dated 1.8.1903 a copy of which is produced (No.7 list of documents) by Mohamed Bin Omer and others along with their Claim Petition.

(b) As the sum deposited by His Highness Sultan Awad is not the personal property of Sultan Awad his heirs had or have no claim over it by way of inheritance and they are put to strict proof thereof. On and from 1924 His Highness Sultan Omer claimed that the said sum be refunded to the Government of Mukalla.

13. (a) (i) Before the year 1900 A.D. during the time of Jamadar Omer Bin Awad and Sultan Awad Bin Omer the State was well established and had a very large income by way of taxes, dues and revenues. Sultan Awad and his brothers had only few properties within the State, but they had some properties in Hyderabad and Bombay, (India).

(ii) All the properties which during the administration of His Highness Sultan Awad belonged to the State are now in possession of the Government of Mukalla.

(iii) As the said sum was taken out of the Treasury of the Government of Mukalla and which fact was admitted by Sultan Omer Bin Sultan Awad the said sum together with all interests and profits be refunded to the Government of Mukalla and a decree may kindly be passed accordingly.

In the alternative

If it be held that the heirs of Sultan Awad are entitled to it the Government of Mukalla is entitled to 1/3rd under the Will of Sultan Omer and Sultan Awad and out of the balance the above-named defendant and his sister are entitled to 1/3rd of the said sum and a decree may kindly be passed accordingly.

(Sd.) A.E. Kazi, Advocate

(Sd.) Saleh bin Ghaleb.

I, Sultan Sir Saleh Bin Ghaleb, do hereby affirm that whatever is stated above is true to the best of my knowledge and information.

Verified at Mukalla this day of January 1954.

(Sd.) Saleh bin Ghaleb.

In the Supreme Court of Aden

No.13

Claim Petition of Heirs of Hussain and Munasser.

(Undated)

No.13

CLAIM PETITION OF HEIRS OF HUSSAIN AND MUNASSER

WRITTEN STATEMENT OF SHARFUNISA BEGUM (MOHAMED & OTHERS - DEFENDANTS 3 - 13)

TO THE CLAIM PETITION OF SAIF & OTHERS (PLAINTIFFS NOS. 1 - 20)

(TITLE AS NO.2)

Claim Petition of the Heirs of Hussain and Munasser.

The written statement to the Claim Petition by their heirs of Hussain and Munasser is as follows :-

1. The manner in which the Arbitrator's Award is sought to be interpreted by the petitioners in paragraph one of their petition is not admitted. The award definitely states that Hussain and Munasser be paid a sum of Rs.2,14,500/- if they relinquished all their claims and rights in properties situated in Arabia and India. Hussain and Munasser did neither accept the award nor relinquish their so called claims. They did not, therefore receive the amount deposited by Sultan Awad Bin Omer under the award.

2. If Hussain and Munasser had accepted the award, they could have taken advantage of the Aden Residency letter No.172 dated 8th August 1903, and received the amount of Rs.2,14,500/- deposited. The fact that they did not do so proves our contention that they rejected the award and the amount deposited by Sultan Awad Bin Omer. The heirs of Hussain and Munasser cannot lay claims to a sum which was rejected by their principals.

3. Aden Residency Letter No.7009 dated 20th November 1906 also seeks to persuade Hussain and Munasser to accept the award and receive the amount. But even this advice was ignored by Hussain and Munasser who chose the other alternative of rejecting the award as well as the compensation offered to them and pressed their claims in the properties in India and Arabia. The heirs of Hussain and Munasser are, therefore, debarred from laying their claim to an amount which was rejected by their ancestors.

In the Supreme Court of Aden

No.13

Claim Petition of Heirs of Hussain and Munasser.

(Undated) continued

4. Hussain and Munasser, in contravention of the award claimed their share in properties situated in Hyderabad State, and were successful in getting huge amounts from the estate of Sultan Awad. Having got these amounts and received an annual income in perpetuity, as mentioned in our original plaint, the heirs of Hussain and Munasser are now trying to get the amount deposited under the award. They are thus trying to have it both ways. They rejected the award and got their shares in Hyderabad. Now they are trying to get the amount which their ancestors had refused to accept.

5. We are not aware if the petitioners are the only legal heirs of Hussain and Munasser.

6. We have no knowledge of the facts stated in paragraphs 6 and 7 of the petition.

7. The statement in para.8 is incorrect.Hussain and Munasser did claim their shares in Hyderabad State in contravention of the award which they had completely repudiated. In pursuance to the claims of Sultan Omer and Sultan Saleh, the present proceedings have been instituted.

8. The statement made in paragraph 9 of the petition is incorrect. Sultan Awad and his heirs have every right to the properties as decided by the award.

9. The allegation that the heirs of Sultan Awad bin Omer has no locus standi in this suit is not correct. The amount was deposited by Sultan Awad Bin Omer on condition that this should be paid to Hussain and Munasser if they accepted the award and relinquished their rights and claims in all the properties in Arabia and India. As Hussain and Munasser and their heirs did not accept the award, and acted in defiance of the Arbitrator's decision, they cannot be held entitled to this amount. This fund automatically reverts to the heirs of Sultan Awad Bin Omer, who had deposited this amount in compliance to the terms of the award.

10. The statement in paragraph 11 of the petition is not admitted.

11. The statement in paragraph 12 of the petition is vague. The petitioners should clearly state their reply to the claim presented by R.S. Chenoy, so that definite reply may be given.

In the Supreme Court of Aden

No.13

Claim Petition of Heirs of Hussain and Munasser.

(Undated) continued

It is, therefore, prayed that the petition of the heirs of Hussain and Munasser be rejected with costs and the amount of Rs.2,14,500/- together with its profits and accretions be distributed among the heirs of Sultan Awad Bin Omer. The claim of respondents is within the time prescribed by Limitation Ordinance.

(Sd.) Mohamed bin Omer and 10 Others.

(Sd.) Respondents.

We affirm the facts stated in the above paragraphs.

(Sd.) H.M.Handa, Pleader.

(Sd.) Mohamed and 10 Others. Respondents.

No.14

Written Statement of Mohamed Bin Omer and Others

(Undated)

No.14

WRITTEN STATEMENT OF MOHAMED BIN OMER AND OTHERS.

WRITTEN STATEMENT OF SHARFUNISA BEGUM (MOHAMED & OTHERS - DEFENDANTS 3 - 13) TO THE CLAIM PETITION OF SULTAN SIR SALEH BIN GHALEB (DEFENDANT NO.2)

(TITLE AS NO.2)

CLAIM PETITION BY SIR SALEH BIN GHALEB AS HEIR OF SULTAN AWAD

The written statement to the claim petition by Sultan Sir Saleh bin Ghaleb is submitted as follows :-

(1) Para.1 is admitted.

(2) As regards para.2, the Will of Sultan Omer has no effect on the amount that was deposited for the heirs of Abdulla in payment of their ancestral claim subject to the condition that the heirs of Abdulla do not institute a suit against Sultan Awad or His Will. Further, so far as the petitioners know, the above Will has not been fully acted upon.

Paragraph 3 is admitted.

(4) As regards para.4, the estimated revenue of the Government of Mukalla is not admitted. The amount paid in pursuance of the award come from the private purse of the late Sultan Awad, which included income from Bombay, Hyderabad and the State of Mukalla.

(5) Paragraph 5 is admitted, but it is not admitted that this amount was paid on behalf of the State. It was the practice in those days for the Rulers of Mukalla to draw from the State Treasury as much amount as they desired, after satisfying the normal requirements of the Government. The petitioners deny that there was any hard and fast differentiate in those days between the State Treasury and the private purse of the Sultan, as it exists today since the appointment of the Resident - Administrator in Mukalla.

(6) Para.6 is admitted.

(7) Para.7 is denied. The amount was not paid on behalf of the State. The State Treasury, is a common Treasury of the Sultan and the Government. The petitioners claim the whole amount with interest and accretions, as the amount was the personal property of the late Sultan Awad, to which his heirs, under Muslim Law, are entitled to.

(8) As regards para.8, it is admitted that Sultan Awad made a Will in the year 1893 by which he gifted 1/3rd of all possessions and properties as Wakf for the State of Mukalla. But the amount under dispute was not at all in possession of the late Sultan Awad at the time of his death. So the Will cannot operate on this amount. Besides, this Will has not fully been acted upon.

As regards Para.8 (b), it is definite that the amount of Rs.2,14,500/- cannot and should not be deemed to be the amount belonging to the State and the claim to the extent of 1/3rd also is not acceptable on the strength of the grounds mentioned above.

As regards sub-para.(c) of Para.8, the petitioners admit the claim of Sultan Saleh and his sister to the extent of 1/3rd of the amount. But the petitioners do not admit that Sultan Saleh is entitled to 1/3rd of the 2/3rd amount of the Trust

In the Supreme Court of Aden

No.14

Written Statement of Mohamed Bin Omer and Others (Undated) continued

Fund and the heirs of Sultan Omer to the extent of 2/3rd out of the 2/3rd of the Trust Fund, but they contend that the whole amount belongs to the heirs of the late Sultan Awad out of which 1/3rd goes to Sultan Saleh bin Ghaleb and his sister and 2/3rd belongs to the petitioners (the heirs of the late Sultan Omer).

The petitioners, therefore, pray that the claim of Sultan Awad to the whole of the Trust amount as belonging to the State Treasury or in the alternative to 1/3rd of the Trust amount belonging to the State on the basis of the Will be rejected. The petitioners pray that the whole amount belongs to the heirs of Sultan Awad. Hence Sultan Saleh and his sister be declared entitled to the 1/3rd of the whole Trust amount and the petitioners be held entitled to 2/3rd of the Trust amount with all its accretions and profits thereto.

(Sd.) Mohamed bin Omer
and 10 Others.

(Sd.) H.M.Handa,
Pleader.

No.15

Rejoinder of Saif Bin Sultan Hussain and 19 Others 29th March 1954

No.15

REJOINDER OF SAIF BIN SULTAN HUSSAIN AND 19 OTHERS

(TITLE AS NO.2)

REJOINDER OF THE PLAINTIFFS TO THE REPRESENTATIONS MADE BY SULTAN SALEH BIN GALEB AND THE GOVERNMENT OF MUKALLA.

MAY IT PLEASE YOUR LORDSHIPS :

This Interpleader suit filed by the Financial Secretary of Aden Government has now, after the parties had appeared in Court, become an Ordinary Civil Suit inter se the parties. Sultan Saleh Bin Galib, the Government of Mukalla and Mohammed Bin

Omer and Others, have filed, in the first instance, Claim Petitions and later, Written Statements to the Claim Petitions of the heirs of Sultan Hussain and Sultan Munasser. Since the heirs of Sultan Hussain and Munasser had been made Plaintiffs, there was no occasion for the other parties aforesaid for their Claim Petitions, as they are not made Plaintiffs in the Suit. This fact has given rise to a confusion in the Proceedings in as much as if no Counter is filed to their Claim Petitions and only a Rejoinder to their Written Statements is submitted, according to principles of pleadings, the allegations made by them in their Claim Petitions would be deemed to have been admitted by the heirs of Sultan Hussain and Sultan Munasser. However to clear the situation, this Rejoinder of the Plaintiffs is jointly filed about the claim petitions and written statements of Sir Sultan Saleh Bin Galib and of the Government of Mukalla, which may kindly be considered a rejoinder to their written statements and also a written statement to their claim petitions, if these can be held to be properly filed and allowed to form a part of the record. A separate rejoinder as regards the Claim Petitions and written statement of Mohammed Bin Omer, etc. is also filed in the same way and with the same effect.

THIS REJOINDER OF THE PLAINTIFFS IS AS UNDER:

(1) Save and except what is expressly admitted herein, the various allegations contained in the claim petitions and in the written statements of these defendants which are against any of the statements of the plaintiffs, are hereby specifically denied.

(2) In reply to para.(1) and para.(2) of their Claim Petitions respectively, it is admitted that the sons of Sultan Omer Bin Awadh were (1) Sultan Abdullah, the eldest (2) Saleh Barek Jung, (3) Sultan Awadh, (4) Mohammed, and (5) Ali.

(3) In reply to para (2) and Para (1) of their Claim Petitions respectively, the Will of Sultan Omer is admitted; but, in the Will he made no Wakf for the Government of Mukalla which was not in existence at that time, nor for the people of

In the Supreme Court of Aden

No.15

Rejoinder of Saif Bin Sultan Hussain and 19 Others 29th March 1954 continued

Mukalla as Mukalla was acquired by Sultan Abdulla, long after the death of his father. The Wakf was for the management of his Estate; but this Wakf was never acted upon and never, at any time, any part of the property or its income were separated or used for the purposes of the said Wakf.

(4) In reply to para (3) and para 2,3,4 (a) and 5 of their Claim Petitions respectively, it is admitted that Mohammed and Ali received their shares, parted with all their interests and executed deeds of relinquishment. It is also admitted that the remaining three brothers, Sultan Abdullah, Saleh, Barak Jung and Sultan Awadh, kept on joint and they had also an agreement of equal partnership together.

(b) Admitted that, as per the Award of the Arbitrator, it was held that Sultan Abdullah sold his share to his brother, Sultan Awadh.

(c) Admitted that, Saleh also received his share and parted.

(5) (a) In reply to para 4 and (paras 3 and 8(ii)) of their Claim Petitions respectively, it is submitted that after the death of Sultan Omar Bin Awad, it was Sultan Abdulla who succeeded him as the Chief and Sultan of the entire State and not Sultan Awadh, his younger brother.

(b) The Plaintiffs know nothing about the stated income of the Government of Mukalla nor this is relevant to the objects of the present case.

(6) In reply to para.5 and (para.6 (c)) of the claim petitions respectively, it is submitted that, in pursuance of the Award, Sultan Awadh deposited with the British Government of Aden, Rs. 2,14,500/- in 1903 to be paid to Sultan Hussain, his mother and Brother. The Plaintiffs do not know from where this amount was obtained by Sultan Awadh and this is immaterial and irrelevant to the case.

(7) In reply to Para.6 and 7 of their claim petitions respectively and to similar statements made in their written statements, it is submitted that these statements are all incorrect and not admitted by the Plaintiffs. Whether Sultan

Hussain and Sultan Munasser had accepted the Award or not does not legally affect the merits of this case because the ultimate decision of the British Government held the Award to be final and binding upon the parties and the amount shown in the Award to be payable to the heirs of Sultan Abdullah. Out of the amount stated in the Award, this amount under reference was, therefore, obtained by the British Government from Sultan Awadh and kept in deposit with the Government of Aden to be paid to Sultan Hussain, Sultan Munasser and mother of Sultan Hussain specifically.

(b) the question of Jagirs, as a whole, does not come under the Award and the Jagirs were never covered by that.

(c) In reply to all allegations submitted by the defendants concerning Jagirs, and made against the plaintiffs, assummed up account of the entire problem is given at the end of this rejoinder.

(d) That Sultan Hussain and his brother never forfeited their rights to claim the amount in deposit. They never violated the terms of the Award and, after the British Government made them to understand that the said Award cannot be objected to and was finally accepted by her, Sultan Hussain and Sultan Munasser never afterwards claimed possession of the immovable properties covered by the Award nor they ever claimed any refund or return of the cash, jewellery or other movable properties mentioned in the Award, from Sultan Awadh nor from his heirs. All these properties movable and immovable have ever since been in the possession of Sultan Awadh and his heirs, and many are also now in the possession of the Government of Mukallas, as admitted by her in the claim petition para.8 (ii), the defendants since been enjoying these properties, their income thereof together with the rights of Chieftainship of Sultan Abdullah. It is therefore, not correct to say that the Award was not acted upon or not adhered to by Sultan Hussain and Sultan Munasser.

(8) (I) In reply to para.7 and 8 (a) of the claim petitions of these defendants respectively, it is submitted that in his para. 7,

In the Supreme Court of Aden

No.15

Rejoinder of Saif Bin Sultan Hussain and 19 Others 29th March 1954 continued

Sultan Saleh made the frank admittance of the fact that the heirs of Sultan Awadh cannot claim anything out of the amount under reference. His claim, therefore, through his own confession alone, is liable to be dismissed. The rest of his para. does not concern him and, no reply is called for.

(I) (a) The claim of the Government of Mukalla that she is entitled to the refund of the suit amount and to its profits, is untenable, not only on the ground already stated but also on the following grounds :-

(b) Sultan Awadh who was a party to the said sale and the Award, had, at the time of payment of the sum, no separate treasury from that of the State. He was the sole authority over the State and its treasury and had full disposing power. Even, assuming without admitting, that he paid the amount out of the State Treasury while himself having another, does not affect the merits of the case.

(c) Even if it is proved that Sultan Awadh had no authority to make such payment out of the state Treasury, the present Government of Mukalla, which was formed only recently, and Sultan Saleh Bin Galeb cannot now advance this fact in support of a claim for a refund of the suit money to the said Government. This is a matter between the Government of Mukalla, if any, and between the heirs of Sultan Awadh Bin Omer. The Government of Mukalla can, in the circumstances, only claim this amount from the heirs of Sultan Awadh, or, in the alternative, claim possession of the properties purchased with the amount. The properties of Sultan Abdullah being once delivered to Sultan Awadh, no such contention can be raised against Sultan Abdullah nor against his heirs in the present suit.

(d) Even, assuming without admitting, that Sultan Awadh had taken the money out of the State Treasury under a fraud for his own personal transactions,the present Government of Mukkalla which was not in existence then, cannot now claim the amount retrospectively or from the Plaintiffs. Neither the said Government can claim the amount by nullifying the sale. She can only see her own way to proceed against the heirs of Sultan Awadh and not against the Plaintiffs.

(9) I. In reply to para.8 and para.9 of the claim petitions of the two defendants respectively, it is submitted that the Will be Awadh Bin Umer is quite irrelevant to the case and the Plaintiffs know nothing of it.

II. The Plaintiffs deny any right or claim of Sultan Saleh, his sister and other heirs of Sultan Awadh in the amount in question. The Plaintiffs also deny any right or claim or refund in the said amount to the Government of Mukalla.

III. The claims of Sultan Saleh and of the Government of Mukalla are very curious. They are in possession and enjoyment of the properties and are not prepared to return them back to the Plaintiffs and yet they prefer a claim to the sale proceeds of the same. It will be against all principles of justice and equity if, in these conditions, the sale proceeds of these properties which they are holding since 78 years, be refunded to them. To claim the principle amount in deposit, the condition precedent for the defendants will be the return to the plaintiffs the entire corpus intact and to claim its profits they will have first to pay back the total income they obtained since the date of the sale from 1295 Hijri.

(10) I. In reply to paragraph (2) (d) I and II of their written statements it is submitted that the facts stated therein are not correct and, therefore, not admitted by these Plaintiffs.

II. The question of Jagirs, as stated above, is dealt with at the end of this rejoinder.

(11) In reply to paragraphs (8) (b) (V) of their written statements, it is submitted that:-

(a) The claim of the plaintiffs is not time barred;

(b) that the Political Resident at Aden, on behalf of the British Government, in his Letter No.7009 dated the 25th November, 1906, have expressly made the decision of the Government clear that the amount will be paid to Sultan Hussain

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No.15

Rejoinder of Saif Bin Sultan Hussain and 19 Others 29th March 1954 continued

and Munasser whenever demanded and in view of which the question of limitation does not arise against the plaintiffs.

(c) that no question of limitation arises in this suit against the plaintiffs in as much as the Government of Aden having admitted the fact that the money is in deposit as a Trust for Sultan Hussain, his mother and brother and that the Government having acknowledged this is willing to pay the amount to the plaintiffs.

(d) that the very issue of the Ordinance in this connection and the fact that the Government of Aden has filed this Interpleader Suit about the said amount, on the only demand of the Plaintiffs, is an acknowledgment and also a promise to pay the sum to the Plaintiffs who are legally entitled to and there can be no limitation bar against them.

(12) On the other hand, the claim of the Defendants in the said amount, is barred by limitation on the following grounds :-

(a) the admission of the Trustees that the suit money is held in Trust for Sultan Hussain, his brother and mother and will be paid to them whenever they pleased, is a clear denial of the rights of these defendants in the suit money. This denial counts from August 1903 through the letter of the Honourable the Resident, and the claims of the defendants are equally time barred.

(b) there is no acknowledgment in favour of these defendants by the Trustees to give a fresh period of limitation.

(13) In reply to all allegations of the defendants made in their claim petitions and written statements, against the plaintiffs as regards Jagirs and Jagir Proceedings etc. the plaintiffs submit as under :-

I. That the Award made by Ahmed Bin Salim was based on a Sale Deed said to have been executed by Sultan Abdullah in favour of Sultan

Awadh. Both the Deed of Sale and the Award have not been produced before this Honourable Court. A translation of the Award has been filed by the Financial Secretary. The Plaintiffs call upon the defendants to produce these documents in original. A perusal of these documents will clearly evidence the fact that the properties alleged to have been sold by Sultan Abdullah, consisted of cash, Jewellery, Arms, Animals, and other movable and immovable properties which he owned at that time. The Jagirs and Inam Makhtass (the Crown Grants of the Nizam) situated in Hyderabad State which were not owned by Sultan Abdullah and were never considered a part of his own property, were not mentioned nor included in both of the documents referred to above; as these cannot and could not be considered a part of the sold corpus.

II. The Jagirs and Inam Makhtass do not come under the category of immovable properties owned by any person. These are simply Crown Grants and Crown property the profits of which can be enjoyed by the Donee as long as he is alive. They are not transferrable nor can be, in any way mortgaged or charged by the Donee in as much as the ownership of these vests always in the Crown. As a consequence of the peculiar characteristic of these Crown Grants, at the death of the Donee, they revert to the Crown and can, if the Donor desires, be redonated to the heirs of the deceased Donee or to any one of them to the exclusion of other heirs. The Crown has also the full authority and discretion to refuse to make a grant of these in favour of any heir to the deceased Donee and to grant them to some other Stranger altogether or to keep them back to the State without being granted. These are not even liable to be attached in an execution of a Court Decree about the debts of the Jagirdar, nor the principles of personal law governing the common succession of the Jagirdar, are made applicable to their proceedings. It will thus be seen from the foregoing characteristic of these Grants, that they never come under the category of properties owned by the late Sultan Abdullah and which were or could be sold to Sultan Awadh.

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III. When Sultan Hussain and his brother wanted to enter Hyderabad, Sultan Awadh made objections on the grounds that they were coming to create unrest and trouble in the State. After this was found to be untrue and the sons of Sultan Abdullah were permitted to come to Hyderabad, the second objection of Sultan Awadh was that they should not be allowed to institute any suit or claim against him, as he said this was barred by the Award of the Arbitrator. He moved this question with the British Government in particular. The problem was taken up, by the political Departments of the British Government and of the Nizam's. Investigations were made and the British Government ultimately came to the conclusion that the Jagirs and Inam Makhtass in Hyderabad were not covered nor governed by the Award or by the Sale Deed and that the sons of Sultan Abdullah were at full liberty to institute any claim about these against Sultan Awadh. The effect of both the sale Deed and the Award was held to be limited only to the personal and private properties of Sultan Abdullah and not to the Crown Grants of Hyderabad State. As regards the private and personal properties of Sultan Abdullah, his sons were definitely prohibited from instituting any claim about them against Sultan Awadh. This decision of the British Government was intimated to the Nizam's and, accordingly, permission was granted to Sultan Hussain and to the son of Sultan Munasser (since Sultan Munasser died by that time) to institute proceedings to substantiate their claims in these Crown Grants in the Court of Hyderabad. All these facts prove the contention of the plaintiffs that the Jagirs and Makhtass were never covered by the Award under reference: (Vide opinion of H.K. Sir Faredoon-ul-Mulk, President of the Executive Council, Nizam's Government, submitted herewith).

IV. That the final conclusion of the enquiry to the claim of Sultan Abdullah's heirs in the Jagirs and Makhtass was, that Sultan Abdullah never had any right in these since the very beginning as he was never made a Donee by the Nizam. The claims of Sultan Hussain and sons of Munasser, were, therefore, rejected, (Vide the final decision of the Chief Justice, of the Hyderabad High Court and the Ferman (King's Order in Council) dated 7th Rabeulawwal 1348 Hijri, copies of which are hereby submitted).

V. Plaintiffs further submit that, to the Jagirs claim of the heirs of Sultan Abdullah, the counter of the heirs of Sultan Awadh was also based on the grounds that the Jagirs and Makhtass were never granted to Sultan Abdulla and that Sultan Abdullah had never any right in them. Heirs of Sultan Awadh went to emphasise the fact still further by stating that all the property situated in Nizam's Dominion are exclusively theirs and that Sultan Abdullah never had in these any title of right. (Vide para. 4 and 5 of the said rejoinder). This is the rejoinder filed by some of the defendants on one hand and referred to by some on the other. That even this said rejoinder never said anything specifically that the Jagirs and Makhtass were included in the Award or in the Sale Deed. The statements made in this rejoinder of the heirs of Sultan Awadh not only substantiates the statement of the plaintiffs in this connection, but also acts as an estoppel against the statements of all the defendants in this suit made to the contrary.

VI. Notwithstanding the fact that the claim of the sons of Sultan Abdullah in the said Jagirs and Makhtass were disallowed on the ground that they nor their father ever had any right in them and not on the ground that they were sold to Sultan Awadh, H.E.H. the Nizam, under his own personal authority as a sole owner and disposer of such Grants, granted to the Heirs of Sultan Hussain and Sultan Munasser, out of the Jagirs only and excluding Makhtass, a small sum of allowance. These allowances were not on the merits of a title or right but merely as a personal gift and a fresh grant on his own part. Such a gift of allowance was also made to the heirs of Mohammed and Ali alike, who long before had obtained their shares and parted with all their inherited rights out of the entire property, as explained in the preceding paragraphs of this rejoinder and as admitted by the defendants themselves. This further still substantiates the fact that the Crown has the absolute authority to grant or dispose of the Crown Grants as it pleases.

The contention of Sultan Saleh and of the Government of Mukkalla that, by instituting a claim in the Attiyat Department of Hyderabad

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State and by getting some allowances the heirs of Sultan Abdullah have infringed the terms of the Award is absolutely and clearly untenable in view of the facts disclosed above.

VII. There is yet another important factor in respect of the Jagir problems worth taking into consideration by this Honourable Court. This is a letter written by Sultan Saleh Bin Galeb (Nawab Saif Nawaz Jung) and with his own pen. The letter is to a person named Jamaluddin who was acting as an intermediary for a compromise between the parties. It was written by Sultan Saleh on behalf of himself and his late uncle, Sultan Umer, at a time when the latter was the Sultan of Mukalla. This letter was posted from Aden Post Office under registered acknowledgement Cover No. R-501 in or about 6th or 16th April 1927.

Sultan Saleh Bin Galeb made it clear in his own writing that the Plaintiffs can get the money in deposit with the Government of Aden and also they can have a monthly allowance of Rs. 1,000/- out of the Income of the Jagirs of Hyderabad. This further supports the contention of the plaintiffs that the suit amount is not and could not be a consideration for a share in Jagirs and that the question of Jagirs is irrelevant to the Trust Fund under reference of this case.

Besides, the letter is a tacit acknowledgement of the claim of the plaintiffs by both Sultan Saleh and Sultan Umer. It is also another estoppel against the defendants'

statement now made about the Jagir affairs.

A photograph of the said letter together with that of its original cover is herewith submitted and the original will be produced at the time of evidence. Some other papers of the Revenue Court of Hyderabad State relating to the said letter are also filed in support of the statements of the plaintiffs.

(14) The Plaintiffs reserve their right, if they deem necessary, of filing a further written statement in connection with the documents of List "A" annexed to the Written Statements of these defendants when the same are produced before this Honourable Court.

FURTHER GROUNDS

(15) In view of the submissions made above and in the claim petition of the plaintiffs, the claim of Sultan Saleh and of the Government of Mukkalla, cannot be entertained in this suit and, as such, they are liable to be dismissed at the preliminary stages before the rights of the heirs of Sultan Hussain & Sultan Munasser interse are investigated and before any further steps are taken by this Honourable Court.

It is, therefore, prayed that :-

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(1) the claim of the plaintiffs be decreed as prayed for in their claim petition and the claim of those defendants be dismissed;

(2) the costs of the suit be allowed to the plaintiffs.

(Sd.) Saif bin Sultan Hussain and 19 Others

PLAINTIFFS.

We, Saif bin Sultan Hussain and others, heirs of Sultan Hussain and Sultan Munasser, as named in the Claim Petition, the plaintiffs in the above suit, do hereby declare that the facts stated above in paragraphs (1) to (15) are true to the best of our knowledge and belief.

(Sd.) Saif bin Sultan Hussain and 19 Others.

PLAINTIFFS.

(Sd.) M. H. Mansoor,

for Plaintiffs.

29. 3.54.

No. 16

REJOINDER of SAIF BIN SULTAN HUSSAIN and 19 OTHERS

(TITLE AS NO.2)

REJOINDER OF THE PLAINTIFFS TO THE REPRESENTATIONS MADE BY MOHAMMAD BIN UMAR AND OTHERS HEIRS OF SULTAN UMAR BIN AWAD

MAY IT PLEASE YOUR LORDSHIPS:-

This Interpleader Suit filed by the Financial Secretary of the Aden Government has now, after the parties had appeared in Court, become an ordinary Civil Suit interse the parties. Sultan Saleh Bin Galib, the Government of Mukkalla and Mohammad Bin Umer and others, heirs of Sultan Umer have filed in the first instance claim petitions and later, written statements to the claim petition of the Heirs of Sultan Hussain and Sultan Munasser. Since the heirs of Sultan Hussain and Sultan Munasser had been made Plaintiffs, there was no occasion for the other parties aforesaid for their claim petition as they are not made plaintiffs in the suit. This fact has given rise to a confusion in the proceedings in as much as if no counter is filed to their claim petitions and only a rejoinder to their written statements is submitted, according to the principles of pleadings, the allegations made by them in their claim petitions would be deemed to have been admitted by heirs of Sultan Hussain and Sultan Munasser. However, to clear the situation, this rejoinder of the plaintiffs is jointly filed about the claim petitions and written statements of Mohammad Bin Umar and other heirs of Sultan Umar, which may kindly be considered a rejoinder to their written statement and also a written statement to their claim petition if this can be held to be properly filed and allowed to form a part of the record. A separate rejoinder as regards Sultan Saleh and the Government of Mukkalla is filed in the same way and with the same effect.

THE REJOINDER OF THE PLAINTIFFS is as under:

(1) Save and except what is expressly admitted herein, the various allegations contained in the

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claim petition and the Written Statements of these defendants which are contrary to any of the statements made by the plaintiffs are denied specifically.

(2) In reply to Para (1) of their claim petition, the geneological table, as far as it differs from the table submitted by the plaintiffs, is not admitted.

(3) Para (2) of the claim petition is admitted.

(4) In reply to para (3) of the claim petition, it is admitted that the dispute was referred to an Arbitrator.

(5) In reply to para (4) of their claim petition, it is admitted that the Arbitrator gave an Award, but it is not true to say that the entire sum he, calculated to be paid to the heirs of Sultan Abdullah, was Rs.2,14,500/-. The sum of Rs.2;14,500/- was only a part of the amount shown by the said Arbitrator, and it is meant for Sultan Hussain, Sultan Munasser and the mother of Sultan Hussain only.

(6) In reply to para (5) of their claim petition, it is admitted to the extent that the British Government held the Award to be final.

(7) In reply to paragraph (6) of their claim petition, it is admitted that Sultan Awadh deposited with the British Government the sum shown.

(8) In reply to para (7) of their claim petition, it is submitted that the Court has not summoned Mohammed Bin Umer and his other partners mentioned in the claim petition under reply. To say that no other persons than the heirs of Sultan Awadh can be a party in the suit is emphatically denied by the plaintiffs. Heirs of Sultan Awadh have no locus standi at all, and, as such, they cannot in principle appear as a party in the suit.

(9) In reply to para (8) of the claim petition and to paras (1) to (3) of their written statement, it is submitted that Sultan Awadh deposited the amount on the understanding that the sons of Sultan Abdullah and their heirs are not to claim anything in the private and personal properties of Sultan Abdullah situated in Arabia or India, owned by him at that time. It is admitted that the Government of India (the then British Government), has also

approved of this agreement; but it is absolutely incorrect to say that Sultan Hussain and Sultan Munasser sons of late Sultan Abdullah, have, at any time, contravened the terms of the Award given by the Arbitrator or the understanding on which the amount was deposited with the Government of Aden. The application of Sultan Hussain and the heirs of Sultan Munasser in the Inam Department of the Hyderabad Government for a claim in Jagirs was, in no way, in contravention of the said Award, in as much as the Jagirs are Crown Grants and properties of the Nizam. The ownership of these cannot be claimed by any one else. They are not and cannot be personal properties of the Jagirdar, and as such, were never affected by the Award. These are not mentioned in the said Award. Besides the Award itself covers only the private properties movable and immovable owned by Sultan Abdullah, the rights of Chieftainship and not the Jagirs which, according to their Laws governing the Crown Grants, are not personal or private properties of any one other than the Nizam. Sultan Hussain and heirs of Sultan Munasser, in their rejoinder mentioned in para under reply, claimed that the above Award, as far as the question of Jagirs and Crown Grants is concerned, is not effective. This declaration cannot, in any way, derogate to their rights accruing under the Award and to their claim to the amount deposited with the Aden Government in respect of the share of their properties excluding the Jagirs. The statement of the plaintiffs is further substantiated by the fact that Sultan Hussain and heirs of Sultan Munasser or the heirs of both, have never claimed their charges in the properties covered by the said Award at any time, after the Award was made & the money deposited.

It is further submitted that the heirs of Sultan Abdullah instituted a claim as far as these Crown Grants situated in Hyderabad State only after the express permission of the British Government and after the British Government had acknowledged the fact that Jagirs and Crown Grants are never covered or effected by the Award under reference. The British Government, before the institution of the Jagir claim by the sons of Sultan Abdullah came to the conclusion that the Award affects only the personal and private properties of Sultan Abdullah, and as regards these, the sons of Sultan Abdullah were prohibited from instituting any claim against Sultan Awadh; taking these, in particular, to be covered by the Award.

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The British Government has approved of this Award and declared it to be final and binding upon the parties and has given a clear understanding that his amount is in Trust for Sultan Hussain, Sultan Munasser and mother of Sultan Hussain and, accordingly to their heirs only and also made clear the fact that they can claim payment of it at any time they please. No doubt, Sultan Hussain and Sultan Munasser were not satisfied with the said Award; but, after the approval and sanction of the British Government they adhered to it. They have, at no time later, taken any action to press or prosecute their original claim in contravention to the terms and conditions of the Award in question.

(10) That, in reply to paragraph (9) of the claim petition and paras. (4) and (7) of the Written Statement, it is submitted that by presenting the application referred to in para (8) of the claim petition, the heirs of Sultan Hussain and Munasser have never contravened the terms and conditions of the said Award as has been explained in the proceeding para of this counter. The fact that the Government of Hyderabad in Inam Department (Attiyat) having granted a maintenance to the heirs of Sultan Hussain and Sultan Munasser, does not in any way, effect the rights of the heirs of Sultan Hussain and Sultan Munasser to the amount in deposit under the said Award.

The Hyderabad Government in Inam Department (Attiyat), after long protracted enquiry, have refused to give a share in the Jagirs to Sultan Hussain and to the heirs of Sultan Munasser, as it was finally held that Sultan Abdullah was never a Donee and never had any right or claim in the said Crown Grants. This fact was also admitted by the sons of Sultan Awad in the Attiyat case. The confession of Sultan Galib and Sultan Omar was that the Jagirs and other Crown Grants were exclusively theirsand granted to them alone and never to Sultan Abdullah. This admittance is in the same rejoinder of the said sons of Sultan Awad, filed by the defendants in the present case which is, by itself, a contradiction of their present allegations. It works also as an estoppel against them.

Only a small sum or allowance from the income of Jagirs alone, excluding the Nakhtass, were granted to the plaintiffs by way of a personal gift and as a fresh grant on the part of the Nizam and

and not as a matter of any legal right or original claim of these plaintiffs in the said Jagirs. Such equal allowances, on the same basis, were also granted to the heirs of Mohammed and Ali, the two other sons of Sultan Umar Bin Awad, although these had, long ago, parted with all their shares they had and executed deeds of relinquishment. The very fact that the heirs of Mohammed and Ali had also been granted maintenances out of the income of the Jagirs, is a further substantiation of the plaintiffs' contention that the proceedings in the Inam Department of Hyderabad Government was not, through any way, in contravention of the Award in as much as that Ali and Mohammed had already got all their shares from the properties of Sultan Umar Bin Awad and they could not, if the Jagirs were considered to be a part of the private properties of Sultan Umar Bin Awad, claim or obtain any maintenance further out of the Jagirs' income.

The statement of these defendants that they have incurred huge expenses to defend the case which was fought for nearly forty years, has no relevancy to the present case. This shows that these defendants are out to deprive the heirs of Sultan Hussain and Sultan Munasser of their rightful share of theirs in the properties of their grandfather. They would not agree to give to the plaintiffs a share in the properties they inherit nor do they agree to give them this deposit amount which is a compensation and price for the more valuable properties they acquired through the sale Deed. It is the most curious and contradictory position they have taken in regard to the claim of the heirs of Sultan Hussain and Sultan Munasser.

The opinion of the Revenue Officers of the Nizam's Government which the defendants have filed or referred to in their claim petition are only interim views and have no value for the legal inference being sought by these defendants. Besides Sir Colonel Trench has made it abundantly clear that the Award and the Sale Deed do not specify the Jagirs and do not cover the sovereign Grants in Hyderabad and that the British Government had acknowledged and admitted this in favour of the Plaintiffs in this suit.

(11) In reply to paragraph (10) of their claim petition, it is submitted that the facts stated therein are not within the knowledge of the heirs of Sultan Hussain and Sultan Munasser and even if

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they are correct they do not in any way, derogate to the rights of the plaintiffs in the money in deposit under investigation of this suit. If the Bombay Government has given any understanding to the heirs of Sultan Umar, against the legal rights of the heirs of Sultan Hussain and Sultan Munasser, such an understanding is not binding on them nor can be enforced in these proceedings and in as much as it is decidedly against the former and final decision of the British Government taken in the matter as explained above. As a matter of fact the refusal to refund this suit amount to the Sultan of Mukalla bars the present claim of his heirs by limitation.

The heirs of Sultan Umar Bin Awad have no locus standi in this suit and cannot claim, any refund of this deposit money nor any share in it.

(12) That in reply to para (11) of their claim petition it is submitted that even if the genealogical table attached to the claim petition under reply can be correct, still the heirs of Sultan Umar Bin Awadh are not entitled to any share in or any refund of the deposit amount as has been illustrated above.

(13) In reply to paras (12) and (13), it is submitted that the facts stated therein have no bearing on the merits of the case as far as the interests of the heirs of Sultan Hussain and Munasser in the deposit amount is concerned.

FURTHER GROUNDS

(14) There is also a letter written by Sultan Saleh Bin Galib on behalf of himself and on behalf of the father of the defendants. It signifies the fact that, to have a share in Jagirs, does not affect the claim of the plaintiffs in respect of obtaining the sum in deposit with the Aden Government.

(15) In view of the submission made above, the claim petition of the heirs of Sultan Umar Bin Awadh cannot be entertained in this suit and it is liable to be dismissed at the preliminary stages before the rights of the heirs of Sultan Hussain and Sultain Munasser inter se are investigated and considered before any Court.

It is prayed, therefore, that the claim of

Mohammed Bin and the others with him be rejected, in toto, and the cost allowed to the plaintiffs.

Dated March 1954. (Sd.) Saif bin Hussain and 19 Others. PLAINTIFFS.

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29th March, 1954 - continued.

We, Saif Bin Sultan Hussain and other heirs of Sultan Hussain and Sultan Munasser, the Plaintiffs in the above suit, do hereby declare that the facts stated above in paragraph (1) to (14) are true to the best of our belief and knowledge.

(Sd.) Saif bin Hussain and 19 Others PLAINTIFFS.

(Sd.) M.H. Mansoor, for Plaintiffs. 29.3.1954.

No. 17

COURT'S DIRECTIONS FOR JOINDER OF ISSUES

No. 17

Court's directions for Joinder of issues.

16th September, 1953.

16/9/53

Court: All such claims as will be considered by this court have now been filed. After perusing the various claims filed I direct that issues be joined between:

Plaintiffs:

1. Saif bin Sultan Hussain Al Quaiti
2. Sultanah Muluk
3. Sultanah Fatimah
4. Omer bin Sultan Munasser bin Sultan Abdulla
5. Sultanah Fatimah
6. Mohamed bin Mohsin bin Sultan Munasser bin Sultan Abdullah.
7. Salah bin Mohsin bin Sultan Munasser bin Sultan Abdullah
8. Ahmed bin Mohsin bin Sultan Munasser bin Sultan Abdullah
9. Galib bin Mohsin bin Sultan Munasser bin Sultan Abdullah
10. Noor Begum
11. Abdul Qavi bin Nasir bin Sultan Munasser bin Sultan Abdullah.

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Court's directions for Joinder of issues.

16th September, 1953 - continued.

12. Munasser bin Nasie bin Sultan Munasser bin Sultan Abdullah
13. Noor Begum.
14. Salehah Begum.
15. Mohamed bin Ali bin Sultan Munasser bin Sultan Abdullah.
16. Esa bin Ali bin Sultan Munasser bin Sultan Abdullah.
17. Saleh bin Ali bin Sultan Munasser bin Sultan Abdullah.
18. Sultanah Begum.
19. Sultanah Fatimah.
20. Amir Salim bin Ahmed Al Quaiti.

Vs.

Defendants:

1. Government of Mukalla
2. Sultan Sir Saleh bin Ghalib
3. Mohamed bin Omer.
4. Saleh bin Omer
5. Hussain bin Omer
6. Awad bin Omer
7. Ghalib bin Omer
8. Ghori Begum
9. Zainab Begum
10. Shargunisa Begum
11. Saleh bin Mohsin L.R. of deceased widow Haliba Begum
12. Ziaminsa Begum d. of Sardar Begum - deceased daughter of Sultan Omer bin Awad through next friend - Mohamed bin Omer
13. Ahmed Ali Pasha, through next friend - Mohamed bin Omer.

No. 18

Discharge of Financial Secretary from suit.

30th September, 1953.

No. 18

DISCHARGE OF FINANCIAL SECRETARY FROM SUIT

30th September 1953

Court: It remains now to discharge the Financial Secretary from any further appearances in the suit. He will be awarded his costs out of the estate.

Issues to be agreed for 7/10/53.

R. Knox-Mawer.

No.19

In the Supreme Court of Aden

No. 19

Court's directions in respect of issues to be tried.

7th June, 1954.

COURT'S DIRECTIONS IN RESPECT OF ISSUES TO BE TRIED

7.6.54.

Court: The issues suggested by counsel have not been found helpful. Many of them are nothing but arguments in favour of their clients' cases. Others concern matters not raised in the pleadings.

Herewith the issues I have framed. Upon application they can be added to, deleted or amended during the course of the case.

Having now perused all the papers submitted to this Court I observe that the possibility exists of the parties finding themselves in difficulties in regard to proof and evidence. It may be that counsel will consult among themselves regarding the possibilities of admissions and kindred matters.

ISSUES:

1. Do the plaintiffs prove that they are entitled to the fund or part thereof by reason of the award of the arbitrator. Syed Ahmed bin Salem?

2. If not the plaintiffs prove that they are entitled to the fund or part thereof by inheritance?

3. Do the defendants or any of them prove that the award is null and void by reason of:-

a) The conduct of the plaintiffs or that of their predecessors in title?

b) Any act of Government?

4. Do the defendants Nos. 3-13 prove that they are entitled to the fund or part thereof by inheritance?

5. Do any of the plaintiffs or defendants prove that their claims made are not barred by the law of limitation?

6. Do the plaintiffs prove that the claims of the defendants are estopped by reason of a letter written by the 1st defendant dated the 16th April 1927?

7. Does defendant No. 1, the Government of Mukalla prove that it is entitled to the trust fund or any part thereof by succession or inheritance?

8. Does defendant No.2, Sultan Saleh of Mukalla, prove that he is entitled to the trust fund or part thereof by inheritance?

9. What orders?

In the Supreme Court of Aden

No. 20

Court Ruling on issue No.5.

3rd August, 1954.

No. 20

COURT RULING ON ISSUE NO. 5

Court: The only possible construction that I can place upon the provisions of sections 4, 5 and 6 of the Ordinance No.18 of 1945 is that the normal rules of Limitation of claims of actions as laid down in the Limitation Ordinance have no application to these proceedings, which are founded upon this special enactment of the Aden Legislature. I answer Issue No. 5, therefore in the negative.

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954.

No. 21

PLAINTIFFS COUNSEL OPENING STATEMENT

Mansoor: I shall now revert to the substance of my claim . Outlines relations between Omer I and the Nizam of Hyderabad.

Omer - founder of Mukalla State. Owned properties in India and Arabia. Died 1865. In particular he owned certain "Jagirs" in Hyderabad.

5 sons

Abdullah Saleh Mohamed Ali Awad daughters

Nature of "Jagirs" outlined. The Nizam transferred these Jagirs to Awad and Saleh while Abdullah was living.

Handa: There is a dispute as to the nature of a Jagir. This fact is also denied. I say Abdulla also received part of the Jagirs.

Court: That will be argued in due course.

Mansoor continues: Mohamed and Ali separated. Took shares in property. Relinquished rights. They had no further interest in the Jagir.

1873. Abdullah, Awad and Saleh entered into a partnership. Record is not available - Remaining property to hold in joint shares of one-third each.

1878. Abdulla said to have sold one-third share to Awad for 186,000 M.T. Dollars.

Saleh took his one-third share and separated. Abdulla died 1888 leaving two sons, Hussain and Munasser.
Saleh died 1880.
Hussein and Munasser claimed one-third share of their father, Abdullah, despite allegation that Abdulla had in fact sold that share to Awad. This is the real origin of dispute.

Prolonged dispute.

Agreed to refer matter - to submit to decision of Arbitrator. Arbitrator is referred to as the "Hansab"

Exhibit I. Secretariat Record. p. 182
(Secretariat Record marked "S.R.")

R.K.M.

Nazi)
Rehman) We accept this as the original and the
Handa) copies as correct translations thereof.
Alhabshi)

Mansoor: The wills of Omer and Awad are also filed. I do not intend to exhibit them at this point because it is only if the plaintiffs fail in their claim that these will become relevant in deciding upon the distribution of the property between the defendants.

I rely upon the following documents, many of which are continued in the Secretariat record. Exhibit 2, Record, p.221.

Handa: This is not admitted to be a letter written by Sultan Awad. No seal appears on it. Mr.Mansoor cannot prove the signature is Awad's.

Mansoor: Also this document Exhibit 3.

Defendants' Advocates: This document is admitted.

Mansoor: Also Ex. 4. Sec. Record. p.243.

Defendants Advocates: Document admitted.

Mansoor: Ex. 5. Sec. Record p.244.

Defendants Advocates: Document admitted.

Mansoor: Ex. 6. Copy only produced.

Defendants Advocates: Admitted subject to production of original.

Mansoor: Ex. 7. Sec. Record p. 319. Enquiry from Acc. General, Bombay. At that time another trust existed but the history of that case is irrelevant here.

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954 - continued.

Defendants Advocates: Document admitted.

Mansoor: Ex. 8. Sec. Record p.322 "This is a new Trust ... styled ... Hokalla's nephews.

Defendants Advocates: Document admitted.

Mansoor: Ex. 9. Sec. Record. p.389.
Ex.10. Sec. Record. p.390.

Defendants Advocates: Documents admitted.

Mansoor: Ex. 11. Sec. Record p.246
Ex. 12. Cert. copy of telegram dated 25th July 1953.
Ex. 13
Ex. 14 (filed by Mr. Handa)

All above admitted by defendants. R.K.M.

Copy Exhibit 15. Letter posted 16th April 1927.

Document not admitted by Defendants. R.K.M.

The original will be produced. It is now in Hyderabad. Jambiddin was an official in the Nizam's Treasury.

Written by present ruler of Mukalla. Defendant 2.

Copy Exhibit 16 - original is in Bombay. Written by legal advisor of plaintiffs in Hyderabad dated April 7th 1942.

Defendants: We do not admit this letter. Where is the original? Admitted subject to argument if Defendants wish at later date.

Ex. 17.
Admitted by defendants.

Copy Ex. 18. Letter 16th January 1945.

Handa: We do not admit this letter is genuine without strict proof. It can go in as an exhibit now but cannot be relied upon without further proof. R.K.M.

Copy Exhibit 19.
Admitted by defendants without production of original.
Copy Exhibit 20.
Defendants: No objection to its production.

Mansoor: I produce certified copies of the proceedings taken in Hyderabad by Munasser and Hussein with a translation.
Exhibited as one bundle, Exhibit 21.

Defendants: Apart from P. 41 this bundle is admitted.

Manda: I wish to check the translation.

Court: You are at liberty to do so. R.K.M.

Mansoor: Exhibit 22 (admitted by all parties)
Exhibit 23 (admitted by all parties)

Court: As it is probable that practically all the documents will in the end be admitted by all parties. I have exhibited each one. There can be individual argument addressed in respect of the authenticity of any one of these documents when counsel seeks specifically to rely upon it in argument. R.K.M.

Mansoor: Reads through Exhibit (1)(No party denies its authenticity) R.K.M.

Refers to the agreement to submit to which Mansab alludes, whereby "the parties are said to agree to abide by his decision".

Mansab then proceeds to set out the cases of each side. i.e. the claim of Munasser and Hussain and the reply and counterclaim of Awad, their uncle.

Mansab's decision and Award - (a) The one-third share had in fact been sold to Awad by Abdulla, father of Hussein and Munasser for 186,000 M.T. Dollars but of that only 46,000 M.T. Dollars had been paid. Balance due to sons of Abdulla - 140,000 M.T. Dollars.

(b) 70,000 M.T. Dollars in respect of Hadramaut property.
(c) 50,000 M.T. "sympathy and mercy".

Awad subsequently deposited 162,500 M.T. Dollars with National Bank of India. This is the money (plus interest) which now forms the subject matter of dispute.

Hussein and Munasser were subsequently forcibly deported from Arabia. Went to Hyderabad. Subsequently filed claim in Court of Hyderabad.

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954

- continued.

This was in respect of Jaghirs which their father had held to which they believed themselves entitled. However Jaghirs are merely gifts for life to the recipient for military service to the Nizam and are automatically revoked at death. A commission was appointed by Nizam. Proceedings continued for 15-20 years. Finally held that Hussein and Munasser had no claim in the Jaghirs. Nizam of Hyderabad accustomed to provide for ancient families. Hussein and Munasser reduced to Miserable state. Therefore the Nizam allocated to them Rs.5250 per year from a Jaghir given to Awad. Nothing done by Hussein and Munasser in India in any way detracts from their vested right to the monies awarded to them under the Arbitration Award.

Having opened my case for the Plaintiffs I now ask that my application for the evidence of certain witnesses to be recorded on commission be granted.

R.K.M.

Court: I can see no reason at all why the first two names in your application, who are plaintiffs in the suit, should not be here in person if their evidence is in your opinion essential. As for the other names, there may possibly be some merit in the application. Assuming that their evidence is so material that the Court feels that it cannot arrive at a proper decision without such evidence, that evidence must be forthcoming. It is appreciated in this respect that these persons may be reluctant to make a special trip to Aden for a case in which they have no interest. As it happens this court has already issued a letter of request for the evidence of the Record Keeper of the Commissioner of the Iman to be taken on commission. It appears to me that it would be not only inconsistent but improper for this court to issue such a request and then promptly proceed to arrive at a decision without waiting for the evidence to be taken as requested and returned here for the Court's perusal. There will therefore be this waiting period and as there must in any case be a considerable delay before I can arrive at a final decision, I think the best course is for me to call upon the other claimants now to put forward their respective cases. This will ensure that the present court days set down for the case are not wasted. As the case proceeds I will better be able to decide upon the necessity for issuing a letter of request for a commission upon Mr. Mansoor's application.

R.K.M.

All advocates agree to this Court.
R.K.M.

Court calls upon Mr. Kazi, for Defendant 2.

Rehman for Defendant 1: "I will rely at this stage in my claim upon the arguments of Mr. Kazi".

Kazi for Defendant 2:

Certain material facts in the story have been omitted by counsel for plaintiffs. Head of family was Sultan Omer, known in Hyderabad as Jamadeder Omer bin Awaz Jabas Jung Shamshiruddanla Bahadur. This was the title of a high post he held in the Nizam's service. Between 1856-1860 he and a small force landed in the Hadramaut and captured Sheban and Hawa. These two cities are at present comprised in State of Shihr and Mukalla. 1862 Sultan Omer made his will. By will, one-third of all possessions were dedicated for dignity of ruler of Hadramaut for allaying wars and for benefit of her subjects. Translation of will filed herewith. Ex. 24.
R.K.M.

All advocates accept documents as a proper translation. No dispute as to validity.
R.K.M.

Provided 2 of 5 sons - Mohamed
Ali might take shares as and when they wished.

Remaining 3 sons to share remainder jointly.
Whoever remained in Hadramaut to look after property there.
Whoever was in Hyderabad to supervise that property.
1865. S. Omer died in Hyderabad.
Mohammed and Ali thereupon took their shares and separated from the other 3. They were living in Hyderabad.
1865 onwards one of sons must have stayed in Hadramaut.
One or two must have stayed in Hyderabad.
No record as to which one stayed there.
1872 Mohamed died.
1867 Awad captured Shehr.
1876 Awad captured Ghail.
1877 Awad captured Hajir.
Later Sultan Abdulla captured Brum and Mukalla (date unknown)
All before death of Abdulla in 1888.

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954 - continued.

The 3 brothers continued to hold possession jointly and made a partnership between them on 24th May 1873.

This Document lost.

28th May 1873 Deed of Declaration made recording that Ali and Mohamed had taken their share of property in Hyderabad.

Amount of shares of remaining 3 brothers stated. Also that 1/3rd property of father was a Stake Wakf.

Copy of this deed only exists.

I do not require to exhibit same.

Mansoor: I wish to inspect this document.

It may be exhibited at a later stage.

21st January 1878.

Abdulla sold his properties in Hyderabad and probably his right in the administration of the Hadramaut possessions to Awad for 186,000 M.T. Dollars. This deed is filed by Handa for Defendants 3-13. Plaintiffs deny its authenticity.

It is a sale deed endorsed by the 1st Political Resident, Aden. Only a certified copy exists.

Exhibit 25 (Copy p. 95 Sec. Record).

(Exhibited subject to argument as to its admissibility) R.K.M.

According to this document Ex. 25 he actually paid 46,000 M.T. dollars.

1880 Saleh died in Hyderabad. His title in Hyderabad was Burq Dowla.

There was no relation between the Arab State and H.M. Government until 1882.

1888 Treaty renewed.

Letter to Political Resident from Sultan Abdulla. p.49-50 of Sec. Record.

The original cannot be traced.

Exhibited 26.

Mansoor: I have no instruction to admit this document.

Court: After perusing Pages 49 et seq in the Secretariat Record, it does appear that the authenticity of this letter was disputed at the time. Furthermore, the original now appears to be completely lost. The translations appearing in the Secretariat Record also vary. Apart from this it does not take us any further in deciding what properties were included in the sale deed - i.e.

whether the Jaghirs in Hyderabad were included or not. I prefer to regard this exhibit as largely unhelpful either way.

R.K.M.

1888 Abdulla died.
Munasser and Hussein were with their father at the time in Hadramaut.
Hussein governed Shehr as agent for Sultan Awad.
Munasser remainder at Hadramaut.
Sultan Awad was at that time in Hyderabad.
1893 Awad made his Will. Exhibit 27.
Copy and translation admitted by advocates for all parties.
Provided one-third as State Wakf.
Two sons, Ghaleb and Omer. Provided for succession.
1896 Awad returned to Hadramaut with Ghaleb and Omer. Reasons: After Abdullah's death in 1888 he being not only sole owner of Indian properties but also ruler of Hadramaut, he required accounts from Hussein and Munasser who had been administering Shihr and other properties in the Hadramaut during his absence.
Went to Mukalla. Dispute between them.
People favoured Hussein and Munasser.
Political Resident tried to placate parties.
Intervention of British Government.
Mansab called in.
Parties agreed to submit to the arbitration of the Mansab.
1901. Awad went on pilgrimage.
Inquiry by Mansab prolonged.
British Government kept Hussein and Munasser in Hadramaut and prevented their going to Hyderabad to present their petition to the Nizam.
Eventually Mansab drew up his award. Exhibit 1 about May 1903.
Claims of Munasser and Hussein set out also the reply of Awad.
Terms of award as outlined by Mansoor are not disputed.

Hussein wrote to Political Resident. Informing him that he had not given authority to Mansab.

Mansoor: I require production of such a letter. We agree that Hussein did not like the award.

Kazi: Pages 3, 4 5 of Secretariat Record.

Court: This only concerns the year 1901. The award of 1903 recites that the parties had submitted to abide by the arbitration. If the Mansab's word is

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954 - continued.

to be believed, then when he made his award there was a submission by all parties and he had the necessary authority to make the award.
When award published all parties were in Arabia.
P.148 Secretariat Record. Ex. 28.
Petition to Viceroy of India by Hussein and Munasser. R.K.M.

All advocates admit copy without dispute.
R.K.M.

Court: There is no mention here of the arbitration agreement.

Kazi: Ref. P.190 Secretariat Record.
26th May 1903. Political Resident interviewed Hussein.
Minutes Exhibit 29.
Hussein refused to accept.
Also a letter Exhibit 30 p.190 Secretariat Record in which Hussein states that he had revoked the Mansab's authority.

Mansoor: I do not object at this stage to the letter going in as an exhibit.

Kazi: There is another letter, Exhibit 31. 28th April 1903. together with a translation thereof from both Hussein and Munasser.

Mansoor: I do not object to this going in at this stage.

Kazi: Also Exhibit 32 and translation dated 27th May 1903. (P.194 Secretariat Record) from Hussein to the 1st A/P.R. Aden. which refers to the cancellation of the Mansab's authority.

Exhibit 33 and translation dated 14th August 1903.
P.248 Secretariat Record.
Exhibit 34. Letter from Political Resident to Hussein and Munasser.
P.254 Secretariat Record.
Exhibit 35. Minutes of an interview with Hussein on 8th October 1903. P.291 Secretariat Record.
Ex. 36. Letter dated 10th October 1903. P.302 Sec. Record.
Ex. 37 P.226 Sec. Record. Letter from Sec.Bombay to Sec. Gov. of India. words "as security for his bonafides".
1909. Hussein and Munasser filed a petition in the Revenue Dept. Hyderabad. Exhibit 38.
(Document and translation not disputed)

Munasser had died in 1906.
Heirs of Munasser were the 7 other applicants.
1910 Awad died. His 2 sons Ghaleb known as Nawaz Jan Nizar Jung Bahadur and Omer were joined as defendants instead of Awad - Application Exhibit 39 (not disputed) R.K.M.

1911 Rejoinder filed. Exhibit 40.

The applicants maintained that they were entitled to half of Jaghirs and Maqtajat (which are similar to Jaghirs). Exhibit 38.
In rejoinder Exhibit 40 para 14 - "decision of the Panchayat" (i.e. the Mansab's arbitration is also wrong".
15th August 1913. Decision of Mr. Dunlop. Exhibit 41. Page 4. If the corpus of the Jaghirs were not disposable by will, the income and profits could be - without Nizam's authority. Certainly Munasser and Hussein acted on this belief - that they could lay claim to them. In any case the Nizam never refused his sanction which was a formality only - compare the Crown Lands Ordinance in Aden.
Comm. of Lands authority necessary. Sovereign is ultimate owner.
1919-20. Again heirs of Munasser and Hussein again filed application. Exhibit 42.
Same grounds. Deed of sale a forgery.
Decision of arbitrator attacked.
4th November 1923. Exhibit 21. translation p.4 of (1)
Conclusions: (1)
Commission appointed.
1925/26 Decision of two of the commission arrived at.
Jaghirs could not be disposed of without consent of sovereign. Therefore heirs of Abdulla could claim no interest through their father in these Jaghirs and Maqtahs.
P. 35 "This opinion of ours is based etc...
A moral burden imposed on Awad's property - re half Jaghirs 3rd Commissioner's judgment not yet obtained.

24th January 1924 Omer, son of Awad, then Ruler of Mukalla wrote to Political Resident, Aden saying that Munasser and Hussein had forfeited their rights because of these suits (Exhibit 14)
Reply dated 30/9/1926, Exhibit 43. Government of Bombay willing to hand back money but heir Saleh objected.
Government of Bombay asked for consent to be obtained of Sultan Saleh.

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel opening Statement.

3rd August, 1954 - continued.

1927. Exhibit 44. Decision of R.C. Trench "prima facie" a good claim.
Recommends an allowance until the Nizam fixes an allowance.
Income of Jaghirs Rs. 1200/- per annum.
Grants Rs. 7200/- per annum to be paid temporarily to heirs of Abdulla by the heirs of Awad.
At end of decision he recommends that any allowance be subject etc... that amount paid will be a first charge against money lying in deposit in Arabia".
Exhibit 45 - Letter authorising payment of the temporary allowance as recommended.

1932. Exhibit 23. Opinion by R.C. Trench. Upon instructions from Nizam as he recommended certain allowances.
Rs. 5250 to each line of the family - i.e. Rs.5250 to the heirs of Abdulla, (Ali and Mohamed). Ali and Mohamed's heirs also came in for a share although Ali and Mohd. had actually been paid off originally.
Exhibit 46. Order from the Assistant Nizam Atiyat for payment of allowances as ordered by H.E.H's Firman.
This is an allowance in perpetuity.
Government of Mukalla claim that it is the successor in title to all these properties including this fund - which was derived from revenues of Shihr and Mukalla.
In the alternative, Defendant (1) claims by inheritance under Sultan Awad's will one-third of the property. This is by occasion of the Wakf set up under his will for the benefit of the State of Mukalla, i.e. the Government of Mukalla.
Although separately represented by Mr. Rehman, the Sultan is only interested in the alternative.
If late Sultan Awad is found entitled to the whole fund - then the heirs must share together with the Government -

1/3rd to Government.

2/3rd remaining - 2/3 to Handa's clients
Balance to Sultan.

R. Knox-Mawer.

In the Supreme Court of Aden

No. 21

Plaintiffs Counsel Opneing Statement.

6th August, 1954 - continued.

6/8/54:

MANSOOR)
ALHABSHI) for Plaintiffs

KAZI for Deft. 1
REHMAN for Deft. 2.
HANDA for Defts. 2-13.

Mansoor: Mr. Kazi did not mention that while Sultan Awad deposited 162,500 M.T. Dollars there remained due from him under the terms of the award a balance of 97,500 M.T. dollars. This has never been paid. In point of fact my clients do not press for the balance. We are only claiming the sum of 162,500 (plus interest) which was actually deposited. R.K.M.

No. 22

No. 22

Defendants Counsel opening Statement.

6th August, 1954.

DEFENDANTS COUNSEL OPENING STATEMENT

Handa: for Defendants 3-13.

Defendants 3-13 are the heirs of Sultan Omer son of Awad. I refer to the genealogical tree.

Exhibit 47 (a) (General tab.)
Exhibit 47 (b) (Plaintiffs)
Exhibit 47 (c) (Defendants)

Their claim is based as follows.

Dispute between Hussein Munasser and Uncle Awad (or Awez). Referred by submission of parties to Mansab.
Award (Exhibit 1)
Approved by Government of Aden and Bombay.
Deposit by Awad in N.B.I.
Transferred to Bombay.
From Bombay to Financial Secretary Aden.
Express understanding that Hussein and Munasser to abide by award and not to claim anything in properties in Arabia or Hyderabad.
In contravention of terms of award Hussein and Munasser brought a claim in the Revenue Dept. Hyderabad for the Jaghirs of their father.
Omer and Ghaleb, sons of Awad, filed a defence.
Reply of Hussein, Munasser's heirs. P. 8 of Exh. 40 repudiated the Mansab's award.

In the Supreme Court of Aden

No. 22

Defendants Counsel opening Statement.

6th August, 1954 - continued.

By filing their petition they clearly repudiated the award.
The decision of Revenue Dept. (by which they were awarded an allowance) expressly disregarded the award of the Mansab. They cannot at one time repudiate the award and also seek to rely upon it.
1924. Sultan Omer requested that trust money be returned to him.
Reply of Government of Bombay, Exhibit 43.
All that Government required was consent of the other heirs of Sultan Awad.
I refer in particular to Exhibit 47 (c) where the claims of Defendants 3-13 can be traced through the family tree.
Refers to Exhibit 48.
This was written by the heirs of Shahzadi Begum - i.e. Omer and Mahboob. Mahboob later died issueless.
I produce copy of Release Deed Exhibit 49.
In fact therefore Shahzadi had no right to any share in property of Awad because of this deed of release executed in favour of her brother Omer.

Regarding the claim of the Government of Mukalla. I admit Sultan Omer I left will, Exhibit 24. This had no bearing on this amount because this merely came from Awad himself during his lifetime - out of his personal estate. Only in 1939 was the Sultan's monies separated from that of the Government. I do not dispute that the present sultan, Defendant 2, is entitled to 1/3rd. We get 2/3rd. i.e. from Omer (1/3rd) and Shazadi (1/3rd). The Will of Awad. Exhibit 27, cannot purport to dispose of this fund because the money had been alienated by Awad inter vivos subject to the condition that Munasser and Hussein abide by the terms of the arbitration.
The Will was made before he deposited the money. The money was paid into the hands of a third party, i.e. Political Resident, Aden, to become the property of Hussein and Munasser only if and when they accepted the award of the Mansab. Until that time it remained his own property.

Mansoor: This is a vital point. We say it became our property from the moment of payment.

Kazi: Despite any submission by the parties to the arbitration, there was no court, no higher authority, which could force the parties to accept that award after it had been made. Awad did accept it and paid this money to a third party (The Political

Resident, Aden). The 3rd party was only to pay the money to the other party if they accepted the award. As they did not in fact accept it, naturally the property in the money remained in Awad.

Mansoor: There is nothing on record to support this explanation. I say that both parties submitted to the arbitration. Both were bound to abide by the award of the Mansab. That award was binding. No one has challenged the award until today. From the day when the award was made Hussein and Munasser had a vested right in the sum awarded. It is immaterial whether any sanctions existed to enforce the award. The parties remained bound by it. Awad was bound to pay the money. Unless the arbitrator's award was set aside, e.g. for partiality etc. it stood and it stands today.
Afterwards Hussein and Munasser refused to accept the award. The British Government acting as a conciliator accepted the payment of the money by Awad into the account of the Political Resident, Aden.
No conditions could be imposed by Awad, he being bound to pay under the award.
He paid unconditionally.
The property became Munasser's and Hussein's.
The Political Resident, Aden, was simply a trustee.
It remained their property whether it lay in the hands of the trustee for centuries.

R.K.M.

Plaintiffs' Counsel's reply on Issue No.2.

Court: I should like to hear Mr. Mansoor on Issue No. 2.

Mansoor: The plaintiffs claim that if they are not successful in Issue No. 1, i.e. that the award of the Mansab still stands - then they are still entitled to this money by inheritance because Abdulla, father of Hussein and Munasser, was not paid the whole of the purchase price and as descendants of Abdulla through Hussein and Munasser, we claim that balance. If the money lying in trust is not ours by reason of the award, it comes to us by inheritance being part of the estate of Abdulla. It is the balance of the price of Abdulla's property which he sold to Awad (140,000 M.T. dollars) plus 70,000 in respect of the Hadramaut property which was also Abdulla's and never sold by him to Awad.
We cannot claim the other 50,000 M.T. Dollars merely through inheritance - only by reason of the award.

Mansoor: I no longer dispute Exhibit 43.

In the Supreme Court of Aden

No. 22

Defendants Counsel opening Statement.

6th August, 1954 - continued.

Handa: I ask for an order of the court to issue requesting the production of Volume 1383 Secretariat Record. Apparently the original deed of sale of which Ex. 25 and P. 90 of this Secretariat Record purport to be translations is to be found in Vol. 1383.

R.K.M.

Court: I agree that this is important. I will make the order. The plaintiffs deny that this Exhibit 25 is a proper translation. No copy of the original Arabic document has been produced in this court.

R.K.M.

Handa: Also in relation to Ex. 26. The original letter appears to be lost. The Plaintiffs deny that Ex. 26 is a correct copy. It is certified as a copy but the court cannot accept that signature. It is better that Hyderabad produce the original. This is only a copy of the translation, not the original.

Court: Again it is in the interests of all parties if an effort be made to have at least a certified copy of the original Arabic letter.

R.K.M.

I would like to hear Mr. Kazi in issue 3(b).

Kazi: If the Jaghirs in Hyderabad were included in the award, then the Nizam of Hyderabad specifically disregarded this part of the award. That rendered it null and void. Such an order could properly be made in Hyderabad in respect of property there. The act of Government referred to is the act of the Nizam in awarding a pension payable out of Hyderabad properties. An award cannot be void in part and valid in part.

Mansoor: I refer now to Exhibit 15, with which Issue No. 6 is concerned.
The defendants require the original to be produced. It is of great relevance. It must be put to the present Sultan who is too old to travel to Aden. Furthermore, the five persons I have listed in my application can each give relevant information regarding this letter.

Court: I am satisfied that in the interests of justice it is necessary for the court to grant an adjournment in this case in order that certain very vital documents might be traced. With regard

to Mr. Mansoor's application for a commission, as there will be a long adjournment in any case, I can see no objection to its being granted in respect of the witnesses listed therein. Mr. Mansoor has stated that in respect of the second name listed (who is one of the plaintiffs) he will be available in Aden to give evidence. So there will be no need to take his evidence on commission.

In the Supreme Court of Aden

No. 22

Defendants Counsel opening Statement.

6th August, 1954 - continued.

Orders: (1) Letter of request as prayed by Mansoor.
(2) Order to Secretariat to produce Volume of Record Numbered 1383.
(3) Case adjourned for mention only to 23/8/54)

R.K.M.

23/8/54

Court Notes

23rd August, 1954.

Mansoor: Handa: Rehman:

By consent hearing will be fixed for a date in 1955 when the case can be finally disposed of. Date to be fixed on 30/8/54.

R.K.M.

30.8.54

30th August, 1954.

Counsel for parties.

Hearing 12, 13, 14 and 15 April 1955.

R. Campbell.

12/4/55

12th April, 1955.

Commission still delayed in India.
Final dates for hearing 19th-22nd July.

R. Knox-Mawer.

27/6/55

27th June, 1955.

Mansoor: Alhabshi: Kazi: Rehman: Handa: Taraporwala.

Court: Certain of the parties to this suit have, over the years, for reasons best known to themselves, attempted to delay the final decision of the matters in issue by all manner of vexatious ways. It would appear from the various messages currently arriving from Hyderabad, India, that similar attempts are still being made. This court has therefore deemed it appropriate to announce in

In the Supreme Court of Aden

Court Notes

27th June, 1955 - continued.

the presence of the advocates representing all parties that in the interests of justice no further delay will be tolerated. This suit will be heard and finally decided at the hearing commencing July 19th 1955, whether the commission which the court requested might be executed in Hyderabad has been taken or not. A telegram to this effect has been despatched to the Registrar of the High Court, Hyderabad.

R. Knox-Mawer.

6th July, 1955. 6/7/55:

Application for adjournment of hearing, presented by Mr. M.H. Mansoor, pleader for the Plaintiffs.

Notices issued to the Pleaders for the opposite party for 11/7/55.

11th July, 1955 11/7/55:

Mansoor: Alhabshi: Kazi: Rehman: Handa:

Court: I have read the application filed herewith. The hearing of this suit was fixed several months ago. The calendar of the Supreme Court is an exceedingly busy one and to attempt to find fresh dates for this hearing at this stage would not only seriously affect the whole year's programme but would probably entail a further delay of 2 years before I would again be available, as acting Judge, to hear and finally decide this case. In any case, I can see little serious merit in the application made. Application refused. All parties notified. Suit will be finally disposed of at hearing commencing July 19th.

R. Knox-Mawer.

12th July, 1955. 12/7/55:

Application filed by Mansoor on behalf of Saif bin Sultan Hussain.

16th July, 1955. 16/7/55:

Commission returned from Hyderabad containing record of evidence of

1. Saif bin Sultan Hussain
2. Raja Bahadur Aravenender
3. Sultan Muluk.

Filed herewith.

R. Knox-Mawer.

Four additional documents filed by Handa (Exhibited 54, 55, 56 and 57. R. Knox-Mawer.

In the Supreme Court of Aden

Court Notes
18th July, 1955.

18/7/55.

Application filed by Amir Salem bin Ahmed and others. R. Knox-Mawer.

Mansoor for Plaintiffs 1-20 (excluding Plaintiff 4)
Alhabshi for Plaintiff 4.

Plaintiffs have withdrawn Dedanwala's Vakalatnama.

Gandhi: I am now instructed for Plaintiffs, 5,6, 7,8,9,10,13,15,16,17 and 20.

Mansoor: I have been instructed up to now for Plaintiffs 1-20 I have no objection to withdrawing at the present time in respect of these plaintiffs, provided it is understood that I am entitled to my fees up to date.

Court: That will be a matter between you and those plaintiffs. The present position is now as follows

Gandhi for Plaintiffs 5,6,7,8,9,10,13,15,16,17 & 20
Mansoor for remaining plaintiffs, excluding Plaintiff 4 and Plaintiff 1.
Alhabshi for Plaintiff 4
Shri Jabil Ahmed for Plaintiff 1.
Kazi for Defendant 1.
Rehman for Defendant 2.
Handa for Defendants 3-13.
Akbarally Khan for Defendants 3-13. Vakat, duly filed.

Mansoor: By consent of all parties Secretariat Record is admitted without further proof.

Saif bin Sultan Hussain Al Quaiti is present in court today. In that case his evidence must be given before this court to allow counsel an opportunity to cross-examine and to enable this court the better to judge the value of his testimony. The commission cannot be admitted in respect of this witness.

R.K.M.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Examination.

PLAINTIFFS' EVIDENCE

No. 23

SAIF BIN SULTAN HUSSEIN AL QUAITI

SAIF BIN SULTAN HUSSEIN AL QUAITI: First Plaintiff (sworn)

My father was Sultan Hussein, my grandfather Sultan Abdulla and great-grandfather was Sultan Omar bin Aud Shamsheeruddowla.

An amount of Rs.2,14,500/- was deposited in 1903 through the Political Resident of Aden with the National Bank of India at Aden to be paid specifically for my father, Sultan Hussein, my uncle, Sultan Munnawa and to my grandmother, i.e. the mother of my father - Sultana Salma.

This amount was deposited by Awad Bin Omar Sultan Nawaz Jung.

It was deposited in compliance with an award given by an arbitrator in connection with an alleged Sale Deed denied by my father.

The heirs of Sultan Hussein, my father, are: (1) myself, (2) my sister, Sultana Fatima and (3) my mother, Sultana Muluk.

