Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Joykishen Mookerjee v. *the Collector of East Burdwan and another, from Bengal; delivered 5th May*, 1864.

Present:

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THE question in this case relates to a small quantity of land, consisting of nineteen begas and some cattahs in the talook of Gobindpore. This talook originally formed part of the great Zemindary of Burdwan, and previously to its purchase by the Appellant it had been granted in putnee by one of the Rajahs of Burdwan. In the year 1852 it was put up to sale by the Collector of the Zillah of East Burdwan, under the provisions of Regulation VIII of 1819, in order to realize the amount of arrears of rent due from the then Putneedar. The Appellant became the purchaser, and entered into the receipt of the rents and profits of the talook, and it must be assumed that as Putneedar he became entitled to the same rights in the subject matter of the suit which were enjoyed by the Zemindar.

At this time the lands now in dispute were in the possession of a person named Ahmed Buksh, who paid no rent for them either to the Government or to the Talookdar, but, instead of rent, performed certain services. What was the nature of those services is one of the matters now in question. Another is, what is the character of the lands thus

held by these services; are they legally appropriated for the performance of these services, or are they lands which are the free and absolute property of the Talookdar, and which he is at liberty to resume and dispose of as he may think fit, either dispensing altogether with the services, or providing from other sources for the performance of these services if he be under any obligation to secure their performance?

On the 11th of January, 1855, the Plaint in the present suit was filed, and the Collector of Burdwan, as representing the Government, was made a Defendant.

The Plaint insisted that the lands in question were part of the talook; that the lands were what are called mal surunjamee or gram surunjamee held for the performance of services personal to the Zemindar, and for the protection of his property; that Ahmed Buksh had ceased to perform any Zemindary services; and that the Plaintiff had appointed another person to perform such services, and was entitled to resume possession of the lands.

On the 9th of January, 1856, the Collector of Burdwan filed his answer, and he thereby insisted "that the land in question was not mal surunjamee (service land for taking care of the Mâl or Zemindar's property), but chakeran land for the performance of police or chowkeedaree duties; that the land being chowkeedaree chakeran land, the Zemindar has no power to interfere with the property as long as the policemen carry out their various duties.

The main issue raised between the parties therefore was as to the nature of the tenure on which the land was held. The contention on the part of the Appellant being that they were of one description and subject to the performance of no Government services, and the contention of the Respondent that they were of another description, and subject to the performance of no services to the Zemindar. Shortly before the Collector put in his answer the Foujdarry Court of East Burdwan had issued an order "that a Purwana be sent to all the Daroghars of this Jurisdiction that the Chowkeedars under their control be instructed not to attend to Zemindary duties."

It appears that these Zemindars were entrusted

previously to the British possession of India, as well with the defence of the territory against foreign enemies, as with the administration of law and the maintenance of peace and order within their district; that for this purpose they were accustomed to employ not only armed retainers to guard against hostile inroads, but also a large force of Thannahdars or a general police force, and other officers in great numbers, under the name of Chowkeedars, Paiks, and other descriptions, as well for the maintenance of order in particular villages and districts as for the protection of the property of the Zemindar, the collection of his revenue and other services personal to the Zemindar.

All these different officers were at that time the servants of the Zemindar, appointed by him and removable by him, and they were remunerated in many cases by the enjoyment of land rent free or at a low rent in consideration of their services.

The lands so enjoyed were called chakeran or service lands. These lands were of great extent in Bengal at the time of the Decennial settlement, and the effect of that settlement was to divide them into two classes:—

1. Thannadary lands, which by Regulation I of 1793, sec. 8, cl. 4, were made resumable by the Government; the Government taking upon itself the maintenance of the general police force and relieving the Zemindar from that expense.

2. All other chakeran lands, which by Regulation VIII of 1793, sec. 4, were, whether held by public officers or private servants in lieu of wages, to be annexed to the malguzari lands, and declared responsible for the public revenue assessed on the Zemindaries' independent talooks or other estates in which they were included in common with all other malguzari lands therein.

It is clear upon the evidence, and in fact was not disputed at the Bar, that the lands in question are chakeran lands of the second class, and it follows that if resumable at all they are resumable by the Appellant, and secondly, that if the services on which they are held are police services at all, they are the services of Chowkeedars or village watchmen.

The Zemindar had an interest in the performance of the duties of the village watchmen inasmuch as they protected his property, but the public also had

a great interest in their maintenance, and in the peace and good order which they were employed to preserve, and the Government, as representing the public, reserved therefore a strict control over them.

Accordingly, various Regulations were passed for the purpose of enabling the Government to effect this object. Registers were required to be kept of the different persons filling these offices in each Zemindary, with a statement of the funds allotted for their support. The officers themselves were made subject to the orders of the Darogha, or Superintendent of the Police of the district. The Zemindar was required to remove them on complaint of their misconduct by the Darogha, and, finally, they were made removable by the magistrate on sufficient cause. But we can find nothing in these Regulations which takes from the Zemindar the right of nomination of these officers, or which deprives him of the power of himself removing them and appointing other fit persons in their stead, and nothing which deprives him of the right of requiring from the Chowkeedar such services as he was bound by law or usage to render to the Zemindar. It might well happen that either by long usage or by the original contract when the lands were granted, the village watchman might become liable, in addition to his police duties, to the performance of other services personal to the Zemindar, as the collection of his revenue and the like. Indeed, the rules laid down for the Decennial settlement appear to us to recognize the interests both of the Zemindars and the public in lands of this description. They were not to be included in the Malguzary lands for the purpose of increasing the Jumma, because the Zemindars had not the full benefit of them; but they were to be included in the Malguzary lands for the purpose of securing the assessment, because in the event of a sale upon default of payment of the assessment, it would be important that they should be transferred to the purchasers under the Government, with whom the appointment of the person whose duty would in part be to attend to public interests would vest.

