*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal and Cross-Appeal of the Widow of Shunker Sahai* v. *Rajah Kashi Pershad, from the Court of the Financial Commissioner of the Province of Oudh; delivered 29th July, 1873.*

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Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

Sir Lawrence Peel.

THE Respondent, the Talookdar of Sessendee, is one of the six loyal Talookdars who were excepted by name in Lord Canning's Proclamation of the 15th of March, 1868, from the general sentence of confiscation thereby pronounced against the landholders of Oudh; and, as such, has had his name entered in the second Schedule annexed to the "Oudh Estates Act" (No. 1, of 1869), pursuant to the provisions of the 4th section of that Statute. The questions raised by this Appeal are, how far the rights of the Respondent are affected by the conflicting rights which the Appellant possesses in certain of the villages comprised in his Talook, and what effect can or ought now to be given to the latter as against him.

The family connection between the parties is of this kind: one Imrit Loll had three sons, Koondun Loll, Mohun Loll, and Seetaram. The pedigree at p. 2 of the Respondent's case states that Seetaram left descendants, but that they have no interest in the property; and, however this may be in point of fact,

Seetaram may, for the purposes of this Appeal, be treated as having died childless. Koondun Loll died in 1838, *leaving* one son, Shunker Sahai (also deceased), of whom the Appellant is the widow, heiress, and representative. The other son, Mohun Loll, died in 1837, leaving a daughter, who is the wife of the Respondent.

The Talook came into this family by gift from one Bussunt Koonwur. The gift was made nominally to Shunker Sahai, but, as the Respondent alleges, really in favour of Imrit Loll. It is immaterial to consider how this was, because it is admitted on all hands that either by virtue of pre-existing family arrangements, or of the proceedings had since the annexation of Oudh, the Appellant can now only claim the whole proprietary right in four, and a one-third share in seven others of the twenty-six villages which compose the Talook; the full proprietary right in the remaining fifteen villages belonging to the Respondent.

The fiscal history of the Talook is thus given at p. 11 of the Record:—"It is admitted that Mohun Loll died in 1243 F., Koondun Loll in 1244 F., Shunkur Pershad in 1248 F.; that from 1243 F. to 1250 F. the engagements for the Government revenue of the Talook were taken from the widow of Mohun Loll, those from 1251 F. to 1256 F. from the widow of Shunker Sahai, those from 1257 F. to 1259 F. from the widow of Mohun Loll, and those from 1260 F. to 1263 F. from Kashi Pershad, who had married Mohun Loll's only daughter, the widows being both alive." Hence it appears that in 1856, when the annexation of Oudh took place, the Respondent was the ostensible Talookdar, and he appears to have continued to be such at the date of Lord Canning's Proclamation.

The present litigation began in March, 1864, when the Appellant commenced proceedings against the Respondent in the Court of the Revenue Officer engaged in making the regular settlement. The Record, which is in other respects but loosely made up, contains only the pleadings as to one of the seven villages; and therefore it does not clearly appear what was the precise case which she made in respect of the four villages of which she claimed to be sole proprietor. The nature of her claims touching all but the one village in question, is only to be

gathered from the Judgments afterwards to be considered, of which some appear to have dealt with her whole claim.

The Plaint set forth in the Record prays, "that the settlement of the proprietary and sub-proprietary rights to one-third share in the village may be made with Plaintiff, according to the provisions of section 167 of the directions to Settlement Officers, and of section 31 of Circular No. 2, and that the wajiboorlurz (written representation) may be recorded by the Petitioner." This prayer, whether it does or does not amount to a prayer for Talookdary rights as such, when distinguished from ordinary Zemindary rights, are understood in Oudh, unquestionably imports a claim for a direct settlement of the Appellant's share of the village with her, independently of any superior.

On the 16th of April, 1864, the Respondent put in a Petition insisting on the absolute right conferred upon him by the Proclamation of March 1858; and objecting to the Appellant's being treated even as under proprietor, as, according to the settlement papers she does not possess these rights. (Appendix, p. 2.)