The heirs of Sultan Munasser are many and their names are entered in the table annexed to the claim petition submitted to the Supreme Court Aden and also in the claim petition.

Sultana Salma died in 1903, so far as I remember and that in Aden, leaving her only son, Sultan Hussain, my father as her heir.

The amount of her dower was 50,000 Ravals and 500 Ashrafis. I came to know of this through my father.

Sultan Hussain died in 1923 (1345 Hijri).

Sultan Umar Bin Awad had five sons:(1) Sultan Abdulla, (2) Saleh Baraq Jung (3) Awad Sultan Nawaz Jung (4) Mohammed and (5) Ali. Sultan Abdulla, my grandfather, was the eldest.

After Sultan Umar bin Awad, my grandfather

Sultan Abdulla ascended the throne of Mukalla. Shehar and Hadramaut.

My great-grandfather died in 1865 (1282 Hijri)

After his death his two sons, Mohammed and Ali had taken all their shares in the matruka left by him with the permission of Nawab Mukhtarulmulk and sanction of the late Nizam and thus separated in the year 1287 and 1288 Hijri respectively.

The three others remained joint and were in joint possession of the whole matruka and estate situated in India as well as in Arabia under an agreement in writing approved by both the Nizam and the British Government to the effect that these three brothers will remain joint and act for and represent each other wherever they may be at the time.

I do not remember the exact year in which Saleh Baraq Jung died. It was the close of the 13th century of the Hijri or it may be the beginning of the 14th century Hijri.

After his death, his son, Mohasin Bin Saleh Baraq Jung II claimed his share of 1/3rd of the whole property, moveable and immovable, and also the crown grants in Hyderabad and he got it by virtue of the sanction or Firman of H.E.H. the Nizam.

Besides this there was a large amount of cash inherited through the ancestors.

This cash was in the hands of Sultan Nawaz Jung and he was asked to render accounts.

Ex. 50 is the certified copy of the account filed by Sultan Nawaz Jung at the time of the partition between Sultan Nawaz Jung and Baraq Jung II.

In this account the only cash amount of 1/3rd share which was due to be paid to Baraq Jung was shown as more than Rs.13,56,000/-.

No partition had ever taken place between Sultan Abdulla and Sultan Nawaz Jung nor after the death of Sultan Abdulla between the heirs of Sultan Abdulla and of Sultan Nawaz Jung up to the present day.

The heirs of Sultan Abdulla after his death which took place in 1888 (1306 Hijri) claimed their 1/3rd share from their uncle, Sultan Nawaz Jung.

It was half of the remaining property.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Examination - continued.

Sultan Abdulla and Sultan Nawaz Jung were in joint possession of the property till the death of Sultan Abdullah and after his death Sultan Nawaz Jung held the entire property.

He refused to give to the heirs of Sultan Abdullah their share on the allegation that Sultan Abdulla during his lifetime had sold all his property to him.

He was prepared, however, to give to the heirs only the price of the property mentioned in the alleged sale deed.

The dispute between the heirs of Sultan Abdulla and Sultan Nawaz Jung was referred to the arbitrator, Ahamed Bin Salem.

I have no knowledge whether this arbitrator was the nominee of either parties or of the Government or what.

The award is on record.

The sale deed was held under the award as genuine and binding on the parties.

I do not remember what is the exact amount still payable under the award to the heirs of Sultan Abdullah.

It was stated therein that certain amounts were already paid and thereis still some balance left as payable to the said heirs.

The amount deposited in the National Bank in pursuance of the award fell far short of the amount shown as payable by the Arbitrator.

There were three daughters, two sons and one widow when Sultan Abdullah died.

The widow is Sultana Salema; the sons are Sultan Hussein and Sultan Numasser and they are step-brothers; and the daughters are Sultana Fatima, Sultana Muznah and Sultana Hayab.

Sultana Fatima most probably had predeceased Sultan Abdullah.

The amount which was deposited in the National Bank was deposited with a specific mention that this is towards the shares of the widow and two sons only.

The shares of the two daughters were neither deposited in the Bank nor paid to them in any manner by Sultan Nawaz Jung.

In the year 1903 it was intimated to my father

and uncle Sultan Munasser through a letter of the Aden Residency No. 172 dated 8th August, 1903 (original of Exhibit 6) that the said amount of Rs.2,14,500/- was deposited in the National Bank of India.

This is the original letter, the photo copy of which has been already filed in the suit (Exhibit 6).

My father and uncle protested against the award on the ground that the whole property was in fact worth Rs.24/- crores and the amount awarded was much less.

But the Government held that the award was conclusive and binding on the parties and that it was sanctioned by the Government of Great Britain.

The Government also stated that the amount deposited shall be under the custody of the Government and shall be paid whenever demanded by the three persons for whom they were deposited.

These facts have been intimated to my father through a letter of Aden Residency of Political Department bearing No. 7009, dated 25th November 1906 (Original of Exhibit 13). The photo-copy of this letter has been already filed (Exhibit 13).

By that time my uncle was dead and so this letter was addressed only to my father.

My father and the heirs of my uncle, Sultan Munasser did institute a claim against Sultan Nawaz Jung for a share in the crown grants in Hyderabad.

As the award did not cover the crown grants in Hyderabad, my father and uncle proceeded to India to have a share in the crown grants in Hyderabad.

Sultan Nawaz Jung raised an objection that as Sultan Abdullah had already sold away all his property to him for valuable consideration, his heirs could not be allowed to sue him for any share in the crown grants.

Such an objection was raised both in the Nizam Government and also in the British Government through the Political Department.

Both the Governments, after due enquiry, came to the conclusion that the award did not cover the crown grants and hence the heirs were entitled to sue therefor.

A formal sanction too was granted to file a suit accordingly.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Examination - continued.

This decision was communicated to my father and the heirs of my uncle through a letter of the Political Department of Hyderabad No. 7332 dated 9th December, 1909. It is Exhibit 51.

I have not got any record of the Political Department's inquiry referred to above as the whole thing was to be maintained as highly confidential and beyond the access of the parties.

This is a photo copy of Exhibit 6 (marked and exhibited with Exhibit 6)

This is a photo copy of Exhibit 13 (marked and exhibited with Exhibit 13).

I had tried in vain to trace out in the Central Record - where such record is kept - the record of the inquiry of the Political Dept.

I have succeeded however, in finding some reference to this in some of the papers.

The search is still going on. I am likely to succeed therein.

I have summoned the Director of the Central Records to produce these records.

As the records have not yet been traced out I did not examine him. I require some more time for the same.

Our claim for a share in the crown grants was eventually rejected by the Revenue Atiyat Department on the ground that Sultan Abdulla's name did not find a place in the Sanad itself which contained only the names of Sultan Baraq Jung and Sultan Nawaz Jung.

His Exalted Highness the Nizam, through his Firman of 7th Rabiullawwal of 1348 Hijri passed this order basing it upon the finding of the Chief Justice of the Hyderabad High Court and of Sadar Yar Jung of the Ecclesiastical Department who constituted the members of the Special Commission to whom the case was referred to for decision.

Notwithstanding this under the same Firman subsequent Firmans had allowed us (the heirs of Sultan Abdullah) maintenance amounts as a fresh grant, in exercise of the Nizam's Royal Prerogative.

Even the heirs of Mohammed, Ali, who had separated having taken the share under the sanction of the Nizam were allowed guzara in the same manner as we.

The matruka property to which Sultan Abdullah

was entitled and was in fact in joint possession thereof did not, not even a part of it, did ever come to the hands of Sultan Abdullah's heirs.

Negotiations for a compromise between our branch and the heirs of Sultan Nawaz Jung took place with regard to the crown grants but without any success.

These negotiations took place when our case relating to the crown grants was referred to Sir Richard Trench by H.E.H. the Nizam for his opinion.

The heirs of Sultan Nawaz Jung who were brought on record in those proceedings were Sultan Umar Bin Awad alias Nawab Shamsheer Nawaz Jung and Sultan Saleh Bin Ghalib alias Saif Nawaz Jung the defendant No. 2.

The negotiations were undertaken by late Jamaluddin, Superintendent of the Public Garden on their behalf, and by Dara Shahpurji Chenoy on our behalf.

The terms of compromise were offered by Saif Nawaz Jung.

Those written terms were sent to Jamaluddin by Saif Nawaz Jung on his behalf and on behalf of his uncle, Nawab Shamsheer Nawaz Jung through a letter (Original No.15).

On the cover in which the letter is sent there is a stamp bearing the date which is 1927.

The two parts of the same envelope are Exhibit 52(a) and Exhibit 52(b).

The date as stamped is 16th April 1927.

Mr. Jamaluddin himself had given this letter and cover to me.

The whole letter is written by Saif Nawaz Jung.

It is in his own writing and bears his own signature which I identify as I am acquainted with his writing and signature.

Only the heirs of Sultan Hussein and Sultan Munasser and Sultana Salema are entitled to the monies in this case and no one else.

Whatever I have set out in my claim petition is quite correct.

After deducting the dower amount payable to Sultana Salema and her legal share in the suit amount the balance will be divided between the heirs of Sultan Hussain and Sultan Munasser in equal shares.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Examination - continued.

Cross-examination.

Sultana Saloma is dead and so only the heirs of Sultan Hussein are entitled to get her share.

The Government of Mukalla or the heirs of Sultan Nawaz Jung are not entitled to any share in the suit amount.

They have no locus standi in the suit.

Cross-examined by Akberally Khan for Defendants Nos. 3-13:

I cannot give the exact equivalent of the dower amount in rupees for the exchange rate of Reyals fluctuates from time to time.

Generally one Reyal is equivalent for Rs.1/8/- or Rs.2/- and sometimes more.

I cannot value the dower amount in rupees even approximately.

During the pendency of negotiations itself the late Jamaluddin had handed over to me the letter, Ex. 15, with cover as soon as it reached him.

He was representing Saif Nawaz Jung (Sultan Saleh, Dt. 2) and his uncle Sultan Omer.

There is no other record in my possession beyond this letter to show that Jamaluddin represented Dt. 2. and Sultan Omer (Shamsheer Nawaz Jung).

It is not a fact that I had snatched away this letter from Jamaluddin and then ran away and this matter was reported to the Police.

I was suspended and dismissed from the lectureship of the Osmania University as a result of a plot of the Itehadul Muslemin who had demanded from me the recruitment of a band of 50,000 Arabs of whose Association I was the President for being registered as razakars, to which I did not agree.

They harrassed me by putting me to a loss of lakhs of rupees of property and had raided my house in my absence, burnt away my library and looted everything I had and distributed it as a booty among them.

They prevailed upon the Vice-Chancellor Mr. Syed Mohd. Azam and the Registrar, Mr. Syed Hussein to suspend and dismiss me.

It was done so without taking any explanation from me on facts which were wholly false.

Even though I was successful on appeal they have not yet taken me back and the case is still pending.

It was about 1943 when I was suspended and dismissed.

The alleged sale deed on which the award was based has not been produced in the case. I have never seen it.

It has never been produced to my knowledge.

I do not know whether the sale deed was ever produced before the arbitrator at all and even if produced whether it was at all genuine.

The Hyderabad jagirs or the crown grants never formed the subject-matter of the Mansab's award nor were they referred to in the award.

Since Jagirs are not properties, the award which covered only the properties did not cover the jagirs or crown grants.

I do not know whether there was any agreement of reference at all for arbitration or whether Sultan Nawaz Jung and my father and uncle had signed any such document of agreement of reference.

I do not know who has appointed the arbitrator.

I do not know whether my father and uncle had expressed their consent to arbitration at all.

I know this much- that the award was pssed and the Government held it as binding on the parties.

The previous history of the award I have no knowledge of.

The award was not placed or filed in a Court but was sent to the Government who declared it as final.

I have not seen the original award at all.

I was not told by my parents or uncle that the award was signed by them or that it was passed with their consent.

I do not know whether my father and uncle had ever applied for the enforcement of the award.

It was not necessary to do so as the Government of India and Britain had actually enforced the award.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Cross-examination - continued.

The award was given in 1318 Hijri.

I do not know whether my father during his lifetime had applied for the money deposited in the National Bank in the manner I have done.

There was no time limit for making such application.

On the contrary, the Government had given assurance that it will be paid whenever demanded and till then it will be kept in safe custody of the Government.

I do not know the exact language in which my father couched his protest but it was to the effect that the awarded amount bore no proportion to the actual value of the property.

I have not seen the application through which the protest was lodged.

I could make out the nature of the protest by the letter of the Residency of Aden, Exhibit P.E.4.

My grandfather Sultan Abdullah was the ruler of Shehar and Hadramaut up to the date of his death.

Mukalla was acquired by him during the period he was a ruler.

The partition relating to Ali and Mohamed's share covered the ancestral property other than the "Saltanat" (Saltani) both in Arabia and in India.

As the Jagir rights too were included in relation to the jagirs in Hyderabad and as the document was a deed of release covering also the shares of the crown grants, the sanction of Mikhtarul Mulk (the then Prime Minister and Regent) and H.E.H. the Nizam was taken.

In Baraq Jung (Sultan Saleh) and Sultan Nawaz's partition, the properties of both Arabia and India were included, but not the Sultanate and property pertaining thereto.

My great-grandfather was a jagirdar here.

After the death of my great-grandfather, my grandfather who was in joint possession of the properties in conjunction with his other two brothers by virtue of an agreement sanctioned by Mukhtarul Mulk did not start proceedings for succession to the Jagirs here as it was unnecessary.

The agreement had the sanction of Mukhtarul Mulk but I cannot say as to the date on which it was accorded.

I do not remember now. It is on the document.

I have not produced this document in the suit.

Some of the defendants have referred to this document (the witness volunteers).

Sultan Abdullah's name in the Sanad (Royal Grant of Jagir) was not mentioned because he was in Arabia.

He did not apply for his name to be recorded in the Sanad as he did not think it necessary because his other two brothers' names appeared therein and they were his agents.

It is not a fact that my uncle and father had ever committed breach of peace in Mukalla and that they were as a result deported.

They were, on account of the arbitration award, asked to hand over the Sultanate to Sultan Nawaz Jung and stay at Hadramaut.

But they wanted to go to India to claim their share of their crown grants.

They came here.

In the year about 1317 or 1318 Hijri, my father and uncle had demanded their share from Sultan Nawaz Jung after the death of Sultan Abdullah.

It was only in about the year 1904 that my father and uncle came to India for the first time.

Before they arrived here they did not apply for their share in the jagirs in the Hyderabad State.

It was only after their arrival and after they had obtained permission from both the Nizam and the British Government that they brought a suit for their share.

As a result of my father and paternal uncle's demand from Sultan Nawaz Jung the dispute had arisen and the arbitration followed.

Apart from the letters I have filed I have in my possession no other record to show that the award was confirmed and held binding by the British Government.

Apart from the award there were no other terms

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Cross-examination - continued.

or conditions under which the amount was deposited in the National Bank.

The terms and conditions if any are contained in the letter of 1906 which I have filed.

I do not know of any letter if any, sent to Shamsheer Nawaz Jung (Sultan Omer) by the Government of Aden to the effect that since the amount deposited in the Bank by his father has not yet been withdrawn by the persons concerned, he is at liberty to take it back.

I do not exactly remember the actual date of filing the suit by my father and the heirs of my uncle but it was soon after the permission was granted to them through the letter of 1909 referred to above, Exhibit 51.

I have filed this document and all other documents now as I have been authorised to produce the documents or any record before the Commission.

I do not remember the pleadings filed by my father in the Revenue Court but I think they must be correct.

The Special Commission that was constituted under the Firman consisted of three members: (1) The Chief Justice of the High Court, Nawab Mirza Yar Jung, (2) Sadar Yar Jung, the member in charge of the Ecclesiastical Department, and (3) Sadat Jung.

Nawab Sadat Jung supported the claim of my father and the heirs of my uncle to the extent of half the portion in the jagirs in possession of Sultan Nawaz Jung.

But the other two members rejected the claims totally as I have mentioned above on the ground that the name of Sultan Abdulla did not appear in the Sanad.

His Exalted Highness the Nizam, through his Firman, approved of the majority view and rejected the opinion of Sadat Jung.

Mirza Yar Jung and Sadar Yar Jung had, however, recommended that maintenance be granted not only to us but also the heirs of Mohammed and Ali in exercise of the Royal Prerogative by the Nizam.

Rs. 600 per month were granted by way of guzara (maintenance) originally to the heirs of Abdullah and the heirs of my uncle.

It was interim guzara granted before the Firman or final disposal of the case.

After the Firman incorporating the majority opinion of the Commission, the guzara granted to the branch of Sultan Abdulla's family alone was approximately Rs. 418/- per month.

I do not remember how many years prior to that an interim guzara of Rs. 600/- per month was granted.

There is no specific mention about the guzara, whether it was hereditary or lifelong, but to all practical purposes after the death of a guzarayab his heirs have been actually getting the guzara in succession.

I am now after the abolition of the jagirs, getting a guzara of Rs. 295/- quarterly representing guzara granted to my father's branch of the family.

My uncle's branch of the family is getting more or less the same amount.

We were granted arrears of maintenance by virtue of a Firman after the death of my father but these arrears were adjusted towards the extra Rs.200/- paid by way of interim maintenance during the pendency of the suit.

The Firman granted the arrears specified the period or the number of years for which arrears were granted.

I do not remember whether it was 10 years, 15 years or more.

I cannot tell how much guzara we have received so far.

I cannot state even approximately what is the total amount that we have received by way of guzara to this day. It can be calculated.

It is an amount which has been constantly varying and so it is difficult to say as to the total amount received.

I cannot say it is two lakhs or three lakhs or less or more.

It is not a fact that the Government of Aden refused to pay the amount deposited in the Bank on our application and so we have resorted to interpleader's petition.

The only reply that we received from the Government was that they were going to promulgate an ordinance.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Cross-examination - continued.

The Ordinance was passed and in consequence of this Ordinance this inter-pleader suit has been filed.

We had applied for the payment of money for the first time in April 7, 1942.

The reply was that they are considering the matter.

I have filed the reply also in the Court.

My great-grandfather Omar I held the Crown Grants or Jaghirs in Hyderabad.

After his demise they were granted to Awad and Saleh, and not to the other three sons - I would say their names were not included in the grant, but the shares given to Mohamed and Ali included a share in the jagirs.

What is why it was necessary to take the permission of the Nizam's Government as to the validity of the deed of release before Mohamed and Ali could part with their shares - because they included jaghirs.

Abdulla was away at the time.

Saleh and Awad were agents of Abdulla because they held his property jointly at that time.

Abdulla personally had no jaghir from the Hyderabad Government.

Abdulla died in 1888.

After that until 1909 Hussain and Munasser were in Mukalla.

When they went to Hyderabad they did file a suit against Awad, their uncle, for a share in jaghirs.

Their claim was finally rejected in 1927.

On the ground that Abdulla's name had not been included in the Sanad and therefore his heirs were not entitled to succeed to the Jaghirs.

Abdulla had not sold his jaghirs to his brother Awad.

He could not in law.

In 1909, 21 years after Abdulla's death Hussein and Munasser were permitted to sue Awad.

Mohamed and Ali gave up their share in the jaghirs with the sanction of the Nizam.

I have seen the translation of the Mansab's award.

I have never seen the alleged sale deed of 1878.

I do not know whether Munasser and Hussein my father ever said they would abide by the award.

I know they protested but I don't know whether their protest was ever withdrawn.

There was no time limit upon which my father and Munasser should apply to have the money paid to them under the award.

11 My first application for the money under the award was in 1942.

I do not know whether they submitted to the arbitration. Or whether they chose the arbitrator or not.

I don't know if Hussein pleaded before the Hyderabad Court that the whole award was invalid.

I became the O.R. of my father.

The Firman of 1927, while rejecting the claim, recommended a grant by the Nizam to the families
20. of Hussein and Munasser, of maintenance.

The assessment of that maintenance went on for some years afterwards.

My father Hussein died in 1345 Hijri (1924/5)

The Firman was made some 3 years afterwards (1927).

I carried on the case before the Court of Hyderabad but no further evidence was taken.

I was asked to give certain replies.

Certainly I pleaded the case as the eldest
30 son, after his death.

R.K.M.

I have stated in my pleadings that I accept the award.

Cross-examined by Kazi for Defendant No. 2:

The recommendation of the Commission appointed by the Nizam to the Nizam was delivered before my father died.

He died more than 3 years afterwards.

I instructed my father's lawyers after his
40 death.

The sale deed was never produced in the original before the Hyderabad Court.

In the Supreme Court of Aden

Plaintiffs' Evidence

No. 23

Saif Bin Sultan Hussein Al Quaiti.

Cross-examination - continued.

A copy only was produced (Exhibit 25)

I don't know if the original had been lost or not.

Our claim was to one-third in the Jaghirs by inheritance.

I don't know if the deed of sale was said by my father to be forged.

I cannot say for certain it is forged.

It doesn't say anything about the Jaghirs.

Colonel Trench gave an opinion in my favour.

My age is 50.

Defendant 2 wrote this letter, Exhibit 15 to one Jamaluddin, Superintendent of Public Gardens Hyderabad, appointed by Defendant 2 and his uncle Sultan Omer of Mukalla, to compromise the dispute with us in Hyderabad.

It was written about April 1927 (from the post-mark on the envelope)

The original letter is undated.
My father was dead at the time.
Jamaluddin gave it to me.

The Hyderabad proceedings were still before Colonel Trench for his opinion.

Dara was a person representing our side at the time.

Defendant 2 wanted time to settle.

The proposed settlement failed to materialise.

At that time the case was not conducted in Hyderabad. (Copy of opinion of Colonel Trench filed Exhibit 53).

This is his opinion upon the whole matter.

Exhibits 23 and 44 are only his advice upon the granting of interim maintenance.

Jamaluddin gave me this letter, Exhibit 15.

I have no other correspondence on this matter.

I have other correspondence from Defendant 2 but not on this matter.

I received a personal allowance from the Nizam. Not from Defendant 2.

The money is ultimately derived from the Jaghirs which the Nizam had granted to Defendant 2 and the father of Defendants 3-13 (Sultan Omer d. 1936).

R.K.M.

Cross-examined by Rehman for Defendant 1:

I did not produce in Hyderabad any personal correspondence irrelevant to this matter between myself and Defendant 2.

Cross-examined by Alhabshi for Plaintiff 4:

I did not receive a revocation of my power of attorney from Plaintiff 4 in 1953, I claim by inheritance deferred dower on behalf of the wife of Abdulla bin Omer (d.1888) my grandmother.

R.K.M.

Cross-examined by Gandhi:

Grandfather Abdulla had 2 wives. Salma my grandmother was one. The other was the mother of Munasser. The marriage of my grandmother took place in Arabia. I don't know if Munasser's mother received any dower or her heirs.

R.K.M.

Jaghirs were abolished in 1948, and I now receive a communation grant of Rs. 295 per quarter for 10 years or 15 years. R.K.M.

Adjourned to 20/7/55. R.K.M.

No. 24

OMER BIN SULTAN MUNASSER BIN SULTAN ABDULLAH

20/7/55:

GANDHI: MANSOOR: ALHABSHI: SHRI JALIL AHMED: KAZI: REHMAN: HAUDA: AKBERALLY KAHAN:

Alhabshi: The only other oral evidence available in this case is my client, Plaintiff 4. I will call him.

OMER BIN SULTAN MUNASSER BIN SULTAN ABDULLAH (sworn):

Plaintiff 4.

I am the seventh and youngest son of Munasser bin Abdullah who died about 1911.

He left 7 sons, 3 daughters, 2 widows as his heirs.

Myself and one half-sister Fatima are the only surviving heirs today.

(The facts set out in para. 6, 7, 8 of Mansoor plaint, setting out the position regarding the

In the Supreme Court of Aden

No. 24

Omer Bin Sultan Munasser Bin Sultan Abdullah.

Examination - continued.

heirs are not disputed by any parties to this suit) R.K.M.

I was in Indonesia when the Hyderabad litigation went on.

I sent a power of attorney to Plaintiff 1 in 1939 to act on my behalf.

I sent a revocation of this power in 1954. 1953.

Dower in Hadramaut is customarily 12 silver dollars.

Cross examined by Shri Jabil Ahmed for Plaintiff 1:

The revocation was sent by registered post to the Revenue Court of Hyderabad.

Not directly to Plaintiff 1.

I have no longer the Post Office receipt.

I received an acknowledgment from the Revenue Department. I left it behind.

My mother's dower was 12 dollars.

I was 8 when my father died.

R.K.M.

Oral testimony concluded.

R.K.M.

No. 25

Counsels Addresses

Mansoor (for Plaintiffs 2,3, 11,12,14,18 and 19).

20th July, 1955.

No. 25

COUNSEL'S ADDRESSES

MANSOOR for Plaintiffs addresses Court:

History agreed - Omer left 5 sons.

Awad, Abdulla, Saleh) agreed that they held property jointly (1/3 each).

Saleh separated. 2/3rd - Awad, Abdulla.

In Awad's hands when Abdulla died.

Sons of Abdulla claimed 1/3rd share from Awad.

Mansab arbitrated, Award.

Defendants' case is that Plaintiffs' successors repudiated award by bringing action - waived it.

Law of Arbitration - Legal position - Agreement to abide -
A Submission - irrevocable by all parties - cannot

revoke arbitrator's authority - can still proceed.

Russell 14 Edn. P. 39, 40.
An act binding on parties.

Lahore A.I.R. 1917. P. 65 P. 67.

Sharia Law has no law of arbitration - custom and usage applies tally's with English Common Law.

Sangiva's Digest of P.C. Rulings. 3rd Edn. Vol.1-A P.205 1890 Q.B. P.550.

No evidence that prior to award the authority of Mansab was revoked by Hussain or Munasser. Even if there was - above authorities show that they cannot do so.

Contents of Award - Mansab does not suggest there that his authority has in fact been revoked.

Letters written by Hussain and Munasser subsequent to the award do not matter. -

Whether they liked award or not - they could not do anything about it.

When Awad (and successor) knew Hussain and Munasser had revoked, why deposit the money as ordered under the award?

Defendants - Claimed return of money only in 1924. Plaintiffs always understood that this money was theirs under the award as Defendants took no step to set aside the award.

Award was against Hussein and Munasser - part of unpaid price of property only given to Hussein and Munasser.

Contrary to principles of natural justice and equity that Defendants can have it both ways - analogy of 2 brothers.

Estoppel - Aden Evidence Ordinance (S.101) Sakka Law of Evidence 5th Edn. P.887 - one section of Indian Act which is identical - Defendants cannot do this. Their acts of omission or commission are such that after all these years the plaintiffs are in a position when in any case they could not claim Abdulla's inheritance. Quite apart from the award P.946 Action of Hussein and Munasser in Hyderabad.

Q. of reopening matter considered by British Authorities.

Telegram, Exhibit 12.
Highest authorities accepted it (irrelevant?)

The Award. Its Legal Effect.
A binding Judgment.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Mansoor (for Plaintiffs 2,3, 11,12,14,18 and 19).

20th July, 1955 - continued.

A private award (a contract) between parties to do as Mansab directs -

> certain set grounds on which it can be set aside. Mutual consent. No violation or breach of award. Fact that one party does not act on the award - e.g. if Awad had not paid the money - Hussein and Munasser only had to receive it - if Hussein and Munasser went and took action in a Court against property forming subject matter of award - then Awad's heirs should plead the award in defence - Court should stay proceedings on being satisfied that there was an irrevocable award. Awad could not ask for money back.

Allegation by defendants that Jaghirs were included in Mansab award is rejudicata here because it was finally adjudicated upon in the Hyderabad Court.

A.I.R. 1934 Bombay 140
A.I.R. 1946 Sind P.117
I.L.R. 1896 Madras 290

Award created an immediate vested interest in Hussein and Munasser. No further act on their part is needed.

A.I.R. 1935 Madras P.473
A.I.R. 1919 Madras P.1113.

The award has been enforced - against Awad - he paid the money over - now in the hands of trustees. Exhibit 2, 27/7/1903. Letter from Awad to P.R. Aden. Original in Arabic, in Secretariat Record (Marked Exhibit 2) Authenticity of Letter of admitted without further proof of all parties. Defendants have no claim whatsoever to the money. Exhibit 3 specifically refers to nephews Munasser and Hussein (admitted by all parties)
Exhibit 4 (admitted by all parties)
Exhibit 5 (admitted by all parties)
Exhibit 7 (similarly admitted)
Exhibit 8 (ditto) Name of trust.
Exhibit 9 (ditto)
Exhibit 10 (ditto)
Exhibit 11 (ditto)

If Defendants have suffered loss by our wrongs then bring action for damages - no right to this "Trust" Fund.

Russel P.345, 346, Last Para.
Exhibit 39 Para. 12.
Exhibit 41. Page 131, final para. (3)
Exhibit 13 - Final paragraph.

A.I.R. 1928 Sind. P.107.

Jaghir Proceedings:

Defendants say this constituted a breach of award.
Plaintiffs say award did not include the jaghirs.
Whether we were entitled to claim jaghirs or not.
Property described in Exhibit 1 - no mention of jaghirs - surely he would have mentioned them.
Have to prove:
(1) That by sale deed Abdulla had sold to Awad the jaghirs as well.
(2) That Mansab included jaghirs in award.

Documents produced before Mansab - Partnership deed - lost. Sale Deed.
Page 6 of copy - Ex. (1)
Figures adopted by Mansab in fixing his award.
Rights of Chiefship etc. P. 7.
Omer I died in 1865.
1866 Joint Sanad - in respect of jaghirs - divided between Awad and Saleh (agreed by parties)
Nothing remained for Abdulla.
At that time Abdulla had no jaghir rights to deal with.
1873 Partnership Deed between Abdulla, Saleh, Awad - could not include Jaghirs because Abdulla had none.

1878 Sale Deed - Abdulla to Awad - could not include jaghirs.

Ex. 39 Para. 5 - Awad's heirs say Abdulla had no Jaghir rights - How can they now say he had - were included a) in Sale Deed
b) in Mansab's Award.

Finding of Nizam's Commission - Abdulla had no Jaghirs during his life - Firman - Abdulla's heirs case dismissed - Special award made by Nizam - ex gratia from Awad's jaghirs - not in perpetuity.

Exhibit 25 Exhibited subject to argument - We deny that it can be relied upon in evidence at all.
Section 9. Sultan etc. Ord. No.11 of 1945 - Evidence. Rules of evidence must be followed.
Aden Evidence Ordinance S.63.
Not a copy of a certified copy - a scrap of paper.
Section 67.
Original said to be lost.
- presumed by court - S.76 - not a public document.
- not even a certified copy is admissible.
Sarkar Evidence (S.63 of Indian Act - which is identical to S.65 of Aden Ord. P.506.

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Secretariat Record also contains a purported copy of this document - but there are differences in the two.
Hyderabad Commission did not accept it as entirely satisfactory - said even if there had been a sale - it could not affect the jaghirs.

Mansoor (for Plaintiffs 2,3, 11,12,14,18 and 19).

20th July, 1955 - continued.

Exhibit 15 - letter from Saif Nawaz Jung one of the heirs of Awad. Suggested settlement. "An admission" -
Exhibit 55, 1st paragraph. Interest. 10
Russell P.334.

Claim of Government of Mukalla
If money is in trust for us - we get it.
If not, then the dispute is between the defendants.
We are not interested in such an event.
Plaintiffs complained of arbitration - of present value of Mukalla property and Hyderabad property but still binding on them today.

Exhibit 52. When Saleh separated - 13 Lakhs for "Invissible" properties. 20

R.K.M.

Shri Jabil Ahmed (for Plaintiff No.1)

20th July, 1955.

SHRI JABIL AHMED addresses Court on behalf of Plaintiffs:

1847 a Sanad of one village was issued in name of Saleh.
1865 Omer I died - Hyderabad title (Shamzir)
1866 Sanad of Jaghirs - granted in joint name of Saleh and Awad pertaining to Omer's jaghirs.
There were 7 villages of jaghirs altogether.
6 Villages included in Sanad in their joint names. 30
1871)
1872) - Relinquishment deeds by Ali and Mohamed.
1873 - Partnership Deed - Saleh, Awad, Abdulla.
1878 Alleged deed of sale.
1880 Saleh died.
1886 Partition between Saleh's heirs and Awad.
1888 Abdulla died.
6th May 1903 Mansab's Award.
1903-1906 Munasser died.
1909 Awad died. 40
1345 (H)
1924-1927 Hussein died.

a) Omer's properties included
(1) personal properties
(2) Chieftainships.
(3) Crown Grants (Jaghirs) in Hyderabad.
He was Jamadar (C-in-C) Irregular Arab Forces, Hyderabad.

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Shri Jabil Ahmed (for Plaintiff No.1)

20th July, 1955. - continued.

b) Abdulla lived in Arabia - never went to India. Awad and Saleh looked after Hyderabad properties. Obtained sanction of Nizam of Sanad in their names only (1866) without disclosing names of other heirs.
Abdulla left out, wrongfully.

c) Partnership Deed (1873) - not exhibited referred to in other documents which are admitted.
Death of Saleh 1880 - heirs demanded partition of father's property - both personal and jaghirs.

1886 1/3rd of Jaghirs - given to Saleh's
1/3rd of personal property heirs - no deed available, merely referred to in other documents.

Claimed a moiety (not 1/3rd) in Omer's Jaghirs because they asserted that jaghirs belonged only to their father and Awad.
Awad a sharp character.
Awad said you are only entitled to 1/3rd, one 1/3rd is mine, and the other 1/3rd is Abdulla's.
This was to avoid giving them half.
Awad wrote a letter to this effect - So Nizam granted only 1/3rd to heirs of Saleh.
Exhibit 21 Page17 (copy) Decision of Issue No.8.
Opinion of Nawab Sir Faridum Ex. 21 P.2.
P.3. of same opinion - over to page 4.

Awad admitted that 1/3rd share was Abdulla's.

Adjourned until 9.30 a.m. 21/7/55.
R.K.M.

21st July, 1955.

SHRI JABIL AHMED continues

After Abdullah's death, Munasser and Hussein claimed partition of the "inheritance" of their father - (see award of Mansab) nothing else.

Awad refused claiming that Abdulla had sold his share inter vivos.
Was entitled only to balance of price fixed by sale deed.
Exhibit 14. A letter from Sultan Omer, son of Awad (not disputed by parties) admitting this.
Final decision rested with the paramount Government as to whether award was to be binding.
1903 Award made.
Monies deposited in N. Bank in compliance by Sultan Awad.

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Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

Styled Trust for the nephews.
Transferred to Bombay. Invested.

Awad had parted with the ownership of the monies deposited - not held for anyone other than in trust for Hussein and Munasser.
Properties alleged to have been sold by Abdullah to Awad.
Defendants cannot lay claim to this amount at this stage from heirs of Munasser and Hussein - money is ours - they claim it from Plaintiffs, as heirs, not from the Government - from the plaintiffs whose property it is.

Only property not retained Awad's and now in his heirs possession were the Crown Grants. Nothing remained to be done - whole matter was executed on both sides.
Award executed - what is legal position if one or other party violates a portion of the award afterwards.
Only share in Crown Grants in question.
Defendants say share in Crown Grants also transferred - we have had something out of that - a violation of a petty term of award - no right to set aside the whole thing.
Munasser and Hussein protested at injustice of award - properties of father worth much more etc.
Decree was nevertheless final - a final adjudication - despite dissatisfaction - in legal force.

If by wrongful act of Plaintiffs, Defendants have suffered, then they can sue for damages.

No repudiation by consent of award - only in 1924 did Defendants come and say the award is not binding.
Russell p.191 "It will be a good answer ..."
Defendant accepted that the question depended on what the decision of Nizam's council was to be (Ex. 14) - if Firman had not held against Plaintiffs then Defendants could perhaps have said that award was no longer to be considered binding.

Action of Munasser and Hussein in coming to Hyderabad Court for share in Jaghirs 1903.
Awad tried to stop them.
British India and Hyderabad Governments finally agreed that they could file a case re Jaghirs despite Mansab Award.
Exhibit 21. P.2, of Faridum's opinion.
If award was final, it is final if - subject to confirmation of Government - then there was a confirmation.
Even if held that Jaghir's property was sold - Awad - then award in this respect was not followed (incorrectly).

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Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

In fact Government agreed that the Jaghirs were not covered in Award. Nevertheless no claim on other ground.

Exhibit 53. Colonel Trench's opinion, p.8.
Exhibit 21. P. 3 Paridum Mulk's opinion - quotes Firman of 1909.
2 portions of the Sale Deed
1) Private and Personal properties.
2) Crown Grants.
Exhibit 1 is of course relied upon by both the parties. P. 4
P. 1 word "inheritance".

Are Jaghirs "inherited" property or not.

The Hyderabad Suit.

Claim by Munasser and Hussein.
Omer I owned certain Jaghir villages and Crown Grant Maktars -
2 kinds Crown
Private.

Sultan Awad died before Written Statement was filed.
Filed by Ghaleb and Omer, heirs of Awad.

Exhibit 39 (admitted by all parties).

Para. 4. - reference to the "Estate".

Holding Crown Grants - Grant not in the name of Abdulla.

In the Inam Dept. the inquiry is directed as to the essential validity of the Sanad.

In the Revenue Department - as to the rights of succession Abdulla's name was not there in original Sanad - therefore no claim to succession can be brought.
Admitted Abdulla - never in possession of the Jaghirs - Para 5, Para 7.

Omer was first grantee.

Succession to Jaghirs should have been in name of all sons - including Abdulla.

Interest in personal property is vested in heirs on death of holder forthwith.
The holder of a Sanad - has only a life interest.
Rights revert to Crown.
Due inquiry made.
Fresh grant may be made to heirs or may not be.
A fresh grant from Sovereign.
Use of word "inheritance" in these pleadings therefore is not technically correct.

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Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

Para 7. Property not in Omer's name.
Para 8. - other brothers excluded - no right now. This is a reference to Sanad of 1866.

1873. Partnership agreement - to deceive Abdulla - Awad and Saleh say "we shall share everything in Arabia and Hyderabad we shall be your agents in Hyderabad".

1886. Saleh is heir and Awad then says "Oh Abdulla was entitled to one third"
Awad always changing.
Para. 9.
Para. 10.

Whatever may be the legal position of Pan Maqtars and Sarf Maktars distinction drawn here by defendants.

Para. 12. Panchayat - the arbitrator - i.e. the Mansab.
This is what the defendants said in 1909.
The same is true today.
They cannot shift their ground as the wind blows.
The money "has been paid" (2 Laks Rs.14500)
We always maintained that the award did not include the Crown Grants. That was our case.

Defendants took two grounds of defence (1) originally by virtue of fresh grant in Sanad of 1866. Abdulla received no share in Jaghirs.
(2) By sale deed of 1878 - acknowledged in Mansab's award - Abdulla sold title and rights in Jaghirs.

Are not alternative pleas. Are entirely contradictory.
Various opinions given. No unanimity. H.E.H. appointed a commission - C.J. of High Court and 2 others.
Recommendations were against Hussein and Munasser.

Main Reason - "Names of Ali, Mohamed, Abdulla excluded from Sanad - so Munasser and Hussein failed - Abdulla had no claim therefore.

Exhibit 21 P. 19 (28)
P. 20

Refers to Sale Deed (we still say Sale Deed cannot be relied on) - whether or not in Sale deed Abdulla purported to transfer Jaghirs - he could not, because his name was not included in the Sanad.

Does fact that allowance granted to Hussein and Munasser (a guzara) affect this point. No?
Recommended - not as a right but as a favour

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Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

Their legal claim was dismissed. P. 26 of Ex. 21.

The final Firman in fact granted a fresh grant to Awad's heirs.

At the same time an allowance was ordered for heirs of Abdulla, Ali and Mohamed.

Burden not imposed on Awad's jaghirs - but on a fresh grant to Awad's heirs.

Assuming Abdulla sold his shares in Jaghirs to Awad by sale deed. What had he got

a) Nothing (said Defendants)

b) A life interest (which is all it could be) in Jaghirs.

We can say (1) This life interest terminated on Abdulla's death - Defendants may say - for Awad's life (2) Even if it could be prolonged - lasted only as long as Awad lived (d.1909)

Not hereditary - did not devolve on his death.

Heirs of Awad must have been given a fresh grant.

Maintenance (retrospective from 1922) was a charge on this fresh grant - not on Awad's jaghirs - so in any case Sale deed Mansab's award not affected.

Quantum of guzara - see Col. Trench's recommendation, Exhibit 23, last para. p. 7 - From 1922.

Awad had died in 1909. Guzara from 1924.

Quantum Rs.437/8/0 p.m. the ultimate guzara as fixed.

In point of fact they had been an excess which was adjusted.

1948 Jaghirs were abolished. Commutation of Rs. 295 quarterly to each branch - Hussein's heirs and Munasser's heirs - i.e. Rs. 590 per quarter to Sultan Abdulla's heirs. The total is 1 Lak Rs. 30,000, that is what Abdulla's heirs have received up to 1948.

From 1948 they have received Rs. 590 per quarter - i.e. Rs. 16500 up to mid June 1955. i.e. 1 Lak 46,500 approx. total.

Saleh's heir (Mohsin) was not a party to the proceeding - he had a share in Jaghirs - but nevertheless the burden of the guzara was imposed on the (a) fresh grant of Awad's jaghirs to Awad's heirs and (b) on Mohsin's jaghirs (heirs of Saleh) - though he was not a party - a Royal Prerogative - could do this.

No arrears recommended by Commission.

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Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

Have we violated the terms of the award?

No, because we never claimed a Guzara against these Jaghirs - we surely claimed a share in Awad's jaghirs. It was not our act - it was an act of royal prerogative - up to H.E.H.

Firman, Exhibit 21, Page 1 of Firman.

"Whose claims are dismissed".

Nothing given from estate of Sultan Awad but from "the heirs of Sultan Nawaz Jung" and Barak Jung. A Royal prerogative - could do as he pleased.

Pan Maktas - Crown Grant)
Purchased Maktars - Purchased) differentiated.
lands.)

Not a Crown Grant. He was only sanctioning the possession of Crown Grants. Para. 5 Page 2
Did Arbitration Award cover the Crown Grants or Not.

Sale Deed - a copy of a copy of unauthenticated translation or original deed of sale. Cannot be admitted as secondary evidence. Translations differ.

Mansab's award differs.

Was this action violation of award.

Under a genuine claim - not filed or sent - taken in good faith - that jaghirs not included in deed of sale. This was not violation of the arbitration award. No properly constituted court in Mukalla - had to petition paramount Government - or go to where property in Hyderabad was situated.

Sale deed in dispute before Mansab. Whole proceedings revolve around that point. Was it genuine?

Mansab said yes - "whatever sold"-
Not peculiar properties i.e. Jaghirs also sold.
Mentioned other items of property - Misses out the word jaghirs. Why, if they were included. Award did not cover them (certainly not clearly covered even if he did purport to transfer them - bonafide belief to the contrary).

If not specifically excluded - thus must be deemed to be included.

Exhibit 21. P. 20

Exhibit 53. P. 2 P. 3 - alleged sale is of Jaghirs or Crown Grants - H.E.H. would not recognise this in any case.

Awad's claim - Everything sold to me by Abdulla.

Hadramaut property not included in Sale deed -
Mansab specifically alloted compensation in respect thereof.

If there is no ambiguity in a document - no question of interpretation arises. No ambiguity in the Award.

If there are ambiguities - court considers normal intention of the parties -

Normally Crown Grants would not be expected to be included in the transfer.

Adjourned to 9.30 a.m. at 22/7/55.

R. Knox-Mawer.

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Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1)

21st July, 1955 - continued.

22nd July, 1955.

SHRI JABIL continues:

Exhibit 25.
Alleged copy of sale deed.
A copy of a copy of a translation itself unauthenticated.
Two copies - (1) Exhibit 25
(2) Secretariat Record.
words not contained in Secretariat file "Mastas" appear in Exhibit 25. It cannot be relied upon in evidence.

Akberally Khan: A certified copy from the Court of Hyderabad. It must be presumed that the original Arabic deed was before the Hyderabad Court (Exhibit 21). Relied upon in opinions of the Hyderabad Commission.
Exhibit 41. Mr. Dunlop's opinion 1913. P. 3
Grench's opinion, Exhibit 53.
Relied upon this document. Edn. of Sarkar P. 52.

Court: In order to arrive at a decision in this case the Court is bound to look to a considerable extent at documentary evidence, often in translation, much of which cannot in the circumstances be strictly proved. However, there is a limit to which the court can go in relying upon this sort of evidence, even in this extraordinary case. Here the defendants are seeking to rely upon the exact wording of a sale deed translation, Exhibit 25. It is, the defendants contend, a true and reliable certified copy from Hyderabad, of a translation of the original Arabic sale deed. The original Arabic deed is lost. All efforts to trace it have failed. The question arises - is this a correct translation? There is no evidence as to whether the Hyderabad authorities in fact examined the original Arabic deed or not. But what finally leads me to distinguish this translation from other relied upon in this case is that there happens to be another

By Court.

In the Supreme Court of Aden

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purported translation of this Arabic deed in the Secretariat Record which differs in several material particulars from the translation, Exhibit 25. I must rule that neither translation (Exhibit 25 or the one in the Secretariat Record) can be held to be accurate. The court cannot therefore rely in evidence upon the contents of Exhibit 25.

R. Knox-Mawer.

Shri Jabil Ahmed (for Plaintiff No.1)

22nd July, 1955 continued.

Shri Jabil: The fact that there was a sale deed is not of course denied.

Refer now to the Mansab's Award.

Why should Awad pay for what he himself owned - he owned the jaghirs: Abdullah did not.

Jaghirs.

1. Jaghirs are not personal property.
2. Crown owns the corpus.
   Donee only enjoying the profits thereof.
3. Are not inheritable.

a fresh grant is always made by the Sovereign. No one succeeds as a matter of right. Sovereign can do as he pleases - may grant to heir or heirs, may not. A royal prerogative.

Long practice - policy to grant succession to some or one of heirs of last holder - only a practice.

4. Cannot be sold, transferred, mortgaged or willed without Sovereign's sanction.

1. References in opinions and judgments.
2. Awad would know the position of jaghirs anyway.

Sultan Awad would have got it confirmed - did nothing to move Hyderabad Government to confirm the transfer.

Date of alleged sale - 1878.

Sanad of 1866. Jaghirs granted in name of Saleh (Barq Jung) and Awad (Nawaz Jung) - Why should Awad buy from Abdulla something he had not got to sell. How can defendants now say that Abdulla had any jaghirs to sell?

(1) Opinion of Nawab Mirza Yar Jung, P. 9.

Refers to Firman of 1319 H. before Hyderabad acceded to India, H.E.H. was an absolute ruler. His Firman's were above the law. When his name not included, Abdulla could not transfer them.

A fresh grant to the heirs - out of Sovereigns' Crown property - not his "ancestor's property".

Page 20 - "Our opinion is that Jaghirs and Maqtas cannot be sold and cannot be transferred".

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Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1)

22nd July, 1955 - continued.

Page 21.

Ali was not given any shares in Jaghirs but was granted Rs.12,000 p.a. as compassion. In fact this recommendation was not acted upon - not the concern of this court.

Page 22. - "As the Nizam has got the right to grant the Jaghirs after the death of the Jagirdar to anyone" ... on the same basis etc.

Page 26.

Page 16. - Question under consideration - what happens if Jaghirs granted to two heirs and nothing others?

Page 17 - "who was the one entitled" - totally within the will of the Nizam.

Through influence of Awad and Saleh in the right quarters they got - their brothers excluded.

Exhibit 39. Para. 10. Distinction between two types of properties. Pan Maqtar are Crown Grants. Zarkarid Maktar are not. They are not included in the term "Jaghirs".

In fact, Zarkand Maktar and Pan Maktas were "treated" as the same by the C.J. but they are not.

Exhibit 21. Firman 7 Rabiulawall. Page 1.

(1) Heirs succeed to the Zarshreed villages in the ordinary course of events.

Exhibit 21, opinion of Nawab Mirza Yar Jung, P. 3. By their general consent the heirs of Awad admitted that Crown Grants were not private properties. Once granted to one heir - others could not claim by inheritance.

We filed a suit for property (i.e. Jaghirs) not included in the Award. So no violation arises.

The commission treated all Maktas as Crown Grants. Crown Grants include:

1. Jaghirs.
2. Pan Maktas
3. and even Zakared Maktas which were originally Crown Grants.

It was found that certain Maktas had changed hands - held that those Pan Maktas so transferred in remote times - were now to be treated as private property - called (purchased) Zakard Maktas. Crown Grants are like licenses.

Omer I held these three types - all treated as "Crown Grants".

Exhibit 21. Doc. 4 C.J's. opinion p. 7

Disputed property is shown to be of three kinds.

Page 8.

If Abdulla sold the Maqtas - nevertheless

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Shri Jabil Ahmed (for Plaintiff No.1)

22nd July, 1955 - continued.

plaintiffs get nothing - Omer's purchased Maqtas held to be in possession of Awad or Mohsin.

Differentiation ignored in this case.

All by consent treated as Crown Grants.

Page 8 were in possession of Awad of his heirs - must have been - certainly plaintiffs were not in possession.

Exhibit 39. Para. 3. - Defendants admitted we were out of possession.

Exhibit 21. Page 1 Firman of H.E.H. "Purchased villages are out of the question ... 60 years".

Page 2.

If Defendants try to confuse issues by drawing distinctions - that is irrelevant.

Refer to Exhibit 59.

Gashti is a Government circular.

No enactments or statutes are to be found relating to "Citigat" (Crown Grant) matters.

All to be found in Gashti's circulars and resolutions. Hyderabad Government Gazette - Translations admitted by all parties. Exhibits 60-64.

Refer to various Gashti's 105 of 1282 Hijri.

Adjourned to 9.30 a.m. 23/7/55.

R. Knox-Mawer.

23rd July, 1955. Gandhi: Mansoor: Alhabshi: Shri Jabil: Kazi: Rehman: Handa: Akbarally.

SHRI JABIL addresses Court:

Refers to Exhibit 59.

Gashti 105 of 1282 Hijri et seq.

Consent of Government must be obtained prior to transfer.

Peculiarities of Jaghirs - based on Firman and Gashtis. Defendants say that by repudiating and rejecting award, by filing suit and obtaining grant of maintenance - Plaintiffs have violated terms of award.

1) Repudiation - Did not violate the terms of award once made - irrelevant - comes too late.

2) Rejection has no legal force.
No steps taken to have it legally set aside.

3) Filing of suit.

Award is unconditional - Page 7

For that reason Plaintiffs have never claimed the properties dealt with in this award.

4) Maintenance grants out of the family jaghirs.
a) Why not a suit for damages.

Exhibit 14. Even in 1924 Defendants (see final para.) awaiting decision of Hyderabad Council.
When our case was dismissed in Hyderabad then defendants admitted our right to this fund.

Our first contention is - Whether we obtained anything from jaghirs or not - irrelevant - because jaghirs were not sold and not included in the Mansab's award.
That was our main assertion in Hyderabad Courts. It still is our first contention.
If that is correct - then it doesn't matter whether we obtained anything out of the jaghirs or not.
We lost our claim in Hyderabad.
How can we also lose here, - but that is what Defendants seek to bring about.

Defendants retain the property of Abdulla - yet they refuse us the consideration paid for this property (i.e. these monies).
Original amount only - why?
They have enjoyed the profits of Abdulla's property. We are entitled to our interests.

Maintenance.
Refer to Firman granting maintenance.
Even if held that Maktars are private property - no share of revenue of Maktas was given to plaintiffs. Charged on Jaghirs only - a fresh grant is a royal favour.
Exhibit 23.
If award is null and void - properties alleged to have been sold by Abdulla are worth far more than that awarded by Mansab.
Sultan Defendant 2 could have given evidence. Has not done so.
Only Plaintiff 1 has decided to submit to cross-examination.
Trench's opinion or determination of maintenance allowance. Exhibit 44 (Exhibited by defendants) page 2. - at that time final orders had not been made - a merely interim allowance.
If plaintiffs had won case - no question of refunding this allowance - only a portion of the jaghir claimed by plaintiffs, i.e. half of the jaghirs revenue Rs. 42000. We here received only Rs. 7200.

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Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1)

23rd July, 1955 - continued.

If we had lost - how was it to be recovered - first charge on our monies lying in Arabia. The interim allowance was in fact dealt with retrospectively by the permanent allowance which was given as a matter of favour. Held Abdulla had no jaghirs so no question of transfer arises.

And by the Nizam's firman made a burden on the fresh grant of Jaghirs given to Awad's heirs and therefore had nothing to do with these monies.

The permanent allowance was given retrospectively from 1922. Exhibit 23, page 4. So temporary allowance recommended by Colonel Trench was later adjusted.

Burden was placed on Jaghirs (not on Maqtars - of (1) Mohsin (Burqud Dowla) and (2) Omer (Nawab Shamsheer) and Ghalib's son (3) - Saleh (Defendant 2).

Sum amount of maintenance was also given to heirs of Mohamed and Ali because Mohamed and Ali had not been included in the Sanad (Grant) to Saleh and Awad. They had also been made parties in the Atiyat proceedings and their claims were also dismissed, on the ground that the Sanad had also not included Mohamed and Ali.

Defendant 1. Government of Mukalla's claim. A matter between defendants. No proof whatever that money was taken out of the Government treasury.

Money is held in trust for us - if Awad dishonestly took money from Treasury - proceed against his heirs.

How do Defendants claim by inheritance? We are the heirs of Hussein and Munasser - not them.

If money is Awad's - then of course they are his heirs.

If heirs of Hussein, Munasser and Salama are held to be entitled to these monies, then counsel for plaintiffs will agree the distribution between them and obtain the sanction of the court for payment out.

Whether the other three daughters of Abdulla were awarded anything is not known - in any case it is too late to worry about it now.

Colonel Trench's opinion - if he had had the power would have awarded plaintiffs these monies then and there.

R.K.M.

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GANDHI addresses Court:

Gandhi (for Plaintiffs 5-10, 13, 15-17 and 20).

23rd July, 1955.

1. Award can be looked at as an act of State. No court capable of deciding dispute. Arbitrator was a special tribunal appointed on instruction of the British Government. Binding effect of a decree of a court. Sanction given by British Government.

2. As an ordinary award of an arbitrator. Indian Arbitration Act 1899. English Arbitration Act 1889 - no such law in Mukalla.

Mukalla an Independent Sovereign state bound by treaty of 1888 (Aden/Mukalla Government).

General principles of law of arbitration - the English Common law - what law.

Law in India was changed in 1940.

Monies deposited in Aden.

Award was not filed in a court (which court could it have been filed in)

1869 4 Q.B. p.669 672 - general principles of arbitration discussed in full.

Award was executed.

Even if both parties dispute an award - i.e. it is entirely unexecuted - award still stands.

I.L.R. 1896. Madras 290.

Dower

Shares can be calculated according to Sharia Law. Regarding claim to dower - Marriage performed in Mukalla - not proved - merely the statement of the plaintiff 1. R.K.M.

ALHABSHI:

Alhabshi (for Plaintiff No.4)

I have nothing to add to what has been said on behalf of the plaintiffs.

AKBERALLY KHAN for Defendants 3-13:

Akberally Khan (for Defendants 3-13).

23rd July, 1955.

Refers to Genealogical tree.

Mohamed was eldest son of Omer.

Family held Sultanate of Mukalla. Army responsibilities in Hyderabad.

Every son has in Mohammedan law a right in Sultanate. Each could claim share in administration, and all properties. Accordingly brothers amicably settled between them.

Family settlements.

1862 Omer I made Will.

1866 Sanad. It was after this Sanad that these settlements were made - thus even if Awad and Saleh had become owners of jaghirs, they still looked after interest of brothers, viz.

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1872 With Ali.
1873 With Mohamed.
Form of conveyancing usual in those days.

Exhibit 21. A report of three commissioners - only 2 reports produced (the majority judgment) why did not the defendants produce the third judgment - could have done?) or could have called upon defendants to do so.

Akberally Khan (for Defendants 3-13)

23rd July, 1955 - continued.

Exhibit 21, page 11. (opinion of Nawab Mirza Yar Jung) - Page 12 - concludes that it was intended to cover all properties, jaghirs included, even though they could not in fact be transferred or inherited.

Page 23 (Ali) p.24

The Jagirdar were probably of the opinion that inheritance can be maintenance i.e. Jaghirs and Maqtars.

The meaning of this report is as follows "Prior to 1903 certain Jagirdars were acting as though Jaghirs could be inherited although the Firman of 1903 now makes it clear that they cannot and could not be inherited".

Thus Ali had purported to include the jaghirs in his deed of relinquishment. And so had Mohamed.
What about Abdullah?
Other Family Deed. P.13 of this opinion.
Omer I's will - purpoted to will 1/3rd - all property - to Waqf.
Partnership P.14 - included all property.
Thus in usual way - deed of sale would include all Abdullah's property (including Jaghirs)
A normal family transaction like the others.

R.K.M.

Adjourned to 25/7/55 at 9-30 a.m.

R.K.M.

25th July, 1955. AKBERALLY KHAN addresses Court:

Opinion of Nawab Mirza Exhibit 21. p.9.

The Firman of 1903 was the first order prohibited alienation, inheritance of Jaghirs. Prior to that it was in order.

Exhibit 60 (1) - is not a Firman - not by a competent authority (printed in Govt. publication)
(2) Relates to inames and mefis only.
(3) It deals only with sale, mortgage and gifts.

N.B. The law relating to these jaghirs etc. is peculiar to Hyderabad - with the law of Crown Grants in British India.

(4) Penalty attached.

Reading Exhibit 60 - ..... etc.
What does "etc." refer to.
Sale
Mortgage
Gifts.
Only 3rd person (transferee) is affected.

Shri Jabil says that this Gashti is authorative - I say that as it is not based on H.E.H. Firman it is not. H.E.H. is only authority who can lay down the law relating to Crown Grants. Secretary of Judicial Department has no such authority.

No mention of Heirs - that they are not entitled as a matter of right.

Only incidental mention of Jaghirs.

Exhibit 61 - This is the first Firman.

First time question taken up.

Stopping a practice which had been going on.

Page 2 - notice position of "etc.".

Jaghirs given to noble families.

Exhibit 62 - a firman giving the force of law to Gashti No. 105 of 1282 (or remedying "omission" therein)

The Jaghirs specifically dealt with by 1903 Firman stand. As for those dealt with by Gashti 105, these instructions are given the force of law by this Firman which also includes some of the left over.

Legal force only attached to the Firman.

a) Gashti No. 105 of 1282 did not relate to the jaghirs.

b) In any case it was merely an instruction from the Secretary, certain minor Crown Grants, to his collecting officers - without any legal force - did not affect the Omer family jaghirs.

c) In any case, this Gashti indicates that Gashti 105 did not relate to rights of inheritance - "object of the Grantor ... grant in perpetuity".

Gashtis issued after 1905 are in my opinion not relevant to the issues in this case.

Exhibit 21. Page 24 of Nawab Mirza's opinion.

Exhibit 53. P. 7 Para 7. Mentions the sanction obtained from two Prime Ministers. Attestation - see also Exhibit 41 - P. 3 Partnership Deed -

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Akberally Khan (for Defendants 3-13)

25th July, 1955 - continued.

Saleh
Awad - one of 4 legal transactions.
Abdulla
i.e. Omer's will.
and the 2 Relinquishments - terms of all may be looked at.

Allowances decreed to Abdulla's family.
Instead of full share they received a half share - as a right of inheritance.

Exhibit 38 - Pleadings of Hussein and Munasser dated 19th April 1910.
My contention is that they considered they had a hereditary right to Jaghirs.

(Yes, but that may have been bonafide - even if mistaken) - not an action that necessarily forfeits their rights to the money deposited)
Why no claim until 1942 from them.
(Why no claim from you - 1924?)

November 1923 Exhibit 21 (a) - opinion against us - that Plaintiffs should get cash grants from our jaghirs.
Until then we had said we will stick to the award. we will honour it, we said, if they will.

Exhibit 21 (a) P. 4 recommended a half share in jaghirs. Minority report of Sir Ardar Jung is not filed here)

Exhibit 38 - what are they seeking.

Refused to take the money under the award and went to Hyderabad and filed their plaint for their share of the jaghirs.

Exhibit 41 P.3
P.5 - give a cash grant from Jaghirs.
Opinion of all responsible officers in Hyderabad was to this effect.
That was what was agreed.
Exhibit 21(a) P. 4
Exhibit 21(b) P. 25
I submit that these recommendations for half of their share plus arrears were first accepted by first Firman, Exhibit 21 (e) but modified on Trench's opinion (Exhibit 44) (Ex.53) (Ex.23) by Exhibit 21(f)

Exhibit 21(f) was a result of Exhibit 23.

R.K.N.

Adjourned to 9.30 a.m. 26/7/55.

In the Supreme Court of Aden

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Akberally Khan (for Defendants 3-13)

26th July, 1955.

- continued.

AKBERALLY KHAN continues

1) Exhibit 44.

Exhibit 21 (d) had been submitted to H.E.H. Application submitted to Trench for interim Guzara. Trench was Revenue Minister - had the power to grant such Guzara.

Felt that in special circumstances they were entitled to Guzara - Claim ... is prima facie a good one".

Any allowance ... if it is held that ...

2) Exhibit 53 P. 5 "It follows ...

P. 6 conventions have developed that notwithstanding royal prerogatives ...

21(e) P. 2 - (a)

After 1903 the heirs of the jagirdar succeeded to his jaghir as a matter in right in Mohammedan Law. Subject to the sanction of the Nizam.

Before 1903 there was no sanction necessary.

This is contrary to the majority opinion of the Commission but not contrary to the opinion of all the persons who gave opinions.

1907 H.E.H. issued a Firman permitting Hussein and Munasser to file a suit.

1913 Mr. Dunlop gave his opinion - notwithstanding the Sanad - should have a share in cash.

1923 President in Council - Exhibit 21(a) gave his opinion.

1924 H.E.H. appointed commission to look into it.

1925 Report of Commission.

Exhibit 21(d) - majority opinion (signed by the other commissioner Nawab Sadar Yar Jung) delivered by Nawab Mirza Yar Jung.

Minority opinion is not filed.

Interim application for Guzara.

1927 On his own account Trench gave an opinion Exhibit 44 - not on the merits.

1927 Sent to Executive Council for their opinion.

1928 Exhibit 53 - Trench's opinion given (Member in Council). The President also gave an opinion - disagreeing with Trench (this was another President from Exhibit 23(a))

1930 Firman Exhibit 21(e) with majority opinion of Commissioners.

Exhibit 21(d) ... In this particular case this was the final decision. R.K.M.

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26th July, 1955 - continued.

1932 Trench gave another opinion, Exhibit 23.
1949 Firman, Exhibit 21 (f)

Exhibit 23:
In Jaghirs there are -
Jagirdars - the holder of the jaghirs - manages the village.
Hissadars - generally the heir - a share in the jaghirs.
Guzadars - maintenance holder - when in perpetuity - he is in as good a position as hissadars.

Page 8 of Exhibit 23.
Awad died 1910.
Confirmation of his jaghirs in his sons name came in 1930 for 20 years they were in possession and enjoyment of the jaghirs.
Exhibit 59. P. 4 et seq.
Expert witness upon who both sides rely - says that generally Muslim law applies subject to prerogative of H.E.H. H.E.H. can grant possession to anyone.
Usual practice.

1) Eldest son put into possession - he is the jagirdar. He manages the property and takes a fixed percentage of the income for managing the property.

2) All heirs share in the balance of the income including the jagirdar.

Saleh and Awad were, by the Sanad, put into possession - they became the jagirdars.

The other heirs Abdulla, Mohamed and Ali were sharees - Hizzadars in the jaghirs but did not forward their claims to the Revenue Department on Omer I's death.

Exhibit 21(d) P. 10 -11
because they were enjoying the income of the jaghirs on the basis of the partnership Deed.
Ex. 21(a) Page 1 "The remaining property ...
Ex. 41(3) "Having regard to the will.

In those days, when Omer I died - these rules were not strictly followed.
Application finally disposed of by 21(f) August 1949.
Firman's might be contradicted -
This 1949 Firman, Exhibit 21(f) contradicts the 1930 Firman 21(e). Firman 1930 (Exhibit 21(e) asked opinion on 3 points saying that necessary orders will be passed after opinion of council is submitted.

Exhibit 21(f) - contradicts findings of Commission in 3 ways.

(1) Arrears: Arrears had been rejected by the Commission majority. Yet following Trench's opinion Exhibit 23 - this firman granted arrears.

Following opinion of Trench with which Council must have agreed:-

P.2.... as per the opinion of the Council - arrears will be paid ....

(2) Amount: - Commission said "some allowance".

Trench recommended half share - calculated regularly (Court - no contradiction here)

This in fact was in perpetuity - Plaintiffs admit that heirs of deceased grantee received the allowance.

Application of Exhibit 38 was finally dealt with by 21(f).

The heirs of Awad and Saleh were enjoying with no confirmatory firman until 1930 Ex. 21(e) when this possession was confirmed.

In 1909 Hussein and Munasser, knowing that jaghirs were large - wanted a big share in them rather than the paltry money deposited for them with Resident in Aden.

Persisted in refusal to accept - even after reminders.

The British India Government wanted award followed and of suit before Hyderabad disallowed - but Government of Hyderabad permitted suit to be brought.

Two alternatives: Could either accept money - Honour the award or Refuse award and bring case in Hyderabad.

(Court - what if they bona fide thought they had a claim to Jaghirs because Jaghirs not included? Why not a case as well.

1888 Abdulla died.

1901 Differences arose. Munasser and Hussein v. Awad.

Arbitrator appointed. Government did not intervene. Until after award - when they advised Hussein and Munasser to honour it.

Mansab's decisions were correct. Balance was due.

They attacked award: Not on ground of jurisdiction but on ground of misconduct of Mansab. They said the attempted settlement is unfair. They were free to reject it - and did so - money is recoverable. They sued for part of their claim in

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26th July, 1955 - continued.

Hyderabad - it was partially successful (see Final Firman of 1949) Did not touch the award - why - because they thought it might prejudice their claim in Hyderabad.

Money paid in under attempted settlement to be returned to defendants and the court can proceed to consider that part of the plaintiffs claim to a share in Bombay and Arabian property etc. - which claim was not pursued in the courts of Hyderabad.

Court: That would be virtually impossible, would it not?

Adjourned to 9.30 a.m. 27/7/55.

R. Knox-Mawer.

27th July, 1955. AKBERALLY KHAN continues

1865 Omer died.
Award was made 38 years afterwards.
1888 Abdulla died.
Award was made 15 years afterwards
1847
1866 - Sanad in name of Awad and Saleh.
1886 - Saleh and Awad's Partition.
1874)
1875) - Relinquishment deeds of Mohamed and Ali.
1873 - Partnership Deed - Awad, Abdulla, Saleh
1903 - Award.

"All the property of their father " - no distinction between jaghirs and other property.

Just like a modern arbitration award, it follows the same method - displays ability and intelligence of Mansab - sets out claims on both sides - states both had consented to abide by its terms.

"Property in Hyderabad" and Bombay.

Saleh's heirs took all the property in their half share - no question of separating jaghirs.

Note words "cash, gold ... lands ... applies".

That there was a sale from Abdulla to Awad is not disputed.

Abdulla admitted that he received a part of the purchase price.

Counterclaim.

Rejoinder of sons.

Did parties appoint Mansab as final arbitrator - agreeing to abide by his decision - Yes. Was his appointment revoked beforehand by Hussein and Munasser?

Was there a subsequent repudiation?

My main contention is still that this is merely a private family settlement.

It is definitely stated that the Mansab was given absolute authority to reach a final decision from which they could not demur.

P.4. "all that which he possesses"

"excluding the property" at Hadramaut - why not exclude the atiyat property if they wished.

For 186,000 M.T. Dollars.

Received 46,000 -

Balance due 140,000.

Award not made in a haphazard way - all matters gone into - every element of proof looked into. Solemn award - done in Arabic Mohammedan way.

Conclusion:

Balance 140,000

70,000 for Hadramaut

50,000 Sympathy, Mercy - not given in a modern award - according to custom.

Counterclaim - null and void - "he is to forgive them".

Use of word "forgive" implies a family settlement.

Uses these words in order to make the pill of his award more palatable - still a quasi judicial decision.

Recommends - friendship and sympathy on both sides.

If the award was as I argue, repudiated, then the money deposited under it by the defendants must be returned to them. That would be the outcome of this case. It is then for the plaintiffs to pursue their claims (if any) in another action. Whether before this Court or another is a matter for them.

What therefore happened after this award was made. Conduct of parties.

Exhibit 31. (See P.170 Secretariat Record)

Were prevented from suing in Bombay.

Wished to do so.

Clearly they did not accept the award - but does that matter?

An arbitrator in Mukalla could not strictly speaking decide on property situated elsewhere - outside jurisdiction - Nevertheless - parties gave him that jurisdiction.

Exhibit 30 (see Secretariat Record P.110).

Admitted Copy.

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27th July, 1955 - continued.

Again they state that before the passing of the Award they had withdrawn the Mansab's Authority.

Proper destination of property in India to be decided in courts of India.

Exhibit 29. (Secretariat Record P.192)

This was the clearest repudiation.

Exhibit 32 (Secretariat Record P.194)

How can they now say then in equity and good conscience they can now claim the award - a person is bound by his own conduct.

Had legal advice at that time.

Exhibit 37 (See P.226 Secretariat Record)

Gazette Paper from Sec. of Govt. of Bombay to Foreign Department.

"As security for his bona fides".

Were not allowed to sue H.H. Sultan Abd. in British India.

Award of an arbitrator can be challenged only on 2 grounds - Misconduct
Want of Jurisdiction.

Question of misconduct considered by British Government.

The only evidence we can have today. No question of a division of property.

Exhibit 33. 14/8/1903. (P.248 Secretariat Record)

Another indication that they knew the legal position; Objected that they had revoked the appointment of Mansab. Accused him of misconduct.

Asked for permission to sue in India.

Exhibit 34. (P.254 Secretariat Record).

Government asked them to accept award.

They preferred to sue for jaghirs - worth much more - than this paltry sum. They chose this alternative - can they now come and take the award.

Exhibit 35 (P.291 Secretariat Record)

Exhibit 13 - money still held for Hussein and Munasser.

Last para. 1906.

"without much delay" can they claim it at any time - 52 years afterwards - deposited with Government as a trustee.

N.B. have been unable to claim at once.

Action taken in Hyderabad

Adjourned to 9.30 a.m. 28/7/55.

R. Knox-Mawer.

28th July, 1955. AKBERALLY KHAN continues

Exhibit 40. Para.14
A reply to Exhibit 39.

A complete repudiation of the award is evidenced.

Exhibit 41. Dunlop's opinion) Both accept as a
Exhibit 53)) matter of fact that
Exhibit 44) Trench) the award referred to the whole property although legally, technically, Crown Grants (atiyat) required the Nizam's sanction.

Exhibit 21(a) Page 2
Exhibit 34 Word "Br. India" used.
Br. Indian Government could not prevent suit in Hyderabad.

Wished the parties to abide by award.
Exhibit 16. 7/4/52. Written by Plaintiffs lawyer.
No date fixed for acceptance of award.
But money paid to trustees - to hold for payees. No trust -
Paid into N. Bank of India account of Political Resident, Aden, payable to Hussein and Munasser.
I say it was money paid as a security.
Position of British Government was similar to that of a trustee? No.
A family compromise -
Awad paid the money to Political Resident impliedly subject to the acceptance by Hussein and Munasser.

Principal Entitlement of Plaintiffs in equity to balance of sale price under the sale deed.

My claim to Lakhs.24. must be considered. Court placed in position of the Mansab.

Interest. If Defendants fault that purchase price not paid to Plaintiffs up to today, then interest would be payable. But it was not. Only the award amount would be payable.
Exhibit 3. Awad's letter.
Exhibit 37. P.226 "as security for his bona fides"
Although British Government may have used these words, in fact was it payment in under the "decretal" award of Mansab.
Resident may well advise Awad to abide by award legally - if award was binding on both sides then in law he was bound anyway - irrespective of advice.

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28th July, 1955 - continued.

Award doesn't say pay on certain conditions and undertakings. It says "pay".

Interest: Defendants have always been ready to pay. Hussein and Munasser are refusing to accept. Awad gave it to 3rd party (Political Resident) to hold until Hussein and Munasser take it.

3rd Party invests it. (P.R.-

Whose money is it.

I give it to 3rd party to show my bona fides.

Not to dispose of without Political Residents consent (3rd party's). The 3rd party is neutral.

Why should Awad pay to the 3rd party unless he wishes to divest himself of the property in it.

Until decree holder demands payment. Property in the money has not passed from Judgment Debtor. If Awad had kept it himself - all right - but what was his intention in handing it over to Political Resident to divest himself of property in it? (What was intention of Sultan Awad?) To constitute Political Resident a trustee (Exhibit 4, Ex.5.) Exhibit 7. Letter from Acc. General. Use of word "Trust".

Exhibit 8. similarly.
Exhibit 9.
Exhibit 10 Interest.
Exhibit 11.
Exhibit 12) Indicates that Political Resi-
Exhibit 13) dent had authority to hand over to Plaintiffs without any further sanction from Defendants.
- were "as" trustees.

Exhibit 14. Letter from Omer (then Sultan) son of Awad to Political Resident.

It doesn't matter in law whether Governments accepted the award or not - court is concerned with the legal implication flowing therefrom.

Exhibit 14 again indicates intention of Awad in paying over the money - divesting himself of property therein.

The reason for crediting the said amount ... was "to give it" to them. Awad's son purports to state Awad's intention.

Exhibit 57. From Agent of Omer (Defendants) request for return of monies deposited.

Exhibit 43. The acts of the Executive do have relevance in this case.

Court: The Ordinance was passed because Ex. wished the courts to give a judicial and legal decision.

"Inheritance of Sultan Awadth". So referred to by the Government of India at that time but obviously the "3rd party" holding the monies has not known the true position - otherwise no special Ordinance would have been enacted.

Exhibit 55. Letter of 4th June 1932 from Sec. of Aden Government. Use of word - "security" - (originally called the Trust).

It was thus in 1932 that Government (the 3rd party) decided that they would file an interpleader suit, to enable a court of law to decide who should have the monies held by them.

Exhibit 56. 27th June - Reference to Exhibit 55 called it "a security" again.

Refer to Ord. No. 11 of 1945. Reference as Awad's Fund whereas in pursuance ...

Section 2.

Not in anyway conclusive. R.K.M.

Ptn. Exhibit A (see Ruling of 30/9/53)

Application by plaintiffs complaining of Ordinance - Ruling of Court.

Exhibit B & C Again the same complaint. Ruled out by Campbell J.
R.K.M.

Adjourned to 9.30 a.m. 30/7/55.
R. Knox-Mawer.

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28th July, 1955 - continued.

AKBERALLY KHAN continues:

30th July, 1955

Court has no jurisdiction under the Ordinance to go further than to say this money is Sultan Awad's - and "these" are his successors in title. All family claimants were permitted to lay claim under the Ordinance. The Ordinance refers to is as "Awad's" Fund.