Such being in our opinion the general law, let us look at the facts of this particular case. It is found by the Zillah Judge that the duties performed by the persons in possession of these lands,

both before and since the Decennial settlement, have been partly police and partly Zemindary, as follows :—

Zemindary.—1. (personal to the Zemindar). To collect or enforce collection of rents; to guard Mofussil treasures, and perhaps to escort Mofussil treasures. 2. (common to the village community). To keep watch at night and to secure the harvests. Police.—To maintain the peace; to apprehend offenders under the orders of the Thannahdar; to report criminal occurrences; to convey public money to the Sudder Treasury (this duty has ceased since the Decennial settlement); to serve as guides to travellers.

The Judge adds :—"I may add that it is notorious, and in my certain knowledge, that most of these duties are at this time performed by the village watchmen in Burdwan."

From this finding their Lordships see no reason to dissent.

But it may well be that although these lands have been held by the predecessors of the Defendant Ahmed Buksh, and were held by him as Chowkeedar, liable to perform services to the public as well as to the Zemindar, yet that there has been no legal appropriation of the land for that purpose, and that the Appellant may be entitled to recover the land, though he may be under an obligation to provide for the performance of such services as a Chowkeedar is liable to perform for the public.

The evidence appears to stand thus :—

At the time of the Decennial settlement, though these lands were included in the Zemindary, their annual value does not seem to have been taken into account in fixing the jumma. This is consistent at least with the hypothesis that they were then appropriated to the payment of some officers whom it would be necessary for the Zemindar, either for his own or for the public interest, to maintain. We find that in 1813 the particular lands in question were in this talook held by Shrishteedur, who is described as Thannahdar, and they appear ever since to have been held by persons succeeding him in the same character. They were not held as Thannahdary lands in the strict sense of the expression—lands of that description had already been resumed by the Government—but as

Chowkeedary lands; lands appropriated to the maintenance of an officer who performed, and was liable to perform, duties as a village watchman. We think that these circumstances are sufficient to warrant the inference that the lands in question were at the time of the Decennial settlement appropriated, and still are liable to the maintenance of such an officer, and that the Talookdar has no right to take possession of them for his own purposes, and hold them, discharged of the obligation to which they are subject.

On the other hand, it is established by the evidence that the Chowkeedars in this district have always been accustomed to perform services personally to the Zemindar as well as to the police. This is distinctly stated to be the fact by Mr. Skipwith, the officiating Collector in 1837, and by the Judge of the Zillah Court in the present case, and it is admitted by the Government. We think, therefore, the order of Foujdary Court in December 1855, forbidding the performance of Zemindary services by the Chowkeedar, was without any warrant in law.

Cases of this description must, as it seems to us, depend mainly, if not wholly, for their decision upon the question, what was the tenure or character of the lands at the time of the Decennial Settlement, and how they were dealt with in that Settlement.

In this case the result, in our opinion, is that both parties have insisted on more than they were entitled to. One side has contended that the holder of these lands is liable to the performance of none but Zemindary duties; the other, that he is liable to the performance of none but police duties.

Under these circumstances, we feel considerable difficulty as to the course which we ought to take. If we advise the affirmance of the Judgment, we may seem to countenance the opinion that the Government has the right to take possession of these lands, and to appoint a person to perform, as Chowkeedar, general police duties to the exclusion of duties to the Talook and the Talookdar, and this is very far from being our opinion.

On the other hand, we think that we cannot advise the reversal of the Judgment, having regard to the form of the pleadings, without maintaining

the position assumed by the Appellant, that these are gram suranjamee lands, not liable to the performance of any but personal services to the Appellant, and from this opinion also we dissent.

The state of the pleadings prevents us from reaching the real merits of the case. It is not for us to say how these merits may best be reached. It may be that the Appellant having appointed a fit person to discharge the duties of village watchman, and to perform the duties personal to himself, may be entitled to recover the land for the purpose of its being held by the persons so appointed, or it may be that the person so appointed may himself be entitled to recover the land. On these points we give no opinion. But on the whole, having regard to the Appellant being Plaintiff in the suit, and having failed to make out the case which he set up, we think that we shall best discharge our duty by humbly advising Her Majesty to affirm the Judgment complained of, but without giving any costs, and to declare that the lands in question are to be considered as appropriated to the maintenance of a Chowkeedar or village watchman in this Talook, and that the right of appointing such officer belongs to the Talookdar, and that such officer is liable to the performance of such services to the Talookdar as, by usage in the Zemindary of Burdwan, Chowkeedars have been accustomed to render to the Zemindar, and to declare that the affirmance of the Judgment is to be without prejudice to any, if any, other suit which the Appellant may think fit to institute in respect to the matters in dispute in this cause.