

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Beerchunder Jobraj v. the Deputy Collector of Zillah Bhulloah, from Bengal; delivered 3rd February, 1870.*

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Present :

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

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SIR LAWRENCE PEEL.

THE argument in this Case has occupied such a length of time, that their Lordships have been able to give it their consideration, and are of opinion that it may be disposed of on the following short grounds :—

The Appellant commenced his Suit in 1856 ; he sought the recovery of certain lands as belonging to Pergunnah Tishnah, a part, viz., equal to 18 dunes of the lands he seeks by his Plaint were ordered to be restored to him in May 1845. Mr. Abercrombie made this Order ; he ordered that these should be restored to the claimant, and that the detailed particulars of the remaining disputed lands be inserted in the General Settlement Report.

Possession was given according to the Order : from May 1845 till 1856 there has been undisputed possession of the disputed lands by the Government ; for the delay in the institution of the Suit no reason is given.

There is satisfactory proof of the Suit of 1811, and of the proceedings of 1824, having been in respect of part of the lands now in question ; there is strong evidence to show that the Government was then in possession.

The Civil Court Ameen, of the Sudder division, made a report, which their Lordships have been asked now to adopt, but it was rejected at the instance of the Appellant, as well as at the instance of the Respondents. The Appellant petitioned against it.

The Moonsiff's Report was *ex parte*.

Their Lordships, however, do not consider it necessary to determine whether it ought or ought not to have been received.

It would certainly have been more satisfactory if the Principal Sudder Ameen had recorded his reasons for disagreeing with the Ameen's Report; but, be this as it may, as the Government has admittedly been in possession since 1845, and are still in possession, their Lordships are of opinion that it was essential for the Appellant to have proved two things—first, possession within twelve years before his Suit; and, secondly, title to possession—of title to possession there is no proof—of possession there is not satisfactory proof either—there is nothing to connect possession with the cabooleuts or any of them; some of the independent witnesses carry back the possession of the Government for more than twelve years before the Suit, and the evidence to the contrary, on the part of the Appellant, is far countervailed by that of the Respondent. The *res gestæ* from 1811 downwards are all consistent with possession by Government, and inconsistent with possession by the Appellant. The onus of proof rests on the Appellant, and he has failed to discharge that onus. For these reasons their Lordships will humbly advise Her Majesty that this Appeal should be dismissed with costs.