(N.B. Section 1 leave the questions of title - whose money is it? opens)

Even the Mukalla Government can claim, although in fact, in my submission, they have no case whatsoever.

Act of State, Section 12.

Questions of law which arise.

What law is to be applied.

Law of Mukalla must apply - Failing that -

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30th July, 1955 - continued.

principles of common law, equity and good conscience according to established Judicial principles.

1899 2 Ch. P.173.

S. Africa K. entered into contract of service with S. African United Breweries. Dispute arose re-interpretation of its terms. Contract entered into in S. Africa.

Place of Performance contemplated as S.Africa. What law applies?

P. 177. What is intention of contracting parties as to the law which was to govern the contract. "The " What law does the contract itself import.

Words of Bowen, L.J.

Form of Contract:- Language - Arabic - Residence of Parties. What is law of Mukalla on the subject.

If a contract is unenforcable, it is unenforcable - but what did parties intend?

Preference gives to law of country with which transaction has the most real connection.

Held Not governed in this case by English law - governed by S. African law.

With which country has this contract the most real connection?

India Supreme Court A.I.R. 1953 P. 91

Either Ex. 37(a) is an Act of State or (b) it was an Executive Act beyond the purview of judicial determination.

Exhibit 43 - refers to Govt. in Council. In any case it does not lay down anything.

Exhibit 54, 55, 56 and 57.

Exhibit 34 (P. 254 Sec. Record)

(If order was made final by Act of State then it was final?)

The British Parliament unlike the Legislature of India has legislative omnipotence - but the Government of India could do executive acts which cannot be challenged by the courts.

(It seems that in fact no final "order" was in fact purported to be made by the Executive - Executive anxious to bring dispute to a peaceful end. Failed to do so - passed this Ordinance - interpleaded then asked to be discharged - let court decide all the judicial principles)

1926 A.C. P. 518, 519, 521, 523, 525, 528.

Court to note the cumulative effect of the Executive acts. Which acts are judicial, which executive.

A.I.R. 1950, Supreme Court of India, P.222.

The Award or Settlement. Law Applying.

Mukalla Law was presumably Mohammedan Law - Shafil doctrine? A sort of family settlement according to customary law. If nothing on the subject - do we fall back on law of British India? It covers properties outside Mukalla, in Arabia, Hyderabad and Bombay. i.e. in several jurisdiction of independent states.

No authority on this sort of award.

An arbitration award of this nature cannot have the effect of a final judgment and decree when purporting to deal with such properties.

Definition Section - Section 2 - Civil Procedure Code

(2) Decree

Parties can grant the adjudicator power to pass a final decree in this dispute - but can they grant him jurisdiction? No Juridical value - while parties are bound one to the other to abide by the award - the decree has no value per se - it does not affect the property as such.

(8) Judge.

(10) Judgment debtor.

- Could Mansab's order be executed against the properties in India - No! Against properties in Mukalla - Yes.

(A contract - breach thereof?)

Section 11. C.P.C.

Even if it is a perfectly valid award - even thus it cannot have the force of a decree.

Russell 14 Edn. P. 1.

Party may be bound in equity by it.

An award cannot operate as a transfer of property.

While judgment covered real property in different states - it merely decreed payment of X rupees - cash - no decretal order or transfer of realty.

Because part of the subject matter of the dispute was outside the jurisdiction of the Judge (or Mansab) he could not pass a juridical order in the dispute.

Exhibit 29, 30, 31, 32.

If there was a consent - it was withdrawn - estopped from denying it now.

Russell 14, Edn. P.37 "At Common Law the authority of an arbitrator might at any time before the award was made be revoked at the pleasure of any party to the submission."

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30th July, 1955 - continued.

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Russell 15 Edn. Page 1.
1915 A.C. P. 499.
When repudiation strikes at the root of the contract the arbitral award cannot be pleaded.
- We do not want to touch the money said the Plaintiffs - no more clear repudiation is possible.
Repudiation at 2 states 1) Before award
2) After award

Akberally Khan (for Defendants 3-13)

30th July, 1955 - continued.

MANSOOR: Defendants have never pleaded that the award was void ab initio.

AKBERALLY: I have pleaded "repudiation".

MANSOOR: Yes - Repudiation of the award not of the agreement to refer to arbitration.

COURT: I agree with Mr. Mansoor as regards the pleadings of Defendants 3-13 but Defendant 1 has pleaded both points.

AKBERALLY: Unless there is a submission there is no award. The submission was withdrawn and thus there was no award.

COURT: You do not appear to have pleaded on behalf of Defendants 3-13 that there was no award. I think you should allow Mr. Kazi for Defendant 1 to take this point, as the Plaintiffs object to your doing so.

Adjourned to 9 a.m. 1/8/55.

R. Knox-Mawer.

1st August, 1955.

AKBERALLY KHAN continues:-

Repudiation of Award
Exhibit 29, 30, 31.
By Hussein and Munasser.
Exhibit 14 and Exhibit 57. Letters of Sultan Omer etc.
Exhibit 43 acceptance by Gov. in Council.

The Government being no longer prepared to hand over money to Plaintiffs - without a judicial proceeding - enacted Ordinance.

1942. A.C. P. 356, 359, 361, 362. Where one party repudiates a contract option lies with other party - accept repudiation treat contract as subsisting and sue for damages.

Did defendants do this. Defended Hyderabad proceedings by relying on the contract?

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1st August, 1955.
- continued.

A Mukalla Award - not under sovereignty of British India, treaty bound but an independent state.

A foreign award - Arbitrally binding only - but not an award in English C.L. since in absence of statutory enactment or protocol.

Russell P. 398 (?) 14 Edn. P.403.
Indian Arbitration Act P. 182
Russell 15 Edn. P.261.
Such an award is not a judgment of foreign tribunal.

Laches.
Claim abandoned on ground of inordinate delay.
Russell 14 Edn. p. 210.

1919 1 K.B. P.78, 82.
have parties "virtually abandoned the contract".

Estoppel.
I paid on basis - "that they abide by the contract - in accepting it". Did not do so. Contract repudiated. Opted to treat it as subsisting - are you not estopped today.

The Arbitration & Award constituted as contract.
Exhibit 37.
Exhibit 3
Underlying the contract there were two basic points.
a) A foregoing of the right to sue.
b) The adjustment of counterclaims.

Mulla & Pollock Indian Contract Act 7th Edn. p. 180, 181, 291, 292, 293.
Has action of Defendants affected the whole or part of the contract - P.292.
A.I.R. 1924 Patna 736 at 744, 745.

Court: But what does the local law of the parties say? The parties were all Shafi'is .

Minhaj el Talibin is the authority used (see P.501)
N.B. Ex.37 "tribal customs"

Rehman) Judges in Mukalla - applying English
Mansoor) C.L. to Civil Law - Contract Commerce and family law. agree that local qadhis differ. Have not given evidence because agreed.

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1st August, 1955 - continued

Sharia Courts - apply Shafi'i doctrine - unwritten law. Agree that under the local Shafi'i doctrine is not certain. - Nothing to say that a decision of a Mansab is final for all time. "the contract is the law of the parties".
Basis is contractual - according to principles of natural justice and good conscience.

Decide case in accordance with what is just and reasonable in the circumstances.

1886 32 Ch. Div. 266 at 289, 291.
A.I.R. 1926 All. p.715, 718.
A.I.R. 1929 Lah. p.482, 487.
A.I.R. 1932 All. 174. 176. Family settlements and arrangements.
1930 A.I.R. Lahore 860
That award is a compromise.

All cases quoted by Plaintiffs do not deal with an award made in another foreign country - in which endorsement is sought in another court.
Basis usual therefore be entirely contractual.
No mediation of a 3rd party - i.e. Br. Govt. there.

Final Point Assume - a good award final, binding, enforceable as a decree.
Cannot go behind it.
What does it say: Accept award.
Take money.

On consideration of your foregoing your claims I will accept decision and pay you what he orders.
Did not choose (upon bringing of case in Hyderabad) to treat agreement at an end - estopped today from doing so. Treated contract as subsisting, money paid over - return not demanded.
Deduct amount taken in Jaghirs - as damages.

Interest - see earlier notes.
No interest given in award.
Exhibit 16 p.383. Russell 14 Edn. Indian Arbitration Act. p.282.
Damages would be 1) Actual sum granted out of jaghirs.
2) Costs involved.

Security.
Exhibits 37, 3, 55, 56.
Who is at fault?
Intention to pass property (i.e. the amount decreed)
Intention to pass to trustee
Trustee received it - Fact that Hussein and Munasser did not accept it - irrelevant here.

A.I.R. 1921 Cal. 576, 577.
A.I.R 1936 Patna 370, 371, 373.
A.I.R. 1924 Rangoon P. 275 at P.277.
A.I.R. 1938 Privy Council, P.67, P.70.
A.I.R. 1935 Bombay, P.200.
Distinguished. Here the Govt. invested it for Hussein & Munasser (originally) whatever they may have said subsequently.

R.K.M.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Akberally Khan (for Defendants 3-13)

1st August, 1955 - continued.

Kazi (for Defendant No.1)

1st August, 1955.

KAZI for Defendant 1:

I shall deal only with one or two points, Exhibit 37. P.226.

Security: Is it a trust: Look at the intention of parties. (I do not intend to place great reliance on various (contradictory) terms used in Government letters etc.)

This exhibit in any case indicates that Govt. were accepting money as holders or trustees on Munasser & Hussein's behalf.

Implied trust attaches upon holder.

Exhibit 3 - Last line - "the said sum may not be disposed of without the order of the Political Resident, Aden -"

The natural responsibility of a trustee?

Exhibit 55, 56.
Exhibit 43.

Even though officers change - did for maintain same position - more or less - but not a security in my opinion, in its legal sense.

Interest is a difficult question when considered viz a viz the contractual position.

What did Awad and successors say and do in effect.

"There's the money, I've paid it. I've fulfilled my side of the bargain - you fulfil your side"- Was contract to submit agreed and subsisting - this question must be answered in the affirmative if this argument is to prevail. Other party refuses to accept - I still do not repudiate. I say that is your money, take it. If you in breach of contract in law then you will be liable - damages? for loss sustained by me. Can I later

In the Supreme Court of Aden

No. 25

Counsels Addresses

Kazi (for Defendant No.1)

1st August, 1955 - continued.

say to third party I want it. Already opted - damages only. I say I now treat contract at an end. Return money to me. Exhibit 14 first time. Cannot change again, can they? Having opted. Exhibit 16.

Exhibit 57 (1?)
Exhibit 43 Reply.
Exhibit 55 - Champion's letter.
From 1924 onwards - claimed return of amount.
Exhibit 14.
Reference to will of Omer I

If money is refunded to Awad's successors we claim 1/3rd, only.

(Court - money is for family's members - Not Govts. as such).

Arbitrator - A special tribunal fixed by contract for deciding dispute under reference -

Revocation can be made at any time before publication of award.
Halsbury Vol.1.
1875 I Q.B. 743.
1888 20 Q.B. 177.

If one party repudiates other does not accept it, what is position?

Before other decides to accept - we accepted repudiation.

Until that day we were still able to accept repudiation.

When did plaintiffs send in their letter claiming money - 1942 - Exhibit 16.

No clean hands.
What is in their favour -
Would 3rd party pay them before 1924? - Yes.

Yes, but Defendants had made their choice - chose despite the repudiation and breach thereof - to regard contract as subsisting - It continued to subsist.

Russell 15th Edn. P.269.

We cannot assess value of jaghirs in Hyderabad.

Treat plaintiffs claim as a counterclaim in damages.

Suit should be in form of a suit for specific performance of the contract.

No - the ordinary rules do not apply to this case - I have to do justice in the matter - not confine myself to form, a quasi equitable function.

? is an equitable remedy.
1910 1 Ch. P.336.
Inherent power of Supreme Court.

Concludes according to principles of justice (see Civil Courts Ordinance). If ever this section applied it does in this case - what is the law applicable etc.

Adjourned to 9.30 a.m. 2/8/55.

R. Knox-Mawer.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Kazi (for Defendant No.1)

1st August, 1955 - continued.

SHRI JABIL replies for Plaintiffs:

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

2nd August, 1955.

No evidence whatsoever that Jaghirs & Crown Grants were included in the sale deed.

There was a sale - can it not be inferred that they were included or not.

Relinquishment Deeds - no words jaghirs and maqtars used - nevertheless included: like inference to be drawn re sale deed. Exhibit 21(d) p.12.

Q. whether Jaghirs ever sold in Relinquishment Deeds. not specifically decided.

Ali's heirs did not claim a share in the jaghirs. No question at all of this. They merely claimed a salary of Rs.12000 per annum. Relinquishment deed constituted merely a relinquishment of salary - not of the jaghirs themselves.

Scheme of Nawab Mirza Yar Jung's Opinion.
Stated their claims.
Framed common issues, individual issues.
Decided common issues, individual issues.
3rd case. Ali's heirs (P. 2 Ex. 21d)
That Ali had been granted a compensatory salary by P.M. - heirs claimed this.
P.20.
Judgment 1868.
Relinquishment deed - 3 years later on.
No relinquishment of jaghirs in that deed because Ali had none.
P.4. General Issues framed
Firman of 1903 embodied in Gashti of that year (Firman delivered, Gashti published, usual procedure).
Assume that prior to 1903 jagirdars interest were inheritable, transferable - fail - see p.9, 10, 11. Therefore we give our opinion against heirs of Mohamed, Abdulla and Ali. That is the basis of his opinion - why our claim dismissed.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

2nd August, 1955.
- continued.

A fresh grant to Saleh, Awad, after Omer's death (1865) in 1866. No legislation has retrospective effect - unless given it - clearly then the same must have been the law before 1903 - i.e. Jaghirs, Crown Grants.
Not inheritable.
Not transferable.
Enforced by Firman.
Other issues also decided against us
P. 13 (21d) (Case No.2)

Court: It seems quite clear that before the 1903 Firman, the transfer of Jaghirs etc. technically required the sanction of the Nizam.

R.K.M.

Mansab's Award:
Jaghirs could not be included in the sale deed because Awad had obtained a fresh grant to himself in 1866 and Abdulla had no shares in them to sell.
Defendants in their written statement plead the arbitration award - rely upon it. Exhibit 39.
Exhibit 40. Plaintiffs in rejoinder deny validity of award.
Plaintiffs were disallowed from filing any suit in Bombay.
We went for Crown Grants.
We had to accept the award in respect of the other property (the whole - we say; jaghirs could not be included) because the Govt. prevented us from suing. No, fact that you contract you forego a claim in which in fact you cannot succeed (thus if you could, technically impossible) Still - if you afterwards claim and lose - a breach of contract.
I obtained no part of the jaghirs as a matter of right.
I received an allowance paid out of income of jaghirs as a matter of grace - no right given in jaghirs as such (See Ex.21(e) "I must show some favour ..." Q's put.
Result - Exhibit 21(f)
Did not affect property covered by award.

If you hadn't claimed, in jaghirs, contrary to arbitration agreement - defendants would not have had charge imposed on their jaghirs by H.E.J. or is true to say that as nothing was granted out of right - then this grant is not a loss flowing from breach?

Opinion of Dunlop never accepted - majority only accepted.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

2nd August, 1955 - continued.

Original Application by Plaintiffs to Nizam were contested by Defendants (Awad) - relied on Award. No copy of these proceedings are filed (See Ex. 40 p. 8)

Exhibit 21(f) 2nd Firman - how does this contradict 1st Firman.

1st Firman Ex. 21(e) "I must show some favour".

Col. Trench's recommendation of interim Guzara - "assumption that we would succeed".

Exhibit 53.

How much should we have on that basis?

P. 5.

"Their claim to arrears with effect from Abdulla's death in 1306 H. cannot be deemed ..."

Exhibit 21(f)

We only received about 1/8th of what we claimed. And that as a matter of grace.

Heirs claim on basis "this was our ancestors jaghir. Now we claim a right as heirs". Incidents of succession to private property does not attach whatever we may have thought.

Usual procedure.

Heirs retain possession of jaghirs on jaghirdars death.

Awaiting confirmatory Sanad of H.E.H.

No question of Abdulla having a share in jaghirs after 1866, paid through Brother Awad.

Two alternatives open to Plaintiffs.

1. Honor award
2. Reject it.
3. In good faith

Thus Believing jaghirs not in award (see Rejoinder still denied award. file suit.

Plaintiffs now say it was a Family Settlement Not an award - If they had said this at the beginning - Government might not have stopped us from suing.

Exhibit 37.

Defendants never pleaded this - always admitted it was an award.

What is an award at Common Law.

Pleadings. Para. 3. of Defendant 3-13.

Para. 5 - "a very exhaustive and learned award".

Para 5(b) of Defendant 1's pleadings - again the word "award" is used.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

2nd August, 1955 - continued.

Para. 5. of Defendant 2 pleadings "under the award".

Exhibit 37 p. 226.

"Accepted" the award. Use of word "award"

(knew at the time that plaintiff was repudiating it?)

Also in Atiyat Pleadings.

Law Applicable.

Since no evidence showing law in Mukalla is in any way different from general equitable principles of law, embodied in Common Law and Indian Law, then these are the principles to be followed.

The Award itself indicates the principles of law applying -

The Mansab indicates them.

Notice way in which award set out -

1. A submission to arbitration.
2. Case for
   against.
3. Counterclaim.
   Reply.
4. Scrutiny of docs.
   Evidence.
5. Decision.

Revocation of Mansab's authority?

Ordinance recites that money was deposited under an Award presumption that award was valid?

Do not have to look behind award to question its validity (Yes - if necessary - Court must do justice)

Revocation - if any - Revocation (of submission) prior to award.

Legal effects.

Equitable principles being applicable -

S.5. Indian Arbitration Act 1940 (not applicable? - corresponds to 1889 Act of India)

Commentary P. 67 - p.68.

Not accepted by the other party - a bilateral contract - only both parties can do so.

Award itself negatives the assertion.

(Had Mansab authority, a question of fact. Hussein and Munasser were bluffing)

Court: I am satisfied the Mansab had the necessary authority at the time when he made the award.

R.K.M.

Repudiation AFTER the award

Awad accepted award - unconditionally

It was enforced and executed - completely.

Payment made - to 3rd party for Hussein and Munasser.

Exhibit 2. "money due to heirs of Abdulla ... is ready.

Awad chose to ignore repudiation and paid the money, no conditions,

No question of a "security" - a term only used by Govt. (see below)

Exhibit 3. as per Mansab's decision.

Deposit in their names.

Credit to account of Political Resident because Hussein and Munasser had no account there -

Exhibit 4 - Receipt from Bank.

Not a conditional payment.

Exhibit 5.

Exhibit 6. - Money still Awad's says Defendants Counsel.

Not entitled to interest on it.

How could it be - security for money already paid.

If a security, why did Government deposit it under the names of Hussein and Munasser.

Exhibits 7 and 8.

Exhibit 8. "it is a new trust and should be styled "The Sultan of Shihr and Mukalla's Nephews Trust".

Exhibit 13. 1906. "the substantial amount .. is safe with Government".

Pleadings of parties admit it - they say "compensation has been paid" Exhibit 39. Para.12 - it was executed.

Hussein and Munasser did not deny that it was paid challenged validity of award as such. Q. is "was money paid?" Answer "Yes".

Property already in possession of Awad. Nothing to be done by us. (Contract negatives one of foregoing to sue)?

Executory on one side only - Awad's. He executed.

We protested against the award.

Had no court in which we could do so - went to Hyderabad.

Has contract to accept award actually been repudiated or not.

Q. of Fact - Did we? By any act of plaintiffs no claim ever made to property covered in Award.

Bombay (Indian Govt. prevented us) Exhibit 12.

Mukalla (pointless anyway)

Exhibit 51 - Not permitted to file claim about "private and personal properties"

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

2nd August, 1955 -- continued.

WHY? - because award covered them?
See also Firman referred to in Ex.21(a) P.3

"The Judicial Dept. should also be intimated that"

If repudiation had been accepted by Awad at that time - as he could have done - parties would have been relegated to their original positions.

No prohibition would have been made in Bombay. Hyderabad.

(or personal properties) 10

No question of statutory enactment applying as such - nevertheless on general principles - award was pleaded and considered binding

a) by British Indian Government.
b) by Hyderabad (Exhibit 51)

Defendants pleaded and relied on award as a bar to atiyat proceedings up to 1924.

Can they purport to accept our repudiation after 21 years?

Adjourned to 9.0 a.m. on 3/8/55. 20

R. Knox-Mawer.

3rd August, 1955.

AKBERALLY KHAN:

Total arrears given to heirs of Hussein and Hunasser from our jaghirs were Rs.146,475 up to 1948. Same amount given to heirs of Mohamed. From 1949 onwards they have received Rs.2,360 p.a. continuing as classified by Plaintiff 1. Same amount goes to heirs of Mohamed (Mohsin's heirs also pay same to Ali's heirs)

Litigation Costs: 30
Rs.240,000.

That would be our claim for damages if Court held that way.

R.K.M.

SHRI JABIL continues:

Figures given for maintenance up to present date are correct.

Arrears paid to Mohamed's heirs are not damages attributable to our action in filing litigation in Hyderabad. 40

The award is final.

All we have done is to infringe an obligation arising out of the Award. Two courses open to defendants having executed the contract on their side. 1) To enforce obligation of plaintiffs if

it can legally be enforced by s.p. and ?
2) claim damages.

Contract can be terminated by consent of parties.

1903 - Repudiation.

1924 - Repudiation accepted. Exhibit 14 Addressed to Aden Government not communicated to my clients - Not till 1953.

A.I.R. 1934 Bombay P.140. Rts. adjudicated upon remain intact.

At the time when acceptance of our repudiation communicated to us - status quo could not be restored.

A.I.R. 1935 Madras 473.

Cannot be a security - only furnished when person does not accept the award - money paid to people entitled to it, under the award.

Exhibit 37. "as security for payment of amount awarded by Mansab".

Awad "has accepted the award"

Attitude of Gov. in Council - wanted to see that money awarded was "paid".

Defendants obliged to pay and accept award as final.

Plaintiffs obliged to accept award as final. - breach repudiated it.

No Court enforced award as such an answer to suit by plaintiffs.

Treat award as final pay to holder. Plead award. Damages sustained by breach would normally be the costs of the action. Did not ask holder to return the money.

Hyderabad said - award could not cover jaghirs - what is substantial answer?
Nevertheless a breach of award contract - bound to accept award as final and precluded from further actions about my property.

That is your money - no condition attached - it could not. The award is final. I shall hold you responsible for anything you cause me by not abiding by the award. As it happens. Hussein and Munasser were only able to sue for jaghirs.

Russell P.345, 346.

Don't ask for any charge on our jaghirs.

Fact that they defended their case on grounds other than existence of award does not alter fact of breach. Did not lose their case entirely - Defendants loss flowed from original breach.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

3rd August, 1955 - continued.

Interest.

We claim our money deposited in our name upon which profits have accrued.

See Exhibits 16 & 19 "Trustees"

We do not seek today to "enforce the award" as such in a court of law, in usual way - because we are bound by the award. The defendants elected to treat it as subsisting it still subsists - that is our money -

Russell P.334. "Interest" does accrue on an award.

Irrelevant, not a q. of interest to be awarded by court, on money deposited, upon enforcement of the award, I am not asking Court to enforce the award.

S.29 Indian Arbitration Act is irrelevant.

Last para. of Exhibit 14 - wait final judgment of "atiyat" case.

- if they win - why - because award pleaded.

Cannot be heard at one time (Atiyat proceedings) to rely on award (plead it as final) now to say it no longer stands - not final.

Court has to decided who is entitled to this money?

Can Court award damages - to avoid costs of separate action? Can I take advantage of Civil Courts Ordinance - Yes

Exhibit 16. "which holds the money in trust"

(Government after holding it in trust for heirs of Hussein & Munasser for all the years decide to enact Ordinance and ask Court to dispose of it).

Exhibit 19. Again "Trustees".

Exhibit 15. 1927. No acceptance of repudiation at this date by defendants.

An offer only.

Evidence that they were still insisting on finality of award.

An award of a Foreign Territory cannot be enforced here as an Award.

Quite irrelevant - no question of this arises.

There is no occasion for enforcement of award by us - it has been executed - money is paid - it is ours. - this court has jurisdiction over the money because it is in the hands of Government.

What is the nature of this suit.

That is how case arises.

Who is entitled to receive this money.

This Court would have jurisdiction apart from Ordinance.

"Trust" money in hands of Trustees - are now doubtful after all these years who to pay it to - they interplead - this suit results - that is how case arises.

In the Supreme Court of Aden

No. 25

Counsels Addresses

Shri Jabil Ahmed (for Plaintiff No.1) in Reply.

3rd August, 1955 - continued.

No question of limitation arises. If plaintiffs are the owners of this money that is the end of the matter.

In any case - What trustees may say or think does not alter the nature of the trust.

Government of Mukalla say that as Awad's money was derived from the State Treasury - they can now claim as against other defendants.

No evidence whatsoever.

Equities. All the properties are held in possession of Defendants today. They tell us to go and file a suit today - entirely inequitable.

If Defendants claim damages they must prove them - if they have not done so - then they must suffer.

Why not file a suit in 1930 for the damages they had suffered - where? At the most they have not spent more than Rs.30,000 in the atiyat proceedings. That is my estimate.

Court can accept this against plaintiffs.

R.K.M.

The defendants' assessment is simply a guess. What are the reasonable costs - nothing exorbitant.

Dower of Abdulla's widow.

Relative shares of plaintiffs have to be determined.

No evidence to substantiate it - accordingly unnecessary to rebut.

Assessment of Hussein and Munasser who are their property of legal successors in title.

When did plaintiffs demand payment of these monies.

1942 Letter Ex.16.

1945 Letter Exhibit 18.

Replied to Exhibit 17 and Exhibit 19.

An acceptance of award?

In any case, our acceptance or non-acceptance is irrelevant - once our entitlement is there our right remains -

(nevertheless a breach of contract to abide by arbitration)

Repudiation of Contract.

1899 2 Ch. 183

Which is law applicable in this case -

N.B. Agreed between parties as to principles of law with which Court has nearest connection.

1942 A.C. 361. 371-374.

Exhibit 28 (P. 148 Sec. Record)

We were entitled to 1/3rd of Omer's property

Hyderabad grant was made because award was considered inadequate?

We filed no suit anywhere.

Q. of Sale Deed - not to be reopened anyway.

By consent contents of Exhibit 65 and Exhibit 66 admitted without further proof thereof.

Judgment 6/9/55.

R. Knox-Mawer.

In the Supreme Court of Aden

No. 26

Judgment.

6th September, 1955.

No. 26

J U D G M E N T

IN THE SUPREME COURT OF THE COLONY OF ADEN

CIVIL SUIT NO.260 of 1952

1. SAIF BIN SULTAN HUSSAIN AL QUAITI
2. SULTANAH MULUK
3. SULTANAH FATMAH
4. OMER BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
5. SULTANAH FATMAH
6. MOHAMMED BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
7. SAIAH BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
8. AHMED BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
9. GALIB BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
10. NOOR BEGUM
11. ABDUL QAVI BIN NASIR BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
12. MUNASSER BIN NASIR BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
13. NOOR BEGUM
14. SALEHAH BEGUM
15. MOHAMMED BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
16. ESA BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
17. SALEH BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
18. SULTANAH BEGUM
19. SULTANAH FATIMAH
20. AMER SALIN BIN AHMED AL QUAITI

Plaintiffs

Versus

1. GOVERNMENT OF MUKALA
2. SULTAN SIR SALEH BIN GALEB
3. SHARFUNISA BEGUM (widow of the late Sultan Omer)
4. GOHI BEGUM (widow of the late Sultan Omer)
5. SAINAB BEGUM (widow of the late Sultan Omer)
6. SALEH BIN MOHSIN (heir of Halibah Begum, Second widow of the late Sultan Omer)
7. SULTAN MOHAMED BIN OMER
8. SULTAN SALEH BIN OMER
9. SULTAN HUSSAIN BIN OMER
10. SULTAN AWAD BIN OMER
11. SULTAN GHALIB BIN OMER
12. MIR AHMED ALI PASHA
13. ZIANMISA BEGUM ... Defendants

In the Supreme Court of Aden

No. 26

Judgment.

6th September, 1955.

- continued.

J U D G M E N T

In arriving at the facts in this case the court has been faced with a task of some complication, for the family dispute, which has eventually resulted in this present suit (instituted under an Ordinance No. 11 of 1945 specially enacted for the purpose), has a long history, and all the original participants have been dead for many years. It has been necessary therefore to establish the relevant facts from a minute perusal of a mass of documents, much of which comprises evidence of an exceedingly secondary character. Nevertheless, the court has found it possible to state the true facts from a consideration of such oral evidence as has been adduced, and by reference only to those documents upon the authenticity of which the parties have been able to agree. The hearing of this case has lasted in all for some 18 days, much of which time has been spent in a careful comparative study of the facts as recited in the various documents exhibited. The court has been afforded the assistance of many hours of able argument by Counsel with regard to the inferences to be drawn from such a study and the record of the proceedings contains a full note of Counsels' argument and the detailed references made therein to the documentary evidence.

2. Sultan Omar bin Awad bin Abdullah Al Quaiti (Omar I) the founder of the Quaiti State of Shihr and Mukalla, had, like many Arabs of Southern Arabia, taken service with the Nizam of Hyderabad. There he acquired the title Shamsheer-Ud-Dowla, and held the office of Commander (Jamadar) of the Nizam's Arab troops. Thus, apart from his Arabian possessions Omar I acquired a considerable amount of Indian property both in Hyderabad and in Bombay. The Hyderabad property consisted for the most part of what may be termed for want of a better word "Crown Grants". These were grants of property given by the Nizam to his noblemen and held at his grace. In 1862 Omar I made his will, (Exhibit 24) in which he left one-third of his property for the benefit of the State and the remaining two-thirds for distribution to his heirs according to the Sharia law of inheritance. He died in 1865 leaving five sons: Mohamed, Ali, Awad (known in Hyderabad as Sultan Nawaz Jung), Saleh (known in Hyderabad as Burq Jung I) and Abdullah. On the death of his father, Awad was in Hyderabad where he was recognised as the head of the family and succeeded to

In the Supreme Court of Aden

No. 26

Judgment.

6th September, 1955 - continued.

his father's position at the Nizam's Court. Saleh was also in Hyderabad with him. Abdullah was living in Arabia and he remained there after his father's death. Where Mohamed and Ali lived is not clear, but as they received their shares in their father's property under relinquishment deeds executed in 1871 and 1872 respectively, and then went their separate ways their future activities are not material in this dispute.

3. It has become apparent during the course of this case that Crown Grants such as those held by Omar I in Hyderabad were not automatically inheritable by the legal heirs of a deceased holder, although in practice the Nizam often sanctioned a succession to them. In this particular instance the Crown Grants held by Omar I were in 1866 awarded by the Nizam to Awad and Saleh only. On 27th May, 1873, the three brothers, Abdullah, Awad and Saleh, who continued each to hold an undivided one-third share in the inheritance, drew up a partnership deed between them. This document is lost, but it seems to have provided that each of them was to be an agent for the other two, looking after the others' interests in Arabia and India according to where each happened to reside. In 1878 Abdullah was persuaded by Awad to sell the whole of his share in the inheritance to Awad for 186.000 Maria Theresa dollars. No admissible record of this sale is available but I am quite satisfied that such a sale did take place and that Abdullah purported to sell the whole of his share. Thus Awad became the owner of an undivided two-thirds share and Saleh continued to hold an undivided one-third share in the inheritance. In 1880 Saleh died. In 1886 Saleh's heirs and Awad effected a partition of the common property and the heirs received their one-third share inherited from their father. In 1888 Abdullah died, leaving along with certain female heirs two sons, Hussain and Munasser. Hussain and Munasser continued each to rule part of the Quaiti Sultanate, Hussain governing Shihr and Munasser governing in the Hadramaut. Their uncle, Awad, remained in Hyderabad until 1896 when he returned to Arabia. Ill-feeling then arose between Awad and his nephews, Hussain and Munasser. Hussain and Munasser refused to acknowledge that their father Abdullah had ever sold his share in the inheritance to Awad. This dispute threatened the political stability of the Quaiti State and it was for that reason that the British Political Resident in Aden was instructed by his Government in India to act as a

conciliator in the matter. Her Majesty's Imperial Government had entered into a treaty with the Quaiti Sultanate in 1882, which was renewed in 1888. This was a treaty of friendship and it must be emphasized that in no sense was the jurisdiction of the British Indian Courts extended to the Quaiti State. Eventually, in 1901, Hussain and Munasser, (who also represented the other female heirs of Abdullah), on the one hand, and Awad on the other hand, submitted their disputes to the arbitration of a "Mansab", Seiyid Ahmed bin Salem bin Sakaf.

4. After considering the claims of the contestants, the arbitrator duly recorded his decision in a document, Exhibit 1, the validity of which has been admitted by all parties. It is clear therefrom that the disputants had solemnly contracted to accept as binding upon them the decision of the "Mansab". The consideration for such an agreement was the mutual promise to abandon all such claims and counter-claims as each side purported to make. The "Mansab" records that his authority to arrive at a final and binding decision was at no time withdrawn by either party prior to his decision, and this I accept as a fact. In Exhibit 1, the arbitrator sets out in a judicial form the case put forward by Hussain and Munasser, and the case put forward by their uncle, Awad. He then records that after hearing evidence and examining documents he has been able to arrive at a decision. His decision, which is then set out, was that Abdullah had indeed sold the whole of his share in the inheritance to Awad for 186,000 M.T. dollars, but that Awad had in fact only paid a portion of the sale price, i.e. 46,000 M.T. dollars. The balance thus due was 140,000 M.T. dollars. The arbitrator also awarded the heirs of Abdullah a further 70,000 M.T. dollars in respect of certain other property in the Hadramaut together with 50,000 M.T. dollars "as a matter of sympathy and mercy". That was his final decision. After deducting the appropriate shares payable to the daughters of Abdullah Hussein's mother (to which share Hussein succeeded as her sole heir) the sum awarded to Hussein and Munasser amounted to 162,500 M.T. dollars.

5. Hussain and Munasser being entirely dissatisfied with this award, immediately purported to repudiate it, although, as I have said, they had

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bound themselves to abide by the arbitrator's decision. Their attitude was made abundantly clear to the British Political Resident, who continued to act as a conciliator in the matter, (see Secretariat Record pp. 190, 192 & 194 Exhibits 29, 30, 32). However, Awad did not accept their repudiation, and as Hussain and Munasser would not take the money from his hand he paid it into the National Bank of India at Aden into the account of the Political Resident, to be held in the names of Hussain and Munasser until they deemed to withdraw it. On the 11th November, 1903, this sum was transferred by the Political Resident to the Government of Bombay and invested in trustee securities. In 1904, Hussain and Munasser proceeded to Hyderabad. There they claimed, by succession through their father Abdullah, a share in the Crown Grants originally held by their grandfather Omar I. These proceedings, being connected with "Crown Grants", did not come before the ordinary courts of law but were conducted before two departments of the Nizam's administration - the Inam Department and the Revenue Department. Awad resisted their claim. From this point, therefore, it will be convenient to refer to Hussain and Munasser and their direct descendants as the plaintiffs and to Awad and his direct descendants as the defendants. The papers relating to the initial application by Hussain and Munasser for permission to proceed before the authorities in Hyderabad are not available, but it is known that this permission was granted by the Nizam in 1907. The "pleadings" filed in the subsequent proceedings are exhibited, Exhibits 39 and 40, and it is clear from these that Awad relied inter alia upon two grounds of defence. Firstly he pleaded that the "Sanad" or Royal Decree of 1866 vested the Crown Grants solely in Saleh and himself. Secondly he pleaded the arbitration agreement and award.

The proceedings in Hyderabad dragged on for many years. In 1906 Manasser died and his heirs became plaintiffs in his stead. ThenAwad died in 1910 and his two sons, Galeb (Jan Baz Jung) and Omar (Nawab Shamsheer Nawaz Jung) were joined as defendants. Various advisors to the Nizam submitted opinions. In 1913 a Mr. Dunlop gave his opinion, Exhibit 41. In November 1923, the President of the Executive Council, Nawab Sir Faridun Ul-Mulk-Bahadue submitted another opinion, Exhibit 21(a). This opinion suggested to the defendants that despite the arbitration award the plaintiffs

might eventually succeed in their claim. No doubt in order to safeguard their interests in anticipation of this eventuality, the defendants purported for the first time to accept the plaintiffs' repudiation of the original arbitration agreement. By letter, Exhibit 14, one of the defendants (Sultan Omar) laid claim to the monies deposited with the Political Resident. The defendants were, however, seeking to "have their cake and eat it" for the proceedings in Hyderabad were by no means over, and it is quite apparent from subsequent "judgments and opinions" delivered by the Nizam's advisors, that the defendants continued to rely upon the arbitration agreement and award pleaded in their defence (Exhibit 40).

In 1924 the Nizam decided to appoint a Commission to further advise him upon the claim. The majority opinion of this Commission (that is of Nawab Mirza Yar Jung Bahadur and Nawab Sardar Yar Jung Bdr.) was delivered in 1926, Exhibit 21(d). Meanwhile, the plaintiffs had applied for the grant of an interim allowance pending a final decision upon their claim. It was in this connection that R.C. Trench, (later Sir Richard Trench), the Revenue Member of the Nizam's Council, submitted a report, Exhibit 44. This report recommended an interim allowance of Rs. 7,200 per annum charged on the Crown Grants held by the defendants. Trench also recommended that any such allowance be subject to the condition that the amount paid would be a first charge on the "Trust Funds" lying with the Political Resident in the name of Hussein and Munasser. An interim allowance was in fact paid to the plaintiffs from 1922 onwards. It was after considering these various opinions submitted to him that the Nizam issued his "firman" or royal declaration (Exhibit 21(e)). This "firman" indicated that the Nizam accepted the principle that because the "Sanad" of 1866 had been granted only in the name of Awad and Saleh then the plaintiffs could have no claim by inheritance to a share in the Crown Grants originally held by their ancestor Omar I. This was the ground upon which the plaintiffs' claim was dismissed. However the Nizam was of a mind to alleviate the poverty of the plaintiffs' branch of the family by granting them, by royal grace, a permanent allowance charged on the Crown Grants held by the defendants. He therefore sought the opinion of his Executive Council upon three further questions in order that an appropriate

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allowance might be assessed (See Exhibit 21(e) page 2). Upon these questions R.C. Trench submitted a further opinion in March 1928, Exhibit 53. Subsequently, in 1932, Trench submitted a recommendation which was eventually acted upon by the Nizam, although the final "firman" confirming a permanent allowance to the plaintiffs charged on the Crown Grants held by the defendants was not issued for some time. The plaintiffs do not, however, deny that from 1922-1948 they received in all an allowance of Rs.5250 per annum charged upon the Crown Grants held by the defendants. In 1948 Crown Grants were abolished by the Legislature and a commuted allowance of Rs.2362.8 annas per quarter to continue until 1960 was granted by way of compensation to the plaintiffs. Thus the total payments which the plaintiffs have received or will receive in the future as a charge upon the defendants' holdings amount in all to Rs.152,771-5-0.

As has already been stated, the so-called "Trust Fund" in the name of the present plaintiffs' ancestors, Hussain and Munasser, was invested by the Government of Bombay in trustee securities. In 1932 the "Trustee" authorities decided in view of the Hyderabad proceedings to file an interpleader suit before the High Court of Bombay to enable the court to consider all claims to the Fund (see Exhibit 55). In 1937 Aden ceased to be administered by the Government of Bombay and became a Crown Colony. Accordingly, on 11th April 1945, the Aden Legislature enacted an Ordinance No.11 of 1945 entitled "The Sultan of Shihr and Mukalla's Fund Ordinance". This Ordinance, after reciting the manner in which the monies came to be invested by the Government of Bombay in pursuance of the award by the arbitrator, provides that the Financial Secretary to the Aden Government may be created a corporation sole for the purpose of holding and administering the Fund. By section 4 of the Ordinance it is provided that when the said Fund shall have been transferred from the Government of Bombay to the Financial Secretary of Aden, he shall institute an interpleader suit in the Supreme Court of the Colony in respect of the said Fund. By an order of the High Court of Judicature of Bombay dated 6th April, 1950, the Financial Secretary of Aden was appointed a trustee of the Fund in place of the Government of Bombay, and directions were given that the securities in which the Fund was invested were to be transferred to him. Thus the

securities are today held by the Reserve Bank of India, Bombay, on behalf of the Financial Secretary of the Government of Aden, "on account of the Sultan of Shihr and Mukalla's Nephews' Trust Fund", and their market value on 15th August 1955 was Rs.987,808-12-0 (Sh.1,481,713.20). On the 11th July, 1952, the Financial Secretary commenced these proceedings by filing an inter-pleader suit. The necessary notices were thereupon issued in accordance with section 5 Ordinance No.11 of 1945; and the various claims having been filed issues were directed to be joined between the present plaintiffs and defendants. Certain preliminary points have been raised and dealt with in the earlier stages of these proceedings. It is unnecessary to recite them here and reference may be made to the record of proceedings in respect thereof. The parties have agreed that this judgment shall be limited to a decision upon the rival claims of the two branches of the family (that is, of the plaintiffs on the one hand and the defendants on the other), and that any minor adjustments which may be necessary between the rival branches inter se can be settled by their respective Counsel out of Court.

Having resolved the facts, the question that next falls to be decided is what law is to be applied in relation thereto. I have found that there was a valid submission by the parties in dispute to the arbitration of a "Mansab". Its basis is, I am satisfied, entirely contractual. The essential validity, interpretation and effect of a contract and the rights and obligations of the parties to it, are governed under the law of Aden, by the law which the parties have agreed or intended shall govern it or which they may presume to have intended. This law is generally known as the proper law of the contract. Prima facie, the proper law of a contract is presumed to be "lex loci contractus", (Halsbury Laws of England, 2nd Edition, Vol. 6, page 266 - and cases cited therein.) In South African Breweries Ltd. v. King (1899) 2 Ch. page 173, it was held that preference should be given, all things being equal, to the law of the place with which the transaction has the most real connection. Here there was a submission to the arbitration of a Moslem Holy Man by the Shafi'i Moslem member of the ruling family of the Islamic Sultane of Shihr and Mukalla. The agreement was made and the arbitral award concluded

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entirely within the Sultanate. Professor J.N.D. Anderson has pointed out in his book "Islamic Law in Africa", pages 12-22, that the Sharia is the fundamental law of the Sultanate in every particular. Referring in more general term to inter alia the population of the Quaiti State he writes, "With isolated exceptions all follow the Shafi'i right, to the tenets of which many cling with fanatical devotion." Articles 9 and 10 of a Sultanate Decree (No. 5 of 1940) provide, "The law of Islam is, and is hereby confirmed to be, the fundamental law of Our Dominion. In the application of which decree our courts shall also be guided by and have regard to the general principles of the law of Islam, and to any tribal laws, customs or usages not repugnant to Islam, justice, equity and morality."

I am in no doubt therefore that the law to be applied in this case is the Sharia law and the Shafi'i tenets in particular. It has however been unnecessary for this court to hear expert evidence from without because among Counsel appearing on behalf of the plaintiffs is Mr. Mansoor, and among Counsel appearing on behalf of the defendants is Mr. Rehman. It so happens that both these lawyers have actually held office as Judges in the State of Shihr and Mukalla. Both can speak with authority therefore, and they are agreed that the only principle of law which can be derived from the Sharia in deciding the issues arising in this case is that the decision arrived at must be just and reasonable in all the circumstances and in accordance with natural justice equity and morality.

In assisting the court therefore in arriving at a decision which is "just and reasonable in all the circumstances, and in accordance with natural justice, equity and moralty," Counsel have cited in varying connections certain judicial precedents from the courts of British India and England. Such assistance as I may properly derive from these cases is, however, particularly limited by the fact that in England and, correspondingly, in British India, the law of arbitration has developed from early times into a highly technical body of statutory law. Thus as early as 1698 an English Statute 9 and 10 Will III. C.15. provided that an arbitral award could be made a rule of court enforcible as a judicial decree. No statutory enactments are relevant here, and as I have already

stated the basis of the arbitration agreement and award in this case is purely contractual. I have found on the facts that Hussain and Munasser on the one hand and Awad on the other agreed to submit all matters in dispute between them comprising their claims and counter-claims to properties in Arabia, Bombay and Hyderabad, to the decision of the "Mansab". His authority derived from the agreement of the parties. They constituted him their private tribunal, and mutually agreed to accept his decision as final. The obligation to accept this decision rested entirely on contract (see the case of Braemer v. Drewry (1933) I.K.B. p. 753, where the English Common law principals are discussed in this connection). The arbitrator has set out his findings, Exhibit1, learnedly, exhaustively, and in a clear and certain manner, and I see nothing to rebut the presumption of their essential validity. In direct breach of their contractual obligation to forego all their claims and to accept the "Mansab's" decision as final and binding, Hussain and Munasser commenced proceedings in Hyderabad. However, it is surely a clear principle of natural justice that repudiation by one side alone cannot of itself terminate a contract, (the English common law principle in this connection is discussed by Lord Simon in Heyman v. Darwins Ltd. (1942) A.C. at page 361: he cites with approval the words of Scrutton, L.J. in Golding v. London and Edinburgh Insurance Co.Ltd. (1932), 43 LI.L. Rep. 487, 488 viz: "I cannot understand what effect the repudiation of one party has unless the other party accepts the repudiation".) In this case, Awad had the option either to accept the repudiation and treat the award as no longer existing and binding upon him or to keep it alive by abiding by his side of the bargain complying with the award, paying over the money as decreed therein, and pleading it as a defence to any action commenced by the other side in breach of contract. Assuming such an action failed, the damages thereupon claimable by Awad would normally be his costs in defending the action brought in breach of the arbitration award. While it is true that in point of fact the Hyderabad authorities were not prepared to treat the existence of the arbitration agreement and award as initial bar to the claim of Hussain and Munasser, and the ultimate rejection of the plaintiffs' claim was based on another ground, it is equally true

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that the defendants relied upon the arbitration agreement and award as a defence throughout the Hyderabad proceedings. Having taken up this position and chosento treat the award as still subsisting and to rely upon it, it is surely contrary to "natural justice, equity and morality" to permit the defendants after a lapse of 21 years to change their ground and assume an entirely contrary position. In English common law this is known as the principle of estoppel. 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".

At the same time I have also found that the action of Hussain and Munasser in bringing the proceedings before the Hyderabad authorities was a clear breach of contract, in respect of which the defendants are entitled to claim damages. The question therefore arises as to whether in these proceedings this court should now assess those damages. Strictly it would be open to the defendants to commence yet another action for damages for breach of contract. Having regard to the feeling between the two contesting sides of the family, the court cannot hope that such a suit would be settled out of court. This dispute has already involved the family in bitter litigation for over half a century, and it would in my opinion be highly undesirable for this court to limit itself to a finding which will make further litigation inevitable. Furthermore, it is conceded by both sides that, at this late date, no further satisfactory evidence is available in this respect other

than that which is before me. Accordingly, no other judge will ever be in any better position finally to resolve this matter. This then is surely a case in which the court may properly exercise its inherent power to act in the interests of justice as it thinks fit. The damages to which the defendants are entitled are therefore assessed as follows.

Firstly, I am satisfied that had the plaintiffs not pursued their claims in Hyderabad in breach of contract the Nizam would not eventually have been moved to grant them an allowance charged on the Crown Grants of the defendants. It is agreed by both parties to this dispute that from 1922-1960 the total charge on the defendants' Crown Grants in respect of this allowance will amount to Rs. 152,771-6-0. (Sh.229,157-10). Furthermore, while technically the plaintiffs lost their action in Hyderabad, no costs were awarded in favour of the defendants. Clearly the defendants were bound in their own interests to resist the plaintiffs' claims in Hyderabad. I am thus satisfied that, in addition to the sum of Rs.152,771-6-0, there also "directly flowed" as damages from the plaintiffs' breach of contract the costs sustained by the defendants in conducting their defence in Hyderabad. The defendants admit that they can adduce no evidence whatsoever in support of their claims to costs amounting to Rs.240,000. Although the matter was before the Hyderabad authorities for many years, legal representation and advice was only occasionally required. Counsel for the plaintiffs has conceded the figure of Rs.30,000 in respect of these costs and that, I think, is a proper and reasonable estimate. The total damages to which the defendants are thus separately entitled to recover from the plaintiffs is Rs. 182,771-6-0 (Sh.274,157.10). It must of course be conceded by Mr. Kazi for Defendant No.1 (The Government of Mukalla) that in the light of this judgment his clients alone among the defendants have in fact, no claim to any share in this sum.

The final order of this court is therefore as follows. The Financial Secretary is ordered to sell the Trustee securities and to pay the sum realised into court forthwith. In order to avoid the artificiality of a separate payment into court, by the plaintiffs, of the sum of Rs.182,771-6-0 (Shs.274,157.10) representing the damages to which

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defendants (apart that is from defendant 1) are held entitled, and a separate withdrawal by the defendants of this sum, the parties can no doubt agree that this sum may be deducted from the plaintiffs' trust monies paid into court by the Financial Secretary

The plaintiffs and defendants will bear their own costs. The costs incurred by the Financial Secretary and the Registrar in respect of these proceedings will be deducted equally from the respective sums to which the plaintiffs and defendants have been held entitled.

Sd. R. Knox Mawer
Ag. JUDGE OF THE SUPREME COURT.

6th September, 1955.

No. 27

Decree.

6th September, 1955.

No. 27

(Title as in No. 26)

D E C R E E.

THIS SUIT coming up for hearing on the 6th day of September, 1955, before Mr. RONALD KNOX MAWER, Acting Judge of the Supreme Court of the Colony of Aden, in the presence of Mr. Jalil Ahmed, Advocate for the Plaintiff No.1, Mr. M.H. Mansoor, Advocate for the Plaintiffs Nos.1,2,3,11,12,14,18 and 19; Mr. S.A. Alhabshi, Advocate for the Plaintiff No.4; Mr. K.A. Gandhi, Advocate for the Plaintiffs Nos. 5 to 10, 13, 15, 16, 17 and 20 and Mr. A.E. Kazi, Advocate for the Defendant No.1; Mr. A. Rahman, Advocate for the Defendant No.2; Mr. H.M. Handa and Mr. Akberally Khan, Advocates for the Defendants Nos. 3 to 13:

IT IS HEREBY ORDERED AND DECREED that the Financial Secretary should sell the Trust Securities and pay the sum realised into the Court forthwith. The Defendants Nos. 2 to 13 are held entitled to withdraw from the Court the sum of Sh.274,157.10 representing the damages subject to deduction of one-half of the costs of the Financial Secretary and the Registrar incurred by them in respect of these proceedings and the Plaintiffs Nos. 1 to 20

are entitled to the balance subject to a deduction of further one-half costs incurred by the Financial Secretary and the Registrar in these proceedings and their respective costs be paid to them. Each party bear his own costs.

GIVEN under my hand and the seal of the Court, this 6th day of September, 1955.

(Sd.) R.A. Campbell.
Judge of the Supreme Court.

In the Supreme Court of Aden

No. 27

Decree.

6th September, 1955
- continued

No. 28

No. 28

NOTICE OF APPEAL BY DEFENDANTS NOS. 2-13

IN THE SUPREME COURT OF THE COLONY OF ADEN

Civil Suit No. 260 of 1952

SAIF BIN SULTAN HUSSAIN AL QUAITI and 19 OTHERS — Plaintiffs

Versus

GOVERNMENT OF MUKALLA and 12 OTHERS — Defendants

Notice of Appeal by Defendants Nos. 2-13.

17th September, 1955.

NOTICE OF APPEAL

TAKE NOTICE that the Defendants Nos. 2 to 13 being dissatisfied with the decision of the Honourable Mr. Justice R. Knox Mawer given herein at Aden on the 6th day of September 1955 intend to appeal to Her Majesty's Court of Appeal for Eastern Africa against the whole of the said decision.

The Defendant No. 1 the Government of Mukalla is not affected by the intended appeal.

DATED this 17th day of September, 1955.

(Sd.) A. Rahman,
ADVOCATE FOR THE APPELLANT (DEFENDANT NO.2)

(Sd.) H.M. Handa,
ADVOCATE FOR THE APPELLANTS (DEFENDANTS NOS.3 to 13).

In the Supreme Court of Aden

No. 28

Notice of Appeal by Defendants Nos. 2-13.

17th September, 1955.
- continued.

To

1. The Registrar of the Supreme Court, Aden.

2. M. Hussain Mansoor, Advocate, Aden, for Plaintiffs Nos. 1,2,3, 11, 12, 14 and 19.

3. K.A. Husain Gandhi, Advocate, Aden, holding for Dedanwalla, Advocate, Bombay, for Plaintiffs Nos, 5,6,7,8,9,10,13,15,16,17 and 20.

And

4. S.A. Alhabashi, Advocate, Aden, for Plaintiff No.4.

The address for service of all the Appellants is C/o H.M. Handa, Advocate, Aden or Sheikh A. Rahman, Advocate, Aden.

NOTE:- A respondent served with this notice is required within fourteen days after such service to file. in these proceedings and serve on the Appellants a notice of his address for service for the purpose of the intended appeal, and within a further fourteen days to serve a copy thereof on every other respondent named in this notice who has filed notice of an address for service. In the event of non-compliance, the Appellants may proceed ex-parte.

FILED the 20th day of September 1955,

(Sd.) V.D. Mpathi,
Registrar.

In the Court of Appeal for Eastern Africa

No. 29

Memorandum and Grounds of Appeal.

12th January, 1956.

No. 29

MEMORANDUM AND GROUNDS OF APPEAL

(Appeal from the Judgment and Decree of Her Majesty's Supreme Court of the Colony of Aden - Mr. Acting Justice R. Knox Mawer - dated 6th September 1955).

In

Civil Suit No. 260 of 1952

B E T W E E N

SAIF BIN SULTAN HUSSAIN AL QUAITI and 19 Others — Plaintiffs

- and -

GOVERNMENT OF MUKALLA and 12 Others — Defendants

MEMORANDUM OF APPEAL

(1) Sultan Sir Saleh bin Galeb, (2) Sharfunisa Begum, (Widow of the late Sultan Omer), (3) Gohi Begum (Widow of the late Sultan Omer), (4) Zainab Begum (Widow of the late Sultan Omer), (5) Saleh bin Mohsin (heir of Haliba Begum, second widow of the late Sultan Omer), (6) Sultan Mohamed bin Omer, (7) Sultan Saleh bin Omer, (8) Sultan Hussain bin Omer, (9) Sultan Awad bin Omer, (10) Sultan Ghalib bin Omer, (11) Mir Ahmed Ali Pasha, and (12) Ziammisa Begum, the appellants above-named, appeal to Her Majesty's Court of Appeal for Eastern Africa against part of the decision above-mentioned so far as the same held that "the present plaintiffs as the legal successors in title of Hussain and Munasser were entitled not only to the original sum of money deposited and held for them throughout the years but also to the interest which has accrued thereon as a result of the investments made on their behalf by the trustee" and so far as the said decision did not grant the Appellants their cost of the proceedings in the Supreme Court of Aden and ordered them to pay half the costs of the Financial Secretary on the following grounds, namely:-

1. The learned Acting Judge and the Supreme Court of Aden had no jurisdiction under the Sultan of Shihr and Mukalla's Fund Ordinance, 1945 (Ordinance

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No. 29

Memorandum and Grounds of Appeal.

12th January, 1956 - continued.

No. II of 1945) under which the Plaintiffs' claims were made, heard and determined to hear or determine the said claims or any of them as the claims of the said Plaintiffs (Respondents in this appeal) to the said Fund were not made before the expiration of the period of six months allowed by Section 6 of the said Ordinance. The publication of all the notices referred to in Section 5 and 6 of the said Ordinance was completed on or before the 15th day of September 1952 and the said claims of the Plaintiffs to the Fund were not made until the 24th day of August 1953 or after such last-mentioned date.

2. The learned Judge erred in holding the Sultan Awad on paying the sum of 162,500 M.T. dollars (Rs.214,500) to the British Political Resident, i.e. on paying that sum to his credit at the National Bank of India, Ltd., Aden, "divested himself of all property therein in favour of his nephew upon whose behalf the money was henceforth held by the British authorities".

3. The learned Judge, having rightly held that Hussain and Munasser had repudiated the "Mansab's" award made in 1903, and they or their heirs having continued in such repudiation until 1924 and thereafter, erred in holding that the Appellants could not in 1924 ("after a laps of 21 years") accept such repudiation.

4. The learned Judge erred in finding that the Appellants relied upon the arbitration agreement and award as a defence throughout the Hyderabad proceedings. The learned Judge failed to appreciate that Exhibit 40 on which he relied was dated 1912, and there was no evidence of acts on the part of the Appellants after 1924, when the heirs of Sultan Awad accepted the repudiation of the Award by the Plaintiffs or the persons under whom they claimed, which prevented the Appellants from relying on the said acceptance of the said repudiation. Even if the Appellants or under whom they claimed relied on the arbitration agreement and the award after 1924 the contract, having determined in 1924 by repudiation on the part of the Plaintiffs or those under whom they claimed and by acceptance of that repudiation by the Appellants or those under whom they claimed, could not be relied upon by the Plaintiffs to enable them to make out a title or claim to the said Fund after January 1924.

5. The learned Judge erred in holding that any principle of estoppel could be relied upon by the Plaintiffs to prevent the Appellants accepting in 1924 the Plaintiffs' continued repudiation of the "Mansab's" award.

6. The learned Judge erred in failing to hold that as from at least as early as 1924 "the British authorities" held the money with all interest thereon and all ocerations thereto unconditionally on trust for the Appellants, the heirs of Sultan Awad; and he failed to appreciate, that the "British authorities" accepted such as being the position, the only reason why they did not in 1924-26 as requested in Exhibit 14 dated 24th January 1924 and as otherwise requested, pay the money to the heirs of Sultan Awad or the Sultan Omer the then Sultan of Shihr and Mukalla being, as shown by Exhibit 43 dated 30th October 1926 and otherwise shown, that other heirs (Sultan Saleh, his three sisters and three widows of Sultan Ghalib bin Awad) of Sultan Awad claimed a share thereof and not because of any claim or right of any of the Plaintiffs or any persons under whom they or any of them claimed.

7. The learned Judge failed to appreciate that the said Hussain and Munasser and/or their heirs, having repudiated and/or reprobated the said award in 1903 and having thereafter continued to do so and having by reason of, or based on, or in pursuance or consequence of, such repudiation and/or reprobation obtained an advantage i.e. certain charges on or payments in respect of "Jagirs" or other property in Hyderabad, which Jagirs or property were property which under the said Award were awarded to Sultan Awad, could not or ought not to be permitted to approbate in part or whole, or claim any benefit or advantage under the said Award which they had repudiated and/or reprobated.

8. The learned Judge erred in holding that there was anything contrary to "natural justice, equity and morality" in allowing the Appellants in 1924 to accept the continued repudiation and/or reprobation since 1903 of the arbitration agreement and Award by the Plaintiffs or the persons under whom they claimed.

9. Even if the Plaintiffs were entitled to payment of the sum of Rs.214,500 deposited in August

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Memorandum and Grounds of Appeal.

12th January, 1956 - continued.

1903 (which is denied), the learned Judge erred in holding that they were entitled only to the interest thereon or to the accretion thereto.

10. Even if the Plaintiffs or persons under whom they claimed had any right to or claim on the sum of Rs.214,500 deposited in August 1903, the learned Judge erred in not holding that the said deposit was a security and, therefore, in not holding that the Plaintiffs or the persons under whom they claimed were not entitled to the interest thereon and accretions thereto.

11. The learned Judge failed to appreciate that up to 1924 the "British authorities", if in any sense they were trustees or if they held a position analogous to that of trustees for any of the persons under whom the Plaintiffs claimed or for any of the Plaintiffs, were never unconditional trustees and that they never became trustees or unconditional trustees at any time for the Plaintiffs or any person under whom the Plaintiffs claimed in respect of any part of the sum deposited or interest thereon or accretions thereto.

12. The learned Judge failed to appreciate (a) that the Political Resident, Aden in 1903 and his successors, if they were trustees, held the said sum of Rs. 214,500 upon trust to pay the same to Hussain and Munasser only on an express or implied condition that they accepted and abided by the said Award, (b) that all interest on and accretions to the said sum of Rs.214,500 were at all times held in trust for Sultan Awad and his heirs, (c) that, as the said Hussain and Munasser and/or their heirs repudiated and/or reprobated the Award and did not accept or abide by the said Award, the Plaintiffs and those under whom they claimed never became entitled to payment of the sum of Rs.214,500 or any interest thereon or accretions thereto, and (d) that there never was at any material time any trust constituted under which the Plaintiffs or those under whom they claimed became entitled to payment of the said sum or any interest thereon or accretions thereto.

13. The learned Judge erred in holding that the "Crown Grants" were held at the grace of the Nizam.

14. The learned Judge erred in not granting the Appellants their costs and in ordering them to pay half the costs of the Financial Secretary.

WHEREFORE the Appellants pray that the said

decision be set aside and that the said Fund or the proceeds thereof including all interest thereon and all accretions thereto be ordered to be paid to the Appellants or that the Appellants be declared to be entitled thereto and that the Respondents be ordered to pay to the Appellants their costs in this Court and in the Court below.

Dated at Aden this 12th day of January 1956.

A.K. Kazi,
Advocate for the Appellants.

In the Court of Appeal for Eastern Africa

No. 29

Memorandum and Grounds of Appeal.

12th January, 1956 - continued.

No. 30

No. 30

MEMORANDUM of AMENDED CROSS-APPEAL of RESPONDENTS Nos.1-3

Memorandum of Amended Cross-Appeal of Respondents Nos.1-3.

25th January, 1956.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

AMENDED CROSS APPEAL FROM RESPONDENTS 1, 2 & 3.

IN

CIVIL APPEAL NO. 17 of 1956.

B E T W E E N

SULTAN SIR SALEH BIN GALEB & 11 Others
Appellants

- AND -

SAIF BIN SULTAN HUSSAIN AL-QUAITI & 19 Others
Respondents

Appeal from a judgment of the Supreme Court of the Colony of Aden (Mr. Justice R. Knox Mawer) dated 6th day of September 1955 in Civil Suit No. 260 of 1952)

BETWEEN

SAIF BIN SULTAN HUSSAIN & OTHERS
Plaintiffs

- and -

GOVERNMENT OF MUKALLA & OTHERS
Defendants

NOTICE OF CROSS-APPEAL UNDER RULE 65:

Take notice that, on hearing of this appeal,

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Memorandum of Amended Cross-Appeal of Respondents Nos.1-3.

25th January, 1956

- continued.

(1) Saif Bin Sultan Hussain Alqu'aiti

(2) Sultanah Muluk, Widow of the late Sultan Hussain Bin Abdullah and

(3) Sultanah Fatimah, daughter of the late Sultan Hussain Bin Abdullah,

Respondents Nos. 1 to 3 (original Plaintiffs Nos.1 to 3) abovenamed, will contend that the decision abovementioned ought to be varied to the extent and in the manner and on ground hereinafter set out, namely:-

BEING aggrieved by a part of the decision of the learned judge of the Supreme court at Aden embodied in the last but one paragraph of the judgment complained of and which runs as follows:-

" At the same time I have also found that the action of Hussain and Munasser in bringing the proceedings before the Hyderabad authorities was a clear breach of contract, in respect of which the defendants are entitled to claim damages. The question therefore arises as to whether in these proceedings this Court should now assess those damages. Strictly it would be open to the defendants to commence yet another action for damages for breach of contract. Having regard to the feeling between the two contesting sides of the family, the Court cannot hope that such a suit would be settled out of Court. This dispute has already involved the family in bitter litigation for over half a century, and it would in my opinion be highly undesirable for this Court to limit itself to a finding which will make further litigation inevitable. Furthermore, it is conceded by both sides that, at this late date, no further satisfactory evidence is available in this respect other than that which is before me. Accordingly, no other Judge will ever be in any better position finally to resolve this matter. This then is surely a case in which the Court may properly exercise its inherent power to act in the interests of justice as it thinks fit. The damages to which the defendants are entitled are therefore assessed as follows.

Firstly, I am satisfied that had the Plaintiffs not pursued their claims in Hyderabad in breach of contract the Nizam would not eventually have been moved to grant them an allowance charged on the Crown Grants of the Defendants. It is agreed by

both parties to this dispute that from 1922-1960 the total charge on the Defendants' crown Grants in respect of this allowance will amount to Rs.1,52,771-6-0 (Sh.229,157.10). Furthermore, while technically the plaintiffs lost their action in Hyderabad, no costs were awarded in favour of the Defendants. Clearly the defendants were bound in their own interests to resist the plaintiffs' claims in Hyderabad. I am thus satisfied that, in addition to the sum of Rs.152,771-6-0, there also "directly flowed" as damages from the plaintiffs' breach of contract the costs sustained by the Defendants in conducting their defence in Hyderabad. The Defendants admit that they can adduce no evidence whatsoever in support of their claim to costs amounting to Rs. 240,000/-. Although the matter was before the Hyderabad authorities for many years, legal representation and advice was only occasionally required. Counsel for the plaintiffs has conceded the figure of Rs. 30,000/- in respect of these costs and that, I think, is a proper and reasonable estimate. The total damages to which the defendants are thus separately entitled to recover from the plaintiffs is Rs.182,771-6-0 (Sh.274,157.10). "

and the relevant order embodied in the last paragraph of the said Judgment which runs as follows:-

" In order to avoid the artificiality of a separate payment into Court, by the Plaintiffs, of the sum of Rs.182,771-6-0 (Shs.274,157.10) representing the damages to which defendants (apart that is from Defendant 1) are held entitled, and a separate withdrawal by the defendants of this sum, the parties can no doubt agree that this sum may be deducted from the Plaintiffs' trust monies paid into the Court by the Financial Secretary. "

These respondents contend that the above mentioned decision ought to be varied in the following manner and grounds:-

(1) That the learned Judge of the Supreme Court has erred in holding that the action of Sultan Hussain etc. in instituting the proceedings before the Hyderabad authorities was a clear breach of contract.

(2) That the learned Judge in the Court below

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No. 30

Memorandum of Amended Cross-Appeal of Respondents Nos.1-3.

25th January, 1956 - continued.

has given this finding without any reference to any particular issue under which it is given and has failed to give any reasons therefor. In fact it is not a Judgment at all in view of the clear provisions of the Civil Courts Ordinance in this regard and is therefore liable to be set aside summarily.

(3) That the Appellants have not been able to establish by any evidence of theirs that Sultan Abdulla has ever sold his rights in Crown Grant properties situated in Hyderabad Deccan - India, nor is it evidenced by the Award in pursuance of which the suit amount was deposited as trust money, specifically for Sultan Hussain, Sultanah Salma, mother of Sultan Hussain and for Sultan Munasser, and as such there can be no question of a breach of contract for which damages have been allowed.

(4) That there is nothing on record to show that there was any sort of the alleged breach of contract on the part of Sultanah Salma and as such to affect the share of her under this wrong conception is totally incorrect and by way of this appeal this error needs to be rectified.

(5) That the learned Judge in the Court below has failed to take into consideration the allegation of appellants that Sultan Abdulla had no rights in the said Crown Grant properties in as much as, after the death of Sultan Omer Bin Awadh (Shamsheer-U-Doula), the same were granted afresh to Awadh Bin Omer (Sultan Nawaz Jung) and Saleh Barak Jung to the exclusion of Sultan Abdullah by H.H. the Nizam of Hyderabad. It is simply inconceivable that Sultan Awadh Bin Omer would have got a Sale Deed executed in his favour about the rights of Sultan Abdulla in Crown Grants properties which he knew to be non-existent. In fact the alleged Sale Deed had not even been admitted in evidence and was totally set aside by the Court below; a factor res judicata in the case.

(6) That the Learned Judge in the Court below has not assessed properly the evidence led by these Respondents nor appreciated and interpreted the relevant laws applicable to the Crown Grants, its succession and prohibitions of its alienations, which have been produced and proved in the Court below. The Crown Grant properties are not transferable without the permission of the Grantor and no such permission has either been pleaded nor proved in the Court below.

(7) That the Court below has overlooked the fact that Sultan Awadh Bin Omer (Sultan Nawaz Jung), who relied on the alleged Sale of the rights in the Crown Grant Properties in his favour was in actual possession of and managing the same on the spot in Hyderabad and he could not be unaware of the laws applicable to Crown Grants or the nature of the same as also of the limited rights conferred on the Jagirdars namely the holders of the Crown Grant Properties and could not have accepted a sale of unsaleable rights to the extent of paying consideration for the same.

(8) That the Court below has failed to apply its judicial mind to the question whether the Court could allow the damages if any, for the breach of contract in view of the limited scope of the enquiry in the proceedings which were instituted in the Supreme Court of Aden Colony in pursuance of the Ordinance No. 11 of 1945 which limited the jurisdiction of the Supreme Court only to the extent of determining the claims of the parties to the Fund namely the suit amount.

That, after once deciding that "the present plaintiffs, as the legal successors in title of Sultan Hussain, Sultanah Salma and Sultan 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 has accrued thereon as a result of the investment made on their behalf by the Trustee", the Court had no jurisdiction to adjudicate and pass orders for payment of damages to the Appellants, which was a matter definitely beyond the scope of the enquiry and the jurisdiction of the court.

(9) (a) That the Court below has failed to frame an issue arising on the pleadings about the Locus Standi of the Appellants, though the Court's attention was drawn by filing an application and decide the same as a preliminary issue. That even His Excellency the Governor of Aden referred this most important factor for the consideration which was totally neglected. If it were done the question of granting relief for damages would not have arisen at all, as the appellants (defendants) cannot appear at all in this interpleader suit.

(b) That the Court below has failed to consider the effect of the letter written by

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Memorandum of Amended Cross-Appeal of Respondents Nos.1-3.

25th January, 1956 - continued.

Appellant No. 1, addressed to Mr. Jamaluddin, dated 16th April 1927 (Ex. 15) in which he for himself and the predecessor of the other appellants admitted that the whole suit amount belongs to the respondents and it should be given to them.

(10) That the Court below has failed to appreciate the fact that the appellants in the Court below have never claimed any damages for the breach of contract nor did they claim any refund of the allowances paid to the respondents out of the Crown Grants of H.E.H. the Nizam which was allowed as prerogative alone as well as a fresh grant without any consideration of any personal or inherited rights. The Court below has gone out of its way to grant a relief not claimed or pressed by the appellants.

(11) That the Court below has failed to take into consideration the fact that even accepting for the sake of argument without admitting, that the appellants had any cause of action for a claim of damages against the respondents (Plaintiffs) it would not entertain such a claim in as much as :-

(a) The claim was definitely time-barred and not legally recoverable under the relevant law applicable to the parties;

(b) It was not an ascertained sum of money;

(c) It was an interpleader suit in which each party was claiming the suit amount from the Financial Secretary to Government of Aden (the original Plaintiff) and as such the claim of the Appellants against these respondents was not competent.

(d) The claim for damages, if deemed to have been made was not a right specifically in the suit amount or a charge on the same. At the most it could be a personal claim against these respondents which in no way affected the rights and title of these respondents in the suit amount.

(e) If the appellants (Defendants) consider themselves entitled to claim anything from respondents, the only proper way was for them to sue the respondents (claiments) through a separate suit in accordance with law and procedure. The appellants (Defendants), cannot, in principle, claim any damages or refund

of money in this interpleader suit.

(f) These respondents had no claim against the appellants which was being adjudicated upon by the Court below and as such the Court below could not award damages to the appellants even as a counter claim or set off.

(12) That the Court below has, while assessing the quantum of damages, taken into consideration the maintenance allowed as a result of the institutions of the proceedings in the Atiyat Court of Hyderabad Deccan. The Court below has misconceived the peculiar import of proceedings instituted in Hyderabad, ultimate order rejecting the claim of these respondents to the Crown Grant properties and has also failed to appreciate the crucial point that the maintenance was not granted to these respondents as a matter of right, but only as a favour by H.E.H. the Nizam of Hyderabad after dismissing their claims and that in his position as a Sovereign and the Grantor he had the prerogative and a discretion, unfettered by any law or rules, to resume the Crown Grants, and grant the same or only a part of it afresh to the rightful heirs or even to a stranger. Therefore the amount of maintenance paid or to be paid till 1960 could not be deemed to be a consequence of the institution of the said proceedings in Atiyat Courts.

(13) That there was no contract which could be breached. Even if there was one, it had merged into the Award, in the Atiyat proceedings and even prior to it the Award was pleaded as a bar by the appellants and the Hyderabad and India Government (The then British Government) and also the Atiyat Court rejected this plea of theirs. A finding by a Court of a competent jurisdiction, and competent authority could not be re-agitated and adjudicated upon by the Court below.

(14) That the Court below has, probably, through some error, failed to specify the shares of the plaintiffs individually and also the shares of the two branches of the heirs of Sultan Abdullah, which could naturally result in confusion and complications when it comes to the actual payment of the shares of various plaintiffs (Respondents). As the amount was kept in trust for only Sultan Hussain, Sultanah Salma, mother of Sultan Hussain and for Sultan Munasser, the shares of each is automatically 1/3rd of the total suit amount. Two thirds will go to the heirs of Sultan Hussain the abovenamed respondents (claimants), as the share of Sultanah Salma goes also to Sultan Hussain being the only son of Sultanah Salma, Sultanah Salma

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25th January, 1956 - continued.

along with her share specified will also get her dower of REYALS 50,000/- and the value of 500/- gold coins. This fact which is a part of the record and profusely dealt with before the court below, was not at all taken into consideration. Therefore this factor needs to be varied and specified by the appellate court through this cross-appeal of the respondents named above.

(15) That the Court below while exercising its inherent power to give a relief to the appellants (Defendants) in spite of admitting that it was open to the Appellants (Defendants) to commence yet another action for damages for breach of contract, failed to appreciate the fact that the appellants (Defendants) had no legal and enforceable right which they could claim. A claim barred by the operation of law could not be revived and enforced under the inherent powers of the Court.

(16) That in view of the facts disclosed and the grounds stated above this Cross-appeal of the respondents Nos. 1, 2 & 3 be allowed and the decision of the Supreme Court at Aden to the extent of awarding damages amounting to Rs.182,771-6-0 to Appellants Nos. 1 to 11 be set aside and be ordered that the whole suit amount be paid to the Respondents (Plaintiffs) and the two third share of the whole amount as explained above be specified and allotted to these respondents together with the dower amount of their grand-mother.

(17) That if it is held that any share or shares of the branch of Sultan Munasser is not claimed or not payable due to any reason, such amount be ordered to revert to the said three Respondents (Claimants) and not to the Government nor to any of the Appellants (Defendants).

(18) That the costs of this cross-appeal be allowed to these Respondents.

Dated this 25th day of January 1956.

(M. HUSSAIN MANSOOR)
ADVOCATE FOR THE RESPONDENTS
Nos. 1, 2 and 3.

To The Hon'ble Judges of
HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

The address for service of these respondents above-named is c/o H. Husain Mansoor, Advocate, Aden.

Filed the 25th day of January 1956 at Aden.

DEPUTY REGISTRAR OF THE COURT OF APPEAL.

No. 31.

In the Court of Appeal for Eastern Africa

No. 31.

Judgment.

6th April, 1957.

JUDGMENT

IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO.17 of 1956

BETWEEN:

1. SULTAN SIR SALEH BIN GHALEB
2. SHARFUNISSA BEGUM (widow of the late Sultan Omer)
3. GOHI BEGUM (widow of the late Sultan Omer)
4. SAINAB BEGUM (widow of the late Sultan Omer)
5. SALEH BIN MOHSIN (heir of Halimah Begum, second widow of the late Sultan Omer)
6. SULTAN MOHAMED BIN OMER
7. SULTAN SALEH BIN OMER
8. SULTAN HUSSEIN BIN OMER
9. SULTAN AWAD BIN OMER
10. SULTAN GHALEB BIN OMER
11. MIR AHMED ALI PASHA
12. ZIAUNNISA BEGUM

... Appellants
(Original Defendants)

- and -

1. SAIF BIN SULTAN HUSSAIN AL QUAITI
2. SULTANAH MULUK
3. SULTANAH FATMAH
4. OMER BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
5. SULTANAH FATMAH
6. MOHAMED BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
7. SALEH BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
8. AHMED BIN MOSHIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
9. GHALIB BIN MOHSIN BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
10. NOOR BEGUM
11. ABDUL QAVI BIN NASIR BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
12. MUNASSER BIN NASIR BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
13. NOOR BEGUM
14. SALEHAH BEGUM
15. MOHAMED BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
16. ESA BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH

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17. SALEH BIN ALI BIN SULTAN MUNASSER BIN SULTAN ABDULLAH
18. SULTANAH BEGUM
19. SULTANAH FATIMAH
20. AMIR SALIM BIN AHMED AL QUAITI Respondents (Original Plaintiffs)

(Appeal from a judgment of the Supreme Court of the Colony of Aden (Mr. Justice R. Knox Mawer) dated 6th September, 1955

in

Civil Suit No.260 of 1952

BETWEEN:

Saif Bin Sultan Hussain and Others Plaintiffs

- and -

Government of Mukalla and Others Defendants)

JUDGMENT

This appeal and cross-appeal have been brought from the decree of the Supreme Court of Aden passed in an inter-pleader suit instituted by the Financial Secretary of that Colony in pursuance of the provisions of section 4 of the Sultan of Shihr and Mukalla's Fund Ordinance, 1945 (Aden Ordinance No. 11 of 1945). The preamble to that Ordinance recites briefly the origin of the Fund and the Ordinance itself empowers the Financial Secretary to administer the Fund and the Supreme Court to hear and determine claims to share in the distribution of it. It is convenient at this stage to note that the provision in section 6 appeals to the High Court of Judicature at Bombay has been replaced by provision for appeals to this Court: see the Aden Colony (Amendment) Order in Council, 1947, and section 6 of the Appeals to the Court of Appeal Ordinance (Chapter 7 of the Laws of Aden, 1955). The Fund was transferred to the Financial Secretary by the State of Bombay on or about 27th April 1951 and then amounted to approximately Rs.11,14,500: Aden Official Gazette: G.N. No.225 of 7th June, 1951. On 15th August 1955 the value of the Fund is said to have been Shs.1,481,713. The present claimants to the Fund fall into two groups: one group may be conveniently described as the heirs of Sultan Awadh bin Omer, who deposited the original sum of Rs.2,14,500; the other as the heirs of Awadh's nephews, Husein bin Abdullah bin Omer and Munassar

bin Abdullah bin Omer. The latter group were made plaintiffs in the interpleader issue and the former group were made defendants. The Supreme Court in effect decreed that the latter group was entitled to the Fund, subject to the prior deduction of certain costs and also subject to the payment to the former group of the sum of Sh.274,157.10, representing damages awarded to them by the Court. The heirs of Awadh appeal to this Court against the finding that the heirs of Husein and Munasser are entitled to the Fund, and alternatively support the award of damages. The heirs of Husein and Munassar have cross-appealed against the award of damages. There is also a cross-appeal by respondents Nos. 1, 2 and 3 claiming the whole Fund for themselves to the exclusion of the other respondents and, also complaining that the Supreme Court had failed to apportion the Fund amongst the respondents.

At the hearing before us Mr. Nazareth for the appellants raised a preliminary point challenging the jurisdiction of the Supreme Court to adjudicate upon the majority, if not all, of the respondents' claims. It will however be more convenient to postpone consideration of this until we have set out the history and origin of the Fund.

It begins with one Omer al Qu'aiti, a soldier of fortune and the founder of the present ruling family of the Sultanate of Shihr and Mukalla. He is referred to in some of the documents in the case as Shamsheer-ud-doula and we shall refer to him as Omer I. The Qu'aiti family held the lordship of Shibam, Houra, Hijrain and other places in the Hadhramaut which they had wrested from another local tribe. Omer I, like many other Hadhramauti Arabs in the first half of the 19th century took service with the Nizam of Hyderabad (Deccan): he there became a commander of the Nizam's Arab troops, a noble of consequence in the State and a man of considerable wealth. Among other benefits he enjoyed in his lifetime a number of royal grants called jaghirs and mukhtars, the nature of which we shall have to consider later in this judgment. Omer I died at Hyderabad in 1865 leaving five sons, Awadh (also known as Nawaz Jung), Abdullah, Saleh (alias Barak Jung), Ali and Muhammed. Ali and Muhammed took their portions and went their separate ways: we are not concerned with them or their heirs.

Omer I left a will which is an important

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Judgment.

6th April, 1957 - continued.

document in the case (Ex.24). By it he created a Wakf of one-third of all his possessions "which he holds in the country of Arabia, Hadhramaut etc. together with all produce of the villages ("Wadi"), all property in Cities, Forts, Fields, Trees, those grown through the effects of rain, and those grown under artificial irrigation, Wells, Ships, Houses, Cash, Weapons, Gold, Silver, Goods in trade, debts due and all property which can be seen, and all things which can be called property great and little, and one third of all properties and goods which he leaves behind in Hyderabad, Hindoostan, together with debts, and all property which can be seen, Cash, Silver, Gold, all Goods in trade, Mukhtars, Jaghirs, Weapons, Houses, Karkana (Establishment) of Arabs etc. and all its belongings in the shape of animals etc, that is to say the one third of all his property and rights in Arabia and Hindoostan, or in any other country. "The objects of the Wakf were to meet the expenses of the city of Shilham (Shibam) and the city of Horah (Houra) and other cities which may after this be taken into his possession", to maintain the dignity of his descendants, to carry on war and suppress rebellion and generally for the welfare of his realm and subjects. For the management of the Wakf, he appointed his three sons, Abdullah, Saleh and Awadh jointly "one is to aid and assist the other and whichever one of these is in Hindoostan will be able to represent the other two, and whichever of these three may be in Hadhramaut he will have the power to represent the other two: in like manner for the other cities". They were also to have power to appoint a successor.

After the death of Omer I, Awadh and Saleh remained in Hyderabad and in 1866 the jaghirs and nukhtars which their father had enjoyed were confirmed, or re-granted to them by the Nizam. Abdullah's name does not appear as Jaghirdar or Mukhtardar. He lived mostly, if not wholly, in Arabia, where he had ruled Shibam and its dependencies as his father's deputy and continued to rule de facto after Omer's death. Between 1866 and 1873 the possessions of the family in Arabia were greatly enlarged by conquest and their wealth and power proportionately increased. During this period they gained control of the coast and the port of Shihr, and perhaps Mukalla, Brum and other places mainly, it would seem, through the energy and leadership of Awadh who brought troops from Hyderabad for that purpose.

The remaining two-thirds of the estate of Omer I, after allowing for the shares of Omer's widow and the two sons Muhammed and Ali, was held in accordance with the Sharia in equal undivided shares by Awadh, Abdullah and Saleh. On 24th May 1873 these three brothers entered into an agreement which has been variously referred to as a "family compact" and a partnership deed. The original document is missing, nor was any translation of it produced, but the parties are agreed that it provided for ownership in common of their properties, each having a third share; and for each to be the agent for the other two and to look after the interests of the others in Arabia or India, wherever each happened to reside. Abdullah appears to have continued to live in Arabia, administering the family property and exercising the power of government: Awadh and Saleh continued to live mostly in Hyderabad.

Early in 1878 a bargain was concluded between Awadh and Abdullah which is the prime source of the present dispute. It is now common ground that Abdullah sold to Awadh, for the sum of One hundred and eighty six thousand Maria Theresa dollars his one-third share of the properties held in common under the partnership, whether in India or Arabia, excepting, as to Arabia, his share in the original family lands and villages in the interior (which we shall refer to as the Hadhramaut property). But the respondents contend that Abdullah had a beneficial interest in the jaghirs and mukhtars which had been confirmed to Awadh and Saleh by the Nizam and that this interest was not included in the transaction. The appellants contend that, if Abdullah did have any such interest which they do not admit, then it was included in the property sold. We shall examine this question at length later in this judgment. It is also common ground now that only ß46,000 of the purchase price was paid at the time of the sale, and that the balance of ß140,000 remained unpaid at the time of Abdullah's death in 1888.

The original sale deed (also called "the letter of vow") is missing and neither of the two alleged translations of it (Ex.25 and p.95 of Secretariat Record) which were produced at the trial was agreed as correct or admitted in evidence in the Supreme Court. Some confusion has been caused by the learned Judge having marked certain documents as exhibits when they were first tendered,

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Judgment.

6th April, 1957 - continued.

and before considering the question of their admissibility, instead of marking them for identification in the first place and as exhibits only when actually admitted in evidence. A further difficulty arises as to the set of documents known as the "Secretariat Record". This is a large bound volume containing originals, translations and copies of all kinds of documents relating to the early history of this case, and evidently collected in the Aden Secretariat for purposes of permanent record. It is the primary source for all the relevant facts. Many documents which have been obtained from Hyderabad and put in evidence are only copies of copies earlier obtained from this volume. The volume was admitted in evidence as a whole by consent of all parties and its contents are all clearly evidence, for what they are worth, being public records over thirty years old and produced from proper custody. Some parts of the book have been copied and included in the record for this Court, but we have also relied on many parts of it which have not been copied or included in our record. So far as we deal with matters of fact which do not appear from our record itself, this is the material on which we base our remarks.

Reverting to the two alleged translations of the sale-deed, it has been suggested that the original may be in Hyderabad. At all events, it cannot be produced and there is no suggestion that it is being deliberately suppressed. At one time it was contended that the original was a forgery, but that part of the respondents' case has been abandoned. The two translations, although naturally not identical, are not so different as to lead to any inference that they are not both bona fide translations from the original document. In the circumstances, we think they should have been admitted in evidence, though it would be necessary to use them with some caution. Similar remarks apply to a letter alleged to have been written by Abdullah to the Resident, Aden, on 15th August 1888. The original has disappeared, perhaps in Hyderabad, and its authenticity is still challenged. At the time of the arbitration referred to later it was an essential part of Husein and Munassar's case that this letter must be a forgery, and they so contended. But Government appears to have considered at all material times that it was genuine, and the Mansab (to whom we refer later) certainly thought so. We think that the purported translation

of the letter (Ex. 26 at p.94 of the Secretariat Record) was admissible and should have been received in evidence, again with mental reservations. We shall have occasion to refer again to this letter.

Going back to the sale-deed of 1878, it is apparent from the translations that it had a much more important purpose than the mere sale of Abdullah's possessions. It settled in Awadh's favour the right of succession to the Sultanate. This might seem a somewhat strange thing for Abdullah to do; but one must remember the provisions of Omer's will and the circumstances of the family as a whole, including the terms of the partnership deed, so far as we know them. Awadh's military record made him the obvious choice as the next head of the family and, if he succeeded, his sons must later do so. Abdullah may have recognized that this was inevitable. If so, his principal concern would be to secure adequate portions for his own sons. The sale-deed had this effect.

It seems highly probable that this transaction was kept secret from Abdullah's sons, Husein and Munassar. Although Abdullah had parted with his birthright, both as landowner and as Sultan, he continued to be the de facto ruler of the family territories in Arabia. By 1881 the British Government was taking an interest in the control of the Southern coast of Arabia and in October of that year, with the assistance of a British warship, Awadh and Abdullah were enabled finally to take possession of the ports of Mukalla and Brum. This was followed by a treaty signed on 29th May 1882 by which Abdullah, for himself and his brother Awadh and his and their heirs and successors, undertook not to dispose of any of the territories of Shihr and Mukalla and their dependencies to any power other than the British Government and, inter alia, to accept the advice of that Government on foreign relations. This was followed on May 1st 1888 by a second treaty establishing a British Protectorate over the Sultanate: this was also signed by Abdullah on behalf of himself and Awadh. Awadh was in Hyderabad during these years and, ex facie, the treaties recognized him and Abdullah as joint rulers of the State. This is probably the explanation for Abdullah's letter of 15th August 1888. In it he stated with regard to the treaties that he had, for himself and his heirs, transferred his interest in the Government of the Sultanate to Awadh by the agreement of 21st January 1878. It may well

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be that this letter was not unconnected with the state of Abdullah's health, for he died on 25th November 1888. The signature of the treaties by Abdullah as a ruler in his own right might after his death have cast doubt on the authenticity of the sale-deed of 1878. This letter would remove any such doubts. There is every reason to believe that Awadh and Abdullah were on good terms right up to Abdullah's death, and, if so, he would be anxious to make the position clear. On the other hand the sale-deed and letter would come as a great shock to Husein and Munassar, and if they heard of them only after Abdullah's death they may honestly have believed that they were not genuine. If they wished to maintain any pretensions to the Sultanate, they would be obliged to adopt that attitude, whatever their own opinions might be. We think the probabilities are in favour of the authenticity of Ex.26. It appears from the Secretariat Record that after Abdullah's death the British Government formally recognised Awadh alone as Sultan. He did not, however, go to Arabia but left Husein and Munassar in charge of the Sultanate: The Secretariat Record shews clearly that the British Government considered them to be deputies to Awadh.

There appears to have been no serious disagreement between Awadh and his nephews until 1896, perhaps because they were still ignorant of the existence of the sale deed of 1878. The two nephews, having started the year 1896 with a violent quarrel between themselves and having appealed to Awadh, then joined forces and began to put forward claims to have inherited their father's share in the property and in the Government of the State. Awadh, urged on by the British Government, visited Mukalla. He deprived his nephews of their administrative functions and installed his own son, Ghalib, in their place. Husein and Munassar were, however, given money allowances and continued to live in the Sultanate. This arrangement lasted until late 1900 when Husein and Munassar again put forward their claims to share both in the sovereignty and in the property, and on 5th November 1900 in accordance with custom the dispute was referred to the arbitration of a "Mansab". (A mansab is a leading and respected Sayyid who is appealed to to decide family and tribal disputes). Awadh appears to have returned to Mukalla early in 1901. It appears from the Secretariat file that this submission was made on the parties' own initiative, and in no way at the instigation of the British Government.

Although Husein and Munassar had joined in this submission, and the question of the Sultanate rights was undoubtedly within the submission, they were apparently unwilling to abandon their political pretensions and continued to claim and to exercise rights of sovereignty in the State. Accordingly in September 1901, the Resident, Aden, went to Shihr and Mukalla and found Husein and Munassar in open rebellion against their uncle. His endeavours to bring about a settlement were unsuccessful, and eventually he informed them that they would have to leave Arabia. They apparently did so, but were later allowed by the Government of India to return for a time. Further endeavours to promote a settlement were equally unsuccessful and in July 1902, the Resident, doubtless in accordance with instructions of higher authority, arrived at Shihr in company with Awadh, and, under threat of bombardment, obliged Husein and Munassar to deliver up to their uncle the towns in their possession (Shihr and Al Ghail) and took the two nephews back with him to Aden. They were never allowed to return to the Sultanate. There is thus no doubt that they were dispossessed by an Act of State, and Sultan Awadh was put into undisputed possession of the lands and Government of the Sultanate by the same Act of State.

The arbitrator had not yet given his award, but, although the British Government was determined for reasons of State to prevent Husein and Munassar from disturbing the peace and good order of the Sultanate, it was equally anxious to ensure that they were fairly compensated for any loss of property rights. A time limit was fixed for the conclusion of the arbitration and the award was eventually delivered at the beginning of May 1903. An Arabic copy of the award signed by the arbitrator and witnesses and by Sultan Awadh is in the Secretariat Record and an agreed translation was admitted at the trial (Ex.1). The arbitrator states that he had before him the following documents, inter alia, - the partnership deed of 1873, the sale deed of 1878, and Abdullah's letter of 1888. The effect of the award may be thus summarized:

(a) the sale of Abdullah's one-third share to Awadh was declared valid and effective;

(b) the claim of his heirs, including Husein and Munassar, to have inherited their father's one third was therefore rejected,

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but they were declared entitled to receive the unpaid balance of the purchase price, namely £140,000;

(c) Husein and Munassar's claim to share in the chiefship and government of the Sultanate was also rejected;

(d) the heirs were entitled to be compensated for their shares in the Hadhramaut properties which were not included in the sale. These shares were valued at £70,000;

(e) Awadh's claim for Rs.24,00,000 representing monies remitted from India for the maintenance of the Government etc. during Abdullah's and the nephews' time, and his claim for an account of their stewardship were both dismissed.

(f) The heirs were awarded £50,000 "as a matter of sympathy and mercy".

There were two main issues on the arbitration, first, the authenticity of the sale-deed and of Abdullah's letter, and secondly, the effect of the sale-deed, if authentic, under Muslim law. The Mansab considered both issues with scrupulous care, and the whole award, which is of considerable length, impresses us as being the production of a man of learning and integrity, anxious to give a just decision on difficult and complex questions. Awadh, as has been said, accepted the award and, at the instigation of the Government of India, paid into the National Bank of India at Aden Rs.2,14,500 (representing M.T. £162,500) on 1st August 1903. See Ex.3. This represented the shares of Husein, Munassar and Husein's mother of the total sum of M.T. £260,000 awarded. The Bank placed the money to the credit of an account entitled "The Political Resident, Aden". Husein's mother (Sultanah Salma) died shortly afterwards. When Husein and Munassar refused to accept the award the money was invested in India Government paper, the account being styled "The Sultan of Shihr and Mukalla's Nephews Trust".

It is not necessary for us at this point to go in detail into the protestations made by Husein and Munassar that they had withdrawn their authority to the arbitrator as early as 1901 (Ex.30 and p.86 of the Secretariat Record). They refused even to accept a copy of the award, and sought the

permission of the Government of India to sue the Sultan in the Courts of British India. This permission was refused and they then turned their attention elsewhere.

In 1904 they left Aden for Hyderabad, where they sought to get a fresh adjudication on their claims. Awadh's opposition and the consequent correspondence with the Government of India were probably responsible for the ensuing delay and it was not until December 1909 that the Nizam's Government decided to refuse them permission to sue in the ordinary Courts of the State in respect of the private and personal property of Awadh, but permission was given them to institute claims in respect of the jaghirs and mukhtars in the Revenue and Finance Departments (Ex.51). Husein and the heirs of Munassar then petitioned the Revenue Department alleging that the jaghirs and mukhtars, which had been confirmed to Awadh and Saleh, were first held jointly by these two and their father Abdullah and that Saleh had then taken his one-third share and separated; they therefore claimed, as heirs to Abdullah, one-half of the remaining two-thirds, and arrears of profits (Ex.38). By that time Munassar was dead, Awadh died early in 1910 and their heirs were substituted as parties. (Ghalib succeeded Awadh as Sultan). In due course Husein died (1924-1925) and his heirs were substituted. The heirs of Awadh in their answer to the petition denied that Abdullah had had any interest in the jaghirs and mukhtars: they also relied on limitation and on the arbitral award, which they said covered the Hyderabad properties. The petitioners replied, inter alia, that the award was invalid and had not been accepted by Husein and Munassar.

It is important to remember that the Hyderabad proceedings were not proceedings in a Court of law and therefore cannot afford any basis for res judicata. Inquiries were held and reports made by different persons and, sometime in 1924, a commission of three was appointed to examine the claims. It reported in 1926 (Ex.21(d)); the Nizam accepted the opinions of the majority and issued orders accordingly, (Ex.21(e) and Ex.21(f)). There can be no doubt that these were administrative decisions. The attitude of the Hyderabad Government appears to have been that the Nizam's authority to dispose of the jaghirs and mukhtars as he thought best was not ousted or restricted by either the sale deed or the

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arbitral award, even if these two documents, or either of them, purported to deal with these grants. Nevertheless, the Commission firmly rejected the contention that Abdullah had had any claim to the jaghirs or mukhtars in his capacity as an heir to Omer I: they also rejected the contention that, although these properties were regranted to Awadh and Saleh only, the intention of the Nizam was that Abdullah should have a beneficial one-third interest. They came to this conclusion in spite of the fact that, when these properties were divided between Awadh and Saleh the former took a two-thirds share. But, although rejecting the legal claims, the Commission advised and the Nizam agreed that there was a moral obligation on the possessor of the jaghirs to maintain and support the descendants of Omer I. The Commission accordingly recommended allowances to be paid to the Claimants out of the income of the jaghirs. Eventually, in June 1932, the allowance to the respondents (or those under whom they claim) was fixed at Rs. 5250 a year, with arrears payable from 1922: this allowance was charged upon the jaghirs and mukhtars held by Awadh and his heirs. In 1948 or 1949, jaghirs and mukhtars were abolished by statute and, by way of compensation, the State Legislature granted to the heirs of Abdullah a commuted allowance of Rs. 2362.8 annas a quarter payable until 1960. It is agreed that the total payments which the respondents and their predecessors have received or will receive in respect of these allowances amount in all to Rs.1,52,771.6.0.

We can now return to events in Aden. By 1924, Ghalib, the elder son of Awadh, had been succeeded as Sultan by the second son, Omer bin Awadh, whom we shall refer to as Omer II. On January 24th of that year, Omer II wrote to the British Agent, Aden, complaining that the heirs of Abdullah had repudiated the award by their proceedings in Hyderabad and therefore forfeited their rights in the Fund. He asked that the Fund should be paid to the heirs of Awadh or reserved pending the decision of the Nizam's Executive Council (Ex.14). The effect of this letter will be further considered with reference to the respondents' alleged repudiation of the award. We do not know what reply was sent to this, but in October 1926, Omer II again applied for payment out to him. This time the Government of Bombay replied to the effect that Omer II should produce the written consent of the other heirs of Awadh to his receiving the amount then in the Fund

on their behalf as head of the family. This consent was apparently never obtained and in 1932 the Government contemplated filing an interpleader suit in the Bombay High Court (Ex.55). It is not clear whether these proceedings were ever begun; it is clear that no determination on the claims was ever made by the High Court.

The next step of importance is that, on April 7th 1942, the heirs of Husein and Munassar applied to the Chief Secretary, Aden, for payment out of the Fund to them (Ex.16). It will be recalled that neither Husein nor Munassar, nor any of their heirs, had ever previously expressed willingness to accept the arbitral award, and that this application was made ten years after the decision on their claims in Hyderabad. The Government of Bombay replied that their intention was to have the trust transferred to the Government of Aden and to provide by legislation for the manner of determining the disposal of the Fund. This was eventually done and Ordinance No.11 of 1945 was passed after Aden had become a separate Colony. Before then the heirs of Husein and Munassar had again laid claim to the Fund in a letter addressed to the Chief Secretary, Aden, on January 16th 1945 (Ex.18).

We can now consider Mr. Nazareth's preliminary point, which was, briefly, that the Supreme Court had no jurisdiction to entertain the respondents' claims or, at least, the majority of such claims, because they were not made within the period of six months limited by section 6 of the Ordinance, and that the amounts awarded to the respondents in respect of such statute-barred claims should go to the appellants. Respondents Nos. 1, 2 and 3 by their cross-appeal adopted the limitation argument as regards the claims of the remaining respondents, but contended that the amount of those claims should be added to their own shares. The arguments on this point were not pressed with any enthusiasm after we had indicated that the share of any claimant otherwise entitled, who was disqualified from taking his share by a technicality, would be treated as undisposed of under section 7 of the Ordinance and that our report to the Governor would include a strong recommendation that equity should be done. However, as the objections to the jurisdiction were not formally withdrawn we must deal with them.

The Financial Secretary, Aden commenced these

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proceedings by filing his interpleader suit on 11th July 1952, under the provisions of section 4 of the Ordinance. Sections 5 and 6 of the Ordinance read as follows :-

"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.

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 governing appeals to the High Court of Judicature at Bombay and to His Majesty in Council, be final".

On 15th July 1952, by direction by the Judge of the Supreme Court, a notice was issued headed "The Financial Secretary of Aden, Plaintiff versus The Heirs of Husein bin Abdullah and Munassar bin Abdulla, Defendants". After recitals, it stated that the court would hear the parties on a date to be determined by the Judge, being a date "not less than six months after the date of this Notice", and it required all persons claiming to be the heirs of Husein and Munassar and all other persons claiming a share in the Fund to enter appearance in the Supreme Court at Aden on 15th September, 1952. The notice was clearly defective in that the period of not less than six months prescribed by section 6 is

to run not from the date of the notice but from "the service or publication of all the notices referred to in section 5", i.e. the period does not begin to run until the latest date on which service or advertisement is completed as ordered. Orders were made for advertisement and posting of the notice and on 15th September 1952 the Registrar of the Supreme Court certified that they had been complied with. Claimants had therefore until the 15th March 1953 in which to notify the Court of their claims. All the appellants entered appearance and lodged their claims within this period. On 15th September 1952 the learned Judge noted, "A number of people have attempted to enter appearance by writing letters. This is not entering an appearance. The letters are directed to be filed separately by the Registrar". One of such letters or petitions appears to be that included at page 11 of the Record of Cross-Appeal. It is dated 28th August 1952 and is from the present first Respondent, Saif the son of Husein. He claims therein to hold a power of attorney from the other heirs of Husein and from the heirs of Munassar and to be authorised to represent them in the Supreme Court of Aden. The petition asks for extension of time for entering appearance by three months, the petitioners being then all in Hyderabad. Apparently no reply was sent to this, nor is it clear whether these parties ever did formally enter an appearance. On 15th January 1952 Mr. Mansoor informed the Court that he was being asked to represent other claimants who had been trying to enter appearance by means of letters and telegrams. The learned Judge then made the following order "I will set 13th May 1953 as the final date for written statements. After this no claimants will be heard". This date was eventually extended to 28th August 1953, on which date all the respondents filed their "claim-petition". On 24th February 1953 Mr. Mansoor had filed his retainer signed by Respondent No.1 on behalf of himself and all the other heirs of Husein and the heirs of Munassar; but on 18th July 1955 the respondents other than Nos. 1, 2 and 3 wrote to Mr. Mansoor alleging that they had never authorised Respondent No.1 to give a retainer on their behalf, nor had they ever executed any power of attorney in favour of Respondent No.1 for the suit or otherwise. On the same day they informed the Supreme Court that a Mr. A.M.N. Dedanwalla was retained to act for them in the suit.

On these facts Mr. Nazareth argued :-

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(a) that no claim on behalf of any of the respondents was made before the expiry of the statutory six months;

(b) that even if Respondent No.1's petition on 28th August 1952 is treated as a claim it can only be considered as made on behalf of himself and Respondents Nos.2 and 3, since the other respondents have repudiated his authority; and

(c) that the Supreme Court was acting without jurisdiction in extending the statutory period of six months.

His third argument may be accepted, though it is necessary to distinguish between informing the Court of the existence of a claim and giving formal particulars of it. Sub-section (1) of section 5 is badly drafted and it is not clear what the expression "such notice in writing" is intended to refer to. However, the section clearly requires the judge to inform himself, in the first instance, of all likely claimants and then to give notice to them of the interpleader suit. Where we think, with respect, the learned Judge erred was in his refusal to take any notice of claims until the claimant had entered a formal appearance. It must have been obvious from the Government records that all the heirs of Husein and Munassar were potential claimants (and indeed the title of the interpleader suit implied this). It was, therefore, the learned Judge's duty, in the first place, to find out, if he could, who those heirs were and for that purpose he should have taken into consideration the letters and telegrams received. Who sent them and to whose claims they related we do not know since they are not included in the appeal record (except the letter of 28th August 1952 from Respondent No.1) for the very good reason that the objection to the jurisdiction is raised for the first time in this Court. In this state of affairs we will certainly not assume that the letters and telegrams which we have not seen did not notify the Court of the existence of the respondents' claims. The letter of 28th August 1952 clearly did so. An objection to the jurisdiction of the Court may properly be taken for the first time on appeal; but, if the objection depends on the existence of a certain set of facts which might, if the objection had been taken in the Court of trial, have been shown by evidence not to exist, the absence

of such evidence from the appellate Court's record will normally be considered to be due to the objector's failure to make his objection at the right time: accordingly the Court will not make any presumption against the party who might have called the evidence, but will, on the other hand, presume that the evidence could and would have been called, and will accordingly overrule the objection. See Banbury v Bank of Montreal, (1918) A.C. 626, 679, 705, 714., Westminster Bank Ltd. v Edwards, (1942), A.C. 529, 539, and Colonial Bank of Australia v Willan, L.R. 5 C.P., 417, 442. For these reasons we are of opinion that Mr. Nazareth failed to establish his objection.

We can now turn to the consideration of the first of the substantial issues in this matter namely, whether Abdullah had any beneficial interest in the jaghirs and mukhtars which had been granted to his father, Omer I, and confirmed to Awadh and Saleh, and, if so, whether such interest was included in the sale of his "one-third share" to Awadh in 1878 and/or in the property covered by the arbitral award in 1903. It does not seem necessary for the purposes of this appeal to draw any distinction between jaghirs and mukhtars: both were Crown grants of usufructuary rights in land for the lifetime of the grantee in return for services rendered. These grants were in theory inalienable during the lifetime of the grantee without prior sanction of the Nizam's Government. The grantee's heirs did not succeed automatically and the granting of a jaghir on the death of a holder to any person, who might or might not be the heir of the deceased, was within the sole discretion of the grantor. The jaghirdar had only a life-tenure and each successor got a fresh estate. A jaghirdar had during his life the right of managing his estates, enjoying the revenue from them and other privileges: see Sarwarlal v. State of Hyderabad: A.I.R. 1954, Hyd. 227. It would seem also that the jaghirdar was expected to apply the revenues of his estate to the support and advancement of needy members of his family. This being the strict legal view of the nature of the rights of a jaghirdar or mukhtardarm it is not surprising that the Commission appointed in 1924 advised that Abdullah had no legal claim to a share in the jaghirs and mukhtars which had been re-granted to Awadh and Saleh. But in their opinion the legal aspect was not the only material one. They ended their report as follows :-

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"This opinion is based entirely on legal consideration; but as the sons of Mohammed Abdullah, and Ali are all descendants of one person Omer Bin Awadh, therefore, it is the moral obligation of the possessor of the Jagirs to maintain and support them. If, for these or for the members of the families, some amount has been fixed as a maintenance to those who deserve, it will not be away from the gracious favour of His Exalted Highness which he has been, all along, bestowing upon this family. This is a Royal Prerogative against which NO Jagirdar has got any right to contest.

This opinion of ours as per orders of the Farman should be submitted to the Honourable Members of the Executive Council".

This supports our view that the strict legal rights of the parties in Hyderabad are not the only relevant consideration. We think we have to look at the matter from a more practical point of view and, so far as possible, from the standpoint of Abdullah and Awadh from 1866 onwards. Ex. No.60, a circular issued by the State Judicial Department in 1866 is interesting: it purports to prohibit the transfer of Crown grants without prior sanction "as if they were personal property" and condemns "the practice of vogue until now". The transfer of jaghirs by mortgage or in any other manner is specifically declared to be invalid without Government sanction. Nevertheless, Ex.61, a circular issued in 1902, and Ex.62, a circular issued in 1905, shew that the practice continued. The former is interesting as shewing that it was not unlawful for jaghirdars to lease their grants at an annual rental. Leases "at nominal rents" or in consideration of large debts (mortgages) are declared unlawful. There is some evidence therefore that restrictions on the assignment of the profits of jaghirs were commonly ignored. It is significant that Omer I by his will made in or about the year 1861 purported to include his jaghirs and mukhtars in the property of which one-third was set apart as Wakf.

The Hyderabad Crown grants were initially rewards of the military prowess of Omer I, the founder of the dynasty, and it was natural that he and his family should, on achieving something like independent sovereignty, regard them as adjuncts of their own royal power. Whether or not Awadh and Saleh in 1866 consented to hold a one-third interest beneficially for Abdullah, we think it is most

probable that, when the partnership agreement was made in 1873, the jaghirs and mukhtars would have been within its terms. Equally, when the sale-deed was made in 1878, one would expect that they would again be made to follow the sovereignty. And this is not merely a matter of speculation; for, if our theory is correct, it explains something for which otherwise no explanation appears, that Saleh, before his death in 1880, was the beneficial owner, not of one-half, but only of one-third, of the jaghirs and mukhtars. There is no record of any sale of a one-sixth interest by Saleh to Awadh; and such a transaction is inherently improbable. We are driven towards the conclusion that, as the parties themselves regarded the matter, Abdullah had, at least after 1873, a one-third beneficial interest in the Crown grants, but sold that interest in 1878 to Awadh. We must approach the present issue with these points in mind.

As to whether the deed of sale executed by Awadh and Abdullah in 1878 specifically referred to jaghirs and mukhtars it is impossible on the evidence before us to give a precise answer. As we have said, the original deed is missing and neither of the two translations produced at the trial was admitted in evidence, although, as we have said, in our view they should have been so admitted. However, as they were referred to in the course of the argument and Mr. Channa Singh contended that they shewed that the jaghirs and mukhtars were not included, we think we should briefly state that in our opinion it is possible to come to a reasonably clear conclusion, even without reference to the Arabic original. Ex.25, a translation sent from Hyderabad, has the expression "grounds, mukhtars etc. including everything that may be called property or thing of value in Hyderabad". The underlining is ours. The translation at p.95 of the Secretariat Record has the words:- "lands, gardens etc. and whatever is called property in Hyderabad". (Again our underlining). Prima facie it would seem that mukhtars were specifically mentioned and that in one case the word was left untranslated, and in the other case translated as "gardens". The word translated as "lands" and "grounds" may or may not have been "jaghirs". We are informed from the bar that "jaghir" is a Persian word, while "mukhtar" is Arabic. In Aden, where Arabic is commonly understood, "garden" might appear to be a reasonably good translation of "mukhtar". Alternatively, the word might stand in original form, as one generally

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understood; but how would a translator from Arabic translate "jaghirs", even if familiar with the Persian original? He could hardly be expected to do better than "grounds" or "lands". We think it highly probable that the word so translated was in fact "jaghirs".

Whatever the legal position may have been, it seems probable that Awadh and Saleh, the jaghirdards, did consider that Abdullah had an interest in the profits of the jaghirs: this seems the most probable explanation of the fact to which we have already referred, that when the jaghirs were divided between them, Awadh took two-thirds and Saleh only one third. If this was in fact the position as between the brothers, then we think that, whether or not the jaghirs were specifically mentioned in the sale-deed, they came within the scope of the expression "whatever is called property in Hyderabad".

The same argument applies to the arbitrator's award. He refers to the deed of partnership and the deed of sale, both of which were before him: he finds the latter to be genuine and valid, and finds as a fact that Abdullah sold to Awadh his one-third share "in all the aforesaid properties in accordance with the deed of partnership which exists between them and of all that which bears the name of property in the direction of India, Hyderabad, Deccan, Bombay etc. such as specie, gold, silver and immovable properties as mentioned in letter of vow excluding the property which is at Hadhramaut".

In face of this, which is part of the award now accepted as valid by the respondents, we think it is quite impossible for them to contend that the arbitration did not extend to whatever interests Abdullah may have had in the profits of the jaghirs, whether this interest derived from inheritance or from the partnership deed.

The next questions to be considered are the nature and effect of the payment by Awadh of Rs.2,14,500 into the National Bank of India to the credit of the Political Resident. The learned trial Judge was satisfied that on payment of the money into the Bank Awadh "divested himself of all property therein in favour of his nephews upon whose behalf the money was henceforth held by the British authorities" and that "the status of the

British authorities in holding the money became, in English legal parlance, that of a 'Trustee'". He held, accordingly, that the respondents, as the legal successors in title of Husein and Munassar, were entitled, not only to the original sum of money deposited, but also to the interest accrued thereon as a result of the investments made on their behalf by the 'Trustee'.

Mr. Nazareth contended, first, that the money was deposited by Awadh as security for the performance of the award. He referred us to a passage in a letter dated the 10th July, 1903 from the Secretary to the Government of Bombay to the Secretary of the Foreign Department of the Government of India (Ex.37) in which it was stated that Awadh had accepted the award and "was prepared to deposit money in Bombay or Aden as security for his bona fides". Secondly, and in the alternative, he contended that the Political Resident held the money as bailee, agent or trustee of Awadh, to pay it to the heirs of Abdullah on fulfilment of a condition, namely, the acceptance of the award by the heirs of Abdullah. What exactly he meant by acceptance of the award is not clear, but presumably it would mean no more than that they should receive the money as paid under the award and give a receipt accordingly. It must be remembered that even before the money was deposited, Awadh was aware that Husein and Munassar were going to try to take legal proceedings elsewhere. As Awadh would wish to plead the award in bar of the proceedings, it was of great importance that he should be able to prove that he had paid the moneys due under it. It is quite possible that, if the money had been received as he intended, the proceedings in Hyderabad might have failed altogether. Mr. Dunlop stresses in his opinion that the money had not been received (Ex.41). One would expect therefore that Awadh's instructions to the Political Resident would be that the fund was not to pass immediately to the heirs of Abdullah, but if the heirs "accepted the award", in the sense indicated above, then, and then only, the Political Resident should hold the money as trustee for them. On behalf of the respondents, however, it was argued that on payment of the money to the Political Resident, an unconditional trust was created in favour of the heirs of Abdullah. It was stressed that when the money was transferred to the Government of Bombay to be invested in trustee securities, the Fund was styled "The Sultan of Shihr and Mukalla's Nephews Fund": see Exs. 8, 9 and 10 in particular.

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The nature and effect of the payment must be determined in the light of the circumstances existing at the time when the payment was made. The Government of India had accepted the arbitrator's award as final and the Political Resident, Aden, was so notified in a telegram dated the 22nd July, 1903 (Ex. 12). A copy of this telegram, together with a copy of the award, was sent to Awadh, though it is evident that he was already aware of the contents of the award. It is also evident that the Government of Bombay intended to exert pressure on Awadh, if necessary, to carry out the terms of the award, for, in the letter of the 10th July, 1903, (Ex.37) referred to above, the Secretary to the Government of Bombay stated that the Governor in Council would "propose to see that the money awarded are (sic) paid". On the 27th July 1903, Awadh wrote to the Political Resident (Ex.2) informing him that "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 the Government or to whoever Government orders us to pay". He then went on to detail how the money should be divided among the heirs. On 1st August 1903 he sent the money to the National Bank of India, apparently on the instructions of the Political Resident, under cover of the following letter (Ex.3).

> "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 Husein's mother, as per the Munsab'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: (Ex.4).

> "Received from H.H. The Sultan of Mukalla, the sum of Rs.2,14,500/- Two lacs, fourteen thousand and five hundred 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".

At this time Husein and Munassar had made it clear,

at least to Government, that they would not accept the award or the money: see the letter dated 27th May, 1903 from Husein to the Political Agent, Aden (Ex.32). It is most improbable that Awadh would have paid the money without ensuring that he should have the full benefit of its having been paid and received in terms of the award. It is clear from Awadh's letters to the Political Resident and the Bank (Exs. 2 and 3) that the money was deposited for the purpose of discharging his obligations under the award. In view of those circumstances, it is impossible to believe that Awadh intended to deprive himself of all power to recall the money if Government did not succeed in persuading Husein and Munassar to "accept the award". We think that the instructions which he actually gave entirely accord with this view. We do not consider it necessary to decide in what capacity the Political Resident held the money, whether as bailee, agent or trustee. As between the parties it was clearly not a payment by way of security. Government from its own point of view desired an assurance that Awadh would perform his obligations under the award and may well have regarded his payment to the Political Resident as affording security to Government that this would be done, but we cannot see that the word "security" can be applicable in any other sense. We think that in whatever capacity he was acting, the Political Resident held the money on behalf of Awadh with authority (and, be it noted, irrevocable authority) to pay it to the heirs of Abdullah, but only on the condition that they should accept the award and receive the money in full discharge of Awadh's obligations under it. It follows that until the heirs of Abdullah indicated that they were willing to receive the sum of Rs.2,14,500/- as money due under the award, the Fund as a whole, including any accretions thereto, belonged to Awadh or his heirs.

It is apparent that the award must be the basis of the respondents' claim. They take under it, or not at all. On behalf of the appellants it was submitted that Husein and Munassar had revoked the authority of the arbitrator before he made his award, and that the award is, therefore, a nullity. It is common ground that Mohammedan law according to the Shafei school applied to the submission to arbitration, and that, according to that law, either party may revoke a submission before the arbitrator has published his award: Howard's Minhaj et Talibin, 1914 edition, p.501. We do not believe

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that Husein and Munassar did revoke the arbitrator's authority before the award was made. It is true that in 1901 they complained to Government that the Mansab was not fully competent to assess the value of the Indian properties, being unfamiliar with such matters. See pp.86 and 87 of the Secretariat Record. But this never amounted to a revocation of his general authority under the submission and is not shown to have been communicated to him. It is also true that on 28th April, 1903, Munassar wrote to the Political Agent, Aden (Ex.31) stating that they had cancelled the authority of the arbitrator, that they both wrote to the Political Resident on 3rd May, 1903, (Ex.30) alleging that they had cancelled the arbitrator's authority in 1901, and that Husein made a similar allegation in a letter to the Political Agent dated 27th May, 1903 (Ex.32). It will also be noted that on 26th May, 1903 they refused to receive a copy of the award, evidently fearing that if they did so it might be considered that they had accepted the award; see Ex.29. Thereafter, they persisted in their repudiation of the award until at least 1942.

So far as we can ascertain, it seems probable that the award was signed about 5th May, 1903, though it was not dated. It is highly probable that Husein and Munassar had either seen a draft or knew what the arbitrator intended to decide before they wrote the letter of 28th April, 1903, but this is not really material, since they did not purport to withdraw his authority as at that date, but alleged then that they had done so in 1901. There is nothing else in the evidence to suggest that they ever in fact revoked the authority in 1901, and nothing at all to suggest that they communicated to the arbitrator any revocation of his authority. Any revocation would, we think, be inoperative unless communicated to him. We cannot believe that the arbitrator would have continued with the arbitration if his authority had been revoked in 1901, as Husein and Munassar alleged. In his award the arbitrator recited that Husein and Munassar had freely executed a "deed of authority" in which they undertook to accept his decision and carry it into effect, but he made no reference to revocation of this authority. Moreover, if the arbitrator's authority had been revoked as early as 1901, we think the Government would have been so informed. Had they believed that the authority had been revoked they would, we think, have taken an entirely different attitude. They would not

willingly have lent their countenance to invalid arbitration proceedings, but would probably themselves have fixed as an Act of State a sum which Awadh was to pay by way of compensation. Their interest was to secure peace and a settled line of succession. An award not generally recognised as valid could only have been contrary to such interest. Finally, in Husein and Munassar's petition to the Viceroy dated 8th February, 1903 (Ex.28) in which they set out their grievances, no mention is made of withdrawal of the arbitrator's authority; indeed the arbitration proceedings are deliberately concealed. As matters turned out, the award was the complete answer to their petition. They may well have suspected that this would be so, and it may have been because the petition omitted this essential factor in the situation, and was therefore wholly misleading, that the Aden Government refused to forward it. We do not think the award was invalid through revocation of the arbitrator's authority.

The respondents now accept the award as binding. In Howard's Minhaj et Talibin at p.501 it is stated that once an arbitrator has pronounced his decision "no-one's approval is necessary for the execution of the judgment". Presumably an ordinary award would be enforced either by the Kathi's Court or by the executive authority. But, having regard to Awadh's special position as a ruler, the award in the present case could not have been enforced against him by judicial process in his own dominions. On the other hand, he had already taken by executive action everything which the award gave him. His only further interest was to prevent the taking of legal proceedings against him in other jurisdictions. For this purpose he could not apply personal pressure to Husein and Munassar, as they were not within his dominions. He did, however, have the assistance of the British Government, which prevented proceedings being taken in the British Courts, and the Hyderabad Government disallowed proceedings except in relation to the Crown Grants. For the reasons we have given the award could not have been enforced against him by any Court within or outside his dominions, but it could be used by him by way of defence. Nevertheless, we think that the award was as binding on the consciences of the parties to the submission and their heirs as a judgment of a competent court would have been, though it was not capable of enforcement by judicial process. Were it not for the dispute

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as to the arbitrator's authority, we think both sides would now accept that view. The only issue is whether the award is valid at all.

We turn now to the proceedings taken in Hyderabad by Husein and Munassar and their heirs. As we have said, the proceedings did not come before the ordinary courts of law, but were conducted before the Revenue and Finance Departments of the Nizam's Government. They were administrative and not judicial proceedings, so that no question of res judicata can arise. Although the legal claim of Husein and Munassar's heirs to a share in the Crown Grants was dismissed, the Nizam granted them, by royal grace, a permanent allowance charged on the Crown Grants held by the appellants. There can be no doubt that the proceedings instituted and prosecuted by the heirs of Husein and Munassar led directly to the grant of the allowance. Since, as we have said, any interest which Abdullah had in the Crown Grants was one of the matters in dispute submitted to arbitration and covered by the award, and the award held that Abdullah's interest had passed to Awadh, the institution of proceedings by the heirs of Abdullah for a share of the Crown Grants was a breach of the obligations flowing from the submission to arbitration and the award. As a result of that breach they obtained allowances which, on our view of the facts, they should not have received. The fund was available to them, and by providing it Awadh had fully performed his obligations under the award.

To summarize, by refusing to accept, or be bound by, the award and by instituting and prosecuting the proceedings in Hyderabad, the heirs of Husein and Munassar had acted unconscionably, and in breach of their predecessors' agreement and moral obligation to observe and be bound by the award. If it was possible to "repudiate" the submission and award, they had done so, and had persisted in that attitude for many years.

It is contended for the appellants that this entitled Awadh's heirs in 1924 to treat the contract as rescinded and to receive back the Fund from Government. They rely on the line of authorities starting with Hochster v Delatour, 3 E.& B. 678, and culminating in Heyman v Darwins Ltd. (1942) A.C. 356, (1942) 1 A.E.R. 347. On 24th January 1924 Sultan Omer II wrote to the British Agent, Aden, alleging that the heirs of Sultan

Abdullah had forfeited their rights to the Fund and asking that it be refunded to "us", meaning thereby the heirs of Sultan Awadh. It is said that from that date the heirs of Abdullah have had no right to receive any of the Fund. Government's attitude was wisely non-committal. The immediate objection to the appellants' submission is that Awadh had received under the award benefits which he could not return to Abdullah's family and therefore could not claim to treat it as set aside. The respondents, as we thought, put their case too high in claiming that Awadh had taken under the award all the properties which Abdullah had sold to him. In truth, he took all those under the deed of sale itself, and was already lawfully in possession with a perfect title before the submission. The award did no more than declare in favour of his title, which was wrongfully impugned by Abdullah's heirs. But, as regards other property not comprised in the deed of sale, the position was different. The deed expressly excludes from its operation property left to Abdullah by Omer I "in Hadhramaut, Shiban, Khutun, Hours and Wadiul Ain, consisting of outstandings, cash, gold, silver, jewels and properties, houses, date trees, wells, lands, household furniture and everything which may be called property in the said places". The award gives to Awadh the interest of Abdullah's heirs in all the immovable property so described in the following terms,

> "I decided in their favour towards the properties which are at Hadhramaut and the ports Ø70000 seventy thousand M.T. in consideration of the share of their father Abdulla Bin Omer viz: the one third of the properties which are on the sea shore and 1/5th share of the property at Hadhramaut after the deduction of the one third part of the Chiefship of Hadhramaut as valued by experts settling all their claims to the various kinds of palm trees, alcob, streams, wells, houses, and lands and in short all the goods and wealth which their father had spent excluding what belongs to the chiefship such as houses and the other which are not to be valued and which belongs to the chiefship".

It is submitted that Awadh did not take this property "under the award", because he was in possession of it from the time when the British Government forcibly removed Husein and Munassar, and had thereafter a <u>de facto</u> title conferred or confirmed

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by Government. We think this cannot be supported. It seems clear that, when Government first intervened in support of Awadh, it did so in the belief that his title to the Sultanate and Sultanate properties under the deed of sale was valid, as the award subsequently declared. Government may have put him in possession of the Hadhramaut properties as Sultan; but there is no reason to infer any intention to give him title to private property which belonged to Husein and Munassar. On the contrary, it seems clear, as we have said, that while it was politically necessary that they should leave Arabia, Government was anxious that they should receive proper compensation for any property they might lose there. Government still maintained the same attitude even after the award. See the letter of 10th October 1903 from the Chief Secretary, Bombay, to the Political Resident, Aden (Ex.36). We think that Awadh's title to Abdullah's share of the Hadhramaut properties, as opposed to his initial possession of them, depended on and sprang from the award. It is reasonable to suppose that, if Awadh had not been prepared to perfect his title by arbitrating and observing the award, the support of Government might have been withdrawn. We are therefore satisfied that Awadh took substantial benefits under the award. We are satisfied also that it would have been impracticable to restore those benefits to Abdullah's family in 1924 or thereafter, and indeed, it has never been suggested that that should be done. The appellants' case now is that it was never necessary to restore such benefits. They submit that it is only in cases where a party seeks to have a contract held void ab initio for reasons such as misrepresentation that restitutio in intergrum is required; but, where one party repudiates a valid contract and the other accepts the repudiation, the latter is excused from further performing the contract and may retain any benefits he has previously obtained under it. This may be good law in England or in Aden, though the benefits would of course diminish, or even preclude, a judgment for damages. But we think other principles govern this case. We are not dealing here with anticipatory breach of an English contract and we think the rules governing such matters ought not to be applied by way of analogy. On the view which we take of the nature and legal effect of this award, and applying what we believe, admittedly on very little authority, to be the relevant Shafei law,

we consider that a "repudiation" of the award would be wholly ineffective for the purpose of bringing it to an end, even if "accepted" by the other party. We think the award would cease to operate only if the parties came to a distinct and clear subsequent agreement to that effect, and this would be considered in law to be a satisfaction of the award, rather than an annulment of it. There was never such an agreement here in fact. If the "repudiation" and "acceptance" could at all be considered a sufficient substitute for such an agreement, it would, we think, be an essential implied condition of the annulment of the award that both parties should be restored to the position in which they stood before the award was made. In this case that was impossible, or at least it was never contemplated. We are therefore of opinion that Awadh's heirs were not entitled in 1924 or at any time to treat the award as rescinded. They remained, subject to matters still to be discussed, liable to pay to Abdullah's heirs the sum of Rs.2,14,500 awarded, and thus could never claim repayment of the whole Fund. The principal ground of appeal therefore fails.

Since the heirs of Awadh are not entitled to the whole of the Fund, it becomes necessary to consider the allowances which were and are being paid, as we have said, under compulsion of an Act of State by the Government of Hyderabad, and to which the heirs of Abdullah were not justly entitled. The amount of these has been agreed at Rs.1,52,771.6.0., or Shs.229,157.10. It is also necessary to consider the costs and expenses incurred by Awadh's heirs in resisting the proceedings in Hyderabad, to which they should never have been subjected. The Supreme Court assessed these at the modest sum of Rs.30,000 or Shs.45,000. These two figures are not now questioned. The question is whether they should be deducted from the apparent share of the heirs of Abdullah and added to that of the heirs of Awadh. The learned trial judge approached the matter in this way. He found as a fact that Awadh's heirs would never have had to pay the allowances or incur the costs if Abdullah's heirs had not made the claim in Hyderabad against Awadh. This is unquestionably right. He also found, and we agree, that the costs were necessarily incurred. He held that in making the claim Abdullah's heirs had broken the contract contained originally in the submission and crystallized, if one may so express it,

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by the award, and that for this breach of contract the heirs of Awadh were entitled to damages. He felt some doubt whether he had jurisdiction to award such damages in the proceedings then before him. He apparently thought that, if he did not decide the matter, the heirs of Awadh would be able to recover judgment in a separate action. He rightly thought that amicable settlement was out of the question, that no better evidence would ever be available, and that a prompt decision would be in the best interests of all parties. He decided to assume jurisdiction, as a reasonable exercise of the Court's inherent powers, assessed the damages at Shs.274,157.10, the sum of the two figures mentioned above, and ordered that that amount be paid out to the defendants, subject to a deduction for costs.

One's first reaction to this is that it was an eminently sensible and just decision; but there are difficulties. In the first place the learned Judge, in trying this interpleader suit, was exercising a special statutory jurisdiction conferred by sections 4-7 inclusive of the Ordinance. It is true that in section 5 it is provided that notice is to be given not only to those who appear to "have a claim to any part of the Fund", but also to those having "any interest in the disposition thereof". If these words were read literally they might cover the whole population of Aden. But under section 6 the duty of the Court is to hear and determine claims made to the Fund itself. It appears to us that, while a claim by an assign of one of the heirs might properly have been allowed, a claim by a mere creditor of one of them would have had to be disallowed. This was in fact done in one case. If one heir were a creditor of another, we think their shares could not have been adjusted in this suit to effect payment of the debt - much less could an issue as to its existence have been tried. We think that, as long as the matter was treated as a question only of damages for breach of contract, it was collateral to the questions which could properly be tried in this suit, and in the circumstances it could not be proper to allow joinder of claims outside the ambit of the Ordinance. We think there is no jurisdiction to award in this suit damages for breach of contract as such, and that the inherent powers of the Court could not be invoked. The general power to make "all such orders as are necessary

for the proper disposal of all matters in issue between the parties" cannot avail in a suit where the matters allowed to be put in issue are limited by statute. We should greatly regret this conclusion, more particularly because it appears to us that any separate suit brought hereafter for damages would almost inevitably be barred by limitation; but we think the learned Judge's object can be achieved by a method other than the one which he adopted.

We have no doubt whatever that the heirs of Abdullah ought not to be allowed to enjoy both the sum of Rs.2,14,500 given to them by the award and the allowances which they obtained by flouting the award. It would be contrary to all equitable principles to allow them to approbate and reprobate in this way. It is common ground that our aim should be to decide this matter in accordance with justice, equity and good conscience. We think there is at the lowest an obligation on the heirs of Abdullah, before enforcing after 54 years their claim under the award, to compensate the heirs of Awadh for their previous conducts, inconsistent with the award, in receiving the allowance and forcing Awadh's heirs to incur costs. So far as the allowances are concerned, this was a clear case of unjust enrichment: but from the point of view of Awadh's heirs the costs are on the same footing. They suffered wrongful loss as regards both. We think two of the maxims of equity are in point, that "he who seeks equity must do equity" and that "he who comes into equity must come with clean hands". We think there is an analogy here with the case of Lodge v National Union Investment Co. Ltd., (1907) 1 Ch. 300, where it was decided that the plaintiff, who had mortgaged securities to secure a loan irrecoverable at common law, as having been made in breach of the Moneylenders Act, 1900, must submit to repay the loan as a condition of obtaining an order in equity for the return of the securities. Even if the Courts in England would not, if the case were to be decided on English law, apply the maxims to this unusual situation, we think it must be remembered that the rights of the parties here are to be determined by Muslin law, and that the broad grounds of justice, equity and good conscience need not be confined by the strict rules of English equity in a case such as the present, where legal rights are to some extent obscure, but the moral aspect is beyond

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argument. An example of this principle is found in Sheo Ratan Singh v Karan Singh, 46. All 860. We conclude that, though damages could not be awarded, the heirs of Abdullah must, as a condition of enforcing their claim, account for the sum of Shs. 274,157.10.

We have held that the Fund as a whole belonged solely to Awadh or his heirs, at least until such time as the heirs of Abdullah were willing to receive the sum of Rs.2,14,500 due under the award. Initially they were unwilling to do so and it is for them to prove a change of attitude. In the circumstances they could hardly do so by evidence other than documentary. The point is important in relation to the income of the Fund, which now amounts to about three-quarters of the total. The heirs of Abdullah contend that they demanded payment by the letter of 7th April 1942, addressed to the Chief Secretary, Aden. The appellants contend that this letter should not be treated as a proper demand, because in paragraph 11 it states that the Claimants "will make separate representations with regard to the payment to them of the amounts due to them under their other claims". They say that this indicates that the money would not be received in terms of the award, but conditionally on the heirs of Abdullah being allowed to prosecute other claims to the property dealt with under the award. In consequence they contend that no proper demand was made until 1953, or alternatively 1945. It is unnecessary to consider the details of these later demands, since we are of opinion that the letter of 7th April 1942 was a sufficient demand for the present purposes. Paragraph 11 appears to us in all probability to relate back to paragraph 5, which deals with the sum of Rs. 1,00,000 paid by Abdullah to Government to be paid by them to Nakeeb Omer bin Saleh al Kasadi, the previous ruler of Shihr and Mukalla whom Awadh and Abdullah had deposed and succeeded in the Sultanate. This fund had existed as a separate account in the hands of the Government prior to the creation of the present Fund - see letter of the Accountant-General, Bombay, dated 24th November 1903 (Ex. 7) - and they have nothing to do with one another. Nor is the Nakeeb's Fund in any way concerned in the disputes between Awadh's heirs and Abdullah's. If Abdullah's heirs had any claim to it, they could properly pursue such claim without being in any breach of their obligations to observe the award. Accordingly we

think that the letter of 7th April 1942 must be considered, qua this Fund, to be an unconditional demand for payment. We are prepared to ignore in favour of the heirs of Abdullah the period which must have elapsed before the demand was received.

We are accordingly of opinion that on 7th April 1942 the heirs of Husein, Munassar and Sultanah Salma became entitled to receive from the Fund a sum of Rs. 2,14,500, or Sh. 321,750 but only subject to accounting at that date for such part of the sums of Sh. 229,157.10. (Rs.1,52,771-6-0) and Sh. 45,000 (Rs.30,000) as are properly attributable to any period prior to 7th April 1942. As regards the latter sum, no exact apportionment between the periods before and after the critical date could, in view of the way it was assessed, ever be made, but most of the expenditure was probably incurred long before. We therefore direct that Sh.37,500 (Rs.25,000) be treated as deductible on 7th April, 1942, and the balance of Sh. 7,500 (Rs.5,000) as deductible at a later stage, as will appear below. As regards the sum of Sh.229,157.10., the proportion thereof received by the heirs of Abdullah prior to 7th April 1942 should be precisely ascertainable, and we shall order an inquiry to determine the amount, if necessary, i.e. if the figures cannot be agreed by the parties. For the moment, and for the sake of clarity, we will assume the amount to have been Rs. 80,000 or Sh. 120,000. Then on 7th April 1942 the heirs of Abdullah would become entitled to part of the Fund, namely, a principal sum of Sh. 321,750 - (120,000+ 37,500) = Sh. 164,250. The heirs of Awadh would remain entitled to the whole of the balance of the Fund as a principal sum. From that date onwards the interest, accretions and any losses of the Fund would be shared in proportion to the two principal sums until payment of the realized proceeds of the Fund into Court.

Theoretically, Abdullah's heirs should account for allowances received after 1942 as and when received, but this would involve extremely complicated accounting and would make little practical difference. We therefore direct that, after ascertainment of the apparent shares of the two families in the fund in Court, the balance of the allowances plus the remainder of the costs and expenses (i.e. Sh. 7,500) be deducted from the apparent share of Abdullah's family and added to that of Awadh's. The resulting figures will represent the

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shares in the Fund payable to the two families, subject to costs.

Under that head the first consideration is the costs ordered to be paid to the Financial Secretary, Aden, and the Registrar. We do not altogether understand why the Registrar should have incurred any costs at all. We presume that he must have paid for advertising for claims or something of the kind. In our view such costs would more properly have been paid by the Financial Secretary to the Registrar as necessary disbursements in launching the suit. Again, we think that all these costs should have been ordered to be paid as between solicitor and client. In Aden party and party costs of proceedings in the Supreme Court are usually very low. Whether or not there is any express provision therefor in any Ordinance or Rules, we think there can be no doubt that the Court has power in a proper case to order taxation as between solicitor and client, so as to afford the party something amounting to, or approaching, an indemnity. The Financial Secretary ought clearly to have in this case all costs properly incurred. We therefore order that his costs, including costs heretofore treated as costs of the Registrar, be taxed as between solicitor and client and paid out of the Fund.

We think it must be conceded that all the claimants now before the Court and also the original first Defendant were fully justified in claiming shares in the Fund, and also that the appellants were justified in bringing, and the respondents in opposing, this appeal. We do not think the learned Judge took any different view. He ordered that each party (other than the Financial Secretary and the Registrar) should bear his own costs of the suit, signifying, as we believe, his view that each side had succeeded in part and failed in part. That was true in the Court below and is also true here; but we think the more appropriate order below and also here is that the costs of all parties (other than R.S.Chenoy, a creditor whose claim was dismissed in limine) of the suit, appeal and cross-appeal be taxed as between solicitor and client and paid out of the Fund. We grant certificates for two counsel for any party so represented either here or below. These costs and the costs of the Financial Secretary will be deductions from the gross amount of the Fund in Court and the shares of the two families

will abate proportionately. We direct that all bills of costs for taxation in either Court be lodged within forty two days from this date, on pain of disallowance in toto. If this were not done, ascertainment of the shares might be indefinitely delayed.

The share of Awadh's heirs may be paid out after ninety days from this date, if no application has by then been filed for leave to appeal to Her Majesty in Council. If such application has been made, that share must remain in Court pending further order of the Supreme Court. The share of Abdullah's heirs, when finally ascertained, is to be transferred to a separate account in the Supreme Court for the following reasons -

The learned Judge states in his judgment,

> "The parties have agreed that this judgment shall be limited to a decision upon the rival claims of the two branches of the family (that is, of the plaintiffs on the one hand and the defendants on the other), and that any minor adjustments which may be necessary between the rival branches inter se can be settled by their respective Counsel out of Court".

The respondents, however, have not been able to maintain their former solidarity and as part of their cross-appeal have asked this Court to determine their shares inter se. We naturally refused to do so. They also raised the question whether the heirs (unnamed) of Sultanah Salma are entitled to dower. Since all the respondents except the fourth, who did not appear, desire to have these questions determined, and they appear to be within the scope of the original suit and would have been determined then if the parties had so desired, we order that the matter be remitted to the Supreme Court of Aden to determine these issues and to make all necessary consequential orders. The point taken before us as to jurisdiction is not to be reopened. The costs of the further proceedings will be in the discretion of the Court, but must not become a charge on any part of the share of Awadh's heirs, who are neither to blame for the further litigation nor interested in it. If an appeal should go forward to Her Majesty in Council the further proceedings should be stayed pending its disposal.

The appeal and cross-appeals are allowed in part. The decree of the Supreme Court of Aden is

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set aside and a decree to the following effect will be substituted therefor :-

(i) Inquire as to the total cash value of the Fund, including all income accrued due but unpaid, as on 7th April 1942;

(ii) Inquire as to the total amount of the allowances (including arrears) paid to the Heirs of Husein and Munassar out of the income of, or in respect of, the jaghirs and mukhtars prior to 7th April, 1942;

(iii) Order that a sum of Shs. 321,750, subject to a deduction of the amount certified under para. (ii) hereof and to a further deduction of Shs. 37,500, be deemed to have been the principal share of the Heirs of Husein and Munassar and Sultanah Salma in the Fund as on 7th April 1942, and order that the remainder of the Fund as certified under para. (i) hereof be deemed to have been the principal share of the Heirs of Awadh at that date, and Order that all subsequent income, accretions and losses of the Fund be appropriated to the said two principal shares accordingly;

(iv) Order that the monies paid into Court by the Financial Secretary Aden, be divided in proportion to the two principal shares aforesaid and that there be deducted thereafter from the share of the Heirs of Husein and Munassar and added to the share of the Heirs of Awadh a sum equal to Shs. 229,157. 10. less the amount certified under para. (ii) hereof, and that there be deducted and added in like manner a further sum of Shs. 7,500;

(v) Declare that subject as hereinafter provided the appellants as Heirs of Awadh and the respondents as Heirs of Husein and Munassar are entitled to receive respectively the amounts ascertained as aforesaid and together constituting the fund in Court;

(vi) Order that the costs of the Financial Secretary, Aden (including therein as disbursements all costs heretofore deemed to be costs of the Registrar, Supreme Court, Aden) and of the Government of Mukalla,

the first defendant in the interpleader issue, and of the appellants and respondents, of the suit be taxed as between solicitor and client if the relative bills of costs are duly lodged for taxation within 42 days after the date of the judgment of the Court of Appeal; provided that, if the bill of costs of any party be not so lodged, such party shall bear his own costs of the suit; and Order that upon any such taxation the costs of two counsel may be allowed;

(vii) Order that any costs taxed as aforesaid and any costs of this appeal and cross-appeals taxed in the Court of Appeal be paid forthwith out of the Fund and that the amounts payable to the appellants and respondents do abate proportionately;

(viii) Order that if within 90 days from the date of the judgment of the Court of Appeal any application be made for leave to appeal to Her Majesty in Council no payment otherwise than in respect of costs be made out of Court pending further order of the Supreme Court;

(ix) Order that if no such application be made within the said period the monies payable to the appellants be paid to them or as they may direct, and the monies payable to the respondents be transferred to a separate account in Court and to the credit of the proceedings hereinafter referred to;

(x) Inquire as to the proportions in which the respondents or any one or more of them are entitled to the said transferred monies or any part thereof; provided that for the purpose of such inquiry each of the respondents shall be deemed to have made in due time a claim to that portion of the Fund to which he may be held entitled; provided further that if it appears that any person other than a respondent is entitled to any part of such monies, the same shall be certified as undisposed of within the meaning of Section 7 of the Ordinance; and Order payment accordingly; provided further that

In the Court of Appeal for Eastern Africa

No.31.

Judgment.

6th April, 1957 - continued.

if any appeal be brought to Her Majesty in Council this inquiry shall be stayed pending final disposal of such appeal;

(xi) Order that the costs of such further proceedings be reserved to further consideration, but be made payable, if at all, only by some one or more of the respondents or out of the monies transferred to separate account as aforesaid.

(xii) Liberty to apply.

The costs of all parties of the appeal and cross-appeals will similarly be taxed as between solicitor and client and paid out of the fund in the Supreme Court, but subject to the same condition that, if the bills of costs are not duly lodged within 42 days, the parties concerned will have to bear their own costs. We certify for two counsel.

A draft of the order to be made by this Court is to be submitted to the President. There will be liberty to all parties to apply generally.

(Signed) N.A. WORLEY
President.

(Signed) R.O. SINCLAIR
Vice-President.

(Signed) F.A. BRIGGS
Justice of Appeal.

NAIROBI.

6th April, 1957.

DELIVERED at Nairobi on 16th April, 1957.

No.32

In the Privy Council

No.32

Order granting special leave to Appeal.

30th July 1958

ORDER GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of July 1958

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

PRIME MINISTER	MR. ORMSBY-GORE
LORD PRESIDENT	MR. BROOKE
LORD MILLS	MR. MOLSON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 14th day of July 1958 in the words following, viz. :-

"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Saif Bin Sultan Hussain Al' Quaiti (Original Plaintiff No.1) (2) Sultanah Muluk widow of Sultan Hussain (Original Plaintiff No.2) and (3) Sultanah Fatimah daughter of Sultan Hussain (Original Plaintiff Nos.3 and 19) on appeal from the Eastern Africa Court of Appeal between the Petitioners 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 Din 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 the Supreme Court of Aden dated 6th August 1956) (5) Sharfunnisa Begum (Original Defendant No.10) (6) Ghori Begum (Original Defendant No.8) (7) Zainab Begum

In the Privy Council

No.32

Order granting special leave to Appeal.

30th July 1958 continued

(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) Ziaunnisa 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) Munassar 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) and (32) Salim Bin Ahamed (Original Plaintiff No.20) Respondents setting forth (amongst other matters): that in 1952 an interpleader Suit was instituted in the Supreme Court of Aden by the Financial Secretary of the Colony of Aden in pursuance of the provisions of the Sultan of Shihr and Mukallas Fund Ordinance 1945 (Aden Ordinance No.11 of 1945) which empowered the said Financial Secretary to deal with the Fund and the said Supreme Court to hear and determine claims for its distribution: that notice was given to all persons claiming to be entitled to a share in the said Fund and the Petitioners and the other Plaintiffs claimed as heirs of Sultan Hussain Bin Abdulla and Sultan Munasser Bin Abdullah and the Defendants as heirs of Sultan Awadh Bin Omer: that the Court delivered Judgment on the 6th September 1955 declaring that the Plaintiffs were entitled to the whole of the Fund and also awarding certain damages to the Defendants against the Plaintiffs: that the Defendants appealed to the Court of Appeal for Eastern Africa and the Plaintiffs cross-

In the Privy Council

No.32

Order granting special leave to Appeal.

30th July 1958 continued.

appealed: that on the 16th April 1957 the Court delivered Judgment and made an Order allowing the Appeal and Cross-Appeal in part and giving directions as to the administration and disposal of the Fund: that on the 3rd October 1957 in the said Court of Appeal the Petitioners were granted leave to appeal to Your Majesty in Council upon certain conditions: that the Petitioners not having complied with all the conditions in time applied to the Court for an extension of time and this application was dismissed on the 15th January 1958: And humbly praying Your Majesty in Council to grant them special leave to appeal from the Judgment and Order of the Court of Appeal for Eastern Africa dated the 16th April 1957 and for further and other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondents Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment and Order of the Court of Appeal for Eastern Africa dated the 16th day of April 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

In the Privy Council

No.32

Order granting special leave to Appeal.

30th July 1958 continued

Whereof the Governor of the Colony and Protectorate of Aden for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

No.33

Order granting Leave to Cross-Appeal

24th March 1959

No.33

ORDER GRANTING LEAVE TO CROSS-APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of March, 1959

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MR. MOLSON

MR. MACLEOD — MR. MARPLES

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of March 1959 in the words following, viz. :-

> WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (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

In the Privy Council

No.33

Order granting leave to Cross-Appeal.

24th March 1959 continued

(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) and (15) Ziaunnisa Begum (Original Defendant No.12) in the matter of an Appeal from the Court of Appeal for Eastern Africa between (1) Saif Bin Sultan Hussain Al'Quaiti (Original Plaintiff No.1) (2) Sultanah Muluk widow of Sultan Hussain (Original Plaintiff No.2) and (3) Sultanah Fatimah daughter of Sultan Hussain (Original Plaintiff No.3 and 19) Appellants and the Petitioners being Respondents Nos.1 - 15 and (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) Saleh 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) Munassar 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) and (32) Salim Bin Ahamed (Original Plaintiff No.20) Respondents (Privy Council Appeal No.40 of 1958) setting forth (amongst other matters): that the Appeal is pending before Your Majesty in Council: that the Petitioners are Respondents thereto as aforesaid and they desire to cross-appeal against the Judgment of the Court of Appeal dated the 16th April 1957 (which is the subject of the pending Appeal) in so far as the same is unfavourable to them: And humbly praying Your Majesty in Council to grant them special leave to cross-appeal against the Judgment and Order of the Court of Appeal for Eastern Africa dated the 16th day of April 1957 and for further and other relief:

In the Privy Council

No.33

Order granting leave to Cross-Appeal.

24th March 1959 continued

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Cross-Appeal against the Judgment and Order of the Court of Appeal for Eastern Africa dated the 16th day of April 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and that the Appeals ought to be consolidated and heard together upon one Printed Case on each side."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor of the Colony and Protectorate of Aden for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

E X H I B I T S

Exhibits

No. 1

No.1

Translation of Award.

TRANSLATION OF AWARD

PRAISE BE TO GOD

I, who am humble to the Almighty God, Sayed Ahmed Bin Salem bin Sakef bin Abi Bakar bin Ahmed bin Sheikh Abi Baker Bin Salem do hereby state that I appeared in the Port of Shehr in the month of Sha'ban 1318 and found Sultan Awadh Bin Omer bin Awadh Alkaiti on the one hand and the sons of his brother Abdulla Bin Omer viz: Husain and Munasser on the other were in dispute and contention demanding what was due to them out of the estate left by their father Abdulla Bin Omer Al Kaiti of all that which are called and the name of property is applied to it. The case briefly speaking is that their father Abdulla Bin Omer has a share and is a partner of his two brothers Saleh and Awadh the sons of the late Omer Bin Awadh Al Kaiti and that he is entitled to one third of all the property and has an equal share in all that property which are in Indian territory viz: Hyderabad Deccan and Bombay and also in the countries of Arabia, viz: Hadramount, the ports and their dependancies. In short they claim that their father Abdulla Bin Omer who is their aforesaid testator has a share and is a partner in all that property and that he died while he was a partner and has a share viz: the third part of what was mentioned and remained undivided under the hand of their aforesaid uncle Awadh only, because, their uncle Saleh died and that both he and his heirs received their share but that the third share of their father is still remaining in the hand of their aforesaid uncle Awadh and that their father died and left for them an inheritance all of which still remain undivided as stated such as cash, gold, silver, immovable property, lands, houses, factories, date and palm trees and all that to which the name of the property is applied. This is the essence of what the sons of the aforesaid Abdulla Bin Omer viz: the aforesaid Munasser and Hussain expressed and claimed and in short the

Exhibits

No.1

Translation of Award. continued

reply of their uncle is this: "All what the aforesaid sons of my brother had claimed of the aforesaid third which was mentioned and written in full of what and of all that which they had submitted to Habib Ahmad Bin Salim. In reply to their aforesaid claim I say that they are not at all entitled to any of all that which they claim" to be due by me and that it has been transferred to me by my aforesaid brother Abdulla Bin Omer during his life time and when he was in good health, sound mind and free in his action in the year 1295 by means of a real purchase and a true and lawful consideration and I possess a document which is perfect in to terms together with the acknowledgement of my aforesaid brother Abdulla during his life time and before the Resident of Aden in accordance with a letter of undertaking sent by him to the Resident of Aden as an acknowledgement of what was mentioned on the 15th of August 1888 and of which a copy is kept with me. As for the property which is in Hadhramaut it is with all that which it comprise in accordance with the letters and that all of this is written in details and proved in a document and that there is nothing remaining due by me except what was left by their father and it is the money which I owned to him in consideration of the value of the sale which was owed and it is the aforesaid third share. This is the reply given by Sultan Awadh Bin Omer Al Kaiti. Awadh bin Omer has also preferred a claim against the sons of his brother Abdulla Bin Omer to the effect that he had despatched articles from India and Bombay during the time of Ilmas Amber Omer, Amir Bin Awadh, and also before and after the time of Abdulla bin Omer such as Gold and Silver ornaments, jewellery money etc.. After the reply of the above mentioned sons of his brother that their father Abdulla is a partner of their uncle in all respects, and that he is not entitled to anything more in accordance with the letter of partnership which was concluded between our father on the one hand and our uncles Awadh and Saleh on the other, and that when they produce all that which are in their possession we will bring what we hold in our hands but all immovable property together with all the other goods are in the hand of our uncle and that we are in possession of nothing but a little. That all the things are in his hand though he is not entitled to anything more than that of our father. After they remained in dispute and dislike one another for a long time all

Exhibits

No.1

Translation of Award. continued.

the aforesaid appeared before me when I remonstrated with them and criticised their action for arranging a settlement to give final decision regarding what they viz: Sultan Awadh Bin Omer on the one hand and the sons of his brother Abdulla Bin Omer, Hussain and Munasser on the other, said and mentioned to me regarding what was said and written. I asked all of them to authorise me to deal in those matters in which I may judge, say, prove, declare as true and decide in accordance with my knowledge for ending the dispute which exists between them and that I will use my discretion and look minutely into the matter and that every one of them who holds a letter, document, will, etc., and all that which should be produced and is worthy of being seen should be brought to me and that I will ascertain and will carefully look until I find out what is right and correct as I may be guided by God in accordance with the authority which I have received from them. I received a bond from them in this respect with their signatures on it to the effect that all that in which I may decide in accordance with my knowledge they should not demur from it and that they should accept it and carry it to effect upon themselves. They have done this in my favour with their free will and consent in accordance with the deed of authority which I am holding and in which are the names of the witnesses who were present. After the conclusion of the first and the last of what was mentioned and written I called for the documents and deeds from every one of them. Sultan Awadh Bin Omer delivered to me all the documents and letters which he had in possession as mentioned in his reply. I went through them minutely word by word, ascertain their contents repeatedly, and referred the essential parts of the same to the learned and educated people without acting independently on my knowledge. Although they agreed that I can act in accordance with my particular knowledge yet I did not act independently according to my sense with a view that I may have strong reasons in my wording and knowledge and in order that I may pass a proper order and avoid erring. As it will be seen, if God pleases, I found some of the letters which were brought to me and which bear dates previous to the year 1290 purporting a partnership between Sultan Awadh Bin Omer and his two brothers Saleh and Abdulla, mutual acknowledgement, a proper and accurate

Exhibits

No.1

Translation of Award continued

record of an estate, will, etc. Apart of what is written in the aforesaid letters is to the effect that every one of them should have one third of the properties described in the letters and that they are partners and that each of them should be the executor of his brother after death. This is the essence of what was mentioned in the former documents of the year 1290 as we precisely described. I have also seen a document shown to me by Sultan Awad Bin Omer. It is a written letter containing stipulations agreed upon as considered by the executors in its proof from, etc. and which was passed by Abdulla Bin Omer Bin Awad Al Kaiti in favour of his aforesaid brother Awadh Bin Omer by means of true sale and real vow in connection with all that which he possesses and which his aforesaid brother Abdulla Bin Omer is entitled to in all the aforesaid one third in the aforesaid properties in accordance with the letters of partnership which exist between them and of all that which bear the name of property in the direction of India Hyderabad Deccan, Bombay etc., such as specie, gold, silver, and immovable properties as mentioned in the letter of vow excluding the property which are Hadhramaut in accordance with the letter because all that which was mentioned is to the effect that the aforesaid Abdulla Bin Omer has sold and vowed the same and as a guarantee for the validity of the sale to his aforesaid brother Awadh Bin Omer during the time he was alive and when he was in his perfect health and sound mind for a certain vowed sum. Also that the aforesaid Abdulla Bin Omer should receive from his aforesaid brother Awadh Bin Omer for the validity of what was mentioned a sum amounting to one hundred and eighty six thousand dollars in consideration of what was mentioned and out of which was paid and received by the hand of the aforesaid Abdulla Bin Omer during the time he was alive from the said Awadh Bin Omer $46000 forty six thousand Maria Theresa the balance due is $140000 one hundred and forty thousand dollars M.T. as described in the aforesaid letter. That which was sold namely that which was vowed was received in a like manner by the hand of the aforesaid Sultan Awadh Bin Omer who was allowed by the vow giver to use it in the same way as owners do in their own property and as rightful persons do in their own rights during the time the vow giver is alive and after his death and up to the present

time and without being interfered with by any one in connection with what was mentioned and written. This is the abstract of the description given. After I pursued what was mentioned in the abstract of description made to me by them together with an abstract of what was mentioned I went into the same after having consulted competent persons and obtained views and advices from those who came to me about the bona fide proofs mentioned in the aforesaid letters as described by me. I was informed that the contents of the letter was correct and right and that they were present when the same was concluded and that Abdulla Bin Omer allowed them to be witnesses against him in connection with the sale and vow which he had pronounced and of his receiving part of the price which was mentioned, and that all this has taken place in his personal presence. Also that the affairs of the chiefship and Government in the territories of Hadhramaut and their properties which are well known at Hadramaut and its dependencies on the one hand and in the ports of Shehr and Mukalla on the other were found by me accurately written in the aforesaid document with the acknowledgement of Abdulla Bin Omer that he has no right to interfere in the Government and Chiefship and that the Government and the administration of the affairs concerns his brother Sultan Awadh Bin Omer and that he is his minister and assistant only and that his brother Awadh Bin Omer has the right to the authority and Government and its connections during the time he is alive and that he has the right to select as his successor after his death whoever he selects and that his (Sultan Awad) brother Abdulla had undertaken to obey his aforesaid brother and his successor after him and that he had testified by means of a Will that his sons also have no right to interfere in the administration and Government and that they should obey their uncle as well as those who will succeed him and that this was also found written in the document and confirmed by well known proofs. When the matter was as I described and I reviewed and referred all that which was described to competent persons and after having put a question to the learned persons which I formed from the information which is comprised in the

Exhibits

No.1

Translation of Award continued.

deed of sale and vow and after they answered that the sale was invalid on account of the defects which existed in most of its articles and at the same time confirmed the aforesaid vow. I Ahmed Bin Salem bin Sheikh Abi Baker do hereby say, affirm, and verify that according to my reading of the detailed description after I considered deliberately for a long time, consulted competent persons, and the clear points which are confirmed in the document and that the deed in which all the property which are written as being in possession of Sultan Awadh bin Omer Alkiaiti together with all that which is comprised in it and that it is true and real and I also confirm the properties which are mentioned in it. I passed the same together with the vow which was vowed as valid and correct and I decided and proved it in favour of the aforesaid Awadh bin Omer as was agreed and vowed by its original owner. As for the sons they are not entitled to anything at all except that which is still remaining out of the aforesaid value. The properties of Hadhramaut which I have mentioned are not included in this and I will arrange between them about it in accordance with my knowledge and give a just decision. As regards the aforesaid third share as described before it is the property of Awadh and that they have no right to it whatever in accordance with the sale and vow which are stated in the letters. I also do hereby state that I proved and affirmed in accordance with my discretion and knowledge which they should take as decisive and final according to the letter of authority that all that which are comprised in the vow such as the property and the other things belongs to Awadh Bin Omer. I also decided that the sons of Abdulla Bin Omer Munasser and Hussain and all the other heirs of Abdulla Bin Omer should be paid by their uncle Awadh Bin Omer the balance which is still due to them from the inheritance of their aforesaid father Abdulla Bin Omer in accordance with the letter of vow viz: one hundred and forty thousand dollars M.T. after that which was paid by Awadh Bin Omer to his aforesaid brother Abdulla Bin Omer I also decided that all the properties which are now in their possession and in possession of their sons and agents such as cash, gold, silver, arms, jewelleries, animals, ornaments, cloths, provisions, carpets, copper and furniture should be retained by them. I decided in their favour towards the properties which are at Hadhramaut and

Exhibits

No.1

Translation of Award continued

the ports $70000 seventy thousand M.T. in consideration of the share of their father Abdulla Bin Omer viz: the one third of the properties which are on the sea shore and 1/5th share of the property at Hadhramaut after the deduction of the one third part of the Chiefship of Hadhramaut as valued by experts settling all their claims to the various kinds of palm trees, aloob, streams, wells, houses, and lands and in short all the goods and wealth which their father had spent excluding what belongs to the chiefship such as houses and the other which are not to be valued and which belongs to the chiefship. I also decided that an assistance of $50000 M.T. should be paid as a matter of sympathy and mercy. Also that all the claims which Awadh Bin Omer have preferred against their father for 24 lakhs 24,00,000 and for the revenue of the chiefship and for all the other things should be treated as null and void and that he is to forgive them the same moreover all the claims of the sons of Abdulla Bin Omer should also be treated as null and void and that they should forgive their uncle the same for the sake of God, His Prophet, the holy creed, our master Al Mukadam Muhammad Bin Ali, our master Sheikh Abi Baker bin Salim and Husain and that nothing remains for both the aforesaid and what was mentioned either any claim, demand, connection, or cause and they should adhere to mutual friendship, connection, mercy and sympathy and that they should bind themselves to listen and obey their uncle and that their uncle should sympathise with them and treat them with mercy and endeavour in their benefit and be kind to them as required by the rights of kindered and relationship which he who maintain is assisted by God and which he who does not maintain is punished by God as it is related in the true tradition and which is not concealed from Sultan Awadh and that all the documents which the sons of Abdulla Bin Omer hold in connection with the finance and Government should be delivered to their uncle Awadh Bin Omer and God is the conductor and the leader to the right way and to him we will return we hope that we will be successfully guided by the Great and the Almighty God and may the peace and the mercy of God be on our master Muhammad his kindered and friends. The humble Ahmed Bin Othman Bawazier may God be kind to him has written and is a witness of the decision which our master

Exhibits

No.1

Translation of Award continued

Habid Ahmed Bin Salem has passed.

Sd/- HABIB AHMED BIN SALEM BIN SAKAF

WITNESSES

Sayid Sakaf bin Salem bin Sheikh Bubaker

Habib Hussain bin Salem

Habib Ahmed Bin Salim bin Dubakar bin Abdulla

Sayid Omer bin Mahder,

Bubaker bin Salim Bin Sakaf bin Sheikh Bubaker bin Salem

Muhammad bin Sakaf bin Bubaker bin Ahmed bin Hussain bin Sheikh Bubaker bin Salem

Husain bin Hamed bin Ahmed Almadhar

Abdulla bin Bubaker bin Abdulla Ba Sawadan

Sayid Bubaker bin Ali bin Salem

Sayid Ahmed bin Saleh Al Mahdar.

No.2

Translation of Letter of Sultan Awad to General Maitland

27th July 1903

No.2

TRANSLATION OF LETTER OF SULTAN AWAD TO GENERAL MAITLAND

Shehr & Mukalla

2nd Jamad Awal 1321

27. 7. 1903.

From,

Sultan Awad bin Omer

To,

General Maitland,
Political Resident, Aden.

Dear Sir,

We inform you regarding the money due to the heirs of the late Abdulla Bin Omer according to the decision of the Mansab is ready and we are

Exhibits

No.2

Translation of Letter of Sultan Awad to General Maitland

27th July 1903 continued

prepared to pay it to Government or to whoever Government orders us to pay. The sum amounts to ₹260,000/- to be divided into 8 shares, each share comprising ₹32,500/-. Of this the daughters of the late Abdulla Bin Omer are entitled to 3 shares, ₹97,500 and the balance after deducting this amount is ₹162,500 which is 5 shares, Munasser, 2 shares, ₹65,000/-, Hussain 2 shares, ₹65,000/- and to the widow of late Abdulla bin Omer one share equal to ₹32,500/-. The total is amounting to ₹162,500/-. In regard to what is due to the widow of Abdulla Bin Omer, the mother of Hussin Bin Abdulla the latter should produce Power of Attorney, authorising him to receive it or on her behalf, otherwise, it should be kept in trust by you. Please send us the reply, so that we may pay the aforesaid amount.

Yours

No.3

No.3

Translation of Letter of Sultan Awadh to National Bank of India

1st August 1903

TRANSLATION OF LETTER OF SULTAN AWADS TO NATIONAL BANK OF INDIA

Aden, 1st August 1903.

The Manager,
National Bank of India Ltd.
Aden.

Dear Sir,

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 Munassar bin Abdulla and Hussein bin Abdulla and Husein's mother, as per the Munsab's decision and agreed to by

Exhibits

No.3

Translation of Letter of Sultan Awadh to National Bank of India

1st August 1903 continued

the Government of India. Kindly receive the same and deposit in their name. The said sum may not be disposed of without the order of the Political Resident, Aden.

Yours faithfully,

Sd. Awadh bin Omar Alqaiti,

For H.H.Sultan of Shehr & Mukalla.

P.S. The amount will be paid to you by Mr. Mohamed Majeebhoy.

Sd. Awadh bin Omer Alqaiti. 10

No.4

Receipt from National Bank of India Ltd.

1st August 1903

No.4

RECEIPT FROM NATIONAL BANK OF INDIA LTD.

Aden, 1st August 1903.

Received from H.H. The Sultan of Mukalla, the sum of Rs. 2,14,500/- Two lacs, fourteen thousand and five hundred 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. 20

Sd. J. Black,
Ag. Manager,
For National Bank of India, Ltd.

No.5

Letter, National Bank of India to Political Resident Aden.

1st August 1903.

No.5

LETTER, NATIONAL BANK OF INDIA TO POLITICAL RESIDENT, ADEN.

Aden, 1. 8. 1903.

The Political Resident,
ADEN.

Sir,

At the request of H.H.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 30

two lacs fourteen thousand and five hundred only) being equivalent to $162,500/- (at Rs.132/- per $100/-).

I have the honour,
Sir,
Your obedient servants,
Sd. J. BLACK,
Ag. Manager.

Exhibits

No.5

Letter, National Bank of India to Political Resident Aden.

1st August 1903 continued

No.6

No.6

LETTER, FIRST POLITICAL RESIDENT, ADEN, TO HUSSAIN AND MUNASSER.

Letter, First Political Resident, Aden, to Hussain and Munasser.

8th August 1903

ADEN RESIDENCY.

No. 172, 1903.

Aden, 8th August 1903.

To

The Respectable and Revered, our friends Hussain bin Abullah and Munasser bin Abdullah AlKaieties the Highly honoured, be them ever protected.

After kind enquiries as regards your good conditions, 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 Munsab had fixed for you and for the mother of Husain Bin Abdullah Alkaiety. I shall be very much pleased to know when and how you will like to receive the same. Be you all protected.

Sd. Col. ABID,

1st Political Resident, Aden.

Exhibits

No.7

Letter, Accountant General, Bombay, to Political Resident, Aden.

24th November 1903.

No.7

LETTER, ACCOUNTANT GENERAL, BOMBAY, TO POLITICAL RESIDENT, ADEN.

Bombay 24 November 1903.

From

The Accountant General,
Bombay.

To,

The Political Resident,
Aden.

Sir,

I have the honour to acknowledge receipt of the order for Rs. 2,14,500/- on the National Bank of India at Aden received under cover of your Na- letter No. 3860, dated 9.11.1903 and to request that you will be so good as to furnish this office with a copy of instructions from the Government in the matter.

I have to enquire whether the investment represents the Trust, which has been held in this office in the name "EX-NAKIB OF MUKALLA" and should be added to it, or whether represents a new Trust. If the latter, will you please advise me under what name it is to be registered.

I have the honour,
Sir,
Your obedient servant,

Asst. Acct. General.

No.8

Letter, Political Agent and First Resident, Aden to Accountant General, Bombay.

5th December 1903.

No.8

LETTER, POLITICAL AGENT AND FIRST RESIDENT, ADEN TO ACCOUNTANT GENERAL, BOMBAY

No. 4127/1903

Aden, 5.12.1903.

From

Lt. Col. H.M. Abud.

To,

The Accountant General,
Bombay.

Sir,

(1) I am directed to acknowledge the

Exhibits

No.8

Letter, Political Agent and First Resident, Aden to Accountant General, Bombay.

5th December 1903.
continued

receipt of your letter No. G.S. 808 dated 24th November last.

(2) As desired in para.1 of your letter, I forward herewith Extract paras.1 and 2 of letter No. 6779 (Confidential) dated October 1903, from the Secretary to Government, Political Department, Bombay.

(3) In reply to para.2 of your letter above quoted, I have to say the investment does not represent the Trust "EX-NAKIB OF MUKALLA". It is a new Trust and should be styled "The Sultan of Shehr and Mukalla's Nephews Trust."

I have the honour,
Sir,
Your obedient servant,
Sd/- H.H.Abud,
Pol. Agent & First Resident.

No.9

No.9

Letter from Treasury Officer, Aden to First Assistant Resident, Aden.

29th November 1904.

LETTER FROM TREASURY OFFICER ADEN TO FIRST ASSISTANT RESIDENT, ADEN

T
No. 5012

Aden Treasury.
Dated 29.11.1904.

From,
Lt.Col. J. Davis,
Treasury Officer, Aden.

To,
The First Assistant Resident,
Aden.

Sir,

I have the honour to inform you that the interests on account of Sultan of Shehr and Mukalla's Nephews Trust Fund including the balance of Rs. 126.3.6. remained after investing the original sum amount to Rs. 7504-7-6 and that the same is held as personal Deposits in the accounts of this office.

Exhibits

No.9

Letter from Treasury Officer Aden to First Assistant Resident, Aden.

29th November 1904 continued

(2) If this amount is not likely to be required for immediate payment, it will be held in deposit unless you wish it to be invested in Government paper.

I have the honour,
Sir,
Your obedient servant
Sd. J. Davis,
Lt. Colonel,
TREASURY OFFICER.

No.10

Letter First Assistant Resident, Aden to Treasury Officer Aden.

3rd December 1904.

No.10

LETTER, FIRST ASSISTANT RESIDENT ADEN TO TREASURY OFFICER, ADEN

No. 4396 of 1904.

Aden Residency
3rd December 1904

From
The First Assistant Resident,
Aden.

To,
The Treasury Officer,
Aden.

Sir,

In reply to your letter T/5012 dated the 29.11.1904 on the subject of the interests accruing on the amount held in trust for the nephews of Sultan of Shehr & Mukalla I have the honour to state that interests is not required for immediate payment and may be dealt with in the same manner as original amount.

I have the honour,
Sir,
Your obedient servant,

First Asstt. Resident Aden.

Exhibits

No.11

Letter, H.M. Abud to Hussain Bin Abdullah and Munasser Bin Abdullah

8th August 1903

No.11

LETTER, H.M.ABUD TO HUSSAIN BIN ABDULLAH AND MUNASSER BIN ABDULLAH

No. 1720/1903

Aden 8. 8. 1903.

To,

Husein Bin Abdullah
and
Munasser Bin Abdulla

We write to inform you that H.H.Sultan Awad Bin Omer Al Kaiti of Shehr and Mukalla has placed in National Bank of India, Aden, the sum of Rs.2,14,500/- the equivalent of $162,500/- being the amount of the shares awarded by the Mansab for yourselves and the mother of Hussain Bin Abdulla at Kaiti.

We should be glad to know when and how you propose to receive the same.

7. 8. 1903.

Sd. H. H. Abud.

No.12

Telegram, Secretary to Government of Bombay to Resident, Aden.

22nd July 1903

No.12

TELEGRAM SECRETARY TO GOVERNMENT OF BOMBAY TO RESIDENT, ADEN.

TELEGRAM DATED 22. 7. 1903

From,

The Secretary to Govt. of Bombay
Pol. Department.

To,

The Resident, Aden.

The Government of India agrees that the decision of the Mansab (Award) should be deemed final, and that Hussain and Munasser should

Exhibits

No.12

accept it. Husain's application praying for permission to file a suit against the Sultan in Court in British India should be dismissed.

Telegram, Secretary to Government of Bombay to Resident, Aden.

No. 2625 of 1903
Aden Residency,
25.7.1903.

22nd July 1903. continued

Copy of the above together with copy of the Award in Arabic (with English translation) forwarded with compliments to His Highness Sultan Awad Bin Omer Al Kaiti, the Sultan of Shehr and Mukalla.

Sd. M. M.
Lt. Col.
Pol. Agent & First Asstt. to Resident of Aden.

No.13

No.13

LETTER, POLITICAL RESIDENT, ADEN TO SULTAN HUSSAIN

Letter, Political Resident, Aden to Sultan Hussain

25th November 1906

No. 7009

ADEN RESIDENCY

25th November 1906

Aden
November 1906.

The leading and respectable of the amirs, the Chief of worthies & honourables our sympathetic & friend Sultan Hussain Bin Abdulla, the Reverend. Be he ever protected.

After our kind regards we got your letter dated 11th October, and in reply to it we inform you that the ring and the amount you mention will be sent to you direct from the Aden Office.

Secondly, as regards the theft which happened to you in Bombay, we are unaware of if any valuables out of the stated articles are recovered beyond the things mentioned. In this connection

we advise you to get information from the Magistrate in Bombay Presidency.

Thirdly, as regards the second part of your letter we very much regret to know that you have lost your brother Munasser. We give you our sympathies and condolences.

Fourthly, as regards your request that we should ask His Excellency the Viceroy of India (The Crown Agent) to enquire again into your case against your uncle, we would like to let you know that the Government of Great Britain, after full consideration has had finally accepted the decision of the Mansab. On the basis of which it is not possible to reopen this question for a second time. The substantial amount which the Mansab had fixed for you as you know, is safe with the Government. It will be paid to you whenever you like to ask for it. We ask you to take the same without much delay. Be you protected.

Sd. D. Brath,
Major General,
Political Resident,
Aden.

No.14

LETTER, SULTAN OMER TO BRITISH RESIDENT, ADEN.

Hyderabad - Deccan.
Dated, 24th January 1924.

To,
The Hon'ble the British Agent,
Aden.

Dear Sir,

You may be aware that, as desired by the Government of India, an Arbitration Judgment was arrived at between Hussain and Munasser, the heirs of Sultan Abdulla Bin Omer and Awad bin Omer

Exhibits

No.14

Letter, Sultan Omer to British Resident, Aden.

24th January, 1924 continued

Al Kaiti, His late Highness the Sultan of Shehr Mukalla.

In this judgment, all the rights and perogatives of the heirs of Sultan Abdulla Bin Omer were decided, according to which they have had no rights whatever, in the properties situated in Shehr Mukalla, Bombay and the Nizam's State.

The Government of India has accepted this judgment and when it was considered as the final and decisive judgment, intimation of the same was given by wire, on the 22nd July 1903, by the Secretary, Political Department as their representatives, to His late Highness Sultan Awad, through the Hon'ble the Resident at Aden, in compliance whereof a sum of Rs. 2 lakhs and 14 thousand was credited by Sultan Awad in the National Bank of India at Aden. But after a lapse of several years, the heirs of Abdulla Bin Omer put forward their claims before H.H. the Nizam of Hyderabad, claiming for their rights in our Jagirs, which are the kingly gifts, wherein they can have no right whatever. Their intention appears to refute the above mentioned judgment, which has been accepted by the Government of India.

The reason for crediting the said amount in the National Bank of India, Aden, was to give it to the heirs of Sultan Abdulla Bin Omer, in consequence of his heirs having withdrawn all their rights and claims. But as Hussain and Munasser are violating the above mentioned judgment and are acting quite contrary to it, we are afraid they might draw the said amount from the National Bank at Aden by misrepresenting the matter to the Government of India. I, therefore, inform you that, the heirs of Sultan Abdulla have forfeited their rights of getting the amount deposited in the National Bank of Aden. The said amount should be refunded to us, together with interest. I hope that you will give an official intimation to the Agent of the National Bank of India, Aden, not to pay the amount deposited there, to the heirs of Sultan Abdulla Bin Omer. The amount under question should be paid to us, who are the heirs of His late Highness Sultan Awad bin Omer Al Kaiti, who has deposited it, or it may be reserved pending the decision of the Executive Council of the Hyderabad State and not paid to the heirs of Sultan Abdulla without our knowledge and consent.

Yours sincerely,

No.15

Exhibits

No.15

Translation of Letter, Nawab Saif Nawaz Jung (Sultan Saleh Bin Ghaleb) to Mr.Jamaluddin.

16th April 1927.

TRANSLATION OF LETTER NAWAB SAIF NAWAZ JUNG (SULTAN SALEH BIN GALEB) TO MR. JAMALUDDIN.

T R A N S L A T I O N

TRANSLATION OF LETTER WRITTEN BY NAWAB SAIF NAWAB JUNG'S (PRESENT RULER OF MUKALLA'S) OWN HAND.

Mr. dear Mr. Jamaluddin,

Greetings. For God the praise is. I am very well. I hope that you are also in good health. Prior to this I have sent to you one letter which I hope you have received. After arriving here I consulted my uncle about the case of the Revenue Department. The point is that the Aden Residency has shown incorrect account of about rupees ten lakhs. Therefore, we agreed to come to a compromise on that sum. The matter now is that, in the Residency, there are only about 5 lakhs of rupees in credit. I, therefore, with very great difficulty, made my uncle agree to this that, the entire amount which is in credit with the Government should be allotted to the heirs of Abdulla and rupees one thousand per mensem should also be fixed for the heirs of Abdullah. The assurity of this we are willing to give through the Government. Besides that, it is quite possible that we also give them a house for their residence. In my opinion this compromise is very suitable for both the parties. If Dara accepts it, a regular draft of the compromise deed may be sent and if this is informed by wire it will be much better.

Sd. SAIF NAWAZ JUNG.

Note:- This letter was sent by Nawab Saif Nawaz Jung from Aden, under registered A.D. cover No.501 of the Aden Camp Post Office on 16th April 1927 (vide photograph of the cover enclosed).

Exhibits

No.16

Letter, S.A. Alyangar to Government of Aden.

7th April 1942

No.16

LETTER, S.A.ALYANGAR TO GOVERNMENT OF ADEN

To

The Chief Secretary to the Government of Aden,
Through the Honourable the Resident,
The Residency,
Hyderabad Deccan.

Sir,

(1) I am concerned for Saif bin Hussain son of Hussain bin Abdulla and grandson of Sultan Abdulla Bin Omer as also for the other grandsons of the said Sultan Abdulla Bin Omer viz., the sons of Munasser bin Abdulla.

(2) The accompanying geneological tree will show the relationship of the parties to the original acquirers of the property (flagged A).

(3) Originally the Sultanate of Shehr and Mukalla in Arabia belonged to Nakeeb Omer Bin Saleh al Kasadi.

(4) This property passed into the hands of Abdulla bin Omer Alkaiti (No.2 in the pedigree) and Awad bin Omer Alkaiti (Nawaz Sultan Nawaz Jung Bahadur (No.3 in the pedigree) in October 1881 through the assistance of the British Government.

(5) That on 29th May 1882, the said Sultan Abdulla paid to the British Government one hundred thousand dollars to be paid to the said Nakeeb Omer Bin Saleh in consideration of the said Nakeeb having resigned the Sultanate in favour of Sultanate Abdulla.

(6) In consideration of the above and on account of other considerations which it is unnecessary to refer to here, the said Sultan Nawaz Jung (No.3) one of the two persons into whose possession the Sultanate came, deposited 1903, in the National Bank of India Ltd. of Aden for payment to Sultan Munasser (No.5) and the mother of Sultan Hussain (No.2a)a sum of Rs.2,14,500/- Rupees two lakhs fourteen thousand five hundred only)

Exhibits

No.16

Letter, S.A. Alyangar to Government of Aden.

7th April 1942 continued

being the equivalent of 1,62,500/- Riyals (one lakh sixty thousand five hundred Riyals).

(7) Thereupon by letter No.172 dated 8th August 1903 Col. Abid the 1st Political Resident of Aden wrote to Hussain Bin Abdulla (No.4) and Munasser bin Abdulla Alkaiti (No.5) intimating to them the fact of Sultan Nawaz Jung (No.3) having deposited Rs. 2,14,500/- (Rupees two lakhs fourteen thousand five hundred only) in the National Bank of India, Aden, and enquiring when they would withdraw the amount (Flag B).

(8) Again on 25th November 1906 by letter No.7009, Major General De Brath the Political Resident at Aden wrote to Sultan Hussain Bin Abdulla (No.4) informing that the said amount would be paid to Sultan Hussain (No.4) whenever he demanded the money and advised him to take back the money (Flag C).

(9) My clients understand that there is now in deposit approximately a sum of about Rs. 10,00,000/- (Rupees ten lakhs) in the National Bank of India, Aden which amount is payable to my clients.

(10) I have the honour to request you very kindly to give this matter your kind consideration. The said sum or such other sum as may now be lying in deposit in the said National Bank of India Ltd., may please be sent over to me as the Attorney of the above mentioned Saif bin Hussain and the heirs of Munasser bin Abdulla by means of a draft on the Imperial Bank of India - Hyderabad (Deccan). Any charges which will have to be incurred for transferring the amount to the Imperial Bank of India, may kindly be deducted from the said amount - itself and the balance may please, be forwarded.

(11) My clients will make separate representations with regard to the payment to them of the amounts due to them under their other claims.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. S. Aravamudu Aiyangar.

Hyderabad (Dn.)
April 7, 1942.

Exhibits

No.17

Letter, Government of Aden to Divan Bahadur S.A.Aiyangar.

13th August 1942

No.17

LETTER, GOVERNMENT OF ADEN TO DIVAN BAHADUR S.A. AIYANGAR

GOVERNMENT OF ADEN

The Secretariat,
Aden

13th August 1942

In reply please quote
No.221/30/8246.

Sir,

I am directed to refer to your letter of the 7th April 1942 regarding the claim of Saif bin Hussain and other grandson of Sultan Abdulla bin Omer to a certain deposit in the National Bank of India, and to inform you that the Government of Bombay, which holds the money in trust, proposes to apply to the High Court of Bombay for its discharge as a Trustee of the fund and the appointment of the Government of Aden as a new trustee in its place. After the transfer of the trust fund, this Government proposes to set up machinery for its disposal by means of Ordinance.

Your application has been noted and you will be informed when the Ordinance has been enacted to enable you to pursue the matter of your claims in the time allotted.

I am, Sir,

Your obedient servant,

Sd. Illegible.

Chief Secretary to the Government.

Divan Bahadur S.Aravamudu Aiyangar M.B.E.
Hyderabad - Deccan.

No.18

Exhibits

No.18

Letter, Messrs. Ambubhai & Diwanji to Government of Aden.

16th January 1945

LETTER, MESSRS.AMBUBHAI & DIWANJI TO GOVERNMENT OF ADEN.

Bombay 16th January 1945.

From:

Messrs.Ambubhai & Diwanji,
Solicitors,
Lentin Chambers, Dalal Street,
Fort Bombay.

To,

The Chief Secretary Government of Aden,
Aden.

Sir,

We have the honour to address you this letter under instructions from our clients Mr. Saif bin Hussain, Malik Begum widow of Sultan Hussain bin Abdulla, Fatama Begum daughter of Sultan Hussain, Noor Begum widow of Mohsin bin Munasser, Mohamed bin Mohsin for self and his minor brothers Galib, Salah and Ahmed Saleha Begum widow of Nasir bin Munasser, Abdulkabi for self and as guardian of his brothers Munasser Saleh Sheka Begum and Noor Begum daughters of Nasir bin Munasser, Omer bin Munasser and Fatema Begum daughter of Sultan Munasser.

Our clients are the heirs of Sultan Hussain, Sultan Munasser and Salma Begum the widow of Sultan Abdullah. Hereto annexed and marked 'A' is a Pedigree of Sultan Omer who left him surviving two sons Sultan Nawaz Jung and Sultan Abdullah.

In the year 1903, the said Sultan Nawaz Jung was directed by the British Government to deposit with the National Bank of India at Aden a sum of Rs.2,14,500/- (being equivalent to 1,62,500/- Riyals) for payment to Sultan Hussain, Sultan Munasser and to the said Salm Begum the widow of the said Sultan Abdullah being the heirs of Sultan Abdullah.

Exhibits

No.18

Letter, Messrs. Ambubhai & Diwanji to Government of Aden.

16th January 1945 continued

On 8th August 1903, the 1st Political Resident at Aden informed the said Hussain Bin Abdullah and the said Munasser bin Abdulla stating that the said amount represented the share which had been fixed to be paid to the said heirs of the said Sultan Abdullah and requesting to know when and how the said heirs of the said Sultan Abdullah were going to take the amount.

On the 25th November 1906 the Political Resident addressed a letter to Sultan Hussain bin Abdullah informing him that the said money was safe with the Government and will be paid to him on behalf of himself, his brother and his mother whenever he demanded it - Hereto annexed and marked "B" are copies of the said letters. The said Sultan Hussain, the said Sultan Munasser and the widow of the said Sultan Abdullah since having died, our clients are the persons, to whom the said money is payable as the heirs of the said three persons.

On or about 7th April 1942 our clients presented a petition to you through the Hon'ble, Hyderabad (Deccan) - requesting you to arrange for payment of the said amount to them as persons entitled to the investments for the time being representing the said amount as they had all left Aden and were residing at Hyderabad (Deccan). Hereto annexed and marked "C" is a copy of the said petition.

By his letter dated 13th August 1942, the Chief Secretary wrote as follows :-

> "I am directed to refer you to your letter dated 7th April 1942 regarding the claim of Saif bin Hussain and other grandsons of Sultan Abdullah bin Omer who had certain deposits with the National Bank of India & to inform you that the Government of Bombay which holds the moneys in trust propose to apply to the High Court for its discharge as a trustee of the fund and the appointment of the Government of Aden as a new trustee in its place. After the transfer of the trust funds, this Government proposes to set up machinery for its disposal by means of an ordinance."

Hereto annexed and marked "D" is a copy of the said reply.

Exhibits

No.18

Letter, Messrs. Ambubhai & Diwanji to Government of Aden.

16th January 1945 continued

After the receipt of the said letter dated 13th August 1942, our clients sent reminders to you but they have not heard any reply so far. We shall be obliged if you will be good enough to let us know at what stage the matter stands and what steps have been taken by the Government of Aden for the disposal of the aforesaid amount.

Our clients have waited for a very long time and we trust you will be good enough to send a reply to this letter immediately and make arrangement for payment of the amount.

Thanking you in anticipation.

We beg to remain Sir,

Your most obedient servants

Sd. Ambubhai Diwanji

Solicitors, High Court.

No.19

No.19

Letter, Government of Aden to Messrs. Ambabhai & Diwanji.

12th February 1945

LETTER, GOVERNMENT OF ADEN TO MESSRS.AMBABHAI & DIWANJI

GOVERNMENT OF ADEN

The Secretariat,
Aden.

No.221/40/1242.

12th February 1945.

Gentleman,

I am directed to refer to your letter of the 16th January on the subject of the claims of Saif bin Hussain and others to certain trust moneys in the National Bank of India, and to inform you that the Government of Bombay has now informed this Government that it has not yet made an application to the High Court of Bombay for discharge as a trustee of the fund, and that, as at present advised, it does not intend to make such an application until a new trustee has been nominated by the Government of Aden.

Exhibits

No.19

Letter, Government of Aden to Messrs. Ambabhai & Diwanji.

12th February 1945 continued

2. The Government of Aden proposes to appoint its Financial Secretary as the New Trustee, but the matter is still the subject of consideration by the Government concerned. It will be appreciated that special legislation will be required and while this will necessarily entail further time being spent every effort to expedite the matter will be made by this Government.

3. With regard to the penultimate paragraph of your letter no reminders were received by this Government from your clients.

I am, Gentlemen,

Your obedient servant,

Sd.
CHIEF SECRETARY TO THE GOVERNMENT

Messrs.Ambubhai & Diwanjee,
Solicitors, Lentin Chambers,
Dalal Street, Fort, Bombay.

No.20

Letter, Financial Secretary,Aden to Registrar, Supreme Court, Aden.

16th November 1953.

No.20
LETTER, FINANCIAL SECRETARY, ADEN TO REGISTRAR, SUPREME COURT, ADEN

Secretariat,
No.221/40-III/130. Aden, 16.11.1953.

The Registrar,
Supreme Court,
Aden.

Sir,

(1) I am writing to you in my capacity as Trustee of the Sultan of Shehr and Mukalla Trust Fund. I have been advised by Mr.Westby Nunn, that I have been formally discharged from Suit No.260/52.

(2) In order that I may know what action I have to take with regard to the assets of this Fund, I shall be grateful if you will let me have copies of all final orders made in this case by the Court. Fees for the making of these copies will, if so required, be paid from the Fund but I shall be glad if you will forward the copies, as soon as possible without waiting for payment of the fees, so that I may complete action in the matter.

I am, Sir,
Your obedient servant,
Sd. ROBERTSON,
FINANCIAL SECRETARY.

Exhibits

No.21(a)

Translation of Opinion of Sir Faridahul Mulk

4th November 1925

No.21 (a)

TRANSLATION OF OPINION OF SIR FARIDAHUL MULK.

T R A N S L A T I O N

Opinion of Nawab Sir Faridun-ul-Mulk Bahadur, President of Executive Council, H.E.H. the Nizam' Govt. Hyderabad-Deccan.

C A S E

CLAIM OF THE HEIRS OF SULTAN ABDULLA ETC.FILE NO. 47/56 (ATTIYAT-MEDAK of 1320 F.)

Dated 4th November 1923 A.D.

This devoted servant very respectfully submits that this case is practically very clear; but the long pendency of it shows as if it is complicated. It started in 1347 Hijri i.e. 15 years ago.

It's facts in brief are: that Omer bin Awadh Shamsheerruddoula was a Jamadar in the Nizam Jammaaiyat (Irregular troops). He had from different wives five sons, namely (1) Abdulla, (2) Ali, (3) Suan Nawaj Jung, (4) Saleh Barq Jung, and (5) Mohamed Omer bin Awadh had also acquired some property in Arabia. He in his lifetime in the year 1279 Hijri, made a will about his properties and to the names of his three sons, Abdullah, Sultan Nawaz Jung, and Barq Jung. As regards Ali and Mohamed he wrote that they should be assistants to his brothers and if these want to separte by getting their shares they should be given their shares and be separated. Accordingly, these two, in the year 1287 and 1288 Hijri respectively obtained their shares and executed Deeds of relinquishment. The remaining property secured in Arabia, etc., therefore, remained in the possession of (1) Abdullah, (2) Sultan Nawaz Jung, and (3) Saleh Baraq Jung. Amongst these there was an

Exhibits

No.21(a)

Translation of Opinion of Sir Faridahul Mulk

4th November 1925 continued

agreement in the year 1290 Hijri sanctioned by Nawab Muktar-ul-Mulk Bahadur. Through this agreement each brother was nominated to be an Agent and Successor for the other two.

Sultan Abdullah, the father of Sultan Hussain and Munasser resided in Mukalla where he died. Sultan Nawaz Jung and Saleh Baraq Jung were residing in Hyderabad. After the death of Shamsheeruddoula the Jagirs were sanctioned to the names of these two. After the death of Saleh Baraq Jung a dispute arose between his son, Mohsin and Sultan Nawaz Jung, Mohsin Barq Jung, on the basis of that that Jagirs, after the death of Shamsheeruddola were sanctioned to the names of Sultan Nawaz Jung and Baraq Jung, claimed half a share in them; but, the statement of Sultan Nawaz Jung, at that time was, that Mohsin Baraq Jung is entitled only to one third and the remaining two thirds were for the share of himself and of his brother Sultan Abdullah; Mohsin Baraq Jung, therefore, was given one third of the Jagirs yielding a revenue of Rs.12.000/- per annum. The remaining two thirds remained in the possession of Sultan Nawaz Jung. After the death of Sultan Nawaz Jung, these are now in the possession of his sons. In the year 1904 A.D. corresponding to the year 1322 Hijri, i.e. 20 years ago, the two sons of Sultan Abdullah, namely Hussain and Munasser came to Hyderabad. At that time Sultan Nawaz Jung tried to stop them from coming here through the British Residency. He made the Government to believe that these are coming to create fights and troubles. Afterwards, it was revealed that these people have come to ask for their claims and are actually peaceful persons. Thereafter, it was proposed that Hussain and Munasser had no more right in the Jagirs or in any moveable or immoveable properties, because they, as per the decision of the Arbitrator, Syed Ahmed bin Salem had sold all their claims for a compensation of two lakhs and sixty thousand Dollars. Accordingly the question arose whether this decision of the arbitrator can effect the Royal Grants and Service in Hyderabad Government. In this connection correspondence took place between the Residency, after which the Government of India had admitted the fact that as regards the case of these against sultan Nawaz Jung towards a share in the Jagirs and towards their services in Hyderabad, the Nizam's Government is empowered to make investigations and to give a decision in the matter.

Exhibits

No.21(a)

Translation of Opinion of Sir Faridahul Mulk

4th November 1925 continued

Therefore, copies of the letters of the Prime Minister numbering outward 129 dated 28th August, 1909 A.D. were submitted for the perusal of His Late Highness. After the case was brought to the notice of His Late Highness a Farman of 5th Zikadah 1327 Hijri was issued as follows :-

> "As regards the claim of Hussain and Munasser against Sultan Nawaz Jung, your opinion of 3rd Zikadh 1327 Hijri is quite suitable. Accordingly Hussain and the heirs of Munasser should be intimated that they can institute their claims, in accordance with the procedure, about attiyat etc. in the Revenue Department as well as in the Finance Department; but as regards the private and the persona properties of the late Abdullah they are not allowed to file any suit in our courts. The Judicial Department should also be intimated that, if any case about the latter mention private and personal properties is filed against Sultan Nawaz Jung it should not be allowed".

Accordingly this was complied with, as per the above orders, Hussain and the Heirs of Munasser made their claim into the Revenue Department some 15 years ago. During this period Sultan Nawaz Jung had also died, and along with his succession proceedings, the case of Hussain and the heirs of Munasser was also heard. Mr. Dunlop, Fasih Jung Bahadur, Mr.Wakefield, and Raja Fateh Nawaz Want Bahadur had admitted their claims, the support of their claim was also made through the letter of Sultan Nawaz Jung personally which he had submitted during the division of the Jagirs between Baraq Jung II, Sultan Nawaz Jung had stated that Baraq Jung could get only 1/3rd share in the jagirs and the remaining 2/3rds (two thirds) contained the share of his own and that of Sultan Abdullah. Now this fact cannot be denied, the sons of Sultan Abdulla can, through any reason be said that their claims are non-admissible. In view of all the above stated facts, this devoted servant has come to the following conclusions :-

(1) The succession of Sultan Nawaz Jung Bahadur should be sanctioned to the name of his two sons. The wife of the late Sultan Nawaz

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No.21(a)

Translation of Opinion of Sir Faridahul Mulk

4th November 1925 continued

Jung, Murad Begum, should remain under their support. To the two sisters of their's namely Shazadi Begum and Mahbood Begum, allowance should be sanctioned. These should not be less than Rs. 100/- per mensem to each of them.

(2) On the above stated grounds, Hussain and the heirs of Munasser should be held entitled to a half share in the jagirs now in possession of the heirs of Sultan Nawaz Jung. The fact remains to be decided whether they should be given one half of the jagirs or one half of its present revenue. After the deductions of the rural expenses etc. and whether they should be given arrears or not, is all entirely under the will and pleasure of His Exalted Highness.

(3) The cases of the heirs of Mohamed, and Ali should be dismissed, because these two, by the Execution of the Deeds of Relinquishment, had already obtained their shares. Nawab Hyder Nawaz Jung Bahadur, pointing out the words of these Deed of Relinquishment, recorded an opinion that the heirs of Ali, as per the judgment of Mukhtar-al-Mulk Bahadur, are entitled to get Rs. 12,000 annually. Actually there are records against this in existence through which it is proved that Ali, in his life time, when he put up a case the Army Secretary have him a clean reply to say :-

> "His Highness the Nizam had finally decided the case and his application was disallowed. To this already 12 years of time had passed".

After this reply Ali lived for another 6 years. He never received his claim again. In the year 1318 Hijri Ali died. His heirs kept silent for a number of years. They never made any claim as regards Jagir. When Hussain and Munasser came up, these and also many other persons made claims. Therefore, their case cannot be held to be admitted. A copy of the note of 30th Aban 1330 Fasli which Nawab Nizamat Jung Bahadur had recorded in detail, is being submitted. After all these facts are considered by your Exalted Highness whatever conclusions are arrived at, will be very obediently complied with.

With due respect,

Sd. Nawab Sir Faridoon Ul Mulk Bahadur.

No.21 (b)

TRANSLATION OF LETTER OF REVENUE SECRETARIAT HYDERABAD

Exhibits

No.21(b)

Translation of letter of Revenue Secretariat Hyderabad 1924.

T R A N S L A T I O N

LETTER OF THE REVENUE SECRETARIAT (BRANCH NIZAMAT ATIYAT) H.E.H. THE NIZAM'S GOVERNMENT - HYDERABAD DECCAN

VERY URGENT

No. 603-605

File No. 47/56 of 1320 Fasli

Dated 9th Farwardi 1333 Fasli.
(5th Rajab 1342 - Hijri)

C A S E

SETTLEMENT OF CASES OF SULTAN ABDULLAH CONCERNING THE JAGIRS RELATING TO THE LATE SULTAN NAWAZ JUNG

From:

The Nazim Saheb,
Atiyat, H.E.H. the Nizam's
Government.

To:

Nawab Mirza Yar Jung Bahadur,
Chief Justice of High Court,
H.E.H. the Nizam's Government.

With reference to the above case, this is to inform you that, in this case, the Arzdasht, dated 25th Jamadussani 1342 Hijri was submitted to H.E.H. in respect of this a Farman was issued in which it is directed that :-

Exhibits

No.21(b)

Translation of letter of Revenue Secretariat Hyderabad

1924 continued

" This case is very complicated. Therefore, until each and every aspect of it is not thoroughly examined, no correct opinion can be formed. Therefore, a Commission should be nominated whose members should be (1) Mirza Yar Jung Bahadur, (2) Sadar Yar Jung Bahadur, (3) Krishnama Chari. These are ordered that they should hear the arguments of the Advocates for each party and, on the present records, they should make everything clear and should give their independent opinion within two months and before the start of Ramzan. This opinion of their's they should submit to the Executive Council and the Executive Council should, after considering the Commission's opinion submit its views to me. Then whatever orders necessary will be passed."

In compliance with the orders of His Exalted Highness file No. 27/2 Attiyat of 1320 Fasli with its relevant papers, in accordance with the separate list enclosed, is sent herewith. Please acknowledge its receipt. With the other Members of the Commission kindly decide the case and return with the judgment, so that this office may send the opinion of the Commission with it to the Executive Council.

Copy of this is sent to Nawab Sadar Yar Jung Bahadur Sadarus Sadur, H.E.H. the Nizam's Government and to Mr. Krishnama Chari, the legal adviser, to H.E.H. the Nizam's Government for the same purpose.

Sd. Revenue Secretary.

No.21 (c)

Exhibits

No.21(c)

Translation of letter of Revenue Secretariat Hyderabad 1924

TRANSLATION OF LETTER OF REVENUE SECRETARIAT HYDERABAD

T R A N S L A T I O N

LETTER OF THE REVENUE SECRETARIAT (BRANCH NIZAMAT ATTIYAT) H.E.H. THE NIZAM'S GOVERNMENT HYDERABAD DECCAN

Very Urgent
No.641-642

Dated 24th Farwardi 33F
(30th Rajab, 1343 Hijri)

C A S E

SETTLEMENT OF CASES OF THE HEIRS OF SULTAN ABDULLAH OUT OF THE JAGIRS OF SULTAN NAWAZ JUNG.

From;

The Nazim Attiyat,
H.E.H. the Nizam's Government.

To:

Nawab Mirza Yar Jung Bahadur,
Chief Justice of the High Court,
H.E.H. the Nizam's Government.

In continuation of this office letter No.603 dated 9th Farwardi 1333 Fasli in the above case, it is directed that, as regards

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No.21(c)

Translation of letter of Revenue Secretariat Hyderabad 1924 continued

the case, a Farman of 19th Rajab 1342 Hijri is issued by His Exalted Highness in which the following orders are recorded :-

"The application of Hussain bin Sultan Abdullah is enclosed. Because Mr.Krishnamachari has been an Advocate for the Opposite Party, therefore in the Succession Proceedings of the late Sultan Nawaz Jung, in respect of the Commission his being a Member is not suitable, as the opinion of the Commission should be an independent. In his place I appoint Sadat Jung, Member of the Paigah Committee. It will be necessary for the Commission that, as per my orders of the 30th Jamadussani 1343 Hijri, they should thoroughly enquire into the present records of the case and should hear the arguments of both the parties. That before the commencement of Ramzan (because holidays start) the Commission Members should forward their independent opinion to the Executive Council and that the Executive Council should consider the case in each of its aspect and should think of all the issues afresh and submit their conclusions for my perusal. The sitting of the Commission should be at least twice in a week".

Therefore, the Farman of His Exalted Highness should be complied with and the report of the Commission should be sent to this office so that it may be placed before the Honourable the Executive Council.

A copy is given to each, Nawab Sadar Yar Jung Bahadur, Dewan Bahadur Krishnama Chari, Legal Adviser, and to Nawab Sadat Jung Bahadur, Member of the Paigah Committee.

Sd. Revenue Secretary.

No.21 (d)

Exhibits

No.21(d)

Translation of Judgment of Nawab Mirza Yar Yung Bahadur and Nawab Sadar Yar Jung Bahadur.

About 1924

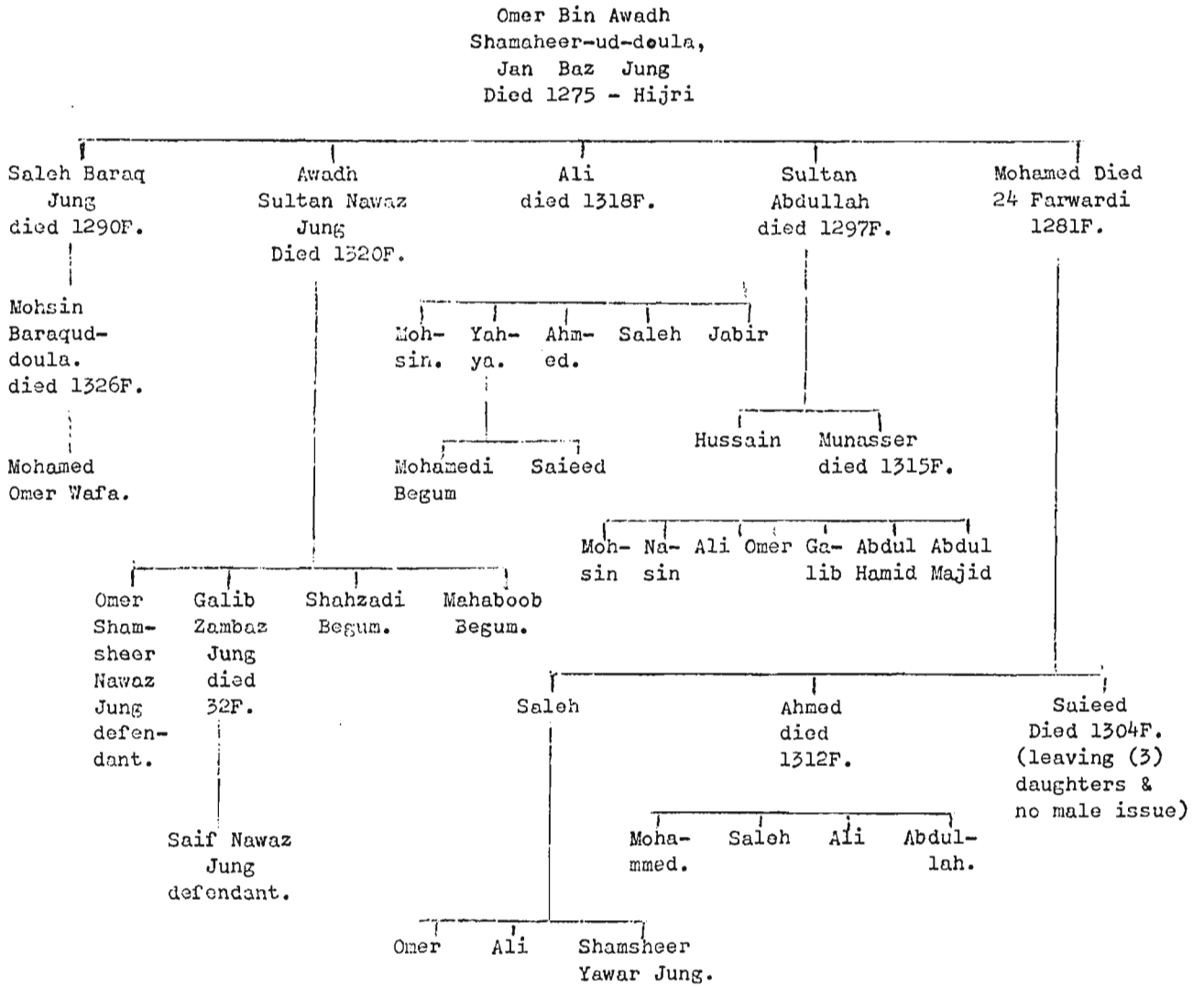
T R A N S L A T I O N

COPY OF JUDGMENT OF NAWAB MIRZA YAR JUNG BAHADUR. CHIEF JUSTICE OF HIGH COURT AND NAWAB SADAR YAR JUNG BDR., Dated 25th Ardibehisht, 1333 Fasli. (22nd Rajab 1342 H)
File No.47/56 (Attiyat Medak) for 1320F.

C A S E

SUCCESSION ENQUIRY OF THE LATE NAWAB SULTAN NAWAZ JUNG.

To come to understand the facts of the case, the following geneological table should be kept in view.



Exhibits

No.21(d)

Translation of Judgment of Nawab Mirza Yar Yung Bahadur and Nawab Sadar Yar Jung Bahadur.

About 1924 continued

The property under dispute is now in possession of the son of Sultan Nawaz Jung, namely Shamsheer Nawaz Jung and grandson, and namely, Saif bin Nawaz Jung, since the death of the ancestor Omer bin Awadh Shamsheeruddoula. At present the claimants of the disputed property are the sons of Mohammed, Sultan Abdulla, Ali and the two daughters of Sultan Nawaz Jung, namely Mahbub Begum and Shazadi Begum. The sons of Saleh Baraq Jung son No.5 are not a party in this case. The result, therefore is that now there are, before us, four different cases. The first case is of the sons of Mohammed, the second of the sons of Sultan Abdulla, the third of the sons of Ali and the fourth of the daughters of Sultan Nawaz Jung, Mahbub Begum and Shazadi Begum.

The first case: Is of the sons of Mohammad. Their contention is that the property originally belongs to Omer bin Awadh Mohammad was the eldest son. The property is of a grant nature. As they are the descendants of the eldest son, they are solely entitled to possess it on behalf of the other sons.

The Second case: Is of the sons of Sultan Abdulla, son No.2. This is to the effect that in accordance with the Will of the Ancestor, Omer Bin Awadh, dated 1st Rajab 1289 Hijri (14th Bahman, 1272 Fasli) and as per the agreement between the brothers, Saleh, Abdullah, and Awadh, dated 26th Rabiul Awwal, 1290 Hijri (12th Thir, 1383 Fasli), they are entitled to one third of the total property. Their second argument is that when the Nizam gave the property to Baraq Jung and Sultan Nawaz Jung he meant that one third should be for Sultan Abdulla. Their third argument is that when the division took place between Baraq Jung and Sultan Nawaz Jung the two thirds of the property which Sultan Nawaz Jung obtained calculated to mean that, as per Sultan Nawaz Jung's own action, he cannot now deny the one third of Abdulla.

The third case: Is forwarded by the heirs of Ali. They do not claim any share in the property but their argument is that the late Nawab Mukhtar ul Mulk, the Prime Minister of his time, had on 10th Zilhajja 1289 Hijri (13th Ardibehest 1278 Fasli) decided about the claims of Ali. According to which Ali is entitled to receive Rs.1000/- per mensem. This salary which was granted to Ali was a compensation for his claim established in the Jagirs. Therefore, this amount should be

ordered to be given along with the arrears.

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No.21(d)

Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sadar Yar Jung Bahadur.

About 1924 continued

The fourth case: Is put up by Mahbub Begum and Shahzadi Begum, daughters of the late Nawaz Sultan Nawaz Jung. In this it is argued that the Jagirs were also made to their names. Therefore, they are equal share holders of their two brothers Galib, Jan Baz Jung & Omer, Shamsheer Nawaz Jung, in the jagirs in question. The reply on behalf of Omer Shamsheer Nawaz Jung and Saif Nawaz Jung as a whole concerns the rest of the three cases alike to the exception of the case of Mahbub Begum and Shahzadi Begum. For facilities sake we call Shamsheer Nawaz Jung and Saif Nawaz Jung, hereafter, in our judgment the defendants. This reply is that the property cannot be considered a private property of Omer bin Awadh in which these are claimants in accordance with the share in Mohammaden Law. When this property was once granted to Baraq Jung and Sultan Nawaz Jung there remained no claim for the present claimants. This is a general counter. The rest of the arguments are particulars to each and every case differently. Against the heirs of Mohamed Ali it is argued that a Deed of relinquishment was written by Mohammad. That once, Sayeed, son of Mohammed, had made a claim of in the said Jagir on behalf of himself and on behalf of the other heirs of Mohammed which was dismissed. Therefore, no fresh case can now be held admissible.

Against the heirs of Abdulla, that is the second case, it is relied upon a Sale Deed executed by Abdulla. It is also argued that the claims of Abdulla were decided through the decision of an Arbitrator. Therefore, the claimants have nothing more to claim here.

Against the third case it is argued that the judgment of Nawab Mukhtar ul Mulk was never acted upon nor it was ever meant that that it is executable. The heirs of Ali never received any claim on its basis. Neither the heirs of Baraq Jung nor those of Nawab Sultan Nawaz Jung can now be responsible for any thing. The judgment was against Baraq Jung. The heirs of Baraq Jung are not a party in this suit. Finally, it is argued that Ali also executed a Deed of Relinquishment on the basis of which even if he had any claim these were already given up.

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No.21(d)

Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sadar Yar Jung Bahadur.

About 1924 continued

Against the fourth case - of Mahbub Begum and Shahzadi Begum the defendants argued that these can only be entitled to a cash allowance and that Rs.100/- per mensem for them will be enough. The other question to be considered is whether any arrears can be granted in connection with each case.

We have stated a brief account of the arguments before giving our opinion so that it may be easy to know what are the relevant matters upon which we have to be express our opinion. Ultimately, the following issues are to be decided :-

COMMON FACTORS TO EVERY CASE

(1) Whether any claimant can have any claim in the property under dispute in the capacity of an heir of Omer Bin Awadh.

(2) If he has got such a claim it will be in what property?

FACTORS TO BE DECIDED ABOUT CASE NO.(1) THAT OF THE HEIRS OF MOHAMMAD.

(3) (a) Whether document dated 21st Zamadiul Awwal 1287H. (5th Meher 1280 Fasli) was written by Mohammad?

(b) If executed what will be its effects on the claim of the heirs of Mohammad?

(4) (a) Whether Saieed bin Mohammad instituted a case on behalf of all the heirs of Mohammad?

(b) If he had done so, what is its effects on the other claims of the heirs of Mohammad as regards the dismissal of the suit?

FACTORS TO BE DECIDED IN CONNECTION WITH THE CLAIM OF THE HEIRS OF SULTAN ABDULLA.

(5) Whether the Will of ancester, Omer bin Awadh dated 1st Rajab 1289 Hijri (14th Bahman 1278 Fasli) gives the heirs of Abdulla any claim or rights?

(6) Whether the document dated 26th Rabiul Awal 1290 Hijri (12th Thir, 1283 Fasli) made between the three brothers Abdulla, Saleh and Awadh, gives the heirs of Abdullah any claim in the property under reference?

(7) Whether the grants of jagir and maqtas to the names of Baraq Jung and Sultan Nawaz Jung meant that the Grantor intended that one third should go to Abdulla?

(8) Whether the practice of Sūltan Nāwāz Jung at the time of the division of the Jagir between Sultan Nawaz Jung and Baraq Jung calculates that Sultan Nawaz Jung now cannot deny the one third of the heirs of Abdullah?

(9) (a) Whether on the 14th Isfandar, 1287 Fasli, Abdullah had executed any Sale Deed in favour of Saleh and Awadh?

(b) If so, what will be its effects on the claims of the claimants?

(10) Whether the judgment of the Arbitrator, Sayed Ahmed bin Salem, of 1302 Fasli can have any effects on the claims of the claimants with regard to the property under reference?

FACTS TO BE DECIDED ABOUT CASE NO.3 THAT OF THE HEIRS OF ALI.

(11) (a) Whether the heirs can get from Sultan Nawaz Jung or from the heirs of Sultan Nawaz Jung a salary of Rs.1000/- per mensem on the basis of the judgment of Nawab Mukhtar ul Mulk dated 13th Ardibehist 1278 Fasli?

(b) If they are entitled to such a claim, whether it is advisable to have this decided here?

(12) (a) Whether Ali has executed any Deed of Relinquishment on 5th Amardad, 81 Fasli?

(b) If so, what will be its effects?

ISSUES TO BE DECIDED ABOUT CASE NO.4 THAT OF MAHBUB BEGUM AND SHAHZADI BEGUM.

(13) (a) Whether Mahbub Begum and Shahzadi

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Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sadar Yar Jung Bahadur.

About 1924 continued

Begum are entitled to any claim in the property under reference?

(b) If so, what extent?

ISSUES TO BE DECIDED ABOUT ARREARS

(14) (a) If any claimant is proved to be entitled to any share in the disputed property whether he can have a right to get arrears?

(b) If entitled for arrears, what will be the amount?

The parties have argued this case before us, for full seventeen days. We have spent three days for understanding the facts, for consulting each other amongst ourselves and for the writing of this judgment. The file is very bulky. If we refer to each argument and to every paper, the matter will be very very lengthy. Therefore, we have observed the principle to express our opinion in the most concise manner possible. For the facility of the Honourable Members of the Executive Council, we have prepared a separate bound file containing all the papers on which each party basis its argument upon. To refer to papers, in any easy way, we have put the following numbers on each file :-

Papers filed by the heirs of Mohammed on which they base their arguments - (File No.1).

Papers produced by the heirs of Sultan Abdullah on which they base their arguments - (File No.2).

Papers filed by the heirs of Ali, on which they base their arguments - (File No.3).

Papers filed by Shamsheer Nawaz Jung and Saif Nawaz Jung on which they base their argument (File No.4)

About the fourth case - that is, of the claim of Mahbub Begum and Shahzadi Begum, we have not prepared any separate file. In this opinion of ours, we will consider the above reference in the same order as above mentioned. Any number quoted means the specified party mentioned above, and

means their relevant papers the names of which are quoted alongside with the given number. We also will follow the decision of each issues in the same order who have already stated.

DECISIONS OF ISSUE WHICH ARE AS FOLLOWS:

(1) Whether any claimant being an heir to Omer bin Awadh has got any claim in the disputed property?

(2) If so, in what property?

The disputed property is shown to be of three kinds. The details of which are as follows:- To the line of each and every property it is necessary to see the specification of each so that issues to be decided may be clear.

(1) J A G I R S.

VILLAGE	AMOUNT	SPECIFICATION
(1) Padgigummal	4,339- 4-3	Sanad of 1282 Mijri (17th Aban, 75 Fasli to the name of Baraq Jund & Sultan Nawaz Jung).
(2) Shekhapur	40,216- 4-9	" "
(3) Ghanpura	40,756- 4-9	" "
(4) Nimtoor	11,451- 7-3	" "
(5) Girgeon	1,111-11-6	" "
(6) Mughat	7,451- 3-6	" "
(7) Newgha	4,698- 4-0	10th Shawwal 1263 Hijri (3rd Aban 56 Fasli) Sanad to the name of Saleh bin Omer, Baraq Jung first).

(II) - PAN MAQTAS (Taxed villages)

(1) Sedpalli	60,651-15-3	As per orders of Seventh Zihejja 1279 Hijri (29th Isfendar 1283F) sanctioned to Baraq Jung and Sultan Nawaz Jung.

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No.21(d)

Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sader Yar Jung Bahadur.

About 1924 continued

VILLAGE	AMOUNT	SPECIFICATION
(2) Masanpalli	11,552- 4-9	As per orders of Seventh Zihejja 1279 Hijri (29th Isfendar 1283F) sanctioned to Baraq Jung and Sultan Nawaz Jung.
(3) Arepalli	512- 9-0	" "
(4) Banjapalli	695- 5-0	" "
(5) Mudeddi	11,963-13-0	" "
(6) Arwer	11,497- 7-6	" "
(7) Komatisingareddipeta	1,659-12-6	Possessed by Sultan Nawaz as a compensation for his salary.

(III) - PRIVATE PURCHASED MAGTAS (Villages)

(1) Amjadabad	11,941- 0-0	17th Amardad 1285F possessed by Sultan Nawaz Jung for LOANS of Sultan NAWAZ Jung.
(2) Akhunshaguda	814- 9-0	Purchased by Baraq Jung 2nd Safar 1281 Hijri (24th Amar adas 1274F) Sarf-e-Khas.
(3) Bswasahebguda	614-15-0	" " " " Rabiul Awwal 1280 Hijri (1st Meher 72F).
(4) Feeranguda	633- 4-6	Purchased by Omer bin Awadh Shanaheer ud doula, in possession of Sultan Nawaz Jung.
(5) Mohsinguda	187- 0-0	" " " " 21st Jamadussani 1265 Fasli)
(6) Garden situated at Nampalli	159- 0-0	" " " " "

As per the above said specification, it will be evident that the first kind is only Jagirs. Out of these six villages have been granted by the

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Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sader Yar Jung Bahadur.

About 1924 continued

Nizem, in Aban 75 Fasli to Baraq Jung and Sultan Nawaz Jung. Property No.(7) is Newgha. The Sened (Deed of Grant) of which is particularly to the name of Baraq Jung only. Accordingly, out of the second kind of property that is the Pan Maqtas, six made to the names of Sultan Nawaz Jung and Naraq Jung on 29th Isfander 1283 Fasli. Property No.(7) is given to Sultan Nawaz Jung as a compensation for salary. Out of the third kind of property i.e. the Private Purchased Maqtass (Villages), about No.1 it is said that Sultan Nawaz Jung obtained it towards his loan and properties 2 and 3 were purchased by Baraq Jung. The parties admit that out of this this third kind, villages 4, 5, and 6 were purchased by Omer Bin Awadh, the Ancestor. During the argument the Advocates made no difference between Jagirs, Pan Maqtass and Private Purchased villages. During the argument the assumption was as if all was a grant property or given by the Nizam. The only difference shown that against the Jagirs, there is no Pan (tax) due but the Maqtass are under the condition of paying Pans (Taxes). As regards the third kind of property, evidently, the fact of being purchased is contrary to the understanding that it is by way of grant. But these were purchased at a time when there were no clear orders about the sale and purchase of such. Accordingly, when the parties themselves did not make any difference about all these, before us, we give our judgment on one, common basis and presume that each and every property is a grant or Attiyat-Sultani (Sovereign Grants). The first thing to be considered by us is what are proper claims of the heirs in any Jagir or Attiyat Sultani (Sovereign Grants). In this connection the Farman issued in 1319 though it is not very clear in the memory of all officers, but, consider the importance of the matter, we think it fit to give its summary as follows:

"No Attiyat-Sultani (Sovereign Grants) can be called a private property, in which any heir to the deceased Jagirdar can claim any right against the Government in that way. Any property possessed by any Jagirdar or Inamdar, covered by Attiyat Sultani, the sanction of which totally depends upon my free will, whether the claimant is really an heir of the deceased or

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Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sader Yar Jung Bahadur.

About 1924 continued

not. But as a matter of fact I am generally inclined to the support of ancient family members and, God willing, this will be continued for all times. I like very much to create some means of living to the heirs of ancient families. This act of grace shown by me cannot be at any time held to be that the Jagir or Inam which include Attiyat (Grants) can be sold or mortgaged, or without such sanction these can be divided in between, or without the sanction of the Government these can be pledged for a loan affecting the Jagirs. This also means that any person who thinks himself to be an heir to a deceased Jagirdar, by some way or other, without sanction of the Government, cannot be in possession of these and at the same time be a hinderance to the Inam Enquiry. These common principles are said for the purpose so that while confirming Jagirs and other Attiyats these facts should be considered during such a proposal. This does not mean, however, that the heirs of the Jagirdar or Inamdars should be deprived from any support. This only means that the heirs of Jagirdars should not, on their own, commit any wrong actions as regards Government Grants. Jagirdars who are often members of ancient families should be given some compassion and this should be in accordance with procedure".

After going through this Farman there seems to be no further clarification possible to make that any heir cannot show the property belonging to his ancestor to be of his own. Generally His Exalted Highness selects one of the heirs as a Grantee. In the circumstances, if any heir is left out he is not entitled to claim any part in the properties covered by the Grant as a personal right. Before such grant is made any heir has got the right to forward his claims in the Revenue Department as regards his own rights. If he never did so, or after doing so, the result goes against him, then, in such a case, after the grant is made, he is not entitled to claim anything on the basis that this is his ancestor's property. It is also argued before us that when H.E.H. the Nizam gave the permission to institute this suit and also referred this case to this Commission. it means that a reconsideration can be made as regards the grant principally. Our opinion is that it was never intended by H.E.H. the Nizam, that, if in the previous proceedings the cases

of the claimants are dismissed they can now be reconsidered or this particular can be taken now into consideration. Therefore, we give our opinion as regards issue No.(1) against the heirs of Mohammad, Abdullah and Ali.

As regards Mahbub Begum and Shahzadi Begum we will express our opinion under the decision of Issue No. (14). After saying so much it is unnecessary for us to express any opinion on Issue No.(2).

ISSUE TO BE DECIDED IN CASE NO.1 THAT IS OF THE HEIRS OF MOHAMMAD.

Issue No.(3) runs as follows:-

(3) (a) - Whether the document dated 21st Jamadiawall 87 Hijri (5th of Thir, 80 Fasli) was executed by Mohammad?

(b) If so, what will be its effect on the claims of the heirs of Mohammad?

This document is printed on file No. (4) page (68). The printed arguments which is submitted to us by Nawab Shamsheer Nawaz Jung admits this document in paras. No.(2), and (15) (vide File No.(2) page 2/4, 2/5 paras - 12 and 15).

Therefore, the decision of the first element is in the affirmative. As regards its effects, the portion of the document concerned needs consideration. Its brief is as follows :-

> "The division of the inherited property of my father Omer bin Awadh whether it is inherited from any one or obtained by any one, whether it is cash or actual property, lands, gardens, Makhtass, date trees etc., and whatever can be called property and has got any value whether it is from my late father, Omer bin Awadh in the shape of movable or immovable property as per the sense of this claim, it is decided on my part through Mohamaddan Law or any other

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Translation of Judgment of Nawab Mirza Yar Jung Bahadur and Nawab Sader Yar Jung Bahadur.

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principle and such are all excluded no claim remains about these. Nothing to be claimed from my said brothers nor from any heir of my late father, in all the property of his, whatever the Government has recorded in its judgment I have no claim against, my brothers Abdullah, Saleh and Awadh".

It is argued by the claimants that this document covers only the inherited property and is limited to that extent, it has no effect on Jagirs. Our opinion is that the disputed property is either an inherited one or otherwise. If not inherited, being a Government grant, is non-transferrable. If, the basis of the claimant is that the Jagirs are inherited, therefore, they have got any share in them, then, in view of the words used in the document these have got very wide scope after which the heirs of Mohammad have no further claim remaining.

DECISION ABOUT ISSUE NO.(4) IS AS FOLLOWS :-

(a) Whether Saieed bin Mohammad has instituted any suit on behalf of All the heirs of Mohammad?

(b) If he had done so, the dismissal of the case, whether affects the claims of the other heirs of Mohammad?

Saieed had instituted a case in 1291 Fasli about the Jagirs and against Saleh for certain. The late Nawab Mukhtar-ul-Mulk, the Prime Minister of his days has rejected his claim in 1291 Fasli on the basis of this Deed of relinquishment (vide file No.4 Page 72 to 77).

Saieed had also instituted a claim about the Jagirs in the High Court. This case was also dismissed without judgment on 30th Meher, 1299 Fasli (vide File No. 4 pages 71 and 93).

It is not evident whether Saieed had done so on behalf of other heirs. Therefore, the effect of dismissal of this case does not affect the claim of Shamsheer Nawar Jung.

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DECISION AS REGARDS CASE NO.(2) OF THE HEIRS OF SULTAN ABDULLAH.

The decision of Issue No.(5) is as follows:-

On the basis of the Will of the ancestor Omer bin Awadh dated 1st of Rajab 1279 Hijri, (14th Bahman 1272 - Fasli whether the heirs of Abdullah has got any claim to put forward?

We have studied this Will very carefully. In our opinion the object of the Will of Omer bin Awadh was that he made a Wakf of one-third (1/3) of his property situated in Arabia and India for the protection and improvement of the said properties. This Wakf he gave into the hands of his three sons, Abdullah, Awadh, and Saleh. It is not necessary for us to state here whether such a Will is admissible or not. That is whether such a Wakf can be made for that object or, in accordance with Mohammedan Law, whether such a Will can be held valid. If the nature of that was not of a Wakf then, whether any heir of his family can be entrusted with such a Will against the consent of other parties or heirs. For the objects of the case it is enough for us to decide, that there is no Will at all as regards that remaining two thirds (2/3). In the one third (1/3) about which a Will was made no claim has been given to any of the three brothers. On the other hand they were only given the power to make expenses for the purposes of the protection of the property. Subsequently facts revealed that no son afterwards had, at any time, excluded this one third of the property on the basis of the Will, neither he had ever acted upon it. In our opinion, Abdullah is not entitled to any claim in the property on the basis of this Will.

DECISION OF ISSUE NO.(6) IS AS FOLLOWS:

Whether the heirs of Abdullah are entitled to any claim on the basis of document dated 26th Rabiulawwal 1290 H (12th Thir, 1283 Fasli) made by the three brothers Abdullah, Saleh, and Awadh.

This document is printed on file No. (2)

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belonging to Abdullah and on page 33. Its purport is that Sultan Abdullah, Awadh and Saleh, the three brothers each had on the 12th Thir 1282 Fasli made a Gift of his one third to the remaining twc brothers. This Gift does not only include the property existing at that time but also any portion of the property which any of the three brothers can obtain in future, or any property which he can create. We are of opinion that a Gift about such a property is made which is not in itself specified. It is not even shown what kind of property one of the brothers is giving away tc the others. Several complications of legal issues are related to this document. For instance whether such an unspecified properties can be given away as a Gift or not, specifically when on the basis of such a document no actual possession has been transferred to any one; whether any Gift can be made of a property which is to be procured in future time? We can give opinion on all these issues in this case. If it is held that this document is valid even then the heirs of Abdullah can have nothing in their favour. It is argued on the part of Abdullah's heirs that the ultimate result of this document is that each of the three brothers becomes jointly an owner of one third in the common property. This we can only assume, if it is granted that before the executing of the deed each brother is an owner of one third of the property. To make clear our idea, we, give an example that is, supposing that Abdullah has got three rupees, Saleh six rupees, and Awadh nine rupees, then only if this Gift is acted upon then result will be that there will be in the possession of Abdullah seven rupees, in the possession of Saleh eight rupees and in the possession of Awadh nine rupees. From this it is evident that on the basis of this document the three brothers cannot be equal shareholders until we suppose that each brother has got any full share in the property. In that case whether there is any such document or not there can be no fresh right established in the property on the basis of this document, or that each brother remains the owner of one third. Therefore, through this document the effect which the heirs of Sultan Abdullah pretend to make out is incorrect. The other argument is that if Abdullah is not an equal share holder in the property even then, Abdullah gets one third of this through the Gift made by Saleh and Awadh

in his favour. This has got still further complications. The property in its nature is such that about which no valid or legal gift can be made. As explained in the Farman quoted above.

The second consideration is, that Jagirs are not clearly mentioned through clear words. Only in one place the word Maqtass was used.

Thirdly that when a portion of the document is non-executable for instance, that even the property acquired in future is always given as a Gift by one brother to the other. It is also worth considering that, how far the executing of such a document can accomplish its object in future. We have read this document on several occasions, very carefully. Subsequently, our view is formed that, on the whole, no action can be taken on this document. Neither any one has ever acted upon it nor through this Deed, Abdullah has got the claim of one third in the property under discussion.

DECISION ABOUT ISSUE NO.(7) IS AS FOLLOWS :

Whether the object of the Grantor, while granting the Jagirs and Maqtass to the names of Sultan Nawaz Jung and Baraq Jung, was to the effect that one third should also be given to Abdullah?

For the first time, the sanction of the Jagir was made in 1275 Fasli to the name of Baraq Jung and Sultan Nawaz Jung and the Pan Maqtass were sanctioned to the name of Sultan Nawaz Jung and Baraq Jung in 1283 Fasli. (torn torn torn torn torn torn torn torn torn) which shows in line of each properties under decision of Issue No.(1) and (2) as described. Nothing is shown to us through any document or a reference to a document which signifies that in 1275 Fasli when the Senad of the Jagirs was made only to the name of Baraq Jung and Sultan Nawaz Jung and when these were sanctioned, or when the Maqtass were given to the names of Baraq Jung and Sultan Nawaz Jung, at the time of the claims of Abdullah or any of his other brothers were considered. This is totally within the free will of the Nizam, that among the five

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sons of Omer bin Awadh who was the one entitled to get this Sanad and who should not. From the facts of the case, it is clear that Sultan Nawaz Jung and Baraq Jung were residing at Hyderabad. These two brothers were having influence and position. Assistance from only these two could have been anticipated. It is quite possible that this was the reason for selecting only these two brothers among the rest. At the same time we do not think it fit to give thorough consideration of these reasons that why these two only were selected. The papers referred to do not give any indication that, the object of the Nizam was that one third of the Jagir should be established for Abdullah. Certain papers are referred to which concern the future periods, when Baraq Jung II and Sultan Nawaz Jung were made to divide the property. The reference to these papers will be given by us in connection with the decision of No. (8). At the same time, in accordance with this issue No. (7) our opinion is that the object of the Nizam was not so.

DECISION OF ISSUE NO.(8) IS AS FOLLOWS:

When the Jagirs were divided between Sultan Nawaz Jung and Baraq Jung and when Sultan Nawaz Jung got two thirds, whether the practice of Sultan Nawaz Jung has got the effect that, at present, he is debarred from the denying one third of the heirs of Abdulla?

During the time of argument, this issue which we have noted down was not dealt with properly in the light of the words of the said issue. Only facts were stated. This serves no useful purpose unless and until such facts are shown in connection with some principle of law and until such facts are not put in support of such a principle thinking that, perhaps the relating of such facts meant to argue upon the principles of estoppel, we have formed this issue. It is evident now that the intention was not to argue on these lines and it is clear that any misrepresentation made by some person about any property for the object of obtaining it does not create any right for any other person. We have already stated, in connection with issue No.(7) that at the time when the sanction was made to the name of Sultan Nawaz Jung and Baraq Jung, no claim for Abdullah was ever intended. Therefore, if any, after statements were made by Sultan Nawaz Jung it can be only said

that it is a principle of estoppel which are defined in the Act Section 92. We do not like to bring in here all the complicated principles of law and their discussion but to make ourselves clear, it is better to make a certain reference. The principles of estoppel can be applied only at the time when a certain person through his after statements or after action intentionally makes another believe that such statement is correct about a certain factor, and in accordance with that the said person has carried out his practice. Then only the person who made the other to believe the truth of such a statement cannot hereafter deny. It is very essential to apply these principles when such a person makes another believe a certain thing, and for the person who believes such it is necessary that he has practically acted in such a way that a loss has been inflicted upon him. For instance if in a case, a person says that he is the adopted son of the principle owner of the property and he instituted a suit against the possessor of the property and gets it. Then again in another property or in its connection when the possessor states that the claimant has already become an adopted son in the time passed, therefore, he is not entitled to deny this person not to be adopted in connection with the obtaining of the property. Then, this adopted person, in connection with some other property, denies the fact of being adopted. It is,therefore, argued that in the second case this person cannot deny the fact of his adoption because in the first case, he succeeded on that basis. It is decided by the Privy Council that in the second case he can deny the fact of being adopted because the one who depends upon the adoption has never harmed the possessor of the property nor he made him to believe anything to the contrary. Therefore, the principles of estoppel are not applied here. (Vide Har Shanker Pratq Singh Versus Lelgiriraj Singh, I.L.R. Allahabad Volume 29, page 519). The reference to this case is only made by a way of Example. When the division was being made between Sultan Nawaz Jung and Baraq, Sultan Nawaz Jung had by some means or another got for himself two thirds of the Jagir, then Sultan Abdullah cannot have any right in that, until he has not done anything which makes Sultan Abdullah believe and through that getting him into a loss, and through that

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confession, some rights have been created for Sultan Abdulla so that he can now stop the heirs of Sultan Nawaz Jung from making an argument. Our opinion is, that, originally Sultan Abdullah has no legal claim or right in the Jagirs and Maqtaas. Then on the basis of Sultan Nawaz Jung obtaining two thirds of the Jagirs, by means, no right can be established for Sultan Abdullah through that way when two thirds was sanctioned to the name of Sultan Nawaz Jung during the time of the division. Even when the Nizam did not make any mention of Sultan Abdullah nor of his rights, he never even made any reference to that, but he clearly gave the order that these two thirds should be given to Sultan Nawaz Jung. Therefore, we decide issue No.(8) also against the claimants.

DECISION ABOUT ISSUE NO.(9) IS AS FOLLOWS:

" (a) Whether, on the 14th of Isfander 87 Fasli Abdullah made any Sale Deed as regards his claims to the names of Saleh and Awadh?".

" (b) If he had done so, what will be its effects on the claim of the claimants?".

This Sale Deed is printed with File No.(4) on page 173. The original of which is not obtainable, because it was sent to the Aden Governor and to his Office. Observing the Proceedings that took place afterwards, it is found that there was the existence of such a Deed of Sale. For instance the Judgment of the Arbitrator, Syed Ahmed bin Salem (pages 181 to 185, printed file No.4), and, on the basis of this judgment, some special amount was given to Sultan Abdullah (vide file No.4 pages 188, 189 190). We therefore, are of opinion that such a Sale Deed was actually to read. From the words of this Sale Deed it can be seen that Sultan Abdullah had sold his rights for a specified sum. In the Sale Deed the Jagirs are not clearly mentioned. Only Maqtaas were said. Our opinion is that as the Jagirs and Maqtaas cannot be sold and cannot be transferred, therefore, if Sultan Abdullah included these in his Sale Deed, even then, it cannot effect the claims of the claimants.

DECISION OF ISSUE NO.(10) IS AS FOLLOWS:

What is the effect of the Judgment of the

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Arbitrator Syed Ahmed bin Salem, dated Dai, 1302 Fasli on the claims of the claimants in the disputed property?

Our opinion is such a Judgment cannot affect the claims of the claimants in the property under reference. The Arbitrator is not empowered to decide any claim of the parties as regards Jagirs and Royal Grants.

DECISION ABOUT FACTS RELATING TO CASE NO.(3) THAT OF THE HEIRS OF ALI.

Issue No.(1)(a) Judgment of Mukhtar el Mulk, dated 13th Ardibehest, 1278 Fasli, whether creates for the heirs of Ali, against Sultan Nawaz Jung or heirs of Sultan Nawaz Jung, the right of obtaining one thousand rupees in cash per mensem?

(b) And if any such claim can be established, whether it is advisable to have it decided in this case?

The decision of the late Nawab Mukhtar ul Mulk is printed on file No.3 of the heirs of Ali page 1 to 3. This decision is of 13th Ardibehist 1278 Fasli. To read this Judgment it can be seen that the late Nawab Mukhtar ul Mulk himself never meant to create any inherited claim in the Jagirs. He in his Judgment only wrote "as regards Jagirs, etc., it can be considered later on".

"Therefore, in obedience to the order of the late Nizam this was given by way of compensation as a compensation of all the claims of Ali bin Omer as regards the sovereign grants .. ..Baraq Jung Bhadur should give to Ali Bin Omer Rs.12,000/- per annum". After this the late Nawab Mukhtar ul Mulk wrote in his decision that this order will be cancelled". This Judgment was pronounced against Baraq Jung. The argument on the part of Sultan Nawaz Jung is that they were not a party. In our opinion, the present Sections of the Code of Civil Procedure which specify the making of parties are not to be applied in this case. Baraq Jung was the Agent of all the State and the Judgment which was pronounced against

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him will have effect on other persons who are related to the State. This fact remains to be decided that whether this cash is meant to be continued to Ali one generation after the other or whether this was only limited to his own person, so that this responsibility can be added upon the heirs of Baraq Jung and Sultan Nawaz Jung on whose naze a fresh grant was made. If we come to the decision that this cash meant to be continued a generation after generation then the ultimate result will be that while the Jagirs originally meant to the lifetime but the compensation which is given towards it can remain one generation after the other. Away from this when the Jagirdar dies and after him, a grant is made to any of his heirs, such a grant does not come into the hands of his heirs as it is in the case of private property. The burden of such a compensation related to private inherited property cannot be applied to any responsibility of such a cash fixation against the heirs. Now Ali to whose name this cash was granted is dead. Saleh Baraq Jung against whom this order of cash was is also dead. Therefore, we have to deal with this case only through the legal principles. Our opinion is that on the basis of Judgment of the late Nawab Mukhtar-ul-Mulk the heirs of Ali have no right to claim the same cash from either the heirs of Baraq Jung or Sultan Nawaz Jung. As the Nizam has got the right to grant the Jagirs after the death of the Jagirdar to any one, therefore, on the same basis he has also got the right to have the burden of any responsibility in cash made against any newly made grants, as per his own choice if he thinks it is justifiable. But such a right cannot be established on the basis of the Judgment made by the late Nawab Mukhtar ul Mulk. This is not to be considered as a fresh grant otherwise we will make a proposal to His Exalted Highness that because the Prime Minister of the time has promised certain thing to Ali, although such a promise was only by the way of grace and as this promise was made in accordance with the order of the Nizam, therefore, it will be put for the State to observe it. In this connection there are two facts which prevent us from making such a proposal. One is that from the date of this Judgment until now, Ali has not received even a single penny. Once a sum of Rs.32,000/- was credited by Baraq Jung in accordance with this Judgment. This amount, through

some way or other paid, was not given to Ali. He once wanted to obtain it but afterwards he was quiet as if the dispute between the parties was decided through some other way. Even the late Nawab Mukhtar ul Mulk himself made the payment of this sum on certain conditions. The first is that he asked for the consent of Ali and afterwards he recorded that if Ali creates any trouble this compassion will be cancelled out. In this respect the compassion of cash which was fixed out is in a disputed state. The second fact is that Ali on the 5th of Arardad 1281 Fasli executed a Deed of Relinquishment which we will refer to under issue No.(12) hereafter. It is clear that Ali through his own action was not willing to benefit by this method of compassion. Otherwise he would have not remained quiet for such a long time. The property has passed into the hands of next two generations already. Now the grandson of Baraq Jung, Mohammad is in possession of the State. Our opinion is that the heirs of Ali are not now entitled to any legal claim as regards this annual cash. Although such a compassion could have been kept on but on the basis of Ali's own practice we are not prepared to make a proposal for the continuation of such a compassion. If, the Officers are of the opinion that the heirs of Ali are entitled to such a cash, then such a case cannot be decided until the heirs of Baraq Jung are made a party, as these are now in possession of the property. If, any such amount is granted to the heirs of Ali it can only be met proportionately from all those persons who are now in possession of the Jagirs and are utilising the same.

DECISION OF ISSUE NO.(12) IS AS FOLLOWS:

(a) Whether Ali had executed any relinquishment Deed on 5th Amardad 1281 Fasli?

(b) If he had done do, what will be its arfects in this case?

This Deed of Relinquishment is printed in File No.4 on page 15. In Amardad 81 Fasli has executed his Deed of Relinquishment. In this he wrote that whether it is an inherited property or any kind of property visible. barrowed whether lands, maqtaas, or anything which can

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be called property, I have relinquished my claims from all such properties. Torn torn torn torn torn torn torn torn. This cash if not included in the inherited property, then it will be considered that it is obtained afterwards, whether it is of any kind of wealth Ali has relinquished his rights of, as he has done in the inherited property (vide File No.4 page 16). Up to that time the farmen above quoted was not issued. The Jagirdars were probably of opinion that inheritance can be maintained in Jagirs and Maqtaas. It is in view of this consideration, Ali wrote that "whatever will be it is to my brothers and to all the heirs as regards the inherited property in the Deccan I have no claim or any right remaining. If any case is instituted, by me, or by my heirs (.....) against the brothers or the representatives of my brothers in future, it will be considered null and void and as per Mohammadan Law and other laws it will be non-admissible".

It is argued on the part of the claimants, that document does not cover the Jagirs and Maqtaas because these cannot come under the definition of private inherited properties. But going through the document it is apparent that Ali had relinquished all his claims. This is the second reason on the basis of which we are not in a position to make any proposal for the continuation of any such cash amount as per our decision in connection with Issue No.(11).

DECISION ABOUT ISSUE REGARDING THE 4TH CASE THAT IS OF MAHBUB BEGUM AND SEAHZADI BEGUM.

Issue No.(13) - (a) Whether Shahazadi Begum or Mahbub Begum is entitled to any share in the property under reference.

(b) If so, in what way their claim can be met with?

The basis on which the Farman above referred to is formed and in consideration of the fact that all the Maqtaas were granted to the name of the heirs of Sultan Nawaz Jung result to give the daughters a right as long as they come under the definition of legal heirs. It is not mentioned

that a share should be fixed for them. The order is "the six villages of Sedpalli and villages Komtisingareddipeta in all seven villages can be held by the legal heirs of the late Sultan Nawaz Jung ..... The sanction of these is granted?

This Farman was issued on 26th Safar, 1332 Hijri, We are of the opinion that Mahbub Begum and Shahzadi Begum have a right to be benefited by these properties. It is not advisable to divide the property between female heirs. The property is of a vast nature. Our opinion is that Mahbub Begum and Shahzadi Begum may be given each three hundred ruppees per mensem and this will be enough. As regards the profits of the property, very lengthy arguments have been placed before us. We are afraid that this judgment of ours is getting too long. Therefore, it will not be proper that we mention all these details. Nor we consider it necessary to give evidence of all the evidence produced. We have proposed the above sum after full consideration of all the arguments concerned.

DECISIONS AS REGARDS ARREARS.

Issue No.14(a) If any claimant is held to be entitled to receive any share in the disputed property, whether it is possible to hold that he can get the previous profits by way of arrears or not?

(b) If he is entitled to that what will be the amount?

We are of the opinion that the claim to get arrears cannot be established until the Jagirs are specifically granted to the claimants' name by Farman. A case was instituted in the High Court, in which after the grant of the Jagirs, claimant claimed to get the arrears of the past times between the death of the ancestors and the date of granting. The full Bench of the High Court came to the decision that, unless the sanction is made till then a claimant cannot have any right for the same and for the reason that the property is not of an inherited nature. They refused to grant him arrears (vide Deccan Law Report Vol.13 page 88 case Mohanlal Versus Vasudeo Rao decided on 3

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Dai 39 Fasli). When this case was put up before the Judicial Committee by the claimant the same opinion was agreed to by His Exalted Highness (vide D.L.R. Vol.14 Page 88, Tulja Bai Versus Mohan Lal, Munsiff, 15th Azur, 33F). The meaning of arrears is that a person have adverse possession upon the property and he deprives the original owner. As the property is of a Jagir's nature, and in which no claim has been established for the Claimants, therefore, no arrears can be granted.

This opinion is based entirely on legal consideration; but as the sons of Mohammad, Abdullah, and Ali are all descendents of one person Omer Bin Awadh, therefore, it is the moral obligation of the possessor of the Jagirs to maintain and support them. If, for these or for the members of the families of these, some amount has been fixed as a maintenance to those who deserve, it will not be away from the gracious favour of His Exalted Highness which he has been, all along, bestowing upon this family. This is a Royal Prerogative against which No Jagirdar has got any right to contest.

This opinion of ours as per orders of the Farman should be submitted to the Honourable Members of the Executive Council.

Sd. Nawab Mirza Yar Jung Bdr.

Sd. Nawab Sadar Yar Jung Bdr.

Dated 25th Ardibehist 33F.

No.21(e)

Translation of the Farman of H.E.H.Nizam of Hyderabad.

1929

No.21 (e)

TRANSLATION OF THE FARMAN OF H.E.H.NIZAM OF HYDERABAD

TRANSLATION OF THE FARMAN DATED 7TH RABIULAWWAL 1348 HIJRI.

After inspecting all the arzdashts of the Revenue Department till Arzdasht submitted on the 5th of Shawwal 1347 H which are related to the Jagirs possessed by Jamadar Sultan Nawaz Jung as well as to his Virasat (succession).

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Translation of the Farman of H.E.H.Nizam of Hyderabad.

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continued

ORDER:- I had appointed a Commission in this old case, members were the Chief Justice, Sadarus Sudoor - and Sadat Jung. If the report of the Commission was joint a final disposal in this case would have been issued since long. But two members, namely the Chief Justice and Sadarus Sadoor's opinion was one side and one member was on the other. Therefore, I thought it necessary to have the opinion of the President and Member in Council. These two have formed divided opinions. Some of the high Officers agreed to the majority of the Commission which is based on legal principles. Other High Officers agreed to the Commission's minority, which its points of view was that of a favour,therefore, it seems equitable to me that I should agree to the majority of the Commission and subsequently sanction the Virasat of Sultan Nawaz Jung to his present heirs. And in view of the special features of this case, according to the opinion of the Chief Justice and Sadarus Sadoor, I must show some favours to those whose claims are dismissed, in the way that some monthly Guzara (allowances) should be fixed for them by the heirs of Sultan Nawaz Jung and Baraq Jung. Therefore, the below mentioned orders are passed :-

(1) Purchased villages are out of the question. They should remain in the possession of those who were possessing them since the last 60 years.

(2) As regards the seven Pan Makhtaas (taxed) villages my order of the 26th Safar 1332 Hijri should remain without any changes.

(3) The division of the seven Jagir Mouzas that took place in the days of His Late Highness in 1303 Hijri, should remain unchanged. In accordance with that division the succession of the villages possessed by Sultan Nawaz Jung should be to the names of his male heirs, namely his grandson Saif Nawaz Jung (son of the late Jan Baz Jung) and his son Shamaheer Nawaz Jung, both having equal shares. This will be under the condition that they would pay monthly allowance to the female heirs according to the opinion of the Chief Justice and Sadarus Sudoor. No arrears should be paid to them.

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Translation of the Farman of H.E.H.Nizam of Hyderabad.

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(4) According to the division mentioned above which had been sanctioned by His late Highness, the succession of the village a possessed by Mohsin bin Saleh Baraquddoula has been settled through previous orders and nothing now remains for a disposal.

(5) With regard to the above mentioned facts I passed an order on the 16th Rabiussani 1347 Hijri that the heirs of Sultan Abdullah and Saif Nawaz Jung should come to a compromise so that the Government need not pass any orders as regards the allowances and its arrears be be paid as a favour to the former. I am sorry that no compromise took place within the allotted time. Therefore, it became necessary for me to decide the matter. I therefore, like to know the opinion of the Council that :

(a) Amongst the heirs of Mohammad bin Omer, Sultan Abdullah bin Omer, and Ali bin Omer Shamsheeruddoula how many are residing in the Nizam's Dominions?

(b) What are the present means of living of each one of them.

(c) Having regard to every one's circumstances what allowances and what arrears of allowances should be given to them by Saif Nawaz Jung who or the present heirs of Baraquddoula.

Necessary orders will be passed regarding the allowances after the opinion of the Council is submitted.

Sd. H.E.H. the Nizam.

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No.21(f)

Translation of Orders of Revenue Secretariat Hyderabad.

1949.

TRANSLATION OF ORDERS OF REVENUE SECRETARIAT, HYDERABAD

T R A N S L A T I O N

Copy of letter of the Revenue Secretariat, H.E.H. the Nizam's Government (Branch of Nizamat Attiyat).

No.4014/4013 Dated 25th Mehar 58F.

File No.47/58 Attiyat Medak of '20F.

BY ORDER OF THE HON'BLE THE REVENUE MINISTER

From

Nizam Attiyat,
H.E.H. the Nizam's Govt.

To

Nawab Sir Saif Nawaz Jung Bahadur.

C A S E

SUCCESSION PROCEEDINGS OF LATE NAWAB SULTAN NAWAZ JUNG.

In this case the Order of H.E.H. through the Farman dated 7th Rabiulawwal 1348 Hijri, was that the cases of Sultan Abdullah, Mohammed, and Ali should be dismissed and some suitable allowances should be given to them annually by the heirs of Sultan Nawaz Jung. For

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this the opinion of the Council was called for.

After a lengthy proceedings, as per the opinion of the Council, the last Arazdasht dated 2nd Shahaban, 1367H was submitted to H.E.H. and Farman of 9th Shawwal 1367 Hijri came to the effect that :-

> "As per the opinion of the Council allowances with arrears as per Table "B" should be paid out".

Therefore, in obedience of the Farman it is ordered that, for the three branches of Shamsisudola Mohammad bin Omer, Sultan Abdullah bin Omer, and Ali bin Omer, to each of them, out of the Jagirs of Nawab Saif Nawaz Jung Bahadur and Baraquddoula an aggregate allowances of Rs.5250/- per annum should be paid. The burden of the allowances for Ali's branch should be upon the State of Baraquddoula, and of the rest of two branches should be borne by the State of Saif Nawaz Jung. The inner division of the sum should be, in each branch, in accordance with Monammedan Law. The allowances for females will stop after marriage and will merge into the allowances of the concerned heirs of the branch.

Arrears to each branch will count from 7th Rabiulawwal 1338 Hijri, as per the opinion of the Council and as per table 'B' which was submitted along with the Arazdasht till the end of Amardad, 1356 Fasli. The branch of Mohammad bin Omer and Ali bin Omer gets each Rs.146475/- and the branch of Sultan Abdullah gets Rs.5615/- arrears to be paid. Because the heirs of Sultan Abdullah Had, during the proceedings Rs.7,200/- annual allowances from 8th Bhman 1337 Fasli. This is being paid by the State of Sir Saif bin Nawaz Jung Bahadur. Therefore, after the deduction of which the balance arrears which remains has been shown above, that is,till

the end of Amerdad 1356 Fasli this branch is entitled to get arrears of Rs.5,615/- only. After this, till Shehrewar, 1358 Fasli this branch will get Rs.7,200/- annually as allowances. Therefore, till the arrears of this branch is paid out Rs.7,200/- annual will be given to them. After the arrears are cleared up this branch will be getting Rs.5,215/- annually. The other two branches should be given by way of instalments. The revenue of the Jagirs, so far gathered, shown that the State of Sir Saif Nawaz Jung has a net income of Rs.83,822/5/7 and that of Baraq Jung has Rs.28,850/-. Therefore till the payment of the arrears along with the current allowances 1/4th of the Revenue of the Jagirs should be paid out annually. As per above said Clarification, the names of the heirs in each branch together with their annual allowances and arrears are shown in the tables enclosed herewith.

The sub-heirs in the branches whose shares and arrears were shown reserved will be kept reserved until further settlement will be met out from the State of Sir Nawaz Jung and the branch of Ali from the State of late Baraquddoula, each getting an annual allowance of Rs.5,250/- and towards arrears Rs.5,250/- as shown above. This will start from Sherwar 1356F. The branch of Sultan Abdullah will be concerned to the State of Sir Saif Nawaz Jung. Their shares and arrears have already been shown above. The income for the State of Sir Saif Nawaz Jung Bdr. towards Excise, through a cheque of Rs.11,842/- for the third instalment of 1358, as per the application of the shareholders, was called for from the Excise Department. Out of this Rs.2,200/- was already given to the heirs of Sultan Abdullah, being the allowances for two months. The balance of Rs.10,642/13/0 is still remaining. Out of this amount the Branch of Mohammad was paid Rs.10,642/13/-.

Exhibits

No.21(f)

Translation of Orders of Revenue Secretariat Hyderabad

1949 continued

After this sum is deducted the balance should be paid out accordingly. The reserved shares will be kept so until settlement. Please therefore, comply accordingly.

Copy given to Mohammad Awadh bin Omer, Grandson of the late Nawab Baraquddoula for the purpose that as per the above specification the branch of Ali is related to your state. As shown above this branch will get an allowance of Rs.5,250/- annually and arrears as stated above. The allowances and arrears of the sub-heirs are shown in the annexed table sent along with.

The allowances and arrears for those persons which were kept in reserve will remain reserved. Kindly comply with accordingly.

A third copy is forwarded to the First Taluqdar, Dist-Parbhani, for the purpose that as the State of Baraquddoula is under the custody of the Government, therefore, as is shown above kindly comply through the District.

The fourth copy of this is given to all the First Taluqdars of the Districts of Medak, Nanded, Bidar, Nizamabad, and Hyderabad for information.

Sd. Mr. Ghulam Hyder,

Nizam, Attiyat.

Exhibits

No.21(g)

Translation of Letter of Revenue Secretariat Hyderabad 1928/1929

No.21 (g)

TRANSLATION OF LETTER OF REVENUE SECRETARIAT HYDERABAD

T R A N S L A T I O N

Copy of letter of the Revenue Secretariat, h.E.H. the Nizam's Government (Branch of Nizamat Attiyat).

No.115/116/117. Dated 4th Azur, 38 Fasli.

File No.47/56 Attiyat - Medak - 1320 Fasli

BY ORDER OF T.J.TASKER,ESQR., O.B.I.E., S.S.
MINISTER REVENUE DEPARTMENT.

C A S E

INAM INQUIRY AND SUCCESSION OF THE LATE NAWAB SULTAN NAWAZ JUNG

From:
Rai Jaganmohan Lal,B.A.,
Nizam Attiyat,
H.E.H.the Nizam's Govt.

To:
Nawab Saif Nawaz Jung Bdr., Possessor of the Jagirs of the late Nawab Sultan Nawaz Jung.

With reference to the above case, please note that in these proceedings a letter of yours addressed to Mr.Jamaluddin, Superintendent of Public Gardens in which it is recorded that the Aden Residency has shown incorrect account of amount Rs.10,00,000/-. Therefore, we were ready to compromise for that sum. Now the matter is that in the Residency there are only about Rs.5,00,000/- B.G. in credit. Therefore, with great difficulty, I made my uncle agree that all the amount which is in credit with this Government should be allowed to the heirs of Abdullah and at the same time Rs.1000/- per mensum should also be fixed for them. As regards this we are ready to give a Government's assurance. Besides, it is possible that we give them also a house for residence. In my opinion this compromise is very suitable for both the parties. If DARA accepts it, a certified copy of the Compromise Deed should be sent and if this is informed by wire it will be more suitable.

The heirs of the late Sultan Abdullah have

Exhibits

No.21(g)

Translation of Letter of Revenue Secretariat Hyderabad

1928/1929 continued

forwarded an application to Sir Maharaja Bhadur, the President of the Executive Council. This application was submitted to H.E.H. the Nizam through Arazdesht. On the basis of which during last Ramzan an order of H.E.H. the Nizam came to say that "the parties were allowed to come to a compromise on the condition that whatever they decide it should be subsequent to the sanction of the Government". But, although two months and twenty three days had already passed, no Compromise Deed has yet been placed by the parties. Therefore, an Arzadesht was submitted in this connection. Now, through Forman dated 16th Rabiussani, 1347 Hijri H.E.H. the Nizam was pleased to order that "last Ramzan 1346H., on the recommendation of the President of the Council, permission was given to the heirs of Sultan Adbullah and to Saif Nawaz Jung that within two months they can come to a Compromise in the case of succession proceedings of the late Sultan Nawaz Jung and forward this compromise for the sanction of a Government. Report why this compromise deed has not been yet forwarded. If there are no prospects of its being made then also report so that this old case should be decided finally".

Therefore, a notice is given to you, that within one week a reply should be forwarded to this office so that it should be submitted to H.E.H. because H.E.H. is awaiting in the matter.

Copy of this is given to Mr.Saif bin Hussain, Mohsin, Nasir, Ali, Abdul Hammeed and Abdul Majeed, son of Munasser bin Sultan Abdullah for the purpose that you too should forward what you have to say in this respect to this office, within a week, and your reply also may be submitted to H.E.H.

On the other copy please acknowledge and return.

Sd. As per copy signed by the
Nizam Saheb Attiyat.

Sd. Mohd. Ghouse Khan,
Muntazim.

Exhibits

No. 22

Translation of letter, Director of Atiyat to Nawab Sir Saif Nawaz Jung Bahadur (Sultan bin Ghaleb)

1949.

No. 22.

TRANSLATION OF LETTER, DIRECTOR OF ATIYAT TO NAWAB SIR SAIF NAWAZ JUNG BAHADUR (SULTAN BIN GHALEB)

TRANSLATION

Letter from the Office of the Secretary to the Revenue Department Nizamat Attiyat Branch.

Outward No.4015 D/- 25th Meher 1358F.

File No. of this office 47/56 of 1320F of Inam Branch Medak.

File No. of the office of the addressee: of 13 received on 1.12.1358 F. with file

Sd. Saif Nawaz Jung.

By order of the Sadarul Moham (Minister) for Revenue Department.

From, Moulvi Gulam Hyder H.C.S. The Director of Atiyat.

To, Nawab Sir Saif Nawaz Jung Bahadur.

Subject:- Regarding the enquiry of Inam and Succession of the late Nawab Sultan Nawaz Jung.

Sir,

I have the honour to state on the above subject that in these proceedings the opinion of the Executive Council was called for by H.E.H. the Nizam of Hyderabad through his Royal Command dated 7th Rabbiul Avval 1347H. in regard to the getting of some salary to the heirs of Nawab Sultan Nawaz Jung by way of subsistence allowance after the dismissal of the claims of the heirs of Sultan Abdullah, Mohamed and Ali. After a great correspondence, as per opinion of the Executive Council, the last memorial was submitted to the H.E.H. on 2nd Shabnul Mozzam 1367H. when the H.E.H. was graciously pleased to pass the Royal Command on 9th Shavvalul-Mukkaram 1367H., as per clarification given herein below:-

"As per the opinion of the Council, the allowances together with the arrears in accordance with the statement 'B' may be disbursed. Hence in compliance with the Royal command, it is hereby directed that out of the three branches of Shamsheer ud

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No.22.

Translation of letter, Director of Atiyat to Nawab Sir Saif Nawaz Jung Bahadur (Sultan bin Ghaleb)

1949.

- continued.

doula that is to say Mohamed bin Omer, Sultan Abdullah bin Omer, and Ali bin Omer, each may be disbursed the aggregate annual allowance of Rs. 5,250/- from the Jagirs of Nawab Sir Saif Nawaz Jung Bahadur and of Barqud-Doula. The burden of the allowance of the branch of Ali shall be with the estate of Barqudoula and the burden of the remaining two branches shall fall upon the estate of Sir Saif Nawaz Jung Bahadur. The internal distribution of the aforesaid amount shall be within the branch itself in accordance with the provisions of Mohammadan Law. The allowances of other females shall cease to exist after their marriage and the same shall amalgamate with the allowances of the concerned heirs".

2. Each branch shall be disbursed the arrears of the allowance from 7th Rabiul Avval 1338H. As per opinion of the Council in accordance with the statement 'B' submitted along with the Memorial, the arrears till the end of the month of Amardad 1356F comes to the branch of Mohamed bin Omer and Ali bin Omer at Rs. 1,46,475/- each, and the arrears of 5,615/- comes to be paid to Sultan Abdullah's branch, in as much as the heirs of Sultan Abdullah, during the proceedings, have been paid the annual allowance of Rs. 7200/- from 8th Bahman 1337F. from the estate of Sir Saif Nawaz Jung Bahadur, so after the deduction of this amount the balance arrears that comes payable has been clarified herein above. That is to say, till end of Amardad 1356 F. this branch comes to be paid the arrears of Rs.5,615/-. Even after this the allowance has been paid till for the month of Shehrewar 1358F. at the rate of Rs. 7200/- per annum. Hence the arrears of this branch shall be paid at the rate of Rs.7,200/- till its payment. After the payment of arrears this branch also shall be paid at the rate of Rs. 5250/- per annum. The other two branches of Mohammad and Ali have not so far been disbursed any amounts. It has been deemed necessary to fix the instalments for the payment of arrears of each branch. And accordingly in this respect in accordance with the information in respect of the revenue of the jagirs obtained from the jagir the net revenue of the estate of Sir Saif Nawaz Jung is Rs. 83822/5/7 and that of the estate of Baraw Jung comes to Rs. 28850/- as such till the full realisation of the arrears in addition to the continued allowance to the extent of 1/4 revenue may be paid towards the arrears every year from the net revenue

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Translation of letter, Director of Atiyat to Nawab Sir Saif Nawaz Jung Bahadur (Sultan bin Ghaleb)

1949.

- continued.

thereof. As per above clarification, for the explanation of the annual allowance and the arrears of the sub-heirs of each branch, the three lists of the three branches have been appended herewith. The shares and arrears of the sub-heirs of these branches which have been given as reserve, shall remain reserve till disposal thereof. In due compliance with the Royal command the aforesaid branch of Mohammad may be paid from the estate of Sir Saif Nawaz Jung Bahadur and of Ali may be paid from the estate of the late Baraw ud doula the annual allowance of Rs. 5,250/- and Rs. 5,250/- towards the arrears as per above clarification from the month of Shahrewar 1356F. The branch of Sultan Abdulla also is connected with the estate of Sir Saif Nawaz Jung. With regard to his share and arrears a clarification has been made herein above. But of course the cheque of the income of the excise of the estate of Sir Saif Nawaz Jung Bahadur of the amount of Rs. 11,842/13/- in respect of the third instalment for the year 1358F. has been called for from the office of the Excise Commissioner on the application made by the Shareholders thereof. Of this amount the heirs of Sultan Abdullah have been paid the amount of Rs. 1,200/- towards the allowance of two months. Now there remains the balance of Rs. 10,642/13-0. Out of this amount the amount of Rs. 10,642/13/0 has been paid and preserved towards the branch of Mohammad. After the deduction of this amount the payment of the remaining amount may be made. The reserved shares shall remain in reserve till disposal thereof. Hence may accordingly be complied with.

A copy of this is given to Mohammad Awad Saheb son of Amar the grandson of late Barqud-Doula with the information that as per clarification made herein above the connection of the branch of Ali son of Umar Shamshir-ud-doula is with your estate. As per above clarification, this branch may be paid the annual allowance of Rs. 5,250/- and the arrears as per above clarification may be paid. A list of the allowances and arrears of the sub-heirs is herewith annexed. The allowances and arrears of the persons that have been reserved shall remain in reserve till disposal thereof. Kindly therefore may accordingly be complied with.

A copy of this is submitted to the First Taluqdar of Parbhani District with the information in

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1949.

- continued.

as much as the Estate of Barqud-Doula is under the Government Superintendence, it may be complied with by the District as per above clarification.

A copy of this is forwarded to the First Taluqdars of Medak, Nanded, Bidar, Nizamabad and Hyderabad Districts for information.

As per draft signed by the Director of the Atiyat

Sd. Illegible in Urdu.
D/- 25.11.1358F

The Asst.Director of the Attiyat Department.

No.23.

Opinion of R.C. Trench, Revenue and Police Member Hyderabad.

26th June, 1932.

No.23.

OPINION OF R.C. TRENCH, REVENUE AND POLICE MEMBER, HYDERABAD

Attested and furnished on the application of Saif Nawaz Jung on 31st March 1950.

Sd. Anand Rao
31.3.50.

Sd. Ashraf Mohd.
31.3.53
Registrar
Revenue Secretariat.

File No.44/56 of 1320 Fasli.
Atiyat Medak section.

Hyderabad Deccan.

June 26th, 1932
Amerdad 21st 1341 F.

In my Guzarish of the 24th April 1932 I have dealt with 2 out of the 3 points on which His Exalted Highness in his Farmans of 7th Rabi-ul-Awwal 1348 Hijri, and the 2nd Shawal 1350 Hijri, has called for the opinion of Council. It now remains for me to submit my recommendations regarding His Exalted Highness's third point which I reproduce below from the earlier of the two Farmans.

"Having regard to the condition (of each heir) what allowances and what arrears of allowances should be given to them by Saif Nawaz Jung or the heirs of Baraq-ud-Doula?

I have today heard the arguments of Counsel

on behalf of all the parties concerned on this point. It is, of course a most contentious one on which no agreement can be expected. The reply to it depends primarily on the amount of the net revenue derived by (a) Saif Nawaz Jung (and Sham-Sheer Nawaz Jung) and (b) the heirs of Baraq Jung from the Jagirs they hold. Statements have been submitted by Saif Nawaz Jung and by the Court of Wards who are at present in charge of the Baraq Jung Jagir giving the income and expenditure of the 2 estates for 3 and 5 years respectively. A good deal of discussion has taken place as to whether the 7 Bilmakhta villages referred to by His Exalted Highness in his Farman of the 7th Rabi-ul-Awwal 1348 Hijri should be included for the purpose of this calculation or not. His Exalted Highness's Order regarding these villages runs as follows :-

"Bilmaqta sat Maqtajat ke nisbat mere hukm Massadara 26th Safar 1332 Hijri bahal rahe us men koi tagayur aor tabadul Ki Zarurat nahin".

Now the order of the 26th Safar 1332 Hijri was to the effect that the 7 villages should be continued in favour of Sultan Nawaz Jung's lawful heirs in accordance with the finding of Sir Henry Griffin's Commission. For the reasons given in Para. 4 of my opinion of the 7th March 1923 I am of opinion, after hearing the arguments advanced by the various parties, that the heirs of Sultan Abdullah, Ali bin Umar and Mohamed bin Omer have no claim to these Makhtas for any Guzaras and in this view I am confirmed by the opening para. of Sir Amin Jung's Guzarish of the 15th March 1928. I have therefore excluded the 7 villages from the calculations that follow.

The Court of Wards statement shows the average gross revenue of the Baraq Jung Jagir for the 5 years 1333-1337 Fasli, excluding income derived from Molgis, to have been Rs. 29,493/-. Against this there is the following average annual expenditure excluding that incurred on Malgis :-

Expenses of management	Rs.	6,635/-
Repayment of debt	"	5,435/-
Family Guzaras	"	16,069/-
Total Rupees		28,139/-

The similar statement produced by Saif Nawaz

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Opinion of R.C. Trench, Revenue and Police Member Hyderabad.

26th June, 1932 - continued.

Jung gives the average gross revenue of the jagir held by himself and Shamshir Nawaz Jung for the 3 years 1332-1334 Fasli as Rs. 49,299/- and the average expenditure as Rs. 23,687/-, leaving a net revenue of Rs. 25,613/-. In these statements Haq-i-Intizam has been included in the jagir expenditure.

It is contended by the learned Counsel for Saif Nawaz Jung that the village of Neogah which has a gross revenue of Rs. 6,692/- should not be brought into account as it was granted to Baraq Jung during the lifetime of his father by a sanad of 1263 Hijri as a Zat Jagir "as mauqufi Ramrao" and cannot therefore be said to be any part of the ancestral estate of Shamshir-ud-doula. Against this it is urged that it was included in the partition of the Jagir villages made in 1303 Hijri between Sultan Nawaz Jung and Baraq Jung from which it is argued that it was then regarded as an integral portion of the ancestral estate. I do not consider that this assumption is justified. For when the partition was effected all sorts of properties such as Jamadaris, Lawazqmas, Mahwars, etc., were admittedly brought into the hotchpot and not merely Shamshir-ud-Doula's and Baraq Jung's Jagir villages. I therefore hold that Neogah should not be included in those jagirs from the Revenue of which Guzaras are to be given to the heirs of Sultan Abdullah, Ali bin Omer and Mohamed bin Omer. This reduced the gross revenue of Saif Nawaz Jung's and Shamshir Nawaz Jung's jagir from Rs. 49,299/- to Rs. 42,607/-.

Having got so far, the next point to consider is what deductions should be made from the gross revenue of both estates on account of Haq-i-Intizam, expenses of Administration, Jagirdars' College case, Haq-i-Malikana, etc., in order to arrive at the net revenue. Needless to say, Saif Nawaz Jung and the heirs of Baraq Jung press for a liberal deduction while the heirs of Sultan Abdulla, Ali bin Omer and Mohamed bin Omer, whose interests in the matter are identical and who allege that the gross revenue derived from the Jagir of Saif Nawaz Jung and Shamshir Nawaz Jung, greatly exceeds the figure given by Saif Nawaz Jung would have it made as small as possible. I may here observe that it was only with considerable difficulty that any figures of revenue and expenditure were extracted from Saif Nawaz Jung. It would be extremely

difficult if not impossible to verify them satisfactorily. So much, however, is certain, namely that if the cost of administration of his and his Uncle's Jagir, including Haq-i-Intizam amounts to 48% of the gross revenue as we are asked to believe the expenditure is higher than in any other jagir of its kind that I have come across. In the Barag Jung estate where no Haq-in-Intizam is paid to the jagirdar the expenses of management work out to about 3½ annas in the rupee. This included the 2 annas in the rupee taken by the Court of Wards. In my opinion it will not be inequitable to any party to deduct from the gross revenue of both jagirs 6 annas in the rupee on account of Haq-i-Intizam, Haq-i-Malikana, Jagirdars' College cess, and all the expenses of administration. It is urged for Saif Nawaz Jung that a more liberal allowance should be made in his case as he has his own Judicial Courts and Police but he is under no compulsion to keep them up and I see no reason to make any distinction in his favour. On the above basis taking the gross revenue of both Jagirs to be Rs.72,100/- (Rs. 29,493/- plus Rs. 42,607/-) and adding Rs. 12,000/- to the gross revenue of Saif Nawaz Jung's Jagir on account of an increase in the Abkari receipts subsequent to 1337 Fasli, the net revenue comes to Rs. 52,563/-.

We are now in a position to get to grips with His Exalted Highness's question regarding the allowances to be made to the heirs of Sultan Abdullah, Ali bin Omer and Mohamed bin Omer. The recommendations that follow are based on the assumptions:-

(a) That no distinction will be made between these heirs who are living within the Dominions and those who are residing elsewhere. A glance of the three geneological trees attached to my Guzarish of the 6th April 1930 will show that all the heirs with the exception of 2 widows and 2 sons of the late Saleh bin Mohamed are living in the State.

(b) That for the reasons given by me in the same Guzarish the "Mali Halat" today of each heir will not be taken into account in fixing the Guzaras.

(c) That as regards the grant of Guzaras, the three branches of Shamshir-ud-Doula's family,

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Opinion of R.C. Trench, Revenue and Police Member Hyderabad.

26th June, 1932 - continued.

that is to say Sultan Abdullah's, Ali bin Omer's and Mohamed bin Omer's are to be treated alike.

I venture to emphasise the importance of my second assumption (b). Any attempt to take into account the "Mali Halat" of the various heirs is bound as a reference to my Guzarish of the 24th April 1932 will show, to involve Government in the greatest difficulties.

If instead of Guzaras the heirs of Sultan Abdulla, Ali bin Omer and Mohamed bin Omer were to be given shares in the 2 jagirs the share of each of the three branches would be worth Rs.10,500/- per annum. In his Farman of the 7th Rabi-ul-Awwal 1348 Hijri His Exalted Highness has directed that they should be given "Thore bahut guzara". I infer from the use of these words that the value of the Guzaras should be well below what the "Hissus-i-Sharai" would be. Taking everything into account, I suggest that the heirs referred to be given 50% of what they would receive if there status were that of Hissadars and not of Guzaradars. This will give Rs. 5,250/- per annum to each branch. As explained in my Guzarish of the 6th April 1930 the internal distributions of the above sums in each branch should be made in accordance with Mohammadan Law. The Guzras should be regarded as hereditary, the Guzara of any female reverting to the other heirs of her branch if and when she marries.

There remains the very difficult question of arrears. In my opinion of the 17th March 1928, in which I advocated the grant of shares to the heirs, I recommended that they should be given with retrospective effect from 1322 Hijri, this being the year in which they served Sultan Nawaz Jung with a notice claiming a share in his Maash. On reconsideration I think that to give arrears of the Guzaras for the last 28 years would impose too heavy a burden on the Jagirdars. If it could be said that the delay in the settlement of this protracted case was entirely or largely due to the procrastination and obstruction on their part, I would not hesitate to recommend that they should be severely penalised in the matter of arrears. As I do not think that it can be laid to their charge I suggest that it will meet the case if arrears for ten years are given, such arrears being

paid in 5 equal annual instalments. For the last three or four years temporary Guzaras totalling Rs. 600/- per mensem have been granted to the heirs of Sultan Abdulla. They will if my proposals are accepted, be reduced to Rs. 437/8/- per mensem in future. The excess received up to date by the heirs should, I submit, be adjusted against the arrears due to them. Any Guzaras that may ultimately be sanctioned should be borne by the Jagir of Saif Nawaz Jung and Shamshir Nawaz Jung and the Baraq Jung Jagir in the proportion of 2 to 1, this being the proportion in which the ancestral estate of Shamshir-ud-doula was divided between Sultan Nawaz Jung and Baraq Jung. We cannot take into account for this purpose what is said to be the revenue of each jagir today.

Sd. R. Chenevix Trench,

REVENUE AND POLICE MEMBER.

No. 24.

TRANSLATION OF WILL OF SULTAN OMER BIN AWAD AL QUAITI

TRANSLATION OF A "WASSEEHUTNAMA" (WILL) EXECUTED BY COMER BIN AWAD BIN ABDULLA ALGAIETY

SEAL OF OOMER,
BIN AWAD

Praise and thanks be to God. After this on 1st Rajub 1279 Hijri this will has been executed by Hauj Jemadar Oomer bin Awad bin Abdulla Algaiety. And (he) attests that there is one God and has no partner and Mohamed is his creature and prophet. Death is true. Heaven is true. Hell is true. The end of the world is true. The Resurrection is true. He prays to God that he will continue him in the faith of Islam, and that he may be permitted to die in that faith. He (the Jemadar) has recorded instructions to his children, and to his wife and family. In the manner in which Abraham recorded instructions (executed "Wasseehuth") for his children and to Jacob. That they should worship The Being who knows the things unknown. After the Divine Decree for his (the Jemadar) demise has been

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No.24.

Translation of Will of Sultan Omer bin Awad Al Quaiti.

1862.

- continued.

fulfilled, after the term of my life. After this according to the ordinances of religion and in proper sanctification, and all rules of the "Shurrah", as regards the application of the "Hannuth" be made, the shroud to be prepared according to "Soonuth", the religious rules. He who bathes the body and digs the grave to be paid the proper and just dues. And he (the Jemadar) has executed this Will. One third of all his possession, which he leaves behind (at time of death) which he holds in the country of Arabia, Hadramaut, etc., together with all produce of the villages ("Wadi") all property in cities, canals, ports, fields, trees, those grown through the effects of rain, and those grown under artificial irrigation, Wells, Ships, Houses, Cash, Weapons, Gold, Silver, Goods in trade, debts due and all property, which can be seen, and all things which can be called property great and little, and one third of all properties and goods which he leaves behind in Hyderabad Hindustan, together with debts, and all property which can be seen, cash, silver, gold, all goods in trade, Mukhtas, Jahgires, Weapons, Houses, Karkana (Establishment) of Arabs etc., and all its belongings in the shape of animals etc., that is to say the one third of all his property and rights in Arabia and Hindoostan, or in any other country, he has gifted one-third of all the property named above, for ever, this has been done in God's name. This has been done to meet the expenses of the City of Shilham and the City of Horah and other cities which may be after this taken into his possession. And the third which he has here written and the profits arising therefrom, the profits arising from the sale of produce, the profits from the date trees, also profits arising from cash and all the profits arising from the Establishment, Jahgires, Ships, etc., all those profits are to be devoted to the maintenance of the expenditure of the cities above-named and other cities and for the maintenance of his dignity of the "Walli" i.e. the person who is in power of his (the Jemadars) descendants, also for the protection, buildings, care, in allaying wars to suppress rebellion etc., all things which are considered to constitute and contribute to the welfare of himself, his country, and his ryots (subjects) And he has appointed for the supervision of this third, to hold in possession and to expend, his children, Abdullah, Saleh, and Awad, sons of Hauj Jamadar Oomer bin Awad bin Abdulla

Exhibits

No.24.

Translation of Will of Sultan Omer bin Awad Al Quaiti.

1862.

- continued.

Gaiety, one is to aid and assist the other, and whichever one (of these) is in Hindoostan will be able to represent the other two, and whichever of these three may be in Hadramant, he will have the power to represent the other two, in like manner for the other cities, the one present shall have power to fully represent the other. After these three (have died), the person appointed by them shall have the power of supervision, who may possess the required accomplishments and ability, either from among the brothers, or from among their children, and to continue in the same manner, from generation to generation, so long as the line of descent continues. And Jamadar Oemer bin Awad bin Abdulla, Algaiety, the above named has appointed as (his representatives and heirs) after death over his Establishments (Karkhana) and over Shibam Horah and other cities, and places, to exercise all authority therein, his three sons, Abdullah, Saleh, and Awad named before. All Establishments and the amounts derived from them, to remain in their possession, and he has granted them permission, if any necessity arises, to expend of the one third abovenamed, together with the profits arising therefrom, for the purpose of driving away an enemy, or for the improvement of the property. He has instructed them and willed, that they should one, continue to be guided by the other, and that they should aid one another in all just things, and he has willed, that they should have patience, exercise kindness to those, whom God has placed under their command, in order to become worthy of the blessing of the Blessed Prophet which he has attered. "Oh God any person who commands or exercises authority over people who follow the Faith I have taught, and exercise kindness towards them, exercise Thy kindness to the same, punish Thou those who cruelly treat them. May God save these (three sons) from the same and give them understanding to act according to His pleasure - He (the Jamadar) has instructed and willed, that they should in all things be guided, by the command of the Almighty God and the rules of the "Shurriuth" (religious ordinances) as regards themselves, and those who have been placed under them by the Divine Will that they should show leniency and kindness to their subjects and dependents, hear all complaints, that their intentions should always be pure and good. They should have mercy upon the poor, they should save those who are being oppressed and should punish the oppressors, they should choose good men for their companions and that they should live honest good lives.

Exhibits

No.24.

Translation of Will of Sultan Omer bin Awad Al Quaiti.

1862.

- continued.

He has instructed and willed that they should have mercy and show kindness to their relations and friends, and he has instructed and willed, that kindness should be shown by them to their dependants. The dependants should in every way show obedience to the person or persons who inherit authority. He has instructed and willed to his two sons Mohamed and Alli, sons of Jemadar, Oomer bin Awad, they should obey in all things their three brothers, and should aid them in all things who should aid them to sustain their dignity and position, they should not bear malice, or anger, and they should live, as brothers and live in amity. If any of these, i.e. Mohamed or Ali, should claim any share from the property left, the share should be given to them after deduction of the property which has been willed, gifted, and granted, as above except the Establishment, which has been willed to the three brothers, named above. He has said all this and willed, to his children, while in a state of sane mind and body, and while in possession of all these things. Hauj Jamadar, Oomer, bin Awad, bin Abdullah, Gaiety. He has granted permission for the writing of the names below, as witnesses.

I am present and have written under the permission of Hauj, Jemadar, Oomer bin Awad, bin Abdullah Gaiety. Mohsin bin Abdullah bin Mohamed, Muscati.

I am witness, Jabbar, Saccd bin Ali Nageeb, Gaiety.

I am witness, Mohamed bin Abdullah, Saeed bin Ali Oomer, Nageeb, Gaiety.

Seal of late Minister

I, Ali, bin Oomer, bin Awad, bin Abdullah, Gaiety state, what has been willed by my father Oomer, bin Awad in the above written will, I agree to and consider just, and it should be continued, as he Oomer, bin Awad, my father has willed, and my signature bears me witness, I have given permission to witnesses to put their names to this.

Dated 20th Ramzan 1283 Hijri.

Witness - Naser bin Abdullah bin Mohamad, Muscati.

Witness - Syed Mehbar bin Alur bin Ahmed, Barabood.

Witness - Mohamed, Abdullah, Nageeb, Saeed.

Witness - Saleh bin Salem bin Nowi.

Exhibits

No.24.

Translation of Will of Sultan Omer bin Awad Al Quaiti.

1862.

- continued.

I, Mohamed, bin Oomer, bin Awad, state, that what has been willed by my father Oomer bin Awad in the above written Will, I agree to and consider just and it should be continued, as he Oomer bin Awad, my father has willed and my signature bears me witness. I have given permission to witnesses to put their names to this.

25th Jamadi-ool-awal 1287 H.

Witness - Saeed bin Ali Saeed, Nageeb, Gaiety.
Witness - Salim, Saeed, Awad, bin Ali Hauj
Witness - Abdullah, Saleh, Daood, Seeali.
Witness - Salim, Mehsin bin Ali, bin Mohamed, Gaiety.

No. 26.

No.26.

Letter from Abdulla bin Omer Sheber (Mukalla) to Resident, Aden.

15th August, 1888.

LETTER FROM ABDULLA BIN OMER SHEBER (MUKALLA) TO RESIDENT, ADEN

Copy of letter No. Nil dated 15th August, 1888

(SEAL)

Dated in Bunder Shehar.

15th August 1888.

My Friend General Adam Hogg,
RESIDENT, ADEN.

I wish your welfare and hope you enjoy best health and secondly I inform your honour with regard to the treaties and writings that have taken place between the Great Britain Government and me on my and my brother Awad bin Umer Algaity's behalf, that there exists an agreement and writing between me and my brother Awad bin Umer in respect of properties and the affairs of State and Government, viz., a writing dated 16th Mohorum 1295 (21st January 1878) whereby it is agreed that the affairs of the State and its Government are for (i.e.being to) him and the person whom he may appoint as his successor, and I am, during my lifetime, acting for him and as his manager and assistant in administration of the State and in other matters; and after my death there will be no right of interference in the Government and the State for any of my children, and the Government and the administration of the countries of Shihr and Mukalla and Shibam and their dependancies are for my brother Awadh bin Umer and for the person whom he may appoint as his

Exhibits

No.26.

Letter from Abdulla bin Omer Sheber (Mukalla) to Resident, Aden.

15th August, 1888 - continued.

successor, and my children must act and obey the orders of their uncle and the person whom he appoints his successor, and I have written this as information to the Great Government and your honour and I stand upon it, and be you always happy.

(Signature) Abdulla bin Umer Algaiety.

(SEAL)

HIS MAJESTY'S POLITICAL RESIDENT,
ADEN.

TRUE COPY

Sd.
Lieut. Colonel.
First Assistant Resident, Aden.

True Copy

Sd.
Supdt. Atiyat. Int. Br.
22.8.52.

No.27.

Translation of Will of Sultan Awad.

1893.

No. 27.

TRANSLATION OF WILL OF SULTAN AWAD

TRANSLATION OF THE WILL OF HIS LATE HIGHNESS SULTAN AWAD

All Praise be to God The Creator of Earth and Heaven, and all Blessings be showered upon the Greatest of Prophets Mohamed and His Progeny and His Companions one and all for ever.

After that on the 1st of Shaaban 1310 Hijri I award s/o Oomer s/o Awad Al-Gaity Sultan Nawaz Jung Shamshir-ul-Mulk, state that my deceased father Oomer s/o Awad, has with regard to a third of the property moveable and immovable, and arms etc., situated in Arabia, Hazarmoth etc., and in India i.e. Hyderabad etc., made a permanent Will simply with a view to the service of God, to the effect this 3rd portion of the property in Sher Saim and Hoora which is in the possession of these descendants, be devoted towards the improvement and welfare of the people living in these countries as well for the maintenance of the administration of these places, the Ruler, the Magistracy the Police in fact every matter relating to the Government of this country, which is essential for the protection and prosperity of the subjects. All these provisions are noted in his Will dated 1st Rajab 1279 Hijri; and as through the same Will created

me and my two brothers Abdullah and Saleh executor and administrator of the said 3rd of the property my deceased father Oomer s/o Awad entrusted the ruling etc., mentioned above and all the powers upon us and our successors who may suit the purpose. After that both of my brothers Abdullah and Saleh died and I alone remained in possession, and the said 3rd of the property continued to be in my control. According to the Will of my late father, I do hereby will that at my death my son Ghalib bin Awad bin Oomer be in possession of all properties and manage the affairs of the Kingdom. He should not indulge in extravagance. He should be careful in spending money on nothing but the necessities. If from the said 3rd after carrying into effect the said Will, any surplus be found, I hereby Will that he should devote that money towards religious and charitable purposes. He should not deter from doing good deeds and services, and homage to the learned and Sadaths. He will have authority to appoint or dismiss servants of the Estate according to the necessities of the time. He should hear complaints and protect his subjects, issue orders according to the dictates of the religion for his own guidance and for that of his responsible servants. He should closely observe all religious laws. He should endeavour to remove the difficulties of his subjects and in every matter should consult his brother Oomer and such other relations and sons, as are capable of offering sound advice. In like manner, the ruler should consult his successor in all matters. They should all help and assist each other. At the death of Ghalib bin Awad his brother Oomer will be in authority over all those countries. At the death of Oomer bin Awad all these countries will be governed and his successor will be Saleh s/o Ghalib s/o Awad, at his death the son of Oomer will succeed. If he has no sons, the successor will be Mohammed s/o Ghalib, and if that son be a minor his representative will also be Mohamed bin Ghalib. In short the Government of these countries will pass on amongst the descendants of Ghalib and Oomer from generation to generation. If the Sultan lived at Shehr his successor should live in Mukalla. If Sultan stays at Mukalla the successor stay at Shehr. If the successor be not in existence then his successor should so arrange to live. If Sultan and his successor both be absent, Sultan will be authorised to appoint a representative. During the absence of Sultan his successor will be Khalifa or representative of the Khalifa. If Sultan or his

Exhibits

No.27.

Translation of Will of Sultan Awad.

1893

- continued.

successor or his representative all three be not present, the Sultan will have a right to nominate anybody. So long Ghalib bin Awad would be Sultan, his successor Oomer bin Awad will be Nazir of all properties, Grain and other Revenues, but he will always be subordinate to Ghalib. In the same manner when Oomer will be Sultan his successor Saleh will be Nazir, the possessor and protector of all such properties. Nevertheless he will be subordinate to Oomer bin Awad. In like manner on any person becoming the Sultan, his successor will be in charge of all the aforesaid matters under Sultan. The Nazir will be empowered to entrust possession of the property to whomever he would like. He would be at liberty to appoint men for the collection of dues and revenues, and for the same purpose he will be authorised to nominate a representative. He will have full powers to realize in person or through his representative any dues or liabilities to which the State legally entitle and to gain which he will be authorised to proceed in a Court of Law. If the successor be in India his successor will reside in Arabia. If the successor happen to live in the same place they should render mutual help and assistance. Any one of these be present he could in the absence of the other represent the interests of the absentee.

Successor will be responsible to the Sultan, Successor of the successor will be responsible to his immediate previous incumbent. It will be incumbent upon the Sultan to appoint agent or agents, to whom he may think proper, in order to manage affairs in Shiban Hoora, Hijrain as well as in Hazarmoth. These agents should carry out the affairs on behalf of the Sultan and issue formal and legal orders. They should be bound to keep their people contented, hear their grievances and prohibit evil actions and spare no efforts to improve these countries and bring prosperity to the people living therein. He should be guide to the poor and needy and be polite to their subordinates. He should submit accounts regularly to his chief. Should he behave discourteously or tyranically with those who have occasion to come in contact and should he fail to render accounts to his superior, the Chief will have every authority to dispense with his services and to appoint a more fitting person in his place. Should such agent be transferred to any other place or should he ever conceive a dislike for him, he will have power to appoint another. In short the appointment and dismissal of these agents will be

Exhibits

No.27.

Translation of Will of Sultan Awad.

1893.

- continued.

discretionary to the chief. It will be incumbent upon the chief to provide entirely for the feeding, clothing and conveyance etc., and other expenses of his successor and his family and dependents, in the same manner, provision should be made for the maintenance of the descendants of descendants of Oomer and Ghalib, who may live in Mokalla and other adjoining places. The Chief will be found to fix allowances for these people. In like manner the chief should provide for the other descendants of my deceased father Oomer bin Awad living in Shehr, Mokalla, and Hazarmoth. They will be entitled to such allowances as would be proper and suitable for the time, provided they all live in friendly manner and subjugation to the chief and be of assistance and aid to him. If the Chief happen to be a lunatic or a minor, the Naib will act in his place so long as he will take to recover or obtain majority. The above statement is credible I admit the whole of the same has been written by me. During my lifetime I can make additions and alterations in it, otherwise it will stand as good as it is, and will be carried into effect. I admit that this is my writing.

Witness:

1. Hussain bin Hamid bin Athar, Almehzar.
2. Jabir bin Abdulla bin Awad, Almosalli.
3. Mohamed bin Abood Basher.

Sd. Awad bin Oomer bin Awad Al-Gaity.
SULTAN NAWAZ JUNG BAHADUR,
SHAMSHIR UL MULK.

No. 28.

No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

8th February, 1903.

PETITION OF HUSSAIN AND MUNASSER TO H.E. THE VICEROY OF INDIA

HIS EXCELLENCY THE RIGHT HONOURABLE
GEORGE NATHANIAL CURZON, P.C., C.M.S.J., G.M.J.E.,
BARON CURZON KEDLESTON
VICEROY AND GOVERNOR GENERAL OF INDIA IN COUNCIL

THE HUMBLE PETITION of Hussein bin Abdulla bin Umar bin Awad Alkaiti and Monassar bin Abdulla bin Umar bin Ahmed Alkaiti, both of Shehr and Mokalla under the jurisdiction of the Political Resident at Aden, Arab inhabitants

Exhibits

No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

8th February, 1903 - continued.

SHEWETH,

1. That your Petitioners are the sons of the late Jamadar Abdulla bin Umar bin Awad Alkaiti, late chief or Sultan of Shehr and Mokalla, who, having, with the assistance of the British Government, occupied the ports of Buram and Mokalla and the territory formerly occupied by the Nakib Umar bin Saleh-al-Kasali, entered into treaties with the British Government on behalf of himself and his brother, Awad bin Umar, their heirs and successors on the 29th day of May 1882 and the 1st day of May 1888 respectively, agreeing not to alienate Shehr, Mokalla, Buram and the territories appertaining thereto on the Hadramat coast of Arabia, without the express consent of the British Government and establishing a British protectorate over the said territories, and died on the 25th day of November, 1888.

2. The said Awad bin Umar being then and thereafter employed in the state of H.H.The Nizam of Hyderabad, it was arranged between him and your petitioners that they should continue in possession of and rule and administer the affairs of the said territories, consulting him when necessary in matters of importance, all parties being entitled to equal rights in all respects in the said territories.

3. Your Petitioners accordingly continued to administer the affairs of the aforesaid territories in pursuance of the terms of the above mentioned arrangements until the year 1896, when their uncle sent his son Galeb to Mokalla, when it was arranged that he should be allowed to rule at that place, your petitioner Hussein bin Abdulla remaining in charge of Shehr and your petitioner Monassir bin Abdulla ruling at Alghail.

4. Subsequently, in the year 1901, Your Petitioners uncle himself came to Shehr and Mokalla from India and immediately commenced to plot against them with a view to deprive them of their just rights and to substitute his sons as the sole Rulers of Shehr and Mokalla to the exclusion of your Petitioners.

5. To counteract these intrigues, your Petitioners, anxious to avoid the possibility of a collision, which, in all probability, would have occurred, had they chosen to take advantage of any work on the sympathy of the people and the troops, studiously avoided having recourse to any measures likely to disturb the country and submitted their case in several letters addressed through the Resident at Aden to the Government of India, explaining the position of affairs, drawing attention to

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No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

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the aggressive conduct of their uncle, and praying for the intervention of Government. Your Petitioners, however, regret to say that no notice whatever was taken of their communications but in the month of September 1901 the Resident at Aden accompanied by their uncle, suddenly came to Shehr in a Government steamer, and having invited your Petitioner Hussein bin Abdulla bin Umar to go on board the steamer, without assigning any reason whatever ordered him to give up the Forts and deliver Shehr and Alghail to Galeb, the son of your Petitioners' uncle, and also ordered both your Petitioners either to go to Katan or Sheban, two villages in Hadramat, or to leave Arabia with their families within one month.

6. In reply to a memorial presented by your petitioner Hussein bin Abdulla he was eventually informed by the Resident at Aden in the month of February or March 1902 that Government had been pleased to decide that your Petitioner should continue to govern Shehr and Alghail.

7. This decision being displeasing to him, your Petitioners' uncle informed the Resident that he would submit his case to Government and returned to Bombay.

8. But your Petitioners, believing the order communicated to them to be the final decision of Government on the respective contentions of themselves and their uncle, returned to their territories and informed their subjects of such decision and resumed the Government of Shehr and Alghail.

9. To your Petitioners' intense surprise, however, in the month of July 1902, the then Acting Resident at Aden come to Shehr in a Government Steamer, accompanied by a British Man-of-war, with your Petitioners' uncle and his sons on board, and a verbal message was sent to your Petitioner Hussein bin Abdulla by the Resident calling him on board the Man-of-war. When your said Petitioner went there, he was informed that under orders from Government both your Petitioners should deliver Shehr and Alghail to their uncle and his sons and that they should proceed to Hadramat in obedience to their uncle's desire, and it was also added that in default of compliance with this order within 24 hours, the town would be bombarded and your Petitioners themselves would be deported from Shehr and Alghail.

10. Your Petitioners, though astounded at this

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No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

8th February, 1903 - continued.

absolutely unexpected, and to them incomprehensible order, at once obeyed the same and gave up the Towns and Forts as ordered by the Resident. Your Petitioners' uncle then asked them to proceed at once to the desert at Hadramat, alleging as an excuse that if allowed to remain Shehr, they would plot against him; his real object being, as your Petitioners have more than once pointed out to Government in their memorials, to banish your Petitioners from their territories and to deprive them of their just rights.

11. Your Petitioners Hussein bin Abdulla then went on board the Man-of-war, to interview the Resident but was not, however, allowed to disembark there, and under the orders of the Resident was carried out to sea and directed to disembark at Mokalla. This he refused to do and came on to Aden with the Resident, leaving his family and all his properties and effects at Shehr.

12. Your Petitioners are up to this date absolutely ignorant of the causes which have induced Government to reverse their previous decision, and respectfully pray that they may be informed thereof, so as to enable them to offer explanations and refutations, as they cannot persuade themselves that, contrary to the traditional policy of Government of hearing both parties before arriving at any decision, especially in an important political question like the present, the orders communicated to them by the Resident are intended to be final, seeing that they have not been given an opportunity of being heard on the subject.

13. Your Petitioners deeply feel the humiliation to which they have been subjected, and they respectfully submit that, having regard to their high position and status recognised by Government, they are entitled to be heard in their defence before any action is taken against them, and they are confident that if given an opportunity they will be able to advance satisfaxtory reasons for a re-consideration of the orders complained of.

14. Your Petitioner submit that if these orders have been passed in consequence of any memorial presented by their uncle to your Excellency's Government since the date of the territories being allotted to them and their uncle as aforesaid, which has led Government to disturb the former arrangement made by the Resident at Aden under orders from Government, your Petitioners are entitled to a copy of such memorial to enable them to

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8th February, 1903 - continued.

furnish a refutation of any allegations that may have been made therein.

15. All that your Petitioners know at present is that on the 27th day of December 1902 they were informed by the officiating Resident, Colonel Abbey, that your Petitioners' uncle had produced a document purporting to have been signed by your Petitioners' father, whereby he is alleged to have transferred all his rights to his brother, viz., your Petitioners' uncle. If any such document has really been produced by your Petitioners' uncle, your Petitioners submit that it is in the highest degree improbable that it can be a genuine one, inasmuch as your Petitioners were allowed to govern, undisturbed, their territories for 15 years since their father's death, during which not the smallest reference was ever made to the existence of any such document and it is inconceivable that if any such document had been in existence, it should not have been produced until now.

16. Your Petitioners humbly submit that, if their uncle has put forward any such document they are entitled to have inspection thereof and to be given an opportunity of disproving its genuineness. Your Petitioners are absolutely convinced that having regard to their father's anxiety that his sons should not be deprived of their just rights after his death, he could not possibly have passed any such document in favour of their uncle, and it is extremely improbable that your Petitioners should not have heard of the existence of such document.

17. Your Petitioner Hussein bin Abdulla is anxious to proceed to Bombay for the purpose of consulting his legal advisers in connection with a suit which he proposes to file in the High Court, with the sanction of the Government of Bombay, against his uncle for partition of the immoveable properties situated in Bombay in which he has an equal half share with his uncle, but your Petitioner regrets to say that he is not allowed by the political Resident to leave Aden.

18. Your Petitioner submits that his presence in Bombay is absolutely necessary and that unless permission is given to him to proceed to India, his pecuniary and other interests will grievously suffer. Your Petitioner has sent a formal petition to the Government of Bombay praying for such permission but the same has not yet been given to him.

19. Your Petitioner further says that the

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No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

8th February, 1903 - continued.

political Resident at Aden has called upon him to proceed to Hadramat for the purpose of arranging with his uncle about their private properties in which they are equally interested, and your Petitioner has been given to understand that unless he proceeds to Hadramat as aforesaid, before the end of February 1903, he will be forcibly deported there.

20. Your Petitioner says he is unwilling to proceed to Hadramat after what has happened as he is convinced that if he does so, his uncle will never allow him to return to Aden and will ill-treat him and subject him to all sorts of indignities and oppression as he is all-powerful there and can do what he pleases.

21. Your Petitioner says that he is not anxious to do anything in connection with his properties in Hadramat until your Excellency's Government has been pleased to give him redress in the matter of his political rights and privileges as the ruler of Shehr and Mokalla.

Your Petitioners therefore humbly pray that Your Excellency's Government may be graciously pleased to restore their rights and to put them in possession of their territories of which they have, as they respectfully submit, been unjustly deprived; and to extend to them your powerful protection against the plots and machinations of their uncle, whose vast wealth enables him to harrass, persecute and oppress your petitioners. Your Petitioners further humbly pray that Excellency's Government may be graciously pleased to furnish them with a copy of any memorial which their uncle may have presented to your Excellency's Government so as to give them an opportunity of refuting any charges and allegations that may have been made therein. Your Petitioners further humbly pray that, if their uncle has put forward any such document purporting to have been signed by their father as aforesaid, they may be given an opportunity of inspecting it to enable them to disprove the genuineness thereof, as your Petitioners are convinced that if any such document is in existence it cannot but be a fabrication.

And your Excellency's Petitioners, as in duty bound, will ever pray.

DATED this 8th day of February, 1903.

Settled by -

R. Branson, Esq.,
Barrister-at-Law.

SEALED AND SIGNED by Sultan Monassar bin Abdulla bin Umar bin Awadth al-Kaiti.

SEALED AND SIGNED by Sultan Husen bin Abdulla bin Umar bin Awadth al-Kaiti.

Sd/- Bhaishankar Kenga and Girdhalall
Solicitors, High Court, Bombay.

Exhibits

No.28.

Petition of Hussain and Munasser to H.E. the Viceroy of India.

8th February, 1903
- continued.

No. 29.

No.29.

NOTES OF INTERVIEW GRANTED BY POLITICAL RESIDENT, ADEN TO HUSSAIN AND MUNASSER

Notes of Interview granted by Political Resident, Aden to Hussain and Munasser.

26th May, 1903.

NOTES ON INTERVIEW WITH HUSEN BIN ABDULLA AND MUNASSER BIN ABDULLA, THE KAITI, ON THE 26th MAY, 1903.

I handed a copy of the MANSAB'S award to HUSEN and MUNASSER bin ABDULLA, the KAITI, but they absolutely refused even to take the copy of the award for consideration evidently fearing that if they did it would be considered equivalent to acceptance. Both promised they would state their objections in writing. They further said that if the MANSAB had been appointed by the Government they would accept his award (evidently knowing he had not been appointed).

Sd.

Exhibits

No.30.

Translation of letter from Munasser and Hussain to Political Resident, Aden.

3rd May, 1903.

No. 30.

TRANSLATION OF LETTER FROM MUNASSER AND HUSSAIN TO POLITICAL RESIDENT, ADEN.

From:

Husen bin Abdulla bin Omer bin Awadh and Munasser bin Abdulla bin Omer bin Awadh Alkaiti.

To:

General Maitland,
Political Resident, Aden.

A.C.

We have received the letter of the Mansab which was sent to us through your Excellency. The Mansab states that you asked him through Galib bin Awadh to divide the property due to us by our uncle. He also informed us that he effected the division and sent the decision to your Excellency. Know oh friend that our reply is this, that if the Great Government preferred that he should decide the case of our property according to his own discretion, please inform us of this; but if both your Excellency and the Great Government believe that the decision of the Mansab is according to the letter of authority which he received from us, know that we had cancelled this in the year 1901 immediately after this we sent our complaint to the Great Government through your Excellency. We continued writing petitions and expressing our unwillingness that the Mansab should decide. Considering the forged letters which they artfully invent for cancelling the partnership of our father, which well known, on which is the signature of Sardar Jung Mukhtar ul Mulk the Nawab of Hyderabad, and which is clear as the sum in its proofs in the Courts of India. Know oh friend that we desire that the case of our property which is in India should be decided in accordance with the law of that place, in order that right may be maintained and the false disappear. We request that the Great Government will as a matter of justice treat equally between the weak and strong so that justice may be restored to its pride. We hope that you will allow us to proceed to India to acquaint our solicitor with the circumstances of our case.

DATED 3 May, 1903.

No. 31.

Exhibits

No.31.

Translation of letter from Munasser and Hussain to First Assistant Resident, Aden.

28th April, 1903.

TRANSLATION OF LETTER FROM MUNASSER AND HUSSAIN TO FIRST ASSISTANT RESIDENT, ADEN.

P.P. 169-170.

From,

Munasser bin Abdulla bin Omer and Husain,
The Keiti.

To,

Colonel Abud,
First Assistant Resident, Aden.

A.C.

We have received your letter dated 14th April 1903 the contents of which have duly been noted. Know oh friend that we had cancelled the power given to the Mansab authorising him to decide our case and subsequently we sent to the Great Government through you our complaint to the effect. We fear to be oppressed by our Uncle through the Mansab (torn) believe the evidence of every foe of ours who may attest the forged documents made by our Uncle and helped by the Arab Kathis who through fear and avariciousness for his money act as he desires. We used to fear these consequences when we were living in our own estate but under the present circumstances when our uncle wrongfully possessed all that belonged to us in India and Arabia there is no doubt that the Mansab and subjects fear him, help him and will unjustly decide in his favour against us. We have come to know that they are at present at Mukalla with Ghalib bin Awad, as we cannot trust them and relying on their doings. We however, look forward to get justice and equity from your Excellency and we trust that the Great Government are just and will not uphold the wrong. We have repeatedly referred our grievances to you in order to be well considered and you are fully aware of what has occurred to us from the first to the last. We do not know why we should be prevented from suing for our claims at Bombay in the Judicial Court which is established by the Government for the enforcement of Judicial Laws; neither do we know why we are forbidden from leaving Aden for Hyderabad for purpose of claiming our estate and money there. It is a known fact if we go, we shall get nothing from the Bombay or

Exhibits

No.31.

Translation of letter from Munasser and Hussain to First Assistant Resident, Aden.

28th April, 1903 - continued.

Hyderabad Governments except what may be lawfully proved for us according to the Rules, should you have any reason under ..... (torn) ..... are forbidden from obtaining our rights please let us know and kindly forward this petition to the Great Government.

May you be preserved.

DATED 28th April, 1903.

No.32.

Translation of letter from Hussain to Political Agent and First Assistant Resident, Aden.

27th May, 1903.

No. 32.

TRANSLATION OF LETTER FROM HUSSAIN TO POLITICAL AGENT AND FIRST ASSISTANT RESIDENT, ADEN.

From:

Husen bin Abdulla bin Omer bin Awadh,
The Kaiti.

To,

Colonel Abud,
Pol. Agent and First Assistant Resident,
Aden.

A.C.

We explained to you previously in many of our applications that we had cancelled the authority which we had given to the Mansab and expressed our unwillingness with his decision and the fear we entertained of his oppression. What we have already explained to you is sufficient. We have also informed you verbally that we are not willing to accept the decision of the Mansab. We saw in your presence the wrong decision of the Mansab which was passed in accordance with forged letters which are not known to all the people not to us. Please send us the copy of the decision as well as the copy of that letter for examination. Also please send us the copy of the letter dated August 1888 about which we have already spoken to you formerly. After we consider and go through the aforesaid papers deliberately we will send you a reply. We ask the Great Government for justice and not the Mansab. Also please send us the copy of the letter which Colonel Ferries sent to us in the month of June 1896 by the hand of our uncle Awadh when he left India for Aden and Mokalla. Colonel Ferries wrote us in the said letter that our uncle Awadh had

Exhibits

No.32.

Translation of letter from Hussain to Political Agent and First Assistant Resident, Aden.

27th May, 1903 - continued.

complained to him about his circumstances and asked that a mutual settlement regarding the finance which is in India may be effected, after the claim which our brother Munasser had preferred on him through his attorneys Mohsin bin Saleh and Framjee Moos. Colonel Ferries desired us to assist our uncle in the matter of settlement. Also please send us the copy of the three letters of partnership between our father Sultan Abdulla bin Omer on the one hand and his two brothers Saleh and Awad on the other, and copies of which we had given to General Maitland when he arrived at the port of Shihr in the month of December 1901. After the receipt of the copies of all the said letters we will furnish you with the necessary remarks.

May you be preserved.

DATED 27th May, 1903.

No. 33.

No.33.

Translation of letter from Hussain and Munasser to Political Agent and First Assistant Resident, Aden.

14th August, 1903.

TRANSLATION OF LETTER FROM HUSSAIN AND MUNASSER TO POLITICAL AGENT AND FIRST ASSISTANT RESIDENT, ADEN.

From:

Husen bin Abdulla bin Omer and
Munasser bin Abdulla bin Omer bin Awadh,
The Kaitis.

To,

Colonel Abud,
Political Agent and 1st Assistant Resident.

A.C.

We have received your letter informing us of the amount of Rs. 2,14,500 deposited by our Uncle in the bank in Aden in accordance with the decision of the Mansab. It is not hidden from your Excellency that before his decision we had abrogated the power passed by us authorising the Mansab to act as an arbitrator and subsequently we submitted our complaint to the Great Government through General penton in the commencement of 1901. Our case therefore had passed off from the hand of the Mansab to that of H.M's Great Government and therefore remained not the least right of the Mansab over us. Immediately as our case was taken out of the hands of the Mansab he became an enemy

Exhibits

No.33.

Translation of letter from Hussain and Munasser to Political Agent and First Assistant Resident, Aden.

14th August, 1903 - continued.

to us. He then was summoned by the representative of our Uncle and without our consent passed a decision based on a forged document bearing the date of 1295; which was dictated by his deputy at Mokalla on the 8th Safar 1321 corresponding with the 6th May 1903. Our moveable and immovable property are numerous which aggregate to over twenty lakhs, and our father's partnership is valid by the admission of our uncle, in defending the case instituted by our co-sharer Mohsin bin Saleh in the High Court of Bombay. Our uncle admitted as per the record of the case deposed by the pleaders and the Agreements the latest of which is in 1897 testifying to the invalidity of the documents fabricated in 1295. This case and the answers were recorded in the Government High Court in the year 1894. Our late father died in 1888, and this acknowledgment was made by our uncle in the High Court 6 years after the death of our father. We cannot understand how it came to pass that the Government did not notice the grave forgery perpetrated by our Uncle, after it had concluded a treaty with our father in 1882 and the protectorate treaty of 1888, the clauses of which all prove the partnership existed between our father and his brother till his death. We had on the 31st July given you verbal information that we have genuine documents which annul the fabrication which took place in 1295 and in August 1888, and the truth of our words will soon come to light. It behoves judicious Government to follow the right and avoid the wrong but at that time you would not accept any reasoning as we had left you with a broken heart for your refusing to hear the right version. Now you intimate that the money is in the Bank and as it is a known fact that we cannot complain against our Uncle in the Government Courts without its permission. You should kindly permit us to go to India in order to represent our grievances in a memorial. Government are just and we hope it will not oppress us in the matter of our inheritance left by our father as decreed by God. We shall after giving our memorial comply with its orders and its equity dictates. Please send this our letter to the Government and please give us freedom, as our residence at Aden is injurious and useless.

May you be preserved.

DATED 14th August, 1903.

Exhibits

No. 34.

No.34.

LETTER POLITICAL AGENT AND FIRST ASSISTANT RESIDENT, ADEN TO HUSSAIN AND MUNASSER

Letter, Political Agent and First Assistant Resident, Aden to Hussain and Munasser.

17th August, 1903.

No.187 of 1903. 17th August 1903

To,

Husen bin Abdulla El Kaiti

and

Munasser bin Abdulla El Kaiti at Aden.

A.C.

We have received your letter of 14th August 1903, and have understood its contents.

We communicated to you the orders of Government on your case on 25th July 1903 and you were informed that these orders were final and that Government had refused to allow you to sue your Uncle in the Courts of British India.

We now ask you again whether you wish to accept the money now in the National Bank of India at Aden or not.

May you be preserved.

Sd. .....

Political Agent, and 1st Assistant Resident, Aden.

No. 35.

No.35.

NOTES OF MINUTES OF INTERVIEW GRANTED BY POLITICAL RESIDENT TO HUSSAIN.

Notes of Minutes of Interview granted by Political Resident to Hussain.

8th October, 1903.

AN INTERVIEW WAS GRANTED TO HUSEN BIN ABDULLA THE KAITI ON THE 8th OCTOBER, 1903

In the opening of the conversation, he was told that it was found necessary to close up the previous day's meeting which took place in Crater as he and Omer had not controlled their feelings and there were many people listening, which was not right. It was my intention to explain to him that Sultan Awadh demands all the State documents, books etc., and the Sultan's letter dated 10th Rajab was given to him to read. He alleged that he

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No.35.

Notes of Minutes of Interview granted by Political Resident to Hussain.

8th October, 1903 - continued.

was in Aden and his house and family were in Shehr. Everything he possessed has been in his house that his rooms were first opened during the lifetime of Betal and then sealed and now Galib bin Awadh again opened the rooms in the presence of his servant Saroor, the Kadhi and others and took away the documents and papers that were found there, as stated by Saroor in his letter copy of which he gave. He in an elaborate conversation which lasted for nearly two hours tried to show that the decision of the Mansab was wrong and unlawful that it was based on a fabricated document which was mysteriously found in some files in the Residency with old correspondence. It was the Government he appeals for mercy as his uncle has none. He argued that he is the heir of Abdulla bin Omer whose name is mentioned in all the State documents and he has equally an interest in those papers. Such papers he would submit after he gets his things, in my presence on his being ordered to do so. He urged this request and complained that his servant was ill treated by Galib at Shehr. It was pointed out to him that the Sultan says that he has not got the papers required and he cannot have made a false statement to Government and it was impressed on him that State papers were belonging to the State and there was no advantage in his retaining them. He admitted the fact but still said he cannot give anything which he has not actually in his hand, he does not know what is taken and what not, his servant wrote him that they were taken away but after he gets his house property and the Sultan submits a list of papers they would be handed over through the authorities. He was told that Omer had given a paper showing what was required and those papers must be given. He said that particulars should be given of the papers when it will be seen if they exist or not, that he had private papers and those cannot be given if after he sees all his papers he will give what he is directed by the authorities on a receipt, or that he will bring all the parcel of papers and c. which may be disposed of as seemed desirable. He asked about the Government treaties if they are to be given as he has also the right to retain them as they are signed by his father and he is the heir of his father. He was told that it was a state document and the person who is administering the country is entitled to keep them. It was pointed out to him that he is bringing troubles on himself by his action. He asked for an order that he should give the papers belonging to the state with details

Exhibits

No.35.

Notes of Minutes of Interview granted by Political Resident to Hussain.

8th October, 1903 - continued.

of the papers &c. saying he does not know what his Uncle meant by essential agreement. He was told that all papers concerning the state had to be given and an order will be given to that effect. He asked that particulars and description of the papers should be given. He at last was told that this will not be done, simply all papers of the state must be given up and for that he must without delay write a letter to his Agent to deliver them up. If he fails to do so, Sultan Awadh would be told to take measures to secure them and this would be bad for him and bring about what it was desired to save him from. He was warned to listen to the advice and left.

Copy of the letter of Sultan Awadh together with a letter from me, desiring him to submit the state documents has been written to him.

12.10.03.

Sd. Illegible.

No. 36.

No.36.

Letter, Government of Bombay to Political Resident, Aden.

10th October, 1903.

LETTER, GOVERNMENT OF BOMBAY TO POLITICAL RESIDENT, ADEN.

Confidential

No. 6779
Political Department
Poona,
10th October, 1903.

From,

The Honourable Mr.S.W.Edgerley, C.I.E., I.C.S.
Chief Secretary to the Government of Bombay

To,

The Political Resident Aden.

Sir,

I am directed to acknowledge the receipt of your letter No.237, dated the 19th September 1903, reporting that the nephews of Sultan Awadh of Shehr, and Mukalla have refused to accept the moneys awarded to them and their father's widow and c ...

2. In reply I am to state that Government approve for your proposal to invest these moneys in Government paper pending final disposal.

3. With reference to the action suggested in paragraph four of your letter, I am to point out that it is for His Highness to take action if he so

Exhibits

No.36.

Letter, Government of Bombay to Political Resident, Aden.

10th October, 1903 - continued.

desires. It is understood that His Highness has steamers chartered at times running direct to Mukalla. His Excellency in Council would therefore prefer that the deportation of the families of Husen and Munasser to whatever place they may elect to go be left to His Highness the Sultan. He is quite competent to arrange it suitably and to issue any orders he may see fit as to their non return. The British Government is hardly sufficiently interested to undertake the charge of this unestimated responsibility.

4. At the same time His Highness should be advised that if the Mansab's award did not include the value of any property owned by the families of Husen and Munasser (if any belong to them) in his Arabian Territories he would be wise, if he determines to remove them from his territory, to have the value of such properties assessed by an independent Mansab.

The amount, so awarded if any, should be treated similarly so that of the main award if the nephews still persist in refusing the moneys.

I have the honour to be,
Sir,
Your most obedient servant,

Chief Secretary to the Govt.

No.37.

Letter, Government of Bombay to Government of India.

10th July, 1903.

No. 37.

LETTER, GOVERNMENT OF BOMBAY TO GOVERNMENT OF INDIA

Confidential

No. 4665

Political Department
Bombay Castle,
10th July, 1903.

From:
The Honourable S.W.Edgerley, C.I.E., I.C.S.,
Secretary to the Government of Bombay.

To:
Louis W.Dane, Esq., C.I.E.I.C.S.,
Secretary to the Government of India,
Foreign Department.

Sir,

With reference to my letter No.9442 dated the 19th December 1902, I am directed to forward, for

Exhibits

No.37.

Letter, Government of Bombay to Government of India.

10th July, 1903 - continued.

the information of the Government of India, copy of a letter No.146, dated the 7th June 1903, from the Political Resident, Aden, and subsequent telegrams regarding the arbitration in the matter of the claims between His Highness the Sultan of Shehr and Mokalla and his nephews.

2. I am to state that, owing to the illness of the Mansab, the date of the submission of his award had first to be postponed to 1st April and subsequently to 1st June.

3. It will be seen that His Highness the Sultan had accepted the award and is prepared to deposit money in Bombay or at Aden as security for his bona fides, and it is worth noting that he has been absent in India for the last six months and that, so far as is known no sort of pressure has been exercised on the Mansab during the course of his arbitration.

4. I am to observe that His Excellency in Council is of opinion that, in such circumstances, the British Government are in no way interested as to the merits of a settlement arrived as in accordance with tribal custom. Since, however, Government have supervised matters so far. His Excellency the Governor in Council would propose to see that the money awarded are paid. I am at the same time with reference to Foreign Department letter No.1272-E.A. dated the 25th June 1902, to submit a renewed application from Husen for permission to file a suit against His Highness in India and to recommend that it be now finally rejected.

5. It will be noted that the award recognises the validity of the family settlement between His Highness the Sultan and his deceased brother Abdulla, which this Government have already reported to have been genuine. It naturally follows that Husen & Munasser are indisposed to accept the award which finally extinguishes any claim to a share in the Chiefship Shehr and Mokalla as against their uncle and his sons. Nevertheless it appears to His Excellency the Governor in Council that, looking the history of the family and of their conduct, they are very liberally treated and should not be supported further by British influence in any way when the award has once been paid.

Government letter No.270-M dated the 14.5.1902.

I have the honour to be,
Sir,
Your most obedient servant,
Sd. S.E. Edgerley,
SECRETARY TO THE GOVERNMENT.

Exhibits

No.37.

Letter, Government of Bombay to Government of India.

10th July, 1903 - continued.

Accompaniments to this letter are :-

1. Letter 146/7-6-3 P.227 (P.1.)
2. Tr. of Award p.p. 227-229 (P.2-5.)
3. Tr. of letter 27/5/3 from Husen (P.6.)
4. Letter 103/28-2-3 from Maitland to Ch.Sec.Bom (P. 6-7).

No.38.

Translation of Application of Hussain bin Sultan Abdulla.

1910.

No. 38.

TRANSLATION OF APPLICATION OF HUSSAIN BIN SULTAN ABDULLA.

Copy of the application of Husain bin Sultan Abdulla dated 15th Khurdad 1319 Fasli, Medak included in the file 54/11 of 1330 Fasli, attached with file 57/56 of 1320 Fasli, Medak.

(S E A L)

Subject: Inam enquiry into the jagirs of late Sultan Nawaz Jung - Secretariat of the Revenue Minister.

1. Husain bin Sultan Abdulla
2. Mohsin bin Munasser bin Sultan Abdulla
3. Nasir bin Munasser bin Sultan Abdulla
4. Ali bin Munasser bin Sultan Abdulla
5. Omer bin Munasser bin Sultan Abdulla
6. Ghalib bin Munasser bin Sultan Abdulla
7. Abdul Majeed bin Munasser bin Sultan Abdulla Minor under the guardianship of Nasir.
8. Abdul Hamid bin Munasser bin Sultan Abdulla Minor under the guardianship of Qamar Begum

PETITIONERS in the case of Shares of Jagirs

versus

Sultan Nawaz Jung Bahadur OPPONENT party.

1. The geneological tree of the heirs of Omer bin

Exhibits

No.38.

Translation of Application of Hussain bin Sultan Abdulla.

1910.

- continued.

Awad, Shamshir-ud-Doula, is attached herewith and from these, the relations of the parties is apparent.

2. A list of the hereditary jagirs and villages, is also attached herewith.

3. From among the children of Omer bin Awad, Shamshir-ud-Doula, Ali and Mohamed separated themselves by taking their due shares.

4. From among the remaining three brothers, i.e. Sultan Abdulla (of whom the petitioners are the heirs), late Nawab Baruq Jung and Awad bin Omer Nawab Sultan Nawaz Jung Bahadur (the other party) were joint holders.

5. After this Nawab Barq-ud-Doula Bahadur took his 1/3rd hereditary share and separated himself.

6. The heirs of Sultan Abdulla and Nawab Sultan Nawaz Jung Bahadur continued as joint holders of the remaining 2/3rd share. As these two brothers were joint holders of the services, Karkhanajat (Jamadari) jagirs, properties and such other interests and the properties in Arabia, it was decided by mutual agreement and in the interest of proper administration that Nawab Sultan Nawaz Jung Bahadur should look after all the above mentioned interests here (in Hyderabad), i.e. services, Karkhanajat, Jagir, properties etc. for himself and on behalf of the heirs of Sultan bin Abdulla and that the heirs of Sultan Abdulla looked after the joint interests and properties in Arabia, for themselves and on behalf of Nawab Sultan Nawaz Jung Bahadur.

7. A short while ago difference arose between Nawab Sultan Nawaz Jung Bahadur and the heirs of Sultan Abdulla and now we the petitioners, the heirs of Sultan Abdulla are now here.

8. On account of differences as stated above, we the petitioners do not want that there should be any joint interest between themselves and Nawab Sultan Nawaz Jung Bahadur.

9. In accordance with the letter No. 7332 dated 6th Bahman 1319 Fasli, issued by the Office of the Political Secretary, in compliance with the Firman of H.E.H. the Nizam dated 11th Zeeqad 1327 Hijri, we the petitioners were directed to obtain our shares and claims, as regards the salaries, karkhanajat-e-Fouji, from the Army Secretariat and as regards the jagirs and Maqtajat from your Department.

Exhibits

No.38.

Translation of Application of Hussain bin Sultan Abdulla.

1910.

- continued.

We, therefore, request you to (a) allocate half of the jagirs and maqtajat and distribute the same amongst us, the petitioners (b) till this date our share of the proceeds and income of the jagirs and maqtajat, may be given to us.

Dated 15th Khurdad 1319 Fasli.

PETITIONERS and heirs of late Munasser, Mohsin bin Munasser bin Abdulla and Omer bin Awad.

Signature	in	Arabic	Manuscript	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.
"	"	"	"	ILLEGIBLE.

Geneological Table attached with the application of Hussain bin Sultan Abdulla dated 15th Khurdad 1319 Fasli, File No.54/11 Medak, 1303 Fasli.

Omer bin Awad Shamshiruddoula

Salma Wife

Son	Son	Son	Son	Mohamed
Sultan Abdulla	Awaz, Nawab Sultan Nawaz Jung	Saleh Late Nawab Burg Jung	Ali	
		Son Nawab Barquddoula		
Son Hussain	Son Munnasser			

Son	Son	Son	Son	Son	Son	Son
Mohsin	Nasir	Ali	Omer	Ghalib	Abdul Majeed	Abdul Hameed

Signature: In Arabic Manuscript illegible.

No. 39.

Exhibits

No.39.

Translation of Reply of Ghalib and Omer.

1912.

TRANSLATION OF REPLY OF GHALIB AND OMER.

Copy of the application in Arabic Manuscript, in reply to the petition dated Ardibehest 1321 Fasli, included in the File No.54/11 Medak, 1313 Fasli, attached with file No.47/56 Medak, 1320 Fasli.

(S E A L)

In the Department of the Revenue Secretary, Government of Hyderabad.

Claimants		Defendants
Hussain bin Abdulla	VERSUS	Nawab Jan Nasir Jung Bahadur and Others

Subject:- Division of Jagirs.

In the above mentioned case, the reply of the heirs of late Nawab Sultan Nawaz Jung Bahadur, is as follows:-

1. In this case, the words of the Firman which was issued, are quite clear and it states that Hussain heir of Munnasser may be asked to file his claims regarding Atiyat, in accordance with the procedure in force in the Revenue and Finance Departments. It means that the Rules permit, he could file his claims and the necessary action will be taken according to the existing law.

2. The case filed on behalf of Hussain and heirs of Munasser, cannot be taken up with Revenue Department. The present petitions had no holding since over 12 years and so legally their case is time barred, and the revenue Department cannot maintain their case.

3. In the Revenue Department, non-holding for 3 years, is quite sufficient for not hearing the case. The present petitioners and their ancestors never had nor do they have any possession of any estate. Hence the Revenue Rules do not permit a decision in this case. The case even if filed in Civil Court, is time-barred.

4. When we the dependents and our ancestors have been in possession of the estate and when the required "Takhta" (statement) was filed in the Inam Department, in favour of Nawab Sultan Nawaz Jung and as the grant is not in the name of the ancestors of the petitioners and in view of the

Exhibits

No.39.

Translation of Reply of Ghalib and Omer.

1912.

- continued.

fact that they have filed their claims in the Inam Department they have no right whatsoever to file their claims in the Revenue Department.

5. In the Estate in Hyderabad, Abdulla bin Omer had no possession and no title and it is not correct to say that by mutual agreement in the interest of administration, Nawab Sultan Nawaz Jung Bahadur was managing and looking after the Estate on behalf of the heirs of Abdulla also. On the other hand, his possession of the Estate was in the capacity of its sole owner. Under the circumstances, the request made in the Revenue Department for the division is irrelevant.

6. The petitioners' request for their shares in the proceeds of the Estate till the time of the division cannot be maintained in the Revenue Department, especially because it is against the Firman which does not allow the filing of a case for the proceeds (Waselat) and it cannot be heard even under Atiyat Rules. Obviously it being time-barred is untenable.

7. This case is about the inheritance of late Omar bin Awad, Shamshiruddoula Bahadur. His heirs can only claim their share in the property owned by Omer bin Awad from whom the property was inherited. The other properties which did not belong to him and which were owned by Nawab Sultan Nawaz Jung and late Nawab Barq Jung, cannot have any relation with this case. There are such details given in the petition. Hence it should be amended and therein it should be stated as to what property was earned by whom and in which way and why the petitioners are entitled to such property.

8. When after the demise of Omer bin Awad, all the jagirs were restored by the Government only to Nawab Sultan Nawaz Jung and late Nawab Barq Jung to the exclusion of all other brothers, the other heirs had no right now. If there was any right, Government ought to have been approached then and there. After a long period of over forty years, such a desire on the part of the petitioners cannot be countenanced by law.

9. All the villages which have been mentioned in the petition as (Pan Maqtas) were given as a special gift to Nawab Sultan Nawaz Jung. Hence the petitioners have no claim to these as they do not happen to be inherited from Omer bin Awad.

10. The other mawtas are not gifts of Government

(Atiyat) but private properties i.e. purchased with money. About these purchased maqtas there is a separate inquiry in the Sega Inam of Sarf-e-Khas. Maqtas which are purchased are private properties and the case for them cannot be launched in the Revenue Department. The reference to the petitions to these (above mentioned mawtas) as gifts of the Crown, should not be maintained and heard; and orders may be issued for amending the petition or exping that particular portion.

11. Ali and Mohamed, sons of Omer bin Awad, Shamshiruddoula did not get any share of the jagir and mawtas for the above mentioned reasons. They however got their share from the hereditary property only.

12. The claimants earlier had approached the 'Panchayat' for arbitrations in their case. The case proceeded in the 'Panchayat' and it was decided. This decision is still there and it has been executed. And on the other hand a case has been filed regarding the property for which compensation has been paid. When the decision of the Arbitrator is there, its compliance is essential under the law. Claim of any party which goes against this decision, cannot legally be maintained. (It is an acknowledged fact that the above mentioned decision includes the properties in Hyderabad).

13. There is no order for hearing the case when the Rules and Regulations do not permit its being taken up. On the other hand it is stated that it should be in accordance with the Rules. Hence we humbly beg you to dismiss the case.

DATED Ardibehist 1321 Fasli.

Signature Illegible.
Signature Illegible.
Signature Pandit Keshav Rao, Vakil.
Signature Moulvi Khursheed Ahmed Saheb Vakil.

Exhibits

No.40.

Reply or Rejoinder of Hussain and Heirs of Munasser.

1912.

No. 40.

REPLY OR REJOINDER OF HUSSAIN AND HEIRS OF MUNASSER

Copy of the application containing the reply of the Petitioners (Hussain bin Abdulla etc.) to the reply of the Defendants dated 19th Ardibehist 1321 Fasli, included in the file 54/11 Medak 1313 Fasli attached with file 47/56 Medak 1320 Fasli.

SEAL OF THE GOVERNMENT.

Revenue Department, Government of Hyderabad.

Claimants: Hussain bin Abdulla and others.

versus

Defendants: Nawab Jan Bez Jung Bahadur.

Subject:- Claim regarding Division of Jagirs.

In compliance with the orders of the Defendant we state the following in reply to the application dated 2nd Ardibehist 1321 Fasli of the heirs of Nawab Sultan Nawaz Jung.

1. The first objection of the heirs of Nawab Sultan Nawaz Jung is that it is stated in the Firman of the late Nizam that claims regarding the Atiyat may be filed in the Department of Revenue and Finance in accordance with law. The qualification of the word law, is that the claims could be filed if the law permits it. The following is a reply to this:-

(1) This objection is vague and entirely wrong.

(2) Nothing was said as to what were the irregularities in the application of the petitions.

(3) The mention made of the Revenue and Finance Departments in the Firman, one and the same time, shows that we the petitioners were ordered to approach the Revenue and Finance Departments and these Departments were ordered to redress our grievances, we filed an application and the case in your Department started. From the Firman-e-Mubarak dated 11th Zeeqada 1320 Hijri, it is clear that it was the Royal will that the Revenue Department should redress the wrongs done to the claimants. This order was conveyed to us (claimants) through the letter from the office of the political and Private Secretary No.7332

dated 6th Bahman 1319 Fasli. A similar letter No.7328 dated 19th December 1909 (A.D.) to your Department.

2. The second objection is that, this cannot be heard in the Revenue Department. As regards this our plea is as follows :-

(1) This dispute relates about the jagirs which are the gifts of the Crown (Atiyat). About jagirs it may be stated that the Crown who has sanctioned the gifts (Atiyat has the right to give himself his decision in whatever may be deemed fit, taking into consideration the existing circumstances personal law (Shara Sharief). Equity and in accordance with his own will or to authorise any Department to decide the case. Nobody has the right to object over this.

(2) There is no fixed time for filing cases in the Revenue Department.

(3) It is wrong to say that we the petitioners have nothing to do with the estate for over 12 years. A perusal of the following papers will show that all the properties and the Estate of the heirs of Sultan Abdulla and Sultan Nawaz Jung are held jointly. Late Nawab Sultan Nawaz Jung managed and supervised the Estate on his behalf and on behalf of the heirs of Sultan Abdulla and the position of Nawab Sultan Nawaz Jung was that of an agent or deputy or the executor of the Will, for heirs of Sultan Abdulla please see Government Gazette Vol.4 page 420, dated 28th Safar 1312 Hijri-Government Gazette Vol. 3, page 235, dated 7th Zeeqada 1309 Hijri, "Agreement dated 26th Rabins Aval 1290 Hijri approved and certified by late Nawab Sir Saleh Jung Mukhtaral Mulh" Agreement dated 1st Rabi-us-Sani 1290 Hijri Letter Bansi Raja II, 1290 Hijri-Memorandum of Nawab Sultan Nawaz Jung No.22 dated 10th Rabiul Awaal 1303 Hijri - Decision of the Commission Nawab Barq Jung Bahadur, dated 16th Zeedada 1304 Hijri - Application of Nawab Sultan Nawaz Jung before the Judicial Committee, dated 25th Bahman 1315 Fasli and copy (sent by) Nawab Sultan Nawaz Jung, to the Viceroy Bahadur, 3rd Jamadi-ul-Awal 1303 Hijri - Application of Nawab Sultan Nawaz Jung to the Prime Minister, Government of Hyderabad.

Exhibits

No.40.

Reply or Rejoinder of Hussain and Heirs of Munasser.

1912

- continued.

(4) The possession of an agent or manager (Muntazim) or deputy is in the nature of a trustee and not as something against the interest of the party. Hence it is entirely wrong to say that the heirs of Sultan Abdulla were deprived of the Estate (Bedakhl). Please see Section 77 of the Act No.4 of 1310 Fasli in which it is stated that the 12 years' period is to be reckoned from the date of the adverse possession.

The possession exercised by a deputy or agent, although it may be long, could not be considered adverse to the interest of owners. Please see Aeen-i-Deccan Vol. IV. page 106, Aeen Deccan Vol. VI, page 16. Before the coming into effect of the Mahboobia Qanoon, there was no period fixed for any case except cases relating to loans, Awten and relating to Patel and Patwaris - Order of Rabi-ul-Awwal 1288 Hijri - Muqannin-i-Deccan Vol.XII, page 508, - Muqannin-i-Deccan Vol.XI, page 567. Apart from this the parties in the case, are arabs, and the claims made by Arabs, generally are exempted from the limitation of being time-barred. Aeen, Vol.IX, page 352, - Muqannin-i-Deccan Vol.XIII, page 510 - Aeen, Vol.V, page 799.

So in the case of Nawab Sultan Nawaz Jung versus Motilal, Sultan Nawaz Jung had obtained exemption from the limit of time-bar on this basis only and in the qanoon-i-Mahbbobis, there is no fixed period for claims relating to Jagirs. Claims based on inheritance rights were exempted from being time-barred.

Qanoon-i-Mahboobia Section IV, Sub-Section "C"

Aeen-i-Deccan Vol. V, page 272.
Moqannin-i-Deccan Vol.XIII, page 125.
Aeen, Vol.XI, page 117.

After this under act No.IV of 1310 Fasli and in accordance with the proviso 79 of Supplement I, 30 years were fixed as a limitation period from the date of enforcement of the law i.e. 1st Khurdad 1310 Fasli. This period has not yet expired. But all these Rules are for cases of civil nature and not for Revenue cases. In accordance with Section 57 of Act No.III of 1309 Fasli, no law would affect the Royal powers. Hence firstly there was no period fixed for such cases. Granting that there was some limitation of time with regard to the hearing of cases, even then the late Nizam had given

especial orders and had permitted action. Under the circumstances there could be no objection raised or heard as to the limitation of time or hearing of the case. Even in case of adverse possession, unless the limitation is passed away, the case will not be affected. Aeen-i-Deccan Vol. XI, page 375. When the possession is not exclusively of the opposite party, there could not be any objection as regard time limit - Aeen, Vol. XV, page 154.

3. The third objection states that in the Revenue Department, non-possession for over 3 years, is sufficient for dismissing the case. This argument is entirely wrong and is a mere repetition. When the late Nizam had given especial permission to the petitioners to approach the Revenue Department and had asked the Revenue Department to redress our grievances, this objection is wrong.

4. The fourth objection raised is that the present claimant or their heirs were never at any time in possession of the Estate and neither they are now. This objection also is wrong. Nawab Sultan Nawaz Jung's possession was a joint one on his own behalf and on behalf of Sultan Abdulla and it was in the nature of trustee, manager, agent and deputy; and he effected the division on the above grounds, by giving 1/3rd to Nawab Barq Jung Bahadur and 2/3rd to himself and to his brother Sultan Abdulla's heirs: and he managed this 2/3rd part of the State on behalf of himself and on behalf of them (the heirs of Sultan Abdulla).

Please see Memorandum of Nawab Sultan Nawaz Jung No.22 dated 10th Rabi-ul-Awaal 1303 Hijri.

Letter from the Office of Political and Finance Secretary, dated 19th Shawwal, 1303 Hijri.

Letter from the Revenue Secretariat No. 425 dated 5th Amardad 1296 Fasli.

Decision of the Commission Barq Jung Bahadur, dated 6th Zeeqada 1304 Hijri.

Decision of Moulvi Syed Afzal Hussain Saheb dated 16th Farwardi 1297 Fasli.

Decision of Nawab Vicar-ul-Umra Bahadur dated 16th Shaban 1308 Hijri.

Application of Nawab Sultan Nawaz Jung before the Judicial Committee, dated 5th Bahmaon 1315 Fasli.

5. The fifth objection relates that the statement

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in the Inam Department has been prepared on behalf and in favour of the other party and that the claimants did not appear before the Inam Department. This objection is also entirely wrong.

(1) No statement of Inam Department has been filed.

(2) But on the other hand, from the letter of Nawab Shamshir Nawaz Jung No.22 dated 13th Azur 1321 Fasli, it is clear that the Jagirs mentioned in the list 'B' are exempt from Inam enquiry and the question of Inam enquiry as regards the villages in the list 'A' has yet to be decided.

(3) This has been proved and acknowledged beyond doubt that Nawab Sultan Nawaz Jung was the agent and deputy on behalf of the heirs of Sultan Abdulla. So any Inam enquiry about will be understood to be also related to the heirs of Sultan Abdulla.

(4) It was the duty of Nawab Sultan Nawaz Jung to have acted with good intentions and to enter the names of the heirs of Sultan Abdulla, in the Inam Enquiry. If he has not acted with good intentions and did not put forward the claims of the heirs of Sultan Abdulla, this was actuated by no good motive on his (Sultan Nawaz Jung) part and that of his heirs. For this he should be dealt with firmly.

(5) If it had been necessary for the Inam Enquiry, the heirs of Sultan Abdulla would have been summoned, this problem would have been considered as to why the heirs of Sultan Abdulla did not present themselves, but when their deputy and trustee Nawab Sultan Nawaz Jung was present, their absence did not harm in any way.

(6) The object of Inam Enquiry is only to ascertain the genuineness of Sanad making grant (Atiyat). Its effect is either to validate the Sanad or cancel it. The Inam Department is not authorised to give decision as between the claimants.

6. The sixth objection raised by them, states that the heirs of Sultan Abdulla, never had possession and that they have no rights. This objection also is entirely wrong and has been unnecessarily repeated. It has been acknowledged by Sultan Nawaz

Jung that the jagirs in his possession were the joint property of himself and of the heirs of Sultan Abdulla and on this basis alone he had taken possession of 2/3rd share while 1/3rd share was given to Nawab Barq Jung. After this how is it possible to raise such objection.

Please see:

Memorandum of Nawab Sultan Nawaz Jung No.22 dated 10th Rabiul-Awwal 1303 Hijri.

Letter from the Office of the Political and Finance Secretary dated 19th Shawwal 1303 Hijri.

Letter from the Revenue Secretariat No. 425 dated 5th Amardad 1296 Fasli.

Decision of the Commission Nawab Barq Jung Bahadur, dated 16th Zeeqada 1304 Hijri.

Will dated 26th Rabi-ul-Awwal 1290 Hijri, certified by Government.

Agreement dated 1st Rabi-u-Sani 1290 Hijri.

Decision of Moulvi Syed Afzal Hussain Saheb, 16th Farwardi 1297 Fasli.

Statement of the property left by late Barq Jung as signed by late Nawab Vicar-ul-Umera.

7. The seventh objection is about the proceeds (of the Estate). This is also wrong. When the heirs of the Sultan Abdulla are entitled for the share in the Estate there is no reason why the proceeds in respect of that share be not given to them.

8. The eighth objection raised by them, is that there is no permission in the Firman, regarding the proceeds. This is also wrong. There are general orders in the Firman that the heirs of Sultan Abdulla should adopt means for the redressal of their grievances regarding their share. In these proceeds of the share (in the Estate) are included.

9. The ninth objection pertains to the nature of the case, which also is not correct.

10. Tenth objection raised by them is also wrong.

It is wrong to say that after the death of Omer bin Awad, all the Jagirs without the Shirkat of other brothers, were restored to Nawab Sultan Nawaz Jung and Nawab Barq Jung.

(1) This claim goes against the act and agreement of Nawab Sultan Nawaz Jung, by which he

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apportioned 2/3rd of the Estate as his share and that of Sultan Abdulla.

(2) NO SANAD was ever filed.

(3) Even assuming that the SANAD has been granted to Nawab Sultan Nawaz Bahadur and Barq Jung Bahadur, even then the order claimants were entitled to their shares, as decided in the case of Momin Ali and others versus Akbar Ali. In this case although the Sanad of the Joint Jagirs, was granted to Akbar Ali and the statement of Inam, was also prepared in his name, and the other had not approached the Inam Department, the Revenue Board (Majlis-i-Malguzari) with the sanction of the then Prime Minister ordered that Momim Ali and others should receive their shares and finally the Royal decision was given that although the SANAD was in the name of Akbar Ali, Akbar Ali's cousins and his nephews, were entitled to their shares. Hence Momin Ali was also entitled to his share according to the personal law (Shrai-Sharief). Accordingly he got his share.

Please see the decision of the Judicial Committee, dated 15th Khurdad 1314 Fasli in the record office - 17th Shawwal 1290 Hijri, endorsed by Government.

11. The heirs of Sultan Nawaz Jung, have repeated each and every objection again and again. On the other hand the petitioners or claimants have filed logical and detailed petitions which contain references to all agreements and decisions. After a perusal of these if it had been their intention to agree to the right thing and not to procastinate the affair, the heirs of Sultan Nawaz Jung would never have filed these baseless objections.

12. All the villages and Maqtas, are included in the category of Atiyat and no objection can be raised against it.

Please see page 5 of the book entitled 'Atiyat-i-Sultani'.

As regards Maqtas purchased, (even if there are any) the heirs of Sultan Abdulla, are entitled to their shares in such Maqtas also because these were purchased by capital which was inherited and jointly owned. The heirs of Sultan Nawaz Jung alone cannot claim full rights.

13. If Ali and Mohamed, were not given their share,

or they themselves did not take their shares under some agreement (Sic) this is no reason why the heirs of Sultan Abdulla should not receive their share especially when there have been several agreements between Sultan Abdulla, Barq Jung and Sultan Nawaz Jung, to the effect that all properties and jagirs are jointly owned and there have been decisions regarding this.

14. The statement regarding the decision of 'Panchayat' is also wrong.

(1) The decision of Panchayat was not given in proper legal way and moreover the heirs of Sultan Abdulla do not accept it.

(2) When the heirs of Sultan Abdulla filed their claims before the late Nizam, the copy of their petition was sent to Nawab Sultan Nawaz Jung and his reply was called. Nawab Sultan Nawaz Jung through his letter No.18 dated 21st Amardad 1315 Fasli gave his reply in which he raised all possible objections and evasions and one such was the heirs of Sultan Abdulla do not have any right and that he (Sultan Abdulla) was only Governor of the Estate on his (Sultan Nawaz Jung) behalf, and that he had taken about twenty four lakhs of rupees. He also filed the decision of the Panchayat. After receiving this reply from Nawab Sultan Nawaz Jung, the late Nizam asking the heirs of Sultan Abdulla to give reply to the reply of Nawab Sultan Nawaz Jung. The heirs of Sultan Abdulla filed their reply dated 10th Dai 1316 Fasli, 1st Isfandar 1316 Fasli and 19th Isfandar 1319 Fasli. After considering all these, the Nizam (late) held that the objections raised by Sultan Nawaz Jung, were wrong and untenable and thus the Firman was issued and in obedience to it the heirs of Sultan Abdulla were ordered through the letter from the Political Secretary No. 7332 dated 6th Bahman 1319 Fasli, to file their claims in the Department of Revenue and Finance and to obtain their shares. However letter No.7328 dated 19th December 1908 also came to this Department asking it to hear the claims of Sultan Abdulla. After all this, how could there be any objection on the grounds of the Panchayat's decision. It would amount to the cancellation of the Firman and not obeying it. It may also be

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stated here that the gist of the reply sent by Nawab Sultan Nawaz Jung to the late Nizam dated 21st Azur 1315 Fasli, was that the heirs of Sultan Abdulla had already received their shares and nothing remained to be given. He also said that the same thing in his reply dated 2nd Rabi-us-Sani 1326 Hijri, to the Notice issued by the claimants dated 5th Khurdad 1317 Fasli. He had never alleged that the heirs of Sultan Abdulla do not have any share in the jagirs and Maqtas, or that the case of such claims, is time barred, and about the position of the three villages and maqtas under claim.

Hence it is not right for the heirs of Sultan Nawaz Jung to make objections regarding these matters and neither can they go against the reply given by their father. Even if they do, their objections could not be heard. Further, when the Arbitrator had accepted in his decision that the share of Abdulla in the properties in Arabia and India is 1/3rd this decision also goes to establish the claim of the petitioners. These objections are wrong and against the cannons of justice and honesty and are made with a view to deprive the heirs of Sultan Abdulla, of their rights.

It is their main intention to repeat their objections in order to prolong the case and to exploit the interests of the claimants thereby unduly benefitting themselves. Otherwise there is no reason for the objection of Sultan Nawaz Jung as the same are not based on law, justice or the personal law (Shra-i-Sharief).

We request that the petitioners be given their share in the Estate and out of its proceeds.

Dated 19th Ardibehist 1321 Fasli.

Petitioners Hussain bin Abdulla and Others.

Sd/- Hussain bin Abdulla

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No.41.

Decision of Director General, Revenue Department, Hyderabad.

15th August, 1913.

DECISION OF DIRECTOR GENERAL, REVENUE DEPARTMENT, HYDERABAD

Copy of the decision of A.Y. DUNLOP, Director General, Revenue Department dated 15.8.1913

(SEAL)

JUDGMENT.

The arguments in this case are fully stated in the written statements of the respective parties and the joint Secretary has summed them up in his opinion.

It is unnecessary that I should go over the same ground in detail.

In dealing with this case, the Joint Secretary was at a disadvantage, it not knowing what had previously taken place in the Political Department. I will refer to this point later.

All that the Joint Secretary had before him was His Highness's Firman dated 11th Zikhada 1327 Hijri and the arguments of the two parties concerned.

Treating the case as an ordinary claim to a share in jagirs and maktas the first points to be considered are :-

(1) What meaning is to be attached to His Highness's Firman of 11th Zikhada 1327H.

(2) To what extent, if any, do the provisions of Revenue Circular No.16 of 1301 Fasli apply to the case.

Taking the Firman as it stands, without reference to previous proceedings of which the Joint Secretary had no knowledge, there is nothing to indicate that the Revenue Department is to deal with the case in any way contrary to the usual procedure. To say, as the claimant says, that the Revenue Department is debarred from referring the parties to Civil Court is incorrect. His Highness' command as regards the Civil Court refers exclusively to the private property of the deceased Abdulla, as distinguished from the Atta-i-Sultani property, and it is only in the case of private property that the Civil Court is directed not to entertain a suit. The Revenue Department is free to dispose of the case according to the usual

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No.41.

Decision of Director General, Revenue Department, Hyderabad.

15th August, 1913 - continued.

recognised procedure. Whether it is expedient to refer the claimant to the Civil Court is a different matter.

As regards the Revenue Circular No.16 of 1301 F. the Defendants hold that the Revenue Department is debarred from entertaining the claim to disputed shares in the jagirs, and can only refer the claimants to the Civil Court. The Joint Secretary has also adopted this view.

I do not concur in this view.

Mr. Krishnamachariar's arguments are summed up as follows :-

(I) The Revenue Department cannot enquire into this case.

(a) Because Circular No.16 of 1301 Fasli is a bar to it;

(b) Because the claimants and their father were put out of possession more than forty years ago;

(c) Because Sultan Nawaz Jung was never an Agent of Abdulla's, and even if he were, the agency terminated at his death.

As regards Circular No.16, I do not think it is a bar to proceedings in the Revenue Department when the shares of the parties have been admitted, and in this case there seems no room to doubt that the three brothers had equal shares, some of them residing in Arabia and some in Hyderabad at different periods, the one brother acting representing the other wherever they might be at the time. In short the property was held jointly on behalf of the three brothers. For this reason I hold that the Circular No.16 of 1301 Fasli is not a bar to the present proceedings. If the property was held jointly, it cannot be held that the claimants were out of possession for 40 years.

Mr. Krishnamacharier further argues that even if it be held that the late Sultan Nawaz Jung was an agent of Abdulla's, the agency terminated immediately on the death of Abdulla which took place more than 3` years ago and therefore the claim is equally barred. But there is no limit that I know of three years in the case of claims to sovereign grants.

Having regard to the will made by Omer bin Awad Jan Baz Jung and attested by the Minister in 1290 H and also to the agreement executed in 1290 Hijri between -

1. Sultan Abdulla Saheb,
2. Saleh Burruk Jung.
3. Sultan Nawaz Jung.

It seems impossible to form any other opinion that the brothers had each a one third share in the property under reference.

The fact that the jagirs were subsequently conferred by sanad on two of the five sons of the late Oomer bin Awad (Sultan Nawaz Jung and Burruk Jung) does not necessarily affect the position of the parties if it is held as I think it should be that the brothers were joint and acting one for the other in the places where they respectively resided. But in dealing with this case it is impossible to ignore the assertion that an Award was given by an Arbitrator in Arabia in regard apparently to the whole property of the family including the jagirs held in His Highness's Dominions. A copy of the award was filed in this case, but nothing was known as to the subsequent proceedings in regard to it.

I felt that I could give no definite opinion in the case without more information on this point.

One of the parties applied that the file should be obtained from the Political Office, and a requisition was made for it. But the reply was that the file was strictly confidential and could not be produced in the case although it might be sent for my own personal perusal. The file has since been given to me, but being of a strictly confidential nature, it cannot be referred to here.

However, from what I have since ascertained from the parties themselves and from the award, a copy of which has been filed in the case, the following facts are clear :-

(1) The parties referred the question of the whole of their property including property held in His Highness the Nizam's Dominions to an arbitrator in Arabia.

(2) The arbitrator in his award held that Abdulla has sold the whole of his share to Sultan Nawaz Jung for 1,86,000 dollars of which 46,000 dollars had been paid and 1,40,000 dollars are due.

(3) Abdulla's heirs objected to the award and never received the money, which Shamsheer Nawaz has said to me, is still at the disposal of his sons.

These three points are established without reference to the confidential file.

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No.41.

Decision of Director General, Revenue Department, Hyderabad.

15th August, 1913 - continued.

An award given in Arabia can have no force in Hyderabad in connection with sovereign grants which are entirely at the disposal of His Highness, and it is a question for His Highness to consider whether the purchase of his brother's share of sovereign grants by Sultan Nawaz Jung, was not a breach of the orders forbidding the alienation of any such grants without the sanction of His Highness. In favour of Sultan Nawaz Jung it may be said that in the year he received a sanad conferring the jagirs upon himself and Surruk Jung, and the payment of or the agreement to pay to his brother Abdulla a sum of money for his share was a family transaction which if true His Highness may graciously condone.

But the fact remains that the Award is disputed and the sons of the late Abdulla deny the sale of their shares in the jagir property. They certainly have not received the cash which Sultan Nawaz Jung was willing to pay them. If the Award given in Arabia is put out of the question altogether then it seems to me that the sons of the late Abdulla have grounds for claiming a half share in the sovereign grants now held by Shamsheer Jung and his brother but the disposal of such grants rests entirely with His Highness.

If I may be permitted to make a suggestion I would submit that the case might be met by giving them a cash grant out of the jagirs and maqtas. The Maktas are purchased property, but the family being undivided the inference is they were purchased with family funds. If there is more evidence to be produced on this point, it can be taken later.

Considering all the circumstances of the case, the claimants should not be allowed to file a suit in the Civil Court.

It would be desirable to read along with this the confidential correspondence in the Political Office.

Sd. A.Y. Dunlop.

DIRECTOR GENERAL.
REVENUE DEPARTMENT.
15.8.1913.

TRUE COPY

Sd. At. Int. Br.

Exhibits

No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

1921.

No. 42.

TRANSLATION OF APPLICATION OF JAMADAR HUSSAIN BIN SULTAN ABDULLA AND OTHERS TO PRESIDENT, GOVERNMENT OF HYDERABAD.

Copy of the application of Jamadar Hussain Bin Sultan Abdulla and others stated 14th Bahman 1331 Fasli, corresponding with 17th Rabi-ul-Sani 1340.

Hijri.

File No.47/2 of 1320 Fasli attached with File No.47/56 Medak, 1320 Fasli.

SEAL OF HYDERABAD GOVERNMENT.

From,

The President and Member of the Executive Council,
Government of Hyderabad.

To,

The Revenue Minister,
Sec. Circulation.

40/8 Atiyat Segha Mal (Revenue Branch) 1319 Fasli.

47/2 Atiyat Segha Mal (Revenue Branch) 1320 Fasli.

5/126 Army Secretariat, 1317 Fasli.

CLAIMANTS:

Jamadar Hussain and Heirs of Jamadar Nisar bin Sultan Abdulla

Versus

1. Jamadar Ghalib Nawab Jenbaz Jung Bahadur
and
2. Omer Nawaz Jung Bahadur

) Sons of Awaz Sultan Nawaz Jung

and

1. Jamadar Mohsin & Others the heirs of Jamadar Ali bin Omer
2. Mohamed bin Saleh Nawab Shamsheer Nawaz Jung Bahadur the grandson of Mohamed bin Omer.

DEFENDANTS

Party raising objections

Subject:- Distribution of Atiyat (grants) etc. between the heirs of Sultan Abdulla and those of Awaz Sultan Nawaz Jung in accordance with the agreement sanctioned by the Government.

Exhibits

No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

1921

- continued.

We beg to state that we decide our affairs in accordance with our old traditions and the wishes of our ancestors. This takes place each time when a separate family separates.

Please see the following papers :-

WILL of Omer bin Awaz, Shamshiruddoula Bahadur Head of the family (Moorise Ala) with the seal of Mukhtar ul Mulk I, dated 1st Rajab 1279 Hijri.

In this there is mention of the shares of the different members of the family, to be received on division of the Estate in accordance with the existing Rules. On this signatures of Ali bin Omer and Mohamed bin Omer, signifying their acceptance are found, along with the signatures of the witnesses who are the nobles of the country. This is the only acknowledged Sanad of the family and on this alone action was taken by Government of Hyderabad and Government of India and it will be so in future. This is accepted as such by the members of family.

Agreement between Abdulla and Saleh Barq Jung and Awaz Sultan Nawaz Jung under the signature and seal of Mukhtar-ul-Mulk I, the Diwan, dated 26th Rabiul-Awwal 1290 Hijri. This was in connection with the decision in dispute for restoration to Abdulla arrived at by the concurrence of the three (3) brothers in accordance with the will of their father, which was renewed. Its mention has been made in Awaz Sultan Nawaz Jung's Memorandum No.22 dated 10th Rabi-ul-Awwal 1303 Hijri, addressed to the Revenue Secretary and is present in the Revenue Secretariat. And as the agent and deputy of the 1/3rd share of Abdulla, Sultan Nawaz Jung's objections, in his case against Mohsin Barq-ud-doula son of Saleh Barq Jung were included in the agreement. This objection (regarding 1/3rd share) were given approval of, by the late Nizam through Firman which was conveyed through the letter from the Political and Finance Minister, addressed to the Army Secretariat No.6432/172 dated 19th Shawwal 1303 Hijri. Instead of dividing the hereditary Estate and property equally only 1/3rd share of the hereditary Estate was given to Mohsin Barq-ud-Doula son of Saleh Barq Jung who was party to agreement while sanctioning the objections raised as above. This is the last authoritative SANAD given by the Ruler of the day and this covers all the previous orders and SANAD and is connected with the mutual agreement and with the will of the head of the family

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Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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- continued.

(Mooris-i-Ala). In this Abdulla whose heirs are now the petitioners and Galeh Barq Jung along with the children of Awaz Sultan Nawaz Jung, have equal shares in the Estate.

In obedience of the Royal Firman mentioned above 1/3rd share was fixed through the letter of the Revenue Secretariat addressed to the Revenue Commissioners (Subedars) No. 6056 dated 21st Ramzan 1304 Hijri and an agreement was reached regarding Mohsin Barq ud Doula son of Saleh Barq Jung. In the same way the 1/3rd share of Abdulla as fixed in the first agreement, should be given to us in obedience to the Firman. Awaz Sultan Nawaz Jung and his children were in possession as was the usage in accordance with the agreement and will of ancestors as endorsed by the Ruler of the day, as deputy and agent. This temporary possession has come to an end and the orders of the Ruler of the day in this regard cannot either be changed or amended, neither by the opposite parties nor by the Executive Authority. Decision of Nawab Madar-ul-Moham Bahadur dated 7th Aban 1307 Fasli, in which 1/3rd share of Mohsin Barq-ud-doula in the hereditary properties and Maqtas was estimated at Rs. 40,2700 as he happened to be the son of one of the parties to the agreement.

The statement of appointments in Kharkhanna Jamiyet sanctioned by Madar-ul-Moham, dated 14th Aban 1295 Fasli which shows the distribution of salaries personnel and other honours into 3 shares one of which was allotted to the son Barq Jung and two shares one of Abdulla the father of claimants and the other of Awaz Sultan Nawaz Jung, remained jointly in accordance with the agreement and the Firman of the late Nizam dated 19th Zeeqada 1327 Hijri conveyed through letter No.7332 da. 6th Bahman 1319 Fasli. We the claimants approa the Army Secretariat as per the agreement the ca was decided in the favour of the claimants in their case against Awaz Sultan Nawaz Jung. On the note of the Army Minister, the Prime Minister, Maharaja Bahadur endorsed that the note from the Revenue Department should be awaited so that both the notes could be submitted together to the Nizam. On this the claimants filed the note of the Revenue Department along with the endorsement of the Revenue Minister, dated 10th Khurdad 1327 Fasli and dated 21st Aban 1328 Fasli along with their application dated 5th Azur 1329 Fasli in the Army Secretariat, included in the file No.5/126 Army Secretariat, 1317 Fasli, which may please be sent for.

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Through Firman of the late Nizam dated 11th Zeeqada 1327 Hijri, the Petitioners were ordered to proceed against Awaz Sultan Nawaz Jung regarding Atiyat etc. in the Revenue and Finance Department but legal proceedings in the Courts of Hyderabad regarding the private and personal properties of late Abdulla were prohibited. This was prohibited because the property was situated in Arabia where Abdulla had lived, about which a case cannot be heard in the Courts of Hyderabad. The details of the private and personal properties of Abdulla are found in the Sale Deed of 1295 Fasli presented by the heirs of Awaz Sultan Nawaz Jung. Apart from this the parties to the Agreement, had received for themselves, from Omer bin Awaz (Mooris-i-Ala) a few lakhs of rupees and mention of this is made in the endorsement of the then Prime Minister Mukhtar-ul-Mulk I on the letter of Prime Minister to Syeed bin Mohamed, No.1947 dated 28th Rajab 1299 Hijri. There is no private or personal property of the parties to the agreement apart from this. But the opposite parties had created complication by stating that the inherited Maqtas etc. were the private properties of Awaz Sultan Nawaz Jung. But Nawab Salar Jung, Madar-ul-Moham had decided for division in the case through letter of the Revenue Department No.769 dated 26th Dai 1323 Fasli, No. 3801 dated 22nd Amardad 1323 Fasli. We the Claimants approve through file No.99 1301 Fasli, concurrencement No.199 recorded 4 in the list enclosed in No.954/11 1303 Fasli dated 20th Isfandar 1303 Fasli, in the office of the Commissioner, Inam with the help of the statement of Awaz Sultan Nawaz Jung and the evidence furnished by him that the villages belonging to Jagirs, Maqtas, Bilmaqtas and maqtas were not purchased by Omer bin Awaz the deceased head of the family (Mooris-i-Ala). Besides there the decisions in the case of Mohsin Barq-ud-doula had been proved. Until that time no Muntakhaba (certificate) had been issued to any of the parties of the agreement. In the Firman, there are words 'Atiyat etc.' The word 'etc.' covers all the inherited properties but the Firman has not made any prohibitions regarding any inherited properties. The last para of the Revenue Department's memorandum endorsed by the Revenue Minister Raja Saheb, dated 10th Khurdad 1327 Fasli, in a summary of the above-mentioned decisions regarding the shares of the members of the family in the Estate. The sale deed 1295 Hijri and the arbitrator's decision at Arabia, are not tenable under the Atiyat

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Rules which are categorical reply to the opposite view of the Finance Department. Hence there remains no argument from the point of view of the financial rights of the Government and there is no need for further consideration. This endorsement on the memorandum, has been agreed by the Prime Minister and other members of the Council that of Law, Police, Army, Medical and Commerce and Industry when it was circulated to them. But as regards the sale deed of 1295 Hijri, filed by the opposite parties the view taken by the Ministers, Finance and Political was against this. It was that the former Minister for Finance and the Minister of the Political Department together with the Revenue Minister Raja Saheb, should inspect the Revenue Department file and should give their report after consideration. Accordingly the file of the suit was sent by the Revenue Department to the Political Minister who has not returned it after 15 months. By this time the previous Finance and Revenue Ministers have changed and orders are required for sending the file to the new Ministers.

Besides this the objections made by the parties for not executing the decision of 1285 Hijri are also under consideration. Although this decision and the sale deed of 1295 Hijri both were final and binding from the very beginning and as such cannot be opened again.

A. Sale deed of 1295 Hijri is in reality false and forged one. As evidence of this the following papers may kindly be seen :-

i. In the file of the case, Secret Branch in the Office of the Political & Private Secretary, the sale deed mentioned above and the decision of the Arab arbitrator has been rejected as not to be considered by the late Nizam in consultation with the Government Legal Adviser, under the Atiyat Rules.

ii. When the Ruler of the day disregarding the sale deed and the decision of the arbitrator, has given permission to the claimants to obtain their rights and interests how can these papers which are nothing but waste papers, now be heard against the claimants?

iii. Even if these are considered there should not be any act against the orders of the late Nizam, which would be illegal.

iv. The sale deed of 1295 Hijri is clearly forged and false. After this :-

Exhibits

No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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(1) The mutual agreement of 1297 Hijri was entered jointly by Awaz Sultan Nawaz Jung. If the sale deed had been a reality there was no need for an agreement of this type.

(2) The decision of the Special Commissioner under orders of Prime Minister as endorsed by late Moulvi Syed Afzal Husain Saheb, Chief Justice of the High Court, dated 26th Farwardi 1297 Fasli, decision of Nawab Sir Asman Jah Bahadur endorsed by Nawab Vicar-ul-Umera, Minister, Government of Hyderabad, dated 14th & 16th Shaban 1308 Hijri uphold the stand of Awaz Sultan Nawaz Jung Bahadur for the mutual agreement of 1297 Hijri, which in its turn completely contradicted and fully falsifies the sale deed of 1295 Hijri, presented by the opposite parties.

(3) The mutual agreement of 1297 Hijri is also forged and false as the sale deed of 1295 Hijri was forged to go against the claimants. This forged agreement was made against Mohsin Barq-ud-Doula the son of member of a family to enable Awaz Sultan Nawaz Jung to obtain a decision in his favour from the Commissions before the decisions referred to above. To support the validity of this agreement, he expressed before the Commission, his willingness to take oath inside the Macca Masjid but the opposite party refusing to accept this procedure, appealed against the decision. And after this Sultan Nawaz Jung appealed against the decision given in the former appeal. In short in the decisions in both the appeals, the agreement referred to above were held suspicious. From this it is clear that and proved that Awaz Sultan Nawaz Jung the sole agent has been acting dishonestly as against the sons of his brothers by preparing forged papers and by obtaining favourable Government orders through his influence. He has been behaving towards the sons of Abdulla (Claimants) party to the agreement as he had behaved towards the son of Saleh Barq Jung who was also a party to the agreement.

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No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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(4) Awaz Sultan Nawaz Jung has become so used and fearless in making false and forged cases with claims of large sums even against Government. The Commission which was appointed to investigate his claims, including a Judge of Allahabad High Court, by name Mr. Griffon, at the expressed desire of Sultan Nawaz Jung who had pleaded no confidence in local officials. This Commission, after investigations held on February 12th 1910 A.D. that all the claims of Sultan Nawaz Jung were false and fictitious and on the other hand Sultan Nawaz Jung was held responsible for lakhs of Government money. The Nizam very kindly did not take a very serious view of the affair and gave permission for the payment of the amount for which he was held responsible through instalments. In this Commission the minister of Sarf-e-khas, Raja Saheb Bahadur & Mr. Datar Assistant Accountant Government of Hyderabad, were included. The file relating to this case, is to be found in the Finance Department and may kindly be seen.

(5) Awaz Sultan Nawaz Jung had filed a suit regarding family claims, against Sev-Lal Motilal who owed Rs. 1,25,000/-. On the appeal application before the Judicial Committee, dated 25th Bahman 1315 Fasli, under para 21, Sultan Nawaz Jung himself has stated that in accordance with the family traditions, agreements, certificates and Wills, which have been verified by the Government, he had the right as the executor of Will and the head of the family and their deputy to receive all the money owed to his brothers and late father. If the sale deed mentioned above had been executed in reality, he instead of writing all this would have said that under the sale deed of 1295 Hijri he was the sole owner, and there would not have been any necessity for the appeal to the judicial Committee.

(6) Certificate (TAHNAMAJAT) dated 26th July 1882 A.D. corresponding to 10th Shaban 1299 Hijri and February 22 1889 A.D. corresponding to 25th Jamidi-us-Sani 1306 Hijri between Abdulla Mooris of the

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Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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Claimants, in the capacity of the Ruler of the City of Mukalla etc., situated in Arabia and British Government were entered into, whose photographs are presented by the claimants are included in the file. This had taken place many years after the sale deed referred. As against these (TAHNAMAJAT) the sale deed is completely false and forged. If the sale deed had really taken place, where was the necessity for the British Government to sign TAHNAMAJAT with Abdulla, which are valid documents.

(7) Maqtas were restored through Firman issued on 26th Safar 1332 Hijri through Revenue Department's letter No.755 dated 18th Farwardi 1323 Fasli. It was stated therein that (Maqtas) be restored to legitimate heirs. The Claimants are among the bigger members of the family and they have rights as such. It has been decided many a time that when a document or Sanad is issued in the name of a member of family this does not come in the way of rights and shares of the other members of the family on the other hand all the members obtain their due shares in accordance with their claims. Nobody denies that the Claimants are the legitimate heirs hence we should also have our shares.

(8) Nawab Salar Jung Bahadur, Madar-ul-Moham in accordance with the Atiyat Rules and the Firman of the late Nizam ordered as mentioned in the Section (vii) regarding the Maqtas and other hereditary properties, came after the division of the family (and when it has been proved that the Maqtas belonged to the family and comes under the Atiyat Rules there should be no hesitation in giving half the share to the Claimants). The Claimants are also entitled to half the share of the Maqtas which were purchased by the Mooris-i-Ala of the family.

10. The share of the Claimants in the body of the jagirs and maqtas is well proved. About the proceeds (proved and accepted), it is to be stated that Awaz Sultan Nawaz Jung father of the other parties, was the agent and deputy of Abdulla, and

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No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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- continued.

the heirs of Abdulla, the present claimants. The principle is that every joint Muntazim is the deputy and agent of his other parties, and is responsible for giving his share out of the proceeds. In this case Saleh Barq Jung former joint administrator and agent died during the later part of 1297 Hijri and in his place Awaz Sultan Nawaz Jung, who was a party to the agreement and (father) Mooris of the other parties (in the case) because the manager and agent in accordance with the agreement and the will and after the death of Awaz (the other parties) Nawab Janbaz Jang and Nawab Shamsheer Nawaz Jung became agent and manager in the same way. Hence it is necessary that the other parties (in the case) should account for the proceeds (of the Estate) since 1298 Hijri, that is from the time of the possession of Awaz Sultan Nawaz Jung till now. Whatever amount fall due to Abdulla and his heirs as result of this accounting should be given to the claimants. Regarding this the Revenue authorities have given opinion about former proceeds (of the Estate) from the date of the death of late Abdulla. This is against justice and should equitably be reconsidered.

11. Regarding distribution (of the Estate) it is to be stated (and it is an accepted and acknowledged fact) that the Mooris (father and the person from whom rights have inherited) of the present claimants was the senior member of the family and he was the eldest brother, and even now Hussain bin Abdulla from among the Claimants is older in age, and is the elder brother of Ghalib and Omer of the opposite parties (in the case). From the point of view of seniority in age (Kalaniyat) all jagirs and maqtas should be handed over to him (Hussain bin Abdulla), and he will give the share of the other parties out of the proceeds (of the Estate). And if this is not acceptable or agreeable then the share of Abdulla in Jagirs and maqtas may be fixed in obedience to the decision of our forefathers just as the share of Mohsin Barq-ud-doula was fixed, and may be given in the possession of the Claimants. As regards the proceeds (cash), the opinion, after acknowledging the seniority (Kalaniyat) of the Claimants, expressed by the Revenue authorities is against justice and is to be equitably reconsidered. (B) The fact about the dissidents (Ozardaran) or objectors is that the other parties (in the case) have asked them (dissidents) to file their application just to prolong the whole matter. Otherwise the renouncement documents (Fergkhati) of Ali and Mohamed

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Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

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(dated) 1228, 87 (187-88) Hijri as certified (and accepted) and Court are present. Regarding the decision of 1285 Hijri the following papers may kindly be seen.

(1) The decision of 1285 Hijri itself which is acknowledged by the dissidents, contains this order as token of favour and regard that Jagir enquiry etc., may however be considered later and in view of the local conditions prevalent at the time, as a prudent step, a monthly salary of Rs. 1000/- was given to Ali bin Omer with condition that if Ali bin Omer did not dismiss at once the Jamiyat (irregular force) and continue to create disturbance, the facility given to him would be cancelled and in that case he would not be entitled to the monthly salary, Ali bin Omer did not comply with this condition (order) and what all disturbances created by Ali Bin Omer against the Government, is known to everybody, so much so that under the Royal Commands, Ali Bin Omer had to be kept under arrest by late Mirza Haider Baig Saheb, Zeladar, with the help of Government Army. It was only under this charge that he remained under house arrest. All this go to cancel the suggestion that Jagir enquiry etc., may however, be considered later, which was made just in view of the local conditions prevalent at the time, as a token of favour with regard. And really that portion of the order was there, just to bring him round and to stop him from creating disturbance as the words "in case Ali Bin Mohamed did not create disturbance" and "may (however) be considered later". Themselves suggest.

(2) This decision is called the decision of 1285 Hijri, and after this the renouncement document (Faregkhati) of Ali Bin Omer of 1288 Hijri, as certified and acknowledged by the same authority who has made the above decision is present. In this there is the categorical and clear promise that neither he nor his heirs have any claims. In the end there are words, signifying withdrawal from the decision mentioned above. After this Ali Bin Omer was alive till recently the present claimants had filed their claims. When he himself never made any demand or claims (such a thought never crossed him).

What rights have his successors the dissidents got to raise objections etc. after the 55 or 65 years, i.e. half century after the decision of an ineffective nature.

(3) In this memorandum No.40 dated 4th Zilhej 1303 Hijri, Ali bin Omer himself had demanded the payment of Rs. 1,000 PER MONTH TILL the date of the decision to renouncement of his claim. Even this demand was made because Sayeed bin Mohamed had apprised him wrongly, from this it is proved and clear the decision referred to was ineffective and ceased to have effect, after renouncement of claims (Faragkhati). Otherwise request and demands for the implementation of the decision would have been made till the date of the memorandum and even after that.

(4) In compliance with the order of the Madar-al-Moham (Prime Minister) the Army Secretariat through letter No.22429 dated 15th Meher 1299 Fasli, gave a clear and categorical reply to Ali bin Omer with reference to the case with Nawab Muktar-ul-Mulk I, to the effect that his application cannot be taken up for consideration.

(5) Even after this the Secretariat through letter No.292 dated 13th Isfandar 1312 Fasli replied to the memorandum of Ali bin Omer No.59 dated 19th Ramzam 1319 Hijri and No. 60 dated 16th Jamidi-us-sani 1320 H. to the effect that the case and the applications were decided (by the Nizam) about 12 years ago and the further action is not possible.

2. In the similar way Mohamed bin Omer in accordance with the will of his father had given the document renouncing his claims (Fareghati) which, as certified by the Prime Minister, under his seal is present. No rights or claims had remained with him, and he himself never filed any claims.

I. Sayeed bin Mohamed, however, after him, with reference to the decision mentioned above had filed a statement for (the Grant) Jagirs with thousand rupees income per month together with other money demands. This was rejected by late Nawab Sir Sarar Jung Bahadur who had ordered the decision of 1285 Hijri, through Secretariat's letter No. 1947 dated 18th Rajab 1299 Hijri. After this

Exhibits

No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

1921

- continued.

Sayeed bin Mohamed again made request but through letter No.2680 dated 9th Khurdad 1299 Fasli, the Secretariat replied to him, that no action was possible against the orders of the Madar-ul-Moham (Prime Minister) of 1299 Hijri.

2. The above mentioned orders were quite sufficient to keep Sayeed bin Mohamed silent but in 1306 Hijri he further filed a suit in the High Court in the branch dealing with the disputes of Arabs. On this the Madar-ul-Moham (Prime Minister) through letter No.2098 dated 24th Rajab 1306 Hijri conveyed orders to the High Court that the case cannot be heard and taken up in the High Court as it had been decided by the Madar-ul-Moham's (Prime Minister) in 1299 Hijri. The High Court therefore dismissed the case of Sayeed bin Mohamed. Please see the decision (in brief) of the High Court, dated 30th Meher 1299 Fasli.

3. After all these stages and proceedings the heirs of Ali and Mohamed had no right to file an application. But owing to the support and promptings of the opposite parties (in the case) the heirs of Ali bin Omer concealing all the relevant facts and the previous decisions in the case, made an application in 1333 Hijri.

(1) The Additional Revenue Secretary has endorsed on 13th Showal 1334 Hijri that the claims of the sons of Ali bin Omer cannot be considered. The Director General (Revenue) and Raja Sadar-ul-Moham Bahadur (Minister) also made similar endorsements in the case.

(2) On resubmission of an application the note of the Revenue Secretary No.187 dated 5th Meher 1327 Fasli contains the following words at the time of decision of the claims and rights of Hussain and Munasser, Ali and Mohamed have now stood up (for their claims) which is nothing but a trick for trying one's luck.

(3) The last endorsement of the Minister Raja Bahadur dated 21st Aban 1328 Fasli is as given below:-

> "Orders had come for enquiry regarding claims of Hussain and Munasser from the Peshi Office of the Nizam and it has been decided. The heirs of Ali and Mohamed want their names to be included by Shikmi for Jagir inquiry, but they are neither in possession nor had there been any special orders from the Nizam. Hence

this department is not in a position to hear (their case). If they think that Muktar-ul-Mulk's decision of 1285 Hijri is effective in their case, they could approach the proper Department for action; either Revenue Department if the case is yet to be heard there, otherwise to the Civil Court".

This endorsement was not favourable to the dissidents but they wanted some pretext to prolong the case. They filed at once an application (Tamil-e-Faisla) for the execution of the decision dated 1285 Hijri, before the Secretary, Revenue Department, and summons were issued. At the date of hearing objection was raised on the grounds that there was an application pending before the Bab-e-Hukumat and till its decision the application for Tamil-e-Faisla in execution of the decision should be withheld and again by applying to the Bab-e-Hukumat (they) manoeuvred to get this file from these and thus complicated and prolonged the case, although there were no real claims whatsoever.

3. If the claims regarding Jagirs, of the heirs of Ali and Mohamed are to be maintained despite their renouncement (Faregkhati) and the repeated categorical decisions against them, then these (claims) will be against both we the petitioners and the defendants. That is, heirs of Ali and Mohamed versus the present Petitioners and the Defendants will be the parties of the case.

Hence in this case which is between the Petitioners and the Defendants the two parties in the case, the application of their heirs of Ali and Mohamed cannot be decided and no objection could be heard.

4. We the Claimants on our brief application which we are now concluding, mentioned all relevant facts, long and short, with brevity and clarity, supported by the concerned papers relating to the past decisions included in the file. We now humbly request the Prime Minister and the Honourable Members of the Executive Council to redress our grievances. This case has been going on since the last 15 years; the case in present in its complete and conclusive form; proceeds (OF THE ESTATE) amounting to Lkhs of Rupees, are to be paid by the Defendants and they are prolonging the case for using our share of the income for themselves; and it would be difficult to recover this amount later; even the guzars (maintenance allowance) has not been given

Exhibits

No.42.

Translation of Application of Jamadar Hussain Bin Sultan Abdulla & Others to President, Government of Hyderabad.

1921

- continued.

to the petitioners as the result of which we are in great difficulties and worries and have been driven to the brink of starvation. An equitable decision in the matter, at the earliest is essential.

(a) We the claimants, or the petitioners are entitled to half the jagirs and maqtas in accordance with the previous decisions and usage.

(b) The proceeds of the Estate, due since the date of the death of Saleh Barq Jung, i.e. 1298 Hijri till now, should be given by the other party (Defendants) in lump sum as was given to the other members of family, who had separate themselves. The opinion expressed by the Revenue Authorities in the matter as regards the date of death of Late Abdulla 1306 Hijri, is unjust; justice may kindly be done in the case.

(c) Among the petitioners and defendants Hussain bin Abdulla is the elder of the family and besides this senior by (Kalaniyat), his share is the largest, thus all jagirs and maqtas be given in his possession and orders may be given that after taking his own share out of the proceeds of the Estate, the rest of the amount may be distributed among the shareholders and defendants.

(d) If the suggestion stated above in (c) is not acceptable, the Petitioners may be given possession of half of the jagirs and maqtas and until full payment of the previous proceeds is made, the jagirs and maqtas should either under the receiver appointed by the Government or under the control of the Petitioners.

DATED 14th Behman 1331 Fasli, corresponding to 17th Rajab-us-sani 1340 Hijri.

Petitioners:

Jamadar Hussain bin Sultan Abdulla,
Jamadar Mohsin,
Nasir,
Ali,
Abdul Majeed and Abdul Hameed,
Sons of Mamedar Munassar bin A.Abdulla.

Signed: Hussain bin Abdulla (Sultan)
bin Omer bin Awaz & Others.

No. 43.

Exhibits

No.43.

Letter, Government of Bombay to H.H. The Sultan Shehr and Mokalla.

30th October, 1926.

LETTER, GOVERNMENT OF BOMBAY TO H.H. THE SULTAN SHEHR AND MOKALLA.

No. 2215 - C.

POLITICAL DEPARTMENT.
Bombay Castle,
D/- 30th October 1926.

From:
J.B. Martin, Esq., C.I.E.,
Ag. Chief Secretary to the Govt. of Bombay,
Political Department.

To:
The Secretary & Agent in India to
His Highness the Sultan Shehr & Mokalla.

Sir,

With reference to your letter dated the 20th October 1926 requesting that the amount of money deposited by the father of His Highness the present Sultan of Shehr and Mukalla for the heirs of the late Abdulla bin Omer may be credited to the account of His Highness in the National Bank of India. I am directed by the Governor in Council to state that Government understand that Sultan Saleh, his three sisters and also the three widows of Sultan Ghalib propose to claim a share in the inheritance of Sultan Awadh, and that Government therefore regret that they cannot accept responsibility for the payment of the amount to His Highness Sultan Omer unless His Highness can produce a written consent of the other heirs to his receiving it as the head of the family on their behalf.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.....

For Ag. Chief Secretary to
Govt. of Bombay,
Political Department.

Exhibits

No.44.

Decision of Revenue Member, Hyderabad.

14th November, 1927.

No. 44.

DECISION OF REVENUE MEMBER, HYDERABAD

Copy of the decision of R.C.Trench, Revenue Member dated 14.11.27

File No.47/56 of 20 F
Medak Sec.

FILE NO

ATIYAT BRANCH

The views of the Council regarding the Wirasat of the late Sultan Nawaz Jung were submitted to H.E.H. on the 1st occasion in Revenue Department Aradasht of the 1st Shaban 1344 Hijri and H.E.H's attention was invited to the case in a reminder to the 13th Zikada 1345 Hijri but orders on this prolonged and somewhat complicated case are still awaited. In the meanwhile the descendants of Munasser and Hussain (the sons of Sultan Abdulla) have been pressing for allowance on the ground that their pecuniary circumstances are daily becoming more difficult. I have caused to be made by the Nazim Atiyat into their representations and as satisfied on the evidence that he has recorded that they are well founded and that the applicants are hard put to get along financially. Ordinarily as Revenue Member, I am empowered to sanction allowance in cases of this nature. Having regard however to the previous history of this case and to the fact that it has on more than one occasion engaged H.E.H's personal attention, it would, I consider, be improper for me to do. At the same time, the applicants have, I consider, a strong claim to the treatment that is usually accorded in Wirasat cases to a party whose claim to a share in an estate is prima facie a good one. That this may be said of the applicant's claim is evident from the fact that many distinguished officers have held them to be entitled to half Atiyā Shahi grants in dispute now held by the descendants of Sultan Nawaz Jung. In saying so much I wish to avoid the appearance of expressing any opinion the merits of the case as it is not my to do at the stage which it has reached.

If the above proposal is approved in principle the anount of the allowance is for consideration. A perusal of the file shows that the value of the property claimed by the applicants was about Rs. 12,000/- per annum 40 years ago. I am not in

Exhibits

No.44.

Decision of Revenue Member, Hyderabad.

14th November, 1927 - continued.

a position to say what the present revenue is, but it must be much greater than the above figure. In any case it would not, I submit, be unreasonable to sanction allowances totalling Rs. 7,200/- per annum for the claimants, half of which might go to the support of Munasser's family and half to that of Hussain's. I do not suggest a higher figure as the decendants of Ali son of Umar bin Awaz have also asked for allowances. I have not yet caused any enquiry to be made into their financial condition but it may transpire that they have a similar claim for consideration. Any allowance sanctioned for the descendants of Munasser and Hussain should, I think, be subject to the condition that the amount paid to them will be a first charge against the money lying in deposit in Arabia, if it is held that Sultan Abdulla sold his share in the Maash to Sultan Nawaz Jung (as alleged by the latter) and that his descendants have in consequence only been entitled all along to the sale proceeds thereof.

Sd. R.C. Trench,
Revenue Member,
14.11.27.

True Copy

Sd.....

Supdt. At. Int. Br.
21.8.52.

No. 45.

No.45.

Translation Letter, Revenue Department, Hyderabad to Nawab Shamsheer Nawaz Jung and Nawab Saif Nawaz Jung (Sultan Omer and Saleh).

1927.

TRANSLATION, LETTER, REVENUE DEPARTMENT, HYDERABAD TO NAWAB SHAMSHEER NAWAZ JUNG AND NAWAB SAIF NAWAZ JUNG (SULTAN OMER AND SALEH)

Translation of Revenue Department letter No.2070 dated 6th Bahman 1337 Fasli by order of the President, Executive Council.

Subject:- INAM ENQUIRY INTO THE JAGIRS OF THE LATE NAWAB SULTAN NAWAZ JUNG.

From: Nazim Atiyat.

To: Nawab Shamsheer Nawaz Jung and Nawab Saif Nawaz Jung.

Sir,

Saif bin Hussain, Mohsin, Nasir, Ali, Omer &

Exhibits

No.45.

Translation Letter, Revenue Department, Hyderabad to Nawab Shamsheer Nawaz Jung and Nawab Saif Nawaz Jung (Sultan Omer and Saleh).

1927

- continued.

Abdulla, sons of Munasser and heirs of Sultan Abdulla have filed a petition for Guzaras from the Jagirs 40 years ago was Rs.22,000/- annually; now it must be much more. As per recommendation of Col. Trench, Maharaja Sir Krishen Pershad, President, Executive Council in his endorsement dated 8th Bahman 1337 F. has ordered that Rs.3600/- per annum be paid to Munasser's family and an equal amount to Hussain's family. Rs.7,200/- per annum would thus be paid from the jagirs of the late Sultan Nawaz Jung. Accordingly Rs.300 per mensem would be paid to the heirs of Hussain and Munasser respectively.

The Petitioners desire that the said Guzara should be paid month by month through this Department. The President has therefore ordered that you should deposit in this office every month Rs. 600/- for transmission to the heirs of Hussain and Munasser.

Sd. Rai Jagan Mohan Lal B.A.
NAZIM ATIYAT

No.46.

Translation, Letter, Revenue Department, Hyderabad to Nawab Saif Nawaz Jung (Sultan Sir Saleh bin Ghaleb).

1949.

No. 46.

TRANSLATION, LETTER, REVENUE DEPARTMENT, HYDERABAD TO NAWAB SAIF NAWAZ JUNG (SULTAN SIR SALEH BIN GHALEB)

Translation letter No. 2137 dated 6th Ardibehist 1358 Fasli.

From: Nazim Atiyat
To: Nawab Saif Nawaz Jung
Subject: INAM AND SUCCESSION INQUIRY OF THE LATE NAWAB SULTAN NAWAZ JUNG.

His Exalted Highness in his Firman dated 9th Shawal 1368 Hijri has ordered that the annual guzara of Rs.5,250/- be paid to the branches of Abdulla, Ali and Mohamed from the Estates of Saif Nawaz Jung and Warq Jung in the proportion of 2:1:

You are therefore requested to remit two-thirds of the amount and Barq Jung Estate to remit one-third of the amount before 24th Ardibehist, 1358 Fasli.

Copy to Mohamed Awad bin Omer, in charge of the Estate of Nawab Barq Jung.

Sd. Pandit Hanmanth Rao,

Assistant Nazim Atiyat.

Exhibits
No.47.
3 Genealogical Trees.
(a)

No. 47 (a)

GENEALOGICAL TREE

JAMADAR OMER BIN AWAZ
JANBAZ JUNG, SHAMSHEER UD DOULA BHADUR AL QUAITI.
Head of the Family
(Moorie-i-Ala)

Sultan Abdulla
- Sultan Hussain
- Sultan Manasoor

Saleh Barq Jung Bhadur
- Mohsin Barquddowala Bhadur

Awaz, Sultan Nawaz Jung
- Ghalib Janbaz Jung Bahadur
- Omer Shamsheer Nawaz Jung Bahadur

Ali
- Jamadar Mohsin
- Jabir
  - Saleh

Mohamed
- Sayeed
  - Daughter.
  - Daughter.
  - Daughter.
  - Sayeedu — Take objection
  - Mohamadi Begum — Died of Plague
    - Abdulla
    - Ali
    - Saleh
    - Mohamed
      - These four reside in Hyderabad and take no objection
      - Mohamed Shamshir Yaver Jung.
      - Ali in Arabia no objection)
- Ahmed
- Saleh

1 Mohsin. 2 Nasir. 3 Ali. 4 Ghalib. 5 Omer. 6 Abdul Majeed. 7 Abdul Hameed.
- Claimants (Petitioners)

DEFENDANTS
- Saleh.
- Ahmed.
- Saleh.
- Yahya (died)

Exhibits

No.47.

3 Genealogical Trees.

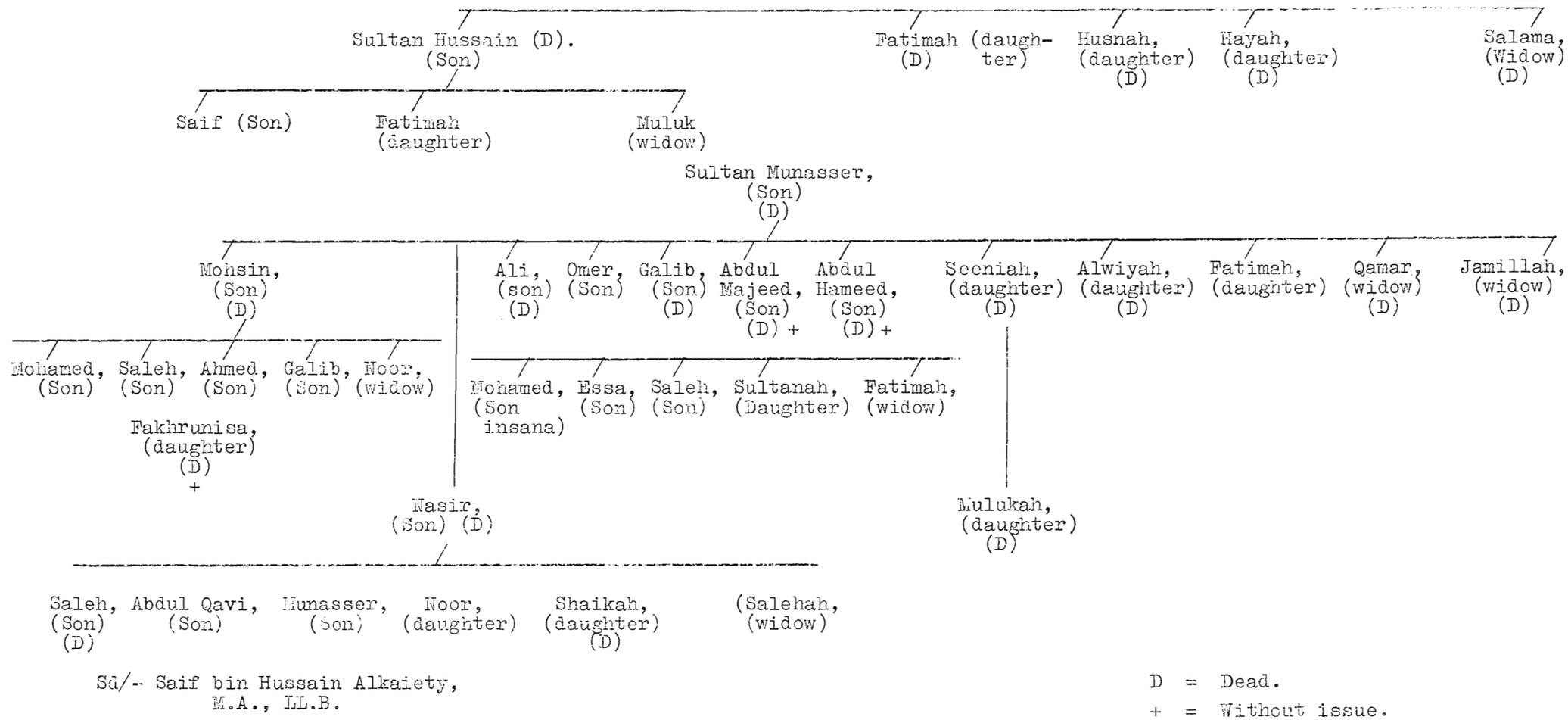
(b)

No. 47 (b)

GENEALOGICAL TREE

GENEALOGICAL TABLE

SULTAN ABDULLAH BIN OMER AL QUI'AITI'



Sd/- Saif bin Hussain Alkaiety,
M.A., LL.B.

D = Dead.

\+ = Without issue.

Exhibits
No.47.
3 Genealogical Trees.
(a)

No. 47 (c)

GENEALOGICAL TREE

GENEALOGICAL TABLE

Sultan Omer bin Awad

Abdulla bin Omer died before 1903.

His Highness Sultan Awad bin Omer died on or about 1910.

Hussain bin Abdulla died on or about 1926.

Saif bin Hussain

Munasser bin Abdulla died on or about 1911

Mohsin. Nasir. Ali. Ghalib. Omer Abdul Majeed. Abdul Hameed.

His Highness Sultan Ghalib bin Awad died on or about 1923.

Mahboob Begum died on or about 1948 issueless.

His Highness Sultan Omer bin Awad (Nawab Shamsheer Jung) Ex- Ruler of Mukalla, according to family arrangement, died on or about 1936.

Shahzadi Begum died in September 1931 issueless.

(Nor share goes to Omer & Mahboob but Mahboob died issueless so Omer takes all shares)

His Highness Sultan (Nawab Saleh Saif Nawaz Jung) Present Ruler of Mukalla according to family arrangement. (Kasi Dt.3)

Daughter Sultani Begum widow of Nawab Shamsheer Yaver Jung.

Daughter Fakh-runisa Begum widow of Nawab Bahbood Ali Khan died on or about 1946.

(1. Habiba Begum, Died on or about 1948, leaving her heir. (D.6)
(Saleh bin Mohsin his step brother.
(2. Sharfunisa Begum. (Dt.3)
(3. Gori Begum. (Dt.4)
(4. Zainab Begum (Dt.5)

Mohamed bin Omer (Dt.7)

Saleh bin Omer (Dt.8)

Husain bin Omer (Dt.9)

Awad bin Omer (Dt.10)

Galib bin Omer (Dt.11)

Sardar Begum died on or about 1945.

Mir Ahmed Ali Pasha (Minor) represented by his uncle Mohamed bin Omer (Dt.12)

Ziennisa Begum (Minor) Represented by her uncle Mohamed bin Omer. (Dt.13)

Exhibits

No.48.

Letter, Omer to Chief Commissioner of Aden.

27th April, 1932.

No. 48.

LETTER, OMER TO CHIEF COMMISSIONER OF ADEN

Shamaheer Bagh,
Nampalli,
Hyderabad - Deccan.

Dated 27th April 1932.

The Hon. Chief Commissioner of Aden.
Aden.

Dear Friend,

I hope you remember the conversation that took place between us in November last on the subject of the amount deposited by my late father Sultan Awad bin Omer Alkaity. The question under discussion was as to how make payment of the said sum. In this connection, I am sorry to inform you that one of my sisters named Shahzadi Begum Saheba died about September 1931 without any issue and leaving only me and her sister Mehboob Begum Saheba as her sole heirs. You are well aware that my late father Sultan Awad bin Omer Alkeity left only four heirs namely the late Sultan Ghalib bin Awad, myself and the two sisters named above. And in accordance with the Islamic law, it is these four that are entitled to obtain payment of the above mentioned sum.

As such it will be found that each son is entitled to one-third and each daughter to one-sixth of their patrimony. As my sister Sahazedi Begum Saheba is deceased, I according to the Islamic Law am entitled to two-third of her portion, while Mahaboob Begum Saheba will obtain one third of it in her right. Further I have in lieu of cash payment purchased from Mahboob Begum Saheba not only her own share, but that which devolved on her by her sister's death. I am entitled in this way to two-third of the whole amount under discussion, one-third being in my own right, while the remainder concerns that which I obtained as inheritance from one sister and purchased from the other as shown above. The transaction referred to has been duly completed and registered at Bombay and certified copies of the relative documents are herewith appended for your perusal. The heirs to the late Sultan Ghalib bin Awad's share, however, are Sultan Saleh bin Ghalib and his mothers and sisters etc. regarding whose respective titles and claims, you may, in accordance with Islamic Law, arrange

Exhibits

No.48.

Letter, Omer to Chief Commissioner of Aden.

27th April, 1932 - continued.

the necessary apportionment and distribution in consultation with the parties concerned in general and Sultan Saleh bin Ghalib in particular. Should any necessity arise, I may state that I am willing to render any particulars or details or help that may be needed by you or by the parties concerned.

But in as much as everything is settled and cleared up regarding my shares I hope there is no let or hindrance in respect of the immediate payment to me of my amount, detailed above. As I am just at present, rather hard pressed monetarily, I shall feel much obliged if you will kindly arrange early payment of my sums and favour me with a reply.

Your sincere friend,

TRUE COPY

No. 49.

No.49.

Deed of Release by Shahzadi Begum and Mahbub Begum.

1929.

DEED OF RELEASE BY SHAHZADI BEGUM AND MAHBUB BEGUM

No.152343

STAMP OF RS.5 OF H.E.H. THE NIZAM'S GOVERNMENT

Sd. Mahbub Begum. Sd. Shahzadi Begum.

I, Mahbub Begum and Shahzadi Begum the daughters of Sultan Iwaz bin Umer-al-Kaiti alias the late Nawab Shamshir Mulk residing Hyderabad write hereby to the effect that our father Sultan Iwaz son of Umar-ul-Kaiti alias the late Nawab Shemshir-ul-Mulk whatever the amount had been deposited by him at the National Bank situated at Aden through the Resident in the case of Hussain and Munasser the sons of Abdulla son of Umer versus Shamshir ul Mulk in execution of the judgment of Arbitration dated Shahban 1328 Hijri against the Arbitration judgment. Hasan and Munasser did not admit those responsibilities which were rosted towards them. And so the sum deposited at the Bank was credited under the Government of Bombay and under the item of credit and owing to the death of the father is fit to be returned in favour of the heirs of the deceased Nawab Shamshir ul Mulk. The heirs of the late father, we two daughters and two sons named Janbaz Jung and Nawab Shamshir Nawaz Jung Behadur, among those Nawab Janbaz Jung has died. His heirs Saif Nawaz Jung and others are in existence. Each

Exhibits
No.49.
Deed of Release by Shahzadi Begum and Mahbub Begum.
1929.
- continued.

of us (who are agreeing) has a share in the said amount according to Islamic Law (Mohamedan Law): but, whereas, owing to our residence at Hyderabad it is difficult and impossible for us to bear the expenses and work for the return of the said amount to us (those who agree) by mutual understanding agree and contract by this document that each of us shall transfer her share in the said amount in favour of His Highness Sultan Umer bin Awaz-ul-Kait-ul-Mukhatih Nawab Shamsheer Nawaz Jung Behadur of Mukalla City, our true brother, in consideration of Rs.20,000/- each that is Rs.40,000/- for us both, subject on the following conditions:-

1. That the said His Highness shall bear all the expenses regarding the working and other proceedings for the regaining of the said amount.

2. That immediately on the receipt of the deposited amount (consequent on the success in the case), the said His Highness should pay us the promised amount of shares viz: Rs.40,000/-.

3. That no matter whether His Highness received the said amount in full or something less, he is under obligation to pay us Rs.20,000/- each, but of course, if he is unsuccessful in the case and does not get any amount, we shall have no right to demand any amount from him.

4. That, the said His Highness has as a security for the amount to be paid to us, has transferred and given us the possession of his Houses Nos. 1747 and 1748B. circle situated in Katal Mandi, Hyderabad Deccan. The transferred property shall remain in our possession till the payment of the amount, and its income and rent etc. shall be collected and forwarded to the said His Highness by us.

5. If after the successful decision in the case, i.e. after receiving the amount, we are not paid in time, we shall take opinion of an expert as regards the value of the houses, and sell the houses for the estimated value. If the amount realised by sale is more, the excess will have to be paid to His Highness. In case the amount is less His Highness is personally responsible for balance payment; but in case of losing the case, that is non-receipt of the amount, we are under obligation to re-transfer the said property in favour of His Highness.

That, on this date we have withdrawn our claims and shares in the sum deposited in the

Exhibits

No.49.

Deed of Release by Shahzadi Begum and Mahbub Begum.

1929

- continued.

Government Bank of Bombay in consideration of Rs.40,000/-. His Highness is entitled to recover the deposited amount. These few lines are written here, of our own free-will and consent under no undue influence or coercion, as a document, so that it may be useful when necessary.

D/- 9th Tir 1339 Fasli corresponding to 14th Zilhej 1348 Hijri.

Date	Kind	No.	Price	Name of the Buyer	Residence
Tir 1339F	Rs.5	9111	Rs.5	Someshwarrao	Gowliguda

for Mahbub Begum & Shahazada Begum.

Sd/-. Mohamed A. Rahman
LICENSED AFZAL
Gunj.

Withdrawal Rs. 40,000/-
Court fee Rs. 135/- through receipt No.774.
Registration Rs.2/13.
Commission Rs.2/-.
Total Rs. 137/13.

778, 634.

As per petition of Mahbub Begum and Shahazada Begum, I had been to their house at 4.15 on Wednesday dated 9th Tir 1339 Fasli corresponding to 14th Zilhaj 1348 A.H. The said document for withdrawal, was given out of the room for registration by the Begum Saheb dated 9th Tir 1339 Fasli.

Sd.....
Sub-Registrar,
Balda (Hyderabad) Branch.

Sd/- Mahbub Begum.

The withdrawal document for Rs.40,000/- O.S. has been written and executed on the solemn affirmation by Mahbub Begum wife of the late Buruk Jung aged 60 years. Arab by caste occupation housekeeping residing in Shah Inayat Gunj and Shahazada Begum wife of Nawab Muhsin bin Ali Saheb aged 50 years, Arab by caste occupation housekeeping residing in Shah Inayat Gunj; in my presence. Both the persons who agree were recognised by Nawab Mohsin bin Ali aged 60 years, Arab by cast profession Jamadar in Nizam Jamiat of H.E.H. residing at Shah Inayat Gunj and Omer bin Mohsin aged 30 years, Arab by caste profession Muntazim, in the Office of District, Police of H.E.H. residing in Shah Inayat Gunj. The ladies observe no Gosha with these two witnesses. The first witness is the

Exhibits

No.49.

Deed of Release by Shahzadi Begum and Mahbub Begum.

1929.

- continued.

brother-in-law of the agreeing party No.1 and husband of the agreeing party No.2 and the witness No.2 is the nephew of the agreeing party No.1 and son of the agreeing party No.2. I personally know both the witnesses, therefore this document is registered.

Sd.....
SUB REGISTRAR
Balda (Hyderabad) Brach.

Sd. Mahbub Begum.
Sd. Shahazada Begum.

Witnesses:-

1. Muhsin bin Ali,
2. Umar bin Mohsin bin Ali.

This registration is copied in Vol. II of register No. 1 for 1339 Fasli on 10th Tir 1339 Fasli under No. 634 page 298 and 299.

Sd.....
Sub Registrar.
Balda (Hyderabad) Deccan.

Witnesses:-

Umar bin Mohsin bin Ali,

Mohsin bin Ali,

Mohammed Hussain,

Mohd. Fariduddin.

Sd. Mahbub Begum } Joint
Sd. Shahzadi Begum } of paper.

Exhibits

No.50.

Table of Matruka Property of Barak Jung.

1892-1894.

No. 50.

TABLE OF MATRUKA PROPERTY OF BARAK JUNG

TABLE OF MATRUKA OF THE LATE BARAK JUNG BANADUR

No. 7 CASE 51 1300F.
32 1303F.

AS PER PREVICUS DECISION OF COMMISSION.

Serial Nos.			
1.	--		--
2.	Total amount as per accounts produced by Sultan Nawaz Jung Bahadur	Rs.	71,88,895.00
3.	Not recoverable	"	1,51,354.00
4.	Particular expenses for State of Arabia	"	3,78,673.12
5.	Particular expenses for State of Arabia	"	12,00,000.00
6.	Total deductions	"	44,19,720.12
7.	Balance	"	27,96,865.04
8.	Amount added after re-consideration made and filed by Sultan Nawaz Jung	"	48,387.00
9.	Total Divisible	"	27,18,253.04
10.	One third share of the heir of Barak Jung	"	9,39,417.12
	UNDER CONSIDERATION		
11.	Total amount as per accounts rendered by Sultan Nawaz Jung	"	71,87,865.00
12.	Amount added as per accounts reconsidered and filed by Sultan Nawaz Jung	"	47,387.00
13.	Total	"	71,67,282.00

Exhibits

No.50.

Table of Matruka Property of Barak Jung.

1892-1894 - continued.

Serial Nos.		
14.	Deduction of 16/7 for expenses of State of Arabia	Rs. 61,66,310.00
15.	Balance divisible	" 46,70,741.01
16.	One third share of the heirs of Barak Jung	" 13,56,990.06
17.	Amount added to the previous judgment of the commission	" 4,17,572.00

Sd. Nawab Vikar ul Uwara Bahadur,
14th Shaban 1308 H.

TRUE COPY

Sd. Kassim Hussain Sarishtadar

No.51.

Translation, Letter, Nizam's Government to Hussain and Heirs of Munasser bin Abdullah.

9th December, 1909.

No. 51.

TRANSLATION, LETTER, NIZAM GOVERNMENT TO HUSSAIN AND HEIRS OF MUNASSER BIN ABDULLAH.

TRANSLATION

Letter of the Officer of Political Secretary Nizam's Government and private Secretary to Maharaja Bahadur Peshkar and Prime Minister of H.G. The Nizam's Government.

No.7332. Dated 9th December 1909
6th Bahman 1319 Fasli.

From:-

Nawab Farudoon Jung Bahadur C.I.E. Political Secretary to the Government of the Nizam and private Secretary to the Prime Minister of H.H. The Nizam's Government.

To:-

Hussain bin Abdulla and heirs of Munasser bin Abdulla nephews to Sultan Nawaz Jung Bahadur.

In reply to application dated 19th Isfandar 1318 F. as per orders of the Government you are informed that you can file a suit for your shares

Exhibits

No.51.

Translation, Letter, Nizam's Government to Hussain and Heirs of Munasser bin Abdullah.

9th December, 1909 - continued.

of Attiyat in the Departments of Revenue and Finance and for services in the Military Departments. But you are not permitted to file any claim about the private and personal properties of Abdullah, now in the possession of Sultan Nawaz Jung in the Courts of H.H. the Nizam's Government.

Sd. Mohamed Ghouse,
Personal Assistant.

No.52 (a)

No.52 (a)

Part of Envelope.

April 1927.

PART OF ENVELOPE

R 501 A. D. Registered

ADEN CAMP

To,

Mr. Jamaluddin Superintendent,
Public Garden,
Hyderabad Deccan,
India.

No.52 (b)

No.52(b)

Part of Envelope.

April 1927.

PART OF ENVELOPE

Postage stamp 3 Annas	Postage stamp 1 Anna
SEAL OF ADEN POST OFFICE	Hyd. 23 April 27

Exhibits

No.53.

Opinion of Colonel Trench.

7th March, 1928.

No. 53.

OPINION OF COLONEL TRENCH

OPINION OF COLONEL TRENCH REVENUE MEMBER

The claim of Sultan Abdulla's heirs to one third of the jagir and Pan Makhtas covered by Mukhtar ul Mulk's Sanad and Orders, dated respectively the 12th Jamadi-us-Sani 1282 Hijri and 17th Zilhaja 1289 Hijri and of certain Zar Khareed Mukhtass, i.e. to a moiety of such of the said Jagirs and Mukhtass as are now held by the descendants of Sultan Nawaz Jung, has been under discussion for nearly twenty years. During that period the Executive Council has, on no less than four occasions, recorded a divident opinion on the case. Similarly no unanimity was reached for by the Select Committee, to whom the case was referred for consideration by the Council in 1329 Fasli, or by the Tribunal nominated by His Exalted Highness in 1342H for the same purpose. At one time or another nearly every one who has held high office since the days of Mr. Dunlop, including the one Minister and three Presidents, has given his views on it but the prospects of agreement appear as remote as they were 15 years ago. I venture with all deference to suggest that in the interest of all concerned the time has now come for His Exalted Highness to abandon all hope of unanimity among his advisors and to put an end to this protracted dispute by the issue of final orders.

(2) It is unnecessary for me to attempt to summarise a new the history of the case. The various stages through which it has passed have done much to obscure the issues but to my mind they are simple. In my opinion the alleged sale by Sultan Abdullah of his property to Sultan Nawaz Jung should be certainly ignored so far as it relates to Attiya Shahi. No one can question His Exalted Highness's absolute right to do so if he sees fit. Even Mr. Glancy who was in favour of recognising the sale did not dispute this proposition. He took the view, however, that the transaction had undoubtedly taken place, that it covered Government grants, and that there was nothing contrary to Policy in confirming it. His sympathies were, he observed, certainly not with the party who wished the Government to over-rule an agreement made of their own free will.

(3) Though I have the highest regard for Mr. Glancy's judgment, I am unable to agree with him.

Exhibits

No.53.

Opinion of Colonel Trench.

7th March, 1928 - continued.

I too have no sympathy with people who try to back out of a bargain they have concluded, but I would not allow such a consideration to carry any weight when the bargain is opposed to the declared and well-known policy of Government. I have no hesitation in saying that the transaction in question was so opposed. Over and over again it has been held down since the original prohibitory Gushti No.105 of 1282 Hijri issued that Attiya Shahi in Hyderabad are inalienable without the sanction of the Ruler. It is undeniable that unauthorised transfer of such grants have on occasions been confirmed by Government, but so long as the general attitude of Government towards them remains unchanged I fail to see how can there be nothing contrary to policy in their confirmation since every post facto sanction encourages irregular and prohibited alienations and cannot, therefore, be otherwise than impolitic. It is also true that Gashti No.9 of 1314 Fasli provides for the treatment of their merits of transfers of Makhtas made prior to that date. But in this particular case there are two strong reasons for withholding recognition of any sale by Sultan Abdullah of his share in the Jagirs and Pan Makhtas to Sultan Nawaz Jung. In the first place, as pointed out by the Honourable Member in the Finance Dept. in his exhaustive notes of the 27th Thir and 23rd Amardad 1331 Fasli, no sale has been satisfactorily established. In the second place, it seemed to me reading Sir Faridoon-ul-Mulk Bahadur's letter No.129-C dated the 28th August 1909 with His Exalted Highness's Firman of the 11th Zikada 1327 Hijri, that Government has practically committed itself to the non-recognition of the alleged sale.

(4) If the above view is accepted, it is unnecessary to discuss whether Sultan Abdullah really sold his share of the Massh or to take into consideration the Arbitration proceedings of 1318 - 30H which were based on the sale, nor is the attitude of the Government of India towards the Award, a factor in the case since it can in no way affect the position of His Exalted Highness's Government Qua Attiya Shahi. It only remains indeed, once the sale is set aside, to determine whether Sultan Abdullah had any right to a third share of the Mash.

NOTE: I assume for the moment that his brothers Ali and Mohamed parted with the interest they had in it.

This point has been examined very carefully by Nawaz

Exhibits

No.53.

Opinion of Colonel Trench.

7th March, 1928 - continued.

Hyder Nawaz Jung, in his note of the 22nd Amardad 1331 Fasli. I certainly agree with the conclusion at which he has arrived so far as the jagirs are concerned. How it came about that Abdullah, Mohammed and Ali were excluded by the Sanad of 1282H from a share in their Father's Jagirs, I do not know. I am told that Sultan Nawaz Jung's influence in those days was practically supreme in Hyderabad and is sufficient to account for the non inclusion of the three brothers. Abdulla had the additional disadvantage of being Resident in Arabia. I cannot, as Mr. Glancy could not, regard the Sanad as tantamount to a definite disallowance of their claims. Their father's tenure of the Jagirs in itself gives them a strong moral claim to a share of them. In Abdullah's case this claim is vastly strengthened by the agreement executed by him, Baraq Jung and Sultan Nawaz Jung in 1290H and by the proceedings of 1303H. Though the Sulahnama in question may not definitely specify jagirs among the movable and immovable property that these brothers were to hold in common. It seems to me abundantly clear, reading it with Nawab Salar Jung II's Arzadasht of the 22nd Rabi-ul-Awwal 1303H that Sultan Nawaz Jung himself recognised Abdullah's moral right to a share in them. The proposition as regards the Pan Makhtas is rather different. These were bestowed on Baraq Jung and Sultan Nawaz Jung by Mukhtar ul Mulk's order of the 17th Zilhij 1289H, seven years after Omer bin Awadh's death. No proof so far as I can ascertain state or were forthcoming that they formed part of Umer bin Awad's ancestral Estate or were indeed ever in his possession. I think it probable that the Sulahnama of 1290H was intended to cover them though, like the jagirs, they are not specifically mentioned in it. The alleged sale deed supports this view to some extent as it purports inter alia to convey "Mukhtajata" though it is not clear whether the Pan Makhtas or Zar Khareed makhtas are referred to. On the other hand Sultan Nawaz Jung's Murasils of the 10th Rabi-ul-Awwal 1303H on which Sir Salar Jung II's Arazdasht was submitted and the Ferman of the 14th Jamadiul Awal 1303H issued cannot, in my opinion be read as including any Makhtas. While rejecting therefore the claim of Sultan Abdulla's heirs to any share in the Pan makhtas, I would admit it subject to what follows regarding the rights of Ali bin Omer and Mohamed bin Omer, to a third share of the jagirs granted or confirmed to Baraq Jung and Sultan Nawaz Jung

in 1282H. I would not give the heirs any share in the zar khareed Makhtas however, and whenever they may have been acquired for the reasons, if for no other that they pertain more to private property than to Atiya Shahi. Since 1304H Barak Jung's share has been separated from the rest of the jagirs and the remaining two thirds have been held by Sultan Nawaz Jung and his heirs. It follows that the heirs of Sultan Abdullah should be given a half share of the jagirs now in the possession of Sultan Nawaz Jung's heirs. I would give them their share in cash leaving the existing possession undisturbed. To avoid constant disputes the value of their half share might be calculated on the average revenue of the last decade and similar reassessment being made every tenth year. At the same time their claims to arrears with effect from Sultan Abdullah's death in 1306H cannot, I think, in justice be denied merely because they will amount to a very large sum. For it is through no fault of theirs that the case has dragged on so long. But for the purpose of these arrears it will in my opinion suffice if the income of 1282H is made the basis of calculation. In those days the jagirs were worth Rs. 25,371/7/3. It is not possible without an examination of accounts which will take time to say what the net revenue amounted to after making the usual deduction of Kalaniyat. Hak-e-Malikhana, Jagirdar school tax etc., but 50% of it will certainly not fall short of two or three lakhs. In the circumstances it would only be equitable to give the heirs of Sultan Abdullah who have gone through very hard times, one lakh down leaving it to the Revenue Member to decide in what instalments the balance should be paid when the accounts have been made up.

(5) It may be argued that the Sanad of 1282H and the Farman of 1303H cannot now be set aside or modified by the grant of a share of the jagirs to the heirs of Sultan Abdullah, personally, I cannot admit such an argument in a case like the one under consideration. In my opinion the Ruler would in the circumstances be fully justified in giving the heirs a share in the jagirs but if this technical objection is held to be insuperable I would albeit reluctantly concur in the grant to them of the relief to which they are entitled in the form of a Guzara or allowance. Such an allowance should not of course be less than the half share calculated as shown above, that they would otherwise receive since there is no reason why if their moral claim

Exhibits

No.53.

Opinion of Colonel Trench.

7th March, 1928 - continued.

to half share is admitted, they should be penalised because of the form in which it is given that it should be a permanent charge on the jagirs payable to Sultan Abdulla's descendants so long as the Jagirs are in existence, arrears being assessed in the same way as the arrears of the half share.

(6) I am not entirely satisfied that justice had been done to the heirs of Ali bin Omer. It is unnecessary to complicate the case of Sultan Abdullah by considering their claim here. Sir Ali Imam agreed with the Revenue Member (Raja Fateh Nawaz Want) that they were out of Court, but to my mind they may have a stronger claim than has hitherto been assumed. As it is very desirable to leave nothing for the various members of the family to wrangle over in future. I would ask permission to take it up also that of Mohamed bin Omer's heirs, though the latter would appear to be debarred from any share in the Mash by the deed of release executed in 1287F. by Mohammed bin Omer and confirmed by Sir Salary Jung. If either of the above branches of the family were held to be entitled to a share in the Mash it can be met from the shares of Sultan Abdullah's, Sultan Nawaz Jung's and Barak Jung's branches proportionately. The consideration of these claims should however in no circumstances be permitted to delay a decision on Sultan Abdullah's case or on the Inam Enquiry regarding which there is no dispute.

(7) Before I conclude, I would correct an impression that is, I believe, prevalent in some quarters that the heirs of Sultan Abdullah are endeavouring to revive a claim which has been allowed to lie dormant for many years. The following chronological statement will show that this is not the case.

(1) Will of Sultan Omer bin Awadh	1279H.
(2) Sanad of Mukhtar-ul-Mulk	1282H.
Mohamed takes his share of certain property with Mukhtar-ul-Mulk's sanction.	1287H.
Sultan Ali takes his share of certain property with Nawab Vicar ul Umera's sanction.	1288H.
Mutual agreement between Sultan Abdulla Sultan Barak Jung and Sultan Nawaz Jung attested by Mukhtar-ul-Mulk	1290H.
Alleged Deed of Sale by Sultan Abdullah	1296H.

Agreement between the Government of India and Sultan Abdullah on his own and on Sultan Nawaz Jung's behalf	1299H.
H.H's order on Sultan Nawaz Jung's representations of the 12th Rabi-ul-Awwal	1303H.
Sultan Abdullah dies	1306H.
Reference to Arbitration	1318H.
Award to Arbitrator	1320H.

Hussain and Munasser (who had declined to accept the Award though approved by the Government of India) come to Bombay and take steps to obtain permission to proceed to Hyderabad in order to push their claim 1321-22H.

Hussain and the heirs of Munasser serve Sultan Nawaz Jung with a notice claiming a share in the Atiya Shahi.	1322H.
Correspondence with the Residency regarding the Residence of claimants in Hyderabad the reopening of the dispute.	
The Government of India accept the view of His Highness's Government regarding an enquiry into the Atiya Shahi	1327H.
Hussain and the heirs of Munasser are authorised by Farman to submit their claims regarding Atiya Shahi in the Revenue and Finance Departments - 12 Zikada -	1327H.

After the issue of His Highness's Farman in Zikada 1327H Hussain and the heirs of Munasser lost no time in instituting their claim. Since 1331H, the proceedings have been continuous. Obviously it cannot, in the circumstances, be said that the descendants of Sultan Abdullah are attempting to revive a claim that has lapsed.

Sd. Chenevix Trench,
REVENUE MEMBER.

7th March 1928.

Exhibits

No.54.

Letter, Acting Governor of Aden to Sultan Omer.

9th October, 1926.

No. 54.

LETTER, ACTING GOVERNOR OF ADEN TO SULTAN OMER

November 7903. Aden, 9th October 1926.

To,

The High Lord and Noble Peer our friend and Ally His Highness Omer bin Awaz bin Omer Alkaiti, the esteemed Sultan of Shehr and Mukalla.

MAY GOD PROTECT YOU.

Sir,

After conveying further wishes of safety, we are writing this in reference to your letter dated 9th October 1926 for your information that we have sent a telegram to the Bombay Government concerning your voyage towards India tomorrow morning and that you desire to withdraw the amount deposited by your late father for successors of the late Abdulla bin Omer. At present the amount stated above is in possession of the Accountant General, Government of Bombay.

You have particularly inquired about the Office which would enable you to withdraw the amount. In this regard please call on the Secretary or in his absence the Under Secretary, Political Department, Government of Bombay.

MAY GOD PROTECT YOU.

Sd. Major Reilly,

ACTING GOVERNOR, ADEN.

No.55.

Letter, Defence Secretary, Aden to Sultan Omer.

4th June, 1932.

No. 55.

LETTER, DEFENCE SECRETARY, ADEN TO SULTAN OMER

Number H.3767 Aden, 4th June, 1932.

To,

The Great and Noble Lord, our friend, His Highness Omer bin Awaz bin Omer Alquaiti, Sultan of Shehr and Mukalla:

MAY GOD PROTECT YOU

Sir,

We feel grateful by receiving your letter dated 6th May 1932 regarding the withdrawal of the

Exhibits

No.55.

Letter, Defence Secretary, Aden to Sultan Omer.

4th June, 1932 - continued.

deposited amount of your late father as a security. We are disturbed by the news of your dealings with your sister Mahboob Begum Sahiba after the death of Shahzadi Begum Sahiba for whom she is mourning. Your honour will remember that the Governor in his talk with you in the last November had informed you that if it was possible for you to obtain the letter of consent from all the inheritors of Sultan Awaz, then it would enable him to help you in your demand about the withdrawal of the said amount. In case of having the letter of consent with you your demand for withdrawal cannot be stopped even if the Inter-pleader suit is filed. This means that the Government will call for all the inheritors who claim any share in the deposited amount and only this procedure will be followed.

Your honour had promised at that time that you will try to obtain the letter of consent from all the other inheritors and will be able to produce it while you return from India. Now you have sent such a letter concerning only with the daughters of Sultan Awaz Bin Omer, while you have given no information about the survivors of Sultan Ghalib bin Awaz.

At this position, the Governor regrets his inability to advise the Government for not filing the Inter-Pleader suit and he cannot agree to your Honour's request that he should manage for the distribution of the concerned shares among the survivors of Sultan Ghalib bin Awaz with the consultation of the party concerned.

Now the matter is clear i.e. when you are unable to produce the letter of consent from the survivors of Sultan Ghalib bin Awaz the only way for the Government for the disposal of the deposited amount, remains by calling all the Plaintiffs to present their claims. In this regard, we have to inform your honour that this procedure cannot be adopted unless you agree to condescend from your distinct position which you attain by Clause 86 of the India Right's Code and that you agree also to carry out the orders of the Bombay High Court in this regard. We want to point out to you at the same time that having the dispute in the claims, the Government's decision to hold the Inter-Pleader suit will bear nothing but losses and expenses, whereas they are ready to hand over the amount to person or persons authorised to receive by the High Court.

Without any further confusion the only way for

Exhibits

No.55.

Letter, Defence Secretary, Aden to Sultan Omer.

4th June, 1932 - continued.

the quick disposal of the said amount is that your Honour should agree to appear before the High Court, where your attorney should present your plea for the withdrawal of all the amount in your favour on grounds that your father had deposited the money in the capacity of the ruler of the State and that you are the present ruler and sole deserving person to receive the amount. Therefore, we are awaiting your reply for your agreement to the above proposal, so that the suit may be filed in the High Court and that you have to appear before the Court for the purpose.

We will be grateful if you kindly furnish us with the stated information about the following and according to our knowledge at present these are :-

1. Date of the death of Sultan Awaz bin Omer.
2. " " " " " Ghalib bin Awaz.
3. " " " " " Abdullah bin Omer.
4. " " " " " Munasser bin Abdulla.
5. " " " " " Hussain bin Abdulla.
6. The names of the widow of Sultan Abdulla bin Omer.
7. The names of the survivors of Sultan Munasser bin Abdulla bin Omer.
8. The names of the survivors of Sultan Hussain bin Abdulla.

PEACE BE ON YOU

Sd. CHAMPION.

DEFENCE SECRETARY.

No.56.

Letter, Defence Secretary, Aden to Sultan Omer.

27th June, 1932.

No. 56.

LETTER, DEFENCE SECRETARY, ADEN TO SULTAN OMER

Number E 4343. Aden, 27th June 1932.

To,

The Great and Noble Lord, our friend, His Highness Sultan Omer bin Awaz bin Omer, Alquaiti, Sultan of Shehr and Mokalla.

MAY YOU BE SAFE.

Sir,

After conveying further wishes of safety, we want to point out to your honour for looking into our letter No.E3767 dated 4th June 1932 concerning the disposal of the deposited security of your late father Sultan Awaz bin Omer. We are also

Exhibits

No.56.

Letter, Defence Secretary, Aden to Sultan Omer.

27th June, 1932 - continued.

sending you a copy of the letter of Mahboob Begum Sahiba dated 31st May 1932 regarding the matter stated above for your information. We will be grateful if you will kindly inform us about the way in which you want to settle between her protest and the conditions of your own condescending from the property rights which were appraisingly pointed out to you in the letter dated 22nd March 1932. Please look into them and compare.

MAY YOU BE SAFE.

Sd. CHAMPION,

Secretary of Defence,
ADEN.

No. 57.

LETTER, K.B. SHAIKH ALI BASKHAS TO GOVERNMENT OF BOMBAY

No.57.

Letter, K.B. Shaikh Ali Baskhas to Government of Bombay.

20th October, 1926.

108, New Kazi Street, Bombay. 20th October, 1926

From: Khan Bahadur Shaikh Ali Baskhas,
Secretary & Agent in India to His Highness the Sultan of Shehr and Mukalla, BOMBAY.

To: J.R. Martin, Esq., C.I.E., I.C.S.,
Chief Secretary to Government of Bombay,
Political Department, Poona.

Sir,

As desired by Highness Sultan Omer bin Awad Al-Kaity Sultan of Shehr and Mukalla, I have the honour to request you to credit the full amount of the money deposited by His Highness's late father for the heirs of the late Abdulla bin Omer in His Highness's current account in the National Bank of India, Bombay which is standing there in the name of His Highness Sultan Omer bin Awad Al-kaity Shamsheer Nawaz Jung.

His Highness the Sultan has come to India for a week only and returns to Aden by s.s. RAZWAK on 30th inst. so I hope the matter will be treated as most urgent. I also herewith enclose the copy of the letter No.A/7903 of 9th October 1926 addressed to His Highness the Sultan by the Hon'ble Political Resident of Aden.

Hoping to be excused for the trouble.

I have the honour to be,
Sir,
Your most obedient servant,

No. 58

GENEALOGICAL TREE

GENEALOGICAL TABLE

SULTAN OMER BIN AWADH (SHAMSHEER-UD-DUALA)

SULTAN ABDULLA (2)	SALEH (3) (BURQ JUNG 1)	AWADH (4) (SULTAN NAWAZ JUNG)	MOHAMED (1)	ALI (5)
	Mohsin (Burq Jung II) (Burqud-dulla)	H.H.Sultan Ghalib (Jan Baz Jung)	Mahboob Begum (Daughter) Died in or about 1948 Issueless	H.H.Sultan Omer (Nawab Shamsheer Nawaz Jung)
ultana atima, Daughter)	Sultana Husna (Daughter)	Sultana Haya (Daughter)	Sultana Salma (Widow)	Shahaedi Begum (Daughter) Died in September 51 issueless
Sultan Hussain		Sultan Munasser	H.H.Sultan Saleh (Nawab Saif Nawaz Jung) Present Ruler of Mukalla	Sultan Begum Fakhrunissa Begum.
aif	Sultana Fatima (Daughter)	Sultana Muluk (Widow)		-1 Habiba Begum (Widow) died in or about 1948 leaving Salen bin Mohsin her step brother as her heir.
Iohsin	Nasir	Ali Omer Ghalib	Abdul Majid Abdul Hamid	Seeniah (D) Fatima (D) Jamila (Widow) Alweyah (D) Qamar (Widow) -2 Sharfunisa Begum -3 Gori Begum -4 Zainah Begum
Iohamed aleh	Ghalib Noor (Widow) Ahmed	Mohamed Esa	Saleh Sultana (Daughter)	Fatima (Widow) Muluka (D)
				Mohamed bin Omer Saleh bin Omer Hussain bin Omer Awadh bin Omer Ghalib bin Sardar Begum, died on or about 1941.
aleh bdul Qavi	Munasser Noor (D)	Shaikha (D) Saleha (Widow)		

No. 59.

Exhibits

No.59.

Deposition of Raja Bahadur A.A.S. Ayyanger.

10th July, 1955.

DEPOSITION OF RAJA BAHADUR A.A.S. AYYANGER

IN THE COURT OF THE CHIEF JUDGE CITY CIVIL COURT HYDERABAD DECCAN

Saif bin Sultan Hussain and others — Plaintiffs

Versus

1. Government of Mukalla ... Mukalla
2. Sultan Saleh bin Galeb ... Mukalla
3. Sharafunisa Begum (widow of the late Sultan Omer, H'bad)
4. Gohi Begum (widow of the late Sultan Omer, H'bad)
5. Zainab Begum (widow of the late Sultan Omer, H'bad)
6. Saleh bin Mohsin (heir of Alisah Begum second widow of the late Sultan Omer, H'bad)
7. Sultan Mohammad bin Omer, H'bad
8. Sultan Saleh bin Omer, H'bad
9. Sultan Hussain bin Omer, H'bad
10. Sultan Awa bin Omer, H'bad
11. Sultan Ghalib bin Omer, H'bad
12. Mir Ahmed Ali Pasha H'bad
13. Ziaunnisa Begum H'bad — Defendants

Subject:- Saif bin Sultan Hussain & Others

Versus

Sultan Saleh bin Galib & Others on the file of the Supreme Court, Colony of Aden: Suit No. 260 of 1952.

Raja Bahadur SI Aravamudu Ayyangar son of Srinivasa Ayyangar, age 81 years, occupation Advocate residing at Amirt Nivas, Hyderabad states on solemn affirmation as follows :-

Examination in chief by Mr. Jaleel Ahmed, Advocate for Saif bin Sultan Hussain and others Plaintiffs :-

"I have been practising in the Hyderabad Courts since 1898. In the beginning I confined myself to the Civil Courts having Civil practice and latterly I also practised in the Revenue Courts, When I became a Minister of the Hyderabad Government I was out of practice for some time, that is between 1945 June till November 1947. I was first given the portfolio of Medical and local Self Government and then I became Law Minister. After I retired from

Exhibits

No.59.

Deposition of Raja Bahadur A.A.S.Ayyanger.

10th July, 1955 - continued.

the cabinet, I again resumed my practice but laterly I have given up my practice in Hyderabad and confined myself exclusively in the Supreme Court of India. There were Gashtis (Circulars and resolutions in Atiyat matters but recently there have been some Acts also in connection with Atiyat matters. I think these Acts are after 1951. The first circular was of 1282 Hijri No.105 published on page 84 of the classified (Muntaquab) Gashtiath containing gashthis from 1281 Hijri to 1308 Hijri. Another Gashti No.17 of 1312 Fasli regarding execution of Wills and adoption etc., regarding Crown Grants is published at page 164 Revenue Gashtis from 1310 Fasli to 1319 Fasli in the volume containing gashtis the said period. Another Gashti is No.9 of 1314 Fasli published in the same volume at page 305. Another gashti is 49 of 1323 Fasli relating to the same subject published at p.210 of the Volume of Revenue Gashtis contained from 1320 Fasli to 1333 Fasli. Another Gashti is No.16 of 1341 Fasli published at page 79 of the Gashtis of 1338 Fasli to 1342 Fasli. The first one 105 of the 1282 Hijri purports to be a Rupkaar (a letter) from the office of the Judicial Secretary. The rest of the Gashtis are based on Firmans. The first gashti and the other gashtis referred to above have the force of law and those that are based on firmans are actually the law. There have been leading cases on the succession to Atiyat property decided by the highest Revenue Courts in Hyderabad and they are published in the Law Reports, namely Nazair Mal, Rameshwar Rao versus Ramdev Rao is published in volume 2 of Nazair Mal at page 185 and the case of Ghosudara Khan, that is Mir Imdad Ali Khan versus Ikrumuddin Khan and Sharefuddin Khan is published at page 56 of Vol.19 of the Deccan Law Reports, Revenue Section. Another one is Sereswati Rai versus Laxmibai and Others in the case of the succession of Raja Vinayak Rao and is published in Nazair Mal Volume 1, page 386. All the provisions contained in these gashtis and their interpretations in the rulings referred to above were the law prevailing in the matters of Atiyat and were applied till the promulgation of the Constitution of India on 26.1.1950. By this I do not mean that they ceased to be the law immediately on the coming into force of the constitution. That would depend upon the particular provisions in question. All these gashtis are published under the authority of the Government and are authorised publications".

Exhibits

No.59.

Deposition of Raja Bahadur A.A.S.Ayyanger.

10th July, 1955 - continued.

Cross examination by Mir Akbar Ali Khan for the heirs of Shamsheer Nawaz Jung.

"In matters of Succession the general rule is that in the case of Hindus, the Dharma Shastras of Hindu Law is applicable and in the case of Muslims, the Share-Shareef or the Muslim Law, but in consequence of the nature of Atiyat property and the object of the grantor, certain deviations from those laws have been recognised in decided cases. Gashtis No.38 of 1299 Fasli and Resolution No.7 of 1303 Fasli lay down the general proposition stated by me above. Resolution No.7 of 1303 Fasli and Gashti No.38 of 1299 Fasli have been referred in the cases of Rameswar Rao versus Ramdeo Rao in N.M. Vol.2 page 185 and N.M. Vol.1 page 386 (Saraswati Bai versus Lazmi Bai and Vamuna Bai). Referring pages 414 and 415 in N.M. Vol.1 I contended in that case that the ordinary law of inheritance would not apply to Atiyat but that each subsequent holder will be deemed to be a donee and the personal law of succession would not govern the succession. This contention of mine was negatived in the Judgment. In N.M. Vol.2 Nameswar Rao versus Ramdeo Rao, it was held that in matters of inheritance, personal law will apply. Alienation or transfer or disposal without the sanction of Government or H.E.H. according to the nature of the Grant has not been allowed but with permission and sanction of the concerned authorities, it has been allowed. The authority to grant the sanction, have been defined to the various offices in the hierarchy. Generally, the Nizam granted succession of the crown grants in favour of personal heirs and ordinarily there has been no eschest to the crown but among the heirs His Exalted Highness has given preference of one over the other so far as the holding and possession of the Jagir is concerned. In extreme cases, he has disinherited the heirs but that is very rare. Under Circulars No. 34 of 1331 and 10 of 1338 Fasli which is supplementary to the former the practice has been that the succession although granted in favour of all the heirs, possession was ordered to be given to one of them on whom lay the responsibility of giving the other heirs, their respective shares or guzaras (allowances) in so far as persons entitled to guzaras are concerned. Section 13 of Gashti No.10 of 1338 Fasli was seen by the deponent and he made the above statement. I appeared for Saif bin Hussain in the Revenue Courts in connection with his right to certain allowance or share,

Exhibits

No.59.

Deposition of Raja Bahadur A.A.S.Ayyanger.

10th July, 1955 - continued.

I do not remember in the estate of Arab chieftains, but I do not remember whether it is in the estate of Saif Nawaz Jung and Shamsheer Nawaz Jung. I also do not remember what amount he was getting".

Cross Examination closed.

Read over to the witness and admitted by him to be correct.

Sd. V.S. Ashoka,
COMMISSIONER.
10.7.55.

Sd.
DEPONENT
10.7.55.

Sd. Illegible 2.

No.60.

Ghasti (Circular) No.105 of 1282 Hijri (1855 A.D.)

No. 60.

GHASTI (CIRCULAR) NO.105 of 1282 HIJRI (1855 A.D.)

CHAPTER VI

A. State Grants

Ghasti No.105 of 1282 Hijri. (1855 A.D.)

Copy of Rubkar dated 22nd Zikada 1282H. from the Secretary Judicial department, prohibiting inamdars and muafidars, etc., from transferring their Inam villages by sale, mortgage or gift without the knowledge and permission of Government is forwarded herewith to all Talukdars and the Amaldar of Kuppal with instructions for the information of the public.

Copy of the Judicial Secretariat rubkar referred to above.

It has been noticed that many inamdars and muafidars, and even some jagirdars also, have been transferring their inam villages and as well as inam lands by sale, mortgage and gift as if they were their personal private property. But as a matter of fact such dealings cannot be allowed in inams and other state-grants whether they be in the shape of land or yomias and salianas, because such inams and grants are meant merely for the maintenance of the inamdars and mufidars, and are

Exhibits

No.60.

Ghasti (Circular) No.105 of 1282 Hijri (1855 A.D.)

- continued.

made on the understanding that the said inamdars and muafidars would be benefitted from the income thereof which Government used to derive when the lands were with Government. In cases in which the inams are conditional on the performance of some service, the object of the grants is to see that the service in question continues uninterruptedly. In no case was it contemplated that the grantees should dispose of the grants by sale or gift and thus deprive themselves of the income from them and to be reduced to the condition they were in prior to the grant. The fact that Government has not in view of the practice in vogue till now, objected to the distribution or transfer of the inams by gift or such other forms of transfer, cannot be adduced as an argument to support the validity of such action, or entitle the inamdars and mafidars to claim a proprietory right in the said grants. On the other hand it must be interpreted as though Government gave its (tacit) sanction to the gift and transfer merely as an act of grace and kindness.

In these circumstances it is considered necessary to direct the District Taluqdars to inform all inamdars and mafidars in their respective districts that whoever wishes to transfer inams and mauafi lands or yomias and saliaanas to any one, it shall be necessary for him to submit an application to the Taluqdar about it, by whom the application will be forwarded to the Revenue Board for orders of Government. If Government is pleased to sanction the application Taluqdars will permit the transfer, otherwise the application will be refused. In future if any person attempts to transfer by sale, gift or mortgage, the transfer shall not be deemed valid, and in case the inam and maufiland is attached by Government no claim by the purchaser, mortgagee or donee will be entertained by the Government.

Similarly if any one wishes to transfer his jagir by mortgage or in any other manner, such transfer also shall not be deemed to be completed and valid without the sanction of Government, and no claim can be preferred against Government, if the jagir is attached.

It is, therefore, ordered that copies of this Rubkar be sent to the Majlis Murafa, the district sadar adalat courts, and the Revenue Secretary with request that copies of the said Rubkar be sent to all Judicial Officers, and all Taluqdars for information.

Exhibits

No.25.

Decision of First Assistant Resident, Aden (Undated).

No. 25.

DECISION OF FIRST ASSISTANT RESIDENT, ADEN

On the 16th Muharram 1295 (21st January 1878), One thousand two hundred and ninety five Hajri, Awadh bin Umar Bin Awadh Algaity purchased from his brother Abdullah bin Umar bin Awadh Algaity the seller all that became due to him in respect of inheritance in (the estate of) his father Umer bin Awadh, deceased at Hyderabad Deccan in India, according to the division which took place between him and between his brothers, Ali and Mohammed, sons of Umer bin Awadh Algaity, and which amounted to three lacs, eighty three thousand seven hundred and ninety two rupees and three quarters of an anna Chulni, consisting of visible things, outstandings, cash, gold, silver, jewels, houses, immovable properties, cattles, arms, grounds, Makhtas, etc., including everything that may be called property or thing of value, at Hyderabad; and also that which became due to him at Bombay in India, consisting of property and properties, houses, immovable properties and everything that may be called property, or thing of value; and also that which became due to him by way of gift from his father Umer bin Awadh, deceased, which amounts to one lac of rupees Chulni in the same way as the share of his brothers Saleh and Awadh: Awadh bin Umer bin Awadh Algaity purchased from the seller his brother Abdulla bin Umer Algaity all that is mentioned above for the sum of one lac and eighty six thousand - dollars Fransa, half of which, taking into consideration the entire amount, amounts to ninety three thousand - dollars Fransa. Out of this sum forty six thousand dollars Fransa, half of which taking into consideration the entire amount, amounts to twenty three thousand dollars Fransa, were handed over and paid in the hands of the seller Abdulla bin Umer Algaity from the hands of the Purchaser Awadth bin Umer Algaity and the balance of the sum which amounts to one lac and forty thousand dollars Fransa remain due against the said purchaser Awadh bin Umar in favour of the seller his brother the said Awadh bin Umer, which he shall pay when he demands; and this was done with consent and free will without the use of force or compulsion; and out of the property which was held between him and his brothers Saleh and Awad, consisting of Nazar and partnership (property) whatever was due to him according to the Deed dated 26th Rabiul-Avval 1290 (24th May 1873, being the

Exhibits

No.25.

Decision of First Assistant Resident, Aden.

(Undated)

- continued.

deed of Aazas partnership and Will and according to the Agreement dated 1st Rabiul Sani 1290 (29 May 1873)), and out of all that was included in the said two deed whatever was due to the said Abdullah bin Umer including property by way of Nazar or partnership or gift or inheritance, etc., were given away to his brother the said Awadh bin Umer save and except the properties left by the deceased Umer bin Awadh Algaity in Hadramaut, Shiban, Khutun, Houra and Wadiul Ain, consisting of outstandings, cash, gold, silver, jewels and properties, houses, date trees, wells, lands, household furniture and everything which may be called property in the said places, which all remains to be divided between him and the heirs of the deceased Umar bin Awadh Algaity and (in setting apart) the one-third share for the State according to the will of the said deceased Umer bin Awadh and Abdulla bin Umer Algaity has agreed that the affairs of the state and its administration and its Government and the issuing of orders are for (i.e. belong to) his brother Awadh bin Umer Algaity and that Abdulla bin Umer is Nazir (manager) with his brother Awadh bin Umer during his life-time and after his death, the children of Abdulla bin Umer cannot interfere in the affairs of the State; and in the event of the death of Awadh bin Umer Algaity and his appointing anybody to be his successor, the Abdullah bin Umer is to be Nazir (manager) and Assistant with the successor of his brother Awadh bin Umer; and in the event of the death of Abdulla bin Umer, none of his children can interfere in the affairs of the State, but they must follow and obey Awadh bin Umer Algaity and the person who may be appointed as his successor, and it is necessary on Awadh bin Umer and whoever may be appointed as his successor to be kind and merciful to the children of Abdulla bin Umer Algaity. What is written above is agreed to, by those persons who are mentioned above in favour of those persons (who are mentioned above). After what had been done as stated above, viz., by way of sale &c., Abdulla bin Umer bin Awadh Algaity gave away by way of present to his brother Awadh bin Umer Algaity the said things sold as aforesaid &c., without any condition to make the sale &c., legal with the knowledge that the Nazar (present) extinguished the right of ownership and thereafter his brother the said Awadh bin Umer Algaity gave away by way of present the value mentioned above to him, except the properties left by the deceased Umer bin Awadh in Hadhramaut, Arabia as described above, which are not included in

Exhibits

No.25.

Decision of First Assistant Resident, Aden.

(Undated)

- continued.

the Nazar (present). This was executed when all were in good health bodily and mentally without being forced or compelled and with their own desire and consent, and God is sufficient as witness.

Agreed to what is mentioned in the above document.

ABDULLA BIN UMER BIN AWADH ALGAITY.

(Signature of) Awadh bin Umer bin Awadh Algaity.

Witness to it:

Syed Abdullah bin Alvi bin Ahmed bin Sheikh Boobaker, may God be merciful to him.

Witness to it: Abood bin Salem Bashaher.

Witness to it: Mohamed Abood bin Salim.

Witness to it: Ahmed bin Saleh bin Salem Basahhar

Witness to it: Abdulla bin Ali bin Abood bin Taher Bashahar.

May God be merciful to him.

Witness to it: Mohsin Abdulla Boobaker Alhaddad Algaity.

True copy.

Sd. Lieut. Col.

FIRST ASSISTANT RESIDENT, ADEN.

Seal.

His Majesty's Political Resident, Aden.

True copy.

Sd.....

Supdt. At. Int. Br.
22.8.52.

No.61.

Ghasti No.17 of 1312 Fasli (1903 A.D.)

No. 61.

GHASTI NO.17 of 1312 FASLI (1903 A.D.)

Gashti No.17 of 1312 Fasli

The following gracious Firman-e-Mubarak dated 4th Ramzan-ul-Mubarak 1319 H. is herewith published for the information of all Government officers jagirdars and inamdars, so as to enable them to act accordingly.

Exhibits

No.61.

Ghasti No.17 of 1312 Fasli (1903 A.D.) - continued.

COPY OF FIRMAN-E-MUBARAK

Maharaja Madar-ul-Moham Peshkar Sahib:- Your opinion expressed in Arzdesht dated 27th Shabaan 1319 H regarding the general question of division and distribution of state grants is correct, viz., that under Islam, adoption does not confer any right and no state grant can be deemed to be a personal heritable property to which the heir of a deceased jagirdar could lay claim as against Government on the death of a jagirdar. Although my inclinations have always been more - towards the preservation and support of old families, and God willing they will continue to be like that for ever, still it depends entirely on my wish to confirm or refuse from doing so any state-grant possessed by the deceased jagirdar on any person, whether he be an heir of the deceased jagirdar or not. It always pleases me to open out in some way or the other means of livelihood for the surviving members of old families. Such sympathetic considerations however cannot permit.

(1) the sale or mortgage in any shape, or the division and mutual distribution of any jagir or inam granted by the state unless with the due sanction of Government.

(2) any adoption or will by a jagirdar made without the special sanction of Government, and with the object of ensuring transfer of the state-grant into the possession of some person after the said jagirdar's death.

(3) the action of a jagirdar in leaving after him the jagir encumbered with debts borrowed during his lifetime without the knowledge and specific sanction of Government.

(4) the action of any person claiming to be the HEIR OF THE DECEASED JAGIRDAR IN TAKING actual possession of a jagir on some pretext or the other, and then obstructing inquiries into succession, etc.

The above general principles have been detailed in this Firman so that you may keep them in view whenever recommending the confirmation, etc. of jagirs and other state-grants. The intention is not to debar any consideration being shown to the jagirdars or their heirs, but the object is to see that jagirdars or their heirs are not allowed freedom to commit irregularities with regard to state-grants. Jagirdars who are generally members of old families often deserve to be treated leniently;

Exhibits

No.61.

Ghasti No.17 of 1312 Fasli (1903 A.D.)

- continued.

but in no case should anything be done in violation of the procedure laid. Jagirdars, Maktadars Inamdars, etc., are not however prohibited from leasing their grants on annual rentals. But all such contracts shall automatically terminate on the death of the lessee. Leases which are granted in consideration of large debts, without fixing any annual rent, or for only an insignificant nominal rent come essentially under the definition of mortgages, and will therefore be deemed to be illegal. In future Gashti No.87 dated 20th Rabi-ul-Awal 1313 Hijri (4th Aban 1304 Fasli) will be deemed to have been cancelled.

No.62.

Ghasti No. 9 of 1314 Fasli. (1905 A.D.)

No. 62.

GHASTI NO. 9 of 1314 FASLI (1905 A.D.)

By order of Prime Minister

Gashti No. 9 of 1314 Fasli (1905 A.D.)

In subject grant Kahreji ..... Gashti No.105 of 1282 H. the transfer of every maash sale, mortgage or gift etc., was entered illegal unless sanctioned by Government. The said gashti however did not differentiate the several kinds of maashes such as, Kharij Jama (i.e. maashes revenue of which was alienated) madad maash (i.e. maashes meant for the support of the grantee), etc., and say in the case of which of these unrestricted transfer could be allowed. Also in cases in which such maashes have freely changed hands in the past whether further transfers (without the sanction of Government) could be held to be valid on the strength of custom.

Now by Firman of His Highness dated 2nd Moharrum 1322 Hijri it is hereby ordered as follows :-

The grant that has been given in the past, whether it is Khariji jama or Madad Maash or of any other kind and being kharij jama has been going on being transferred previously such grant also according to Gashti No.105 of 1282H which prohibited its mortgage, sale or gift cannot be mortgaged, sold, gifted or transferred in any other way, nor the rights of Crown shall be extinguished in it, as much as the object of the Grantor in granting Maash is that the Grantees should be benefitted and not for temporary gain sell, mortgage or gift, thus depriving themselves of the benefits of the grant in perpetuity.

Exhibits

No.62.

Ghasti No. 9 of 1314 Fasli. (1905 A.D.) - continued.

But in the case of inam lands (whether kharij jama makta or madad maash or any other kind of maash) - which have already changed hands more than once during period intervening between the date of issue of Gashti No. 105 of 1282 Hijri and the presne gashti, any specific orders which may have already been passed on the merits of each case, will be allowed to stand. If however, no such orders have been passed at any time suitable orders should be obtained from His Highness in each case, in the light of the individual merits of the said case. It is hereby made incumbent on all officers concerned to fully carry out the Firman of His Highness.

No. 63.

No.63.

Ghasti No.49 of 1323 Fasli (1914 A.D.)

GHASTI NO. 49 of 1323 FASLI (1914 A.D.)

Orders prohibiting the sale, gift or mortgage, etc., of State grants without the sanction of Government contained in Gashti No.100 of 1282 F were followed by the explanatory orders contained in Gashti No.9 of 1314 Fasli based on the Firman of Hozarat Gaofran makan dated 2nd Moharrum 1322 Hijri. The orders of letter gashti were that even though maashs granted in olden days, whether Kherij jama Nadadwaash or of any other kind may have been freely charging hands in the pact owing to their being Kherij Jama, they cannot after the date of issue of Gashti No.105 of 1282 H. be allowed to be transferred by sale mortgage, gift or otherwise nor can the sovereign rights of the ruler over them be suspended in any way.

In this connection gracious Firman of HEH dated 9th Ramzan 1332 H has been received commanding tate :-

The order prohibiting the transfer of any State grant by gift or otherwise also covers the grant as jagir to any person of any portion of a jagir or any other maash detailed in Gashti No.9 of 1314 F. (Promulgated on the authority of Firman of Hazarat Gufran makan dated 25th Moharrum 1322 H.) by any jagirdar, be he an Amir of the Paigahs, any Mustasna of geir mustana Jagirdar or Raja holding a Samesthan. Hence it is hereby ordered in continuation of the above mentioned gashties that no jagirdar Raja of a Samasthan or any Amir of the Paigahs will be empowered to alienate any State grant in the manner detailed above, without the sanction of H.E.H.

Exhibits

No.64

Ghasti No.16 of 1341 Fasli (1931 A.D.)

No. 64.

GHASTI NO. 16 of 1341 FASLI (1931 A.D.)

In obedience to Firman of H.E.H. dated 8th Rabi-us-Sani 1351 H. it is hereby ordered that under Gashti No.92 of 1325 F. the liability for the payment of the debts due by a deceased jagirdar does not rest on the present jagirdar; but decrees granted in respect of debts due by Maashdars holding zat jagirs and Madad Maashes, etc., can be executed during their lifetime against the income of the jagir with the sanction of Government in the Revenue Department.

The question has now arisen as to whether, in the event of any jagirdar admitting the debt due by a deceased jagirdar and a Civil Court granting a decree on the basis thereof, such a decree could be executed against the jagir income or not?

In such cases the only effect of the constant is that, a jagirdar admits that a deceased jagirdar owed some debts and that he is prepared to pay the same. But such a consent does not alter the nature of the debt itself; that is to say, the debt of the deceased jagirdar does not become the debt of the present jagirdar. Therefore a decree that has been granted on the basis of such consent cannot be executed against the jagir income without the sanction of H.E.H. If it is held that the consent of the present jagirdar amounts to willingness for the payment of the debt, and that therefore payment is not illegal, then in such a case the jagirdar may pay the debt of his own accord, and the question of the execution of the decree does not arise at all nor is there any necessity for it. In the same way, if any jagirdar even gets the loan bond in respect of any debt, executed by his would be heir, it can have no force as against the said heirs in respect of the royal grant that they may eventually get in future. In short, under no circumstances, can the decree, granted in respect of the debt due by a deceased jagirdar, be executed against the income of the jagir, whether the present jagirdar admits such a debt or denies it. Action should be taken accordingly.

B. Grant by State Grants.

Gazette Notification dated 12th Rajjeb 1289 H. page 61.

In these days it has come to the notice of

Exhibits

No.64.

Ghasti No.16 of 1341 Fasli (1931 A.D.) - continued.

Government that watans and maktas, etc., pertaining to jagirs have in some places been sold or mortgaged without the information of the jagirdars concerned, this results in quarrels and disputes, hence all jagirdars and officers of Khalsa are hereby notified that when the sale or mortgage of Watans (including maashes) has been prohibited within the Khalsa jurisdiction without the knowledge and sanction of Government, similarly within jagirs also the purchase and sale as also mortgage of watans and maktas should be prohibited without the knowledge of the jagirdars. If this old order has been contravened in the past or is not observed in future, and a complaint regarding it is filed before any Government officer, then the said Khalsa officers will be empowered to inquire into and decide such complaints.

No. 65.

No.65.

Statement of Maintenance Allowance filed by Mr. Munasser. 26th August, 1955.

STATEMENT OF MAINTENANCE ALLOWANCE FILED BY MR. MUNASSER

M. Hussain Mansoor,
Advocate.

Aden (Camp)
25th Aug. '55.

To, A.E. Kazi, Esq.,

Dear Sir,

Re: Mukalla case.

As desired by the Judge, I am submitting to the judge on 26th August, 1955, the attached statement of the maintenance allowance along with the official document showing the remaining period of the allowance as I received from Hyderabad. I hope you would kindly make it convenient to attend the Court on 26th August, 1955.

Yours faithfully,

(M. H. Mansoor)

Maintenance allowance paid and payable to the branches of Sultan Hussain and Sultan Munasaeer :-

(1) From 1922 till 1948 maintenance allowance was being paid at Rs. 5250/- per year collectively for both the branches of Sultan Hussain and Sultan Manaseer and the total amounted to

Exhibits

No.65.

Statement of Maintenance Allowance filed by Mr. Munasser.

26th August, 1955 - continued.

Rs. 146,000/- which figure has been given to the Court by consent of the parties.

(2) From 1948 each branch gets Rs. 295-5-0 per quarterly that is aggregate amount for both the branches comes to Rs. 2362-8-0 per year.

(3) The above commutation amount of Rs.2,362-8-0 per year will be paid till 31st March 1960 only.

(4) From April 1948 to April 1955 the amount was paid at the rate of Rs. 2,362-8-0 per year and this amounts to Rs. 16,537-8-0 and from July 1955 to March 1960 a further sum of Rs. 11,091-14-0 will be paid. Thus the total from 1948 to 1960 will be Rs. 27,628-6-0.

(5) The sum of Rs. 146,000/- paid till 1948 was in halli sicca (Hyderabad currency) the exchange rate being Halli sicca rupees equal to Rs. 100/- of now Indian Rupees. That means till 1948 the Plaintiff received Rs.125,143/- in Indian currency.

Summary :-

From 1922 to 1948 for 26 years at H.S. Rs. 5,250/- per year paid to both branches of Husain and Munaseer.

	Halli sicca Rs.	146,000/-
	Indian Rs.	125,143/-
From 1948 to 1960 at Indian Rs. 2,362-8-0 per year to both branches	Indian Rs.	27,628-6-0
	Total Rs.	152,771-6-0

Exhibits

No.66.

Certificate of Reserve Bank of India as to Securities.

18th August, 1955.

No. 66.

CERTIFICATE OF RESERVE BANK OF INDIA AS TO SECURITIES

RESERVE BANK OF INDIA
Securities Department,
Post Box No. 901,
Bombay No.1.

18th August, 1955.

No.Sec.6681/11-55.

Certified that the undernoted securities amounting to Rs. 12,29,000 - (Rupees Twelve lakhs and twenty nine thousand only) are held by the Reserve Bank of India, Bombay as on the 15th August 1955, in safe custody on behalf of the Financial Secretary to the Government of Aden on account of the Sultan of Shehr & Mukalla's Nephew's Trust Fund.

Title of Securities	Face Value	Market Rate	Market Value
3 Conversion Loan 1946-86	Rs.12,29,000	Rs.80-6-0	Rs.9,87,808-12-0

Sd/- Illegible
P. Manager.