In answer to this the Appellant's Agent, on the 11th of May, 1864, put in a Petition in which he entered into the history of the Talook before the annexation of Oudh; insisted in paragraph 4 on the provisions made by the British Government for the protection and maintenance of the rights of persons in possession, and the rights and possession of under-proprietors; and after stating, in paragraph 7, "That if in consideration of the estate having been formally gained by the husband of Petitioner's client who is in the possession of the same, she is entitled according to law to superior right, the objection of the Rajah's Mookhtear to the settlement of under-proprietory right with her cannot be held valid;" he concluded with the expression of a hope that after due inquiry a Decree for the possession of the entire estate of Sessendee might be passed in the Plaintiff's favour. (Appendix, p. 4.)

Mr. Capper, the Settlement Officer, who tried the case in the first instance, came to the following conclusions:—

1st. That the Appellant's claim to the entire Talook as given to her late husband, was barred by

the grant of the Talook by Government to the Respondent.

2ndly. That this did not affect her claim to hold Pookhta as under-proprietor, villages which were the proprietary of her husband, and which she was holding in 1855-1856 A.D.; as to which appropriate orders would be issued.

3rdly. That the claim to share in the proceeds of the joint collections of other villages in which she had no distinct proprietary possession in 1855-1856 was barred by the rules which admit no share in a Talook. And he added the following observations:—"The common collection must be held to be that of the Talookdar, and any distribution of the proceeds must be held to be his voluntary act granting maintenance to his relations. By the local rules these can only be enforced when the Talookdar has bound himself in writing to continue it. If such document exist, it can be separately adjudicated." (Appendix, p. 11.)

His final Decree in the case of the particular village sued for by the Plaintiff, set out in the Record, was in these words, "I dismiss the claim of the widow of Shunker Sahai to under proprietary title in one-third of Mouzah Sessendee Khas, and decree full under proprietary title to Rajah Kashi Pershad." (Appendix, p. 12.)

On appeal this Decree was confirmed by Mr. Currie, the Settlement Commissioner, on the 22nd September, 1864. In his Judgment (p. 14) he states that, although in the Lower Court the Appellant had claimed only one-third of Mouzah Sessendee in under-proprietary right, she had before the Appellate Court laid claim to the whole; that he refused to admit an appeal for a larger portion than was claimed in the Lower Court; that her claim, such as it was, was barred by the Respondent's Sunnud; that any possession which she may have had in the village was of a proprietary, not of an under-proprietary character, and that possession of a proprietary character could not entitle a person to be recognized as an under-proprietor. He added that, inasmuch as the Respondent had voluntarily agreed to allow the Appellant to retain possession of her one-third of the profits for the term of her life, the Settlement Officer, if she applied for the benefit of this concession, and gave security not to disturb the

Respondent further, should take the necessary steps to secure her the rights conceded.

Their Lordships have to observe on this decision that the reasoning on which it is based applies only to the particular village of Sessendee Khas, and the other six in respect of which the Appellant claimed one-third of the profits. It has no application to the four villages of which she claimed the full proprietary right, and the Record fails to show distinctly what proceedings were had in respect of the latter after Mr. Capper's Judgment of the 23rd of May, 1864.

From Mr. Currie's Order the Appellant brought a special Appeal before Mr. Davies, the Financial Commissioner, which that officer dismissed on the 6th of December, 1864, regretting that he was legally debarred from interfering with Orders of the Lower Courts. And on the 10th of July, 1865, he rejected a subsequent petition for review of Judgment, stating that "he fully admitted the hardship of the case, but was unable to point out any legal remedy at present." The first of these Orders may have been passed under some doubt as to the powers of the Financial Commissioner. But no such doubt can have existed in July 1865, when the Petition for review was rejected, since Act XVI of 1865, which received the assent of the Governor-General on the 7th of April, 1865, had been passed intermediately to remove such doubts. On the 18th of July, 1865, the appellant presented a long petition to the Financial Commissioner, which was the commencement of the proceedings out of which this Appeal has directly arisen (Appendix, p. 18). This document is in terms confined to the previous adjudication concerning the single village of Sessendee Khas. It complains first, that no distinct issue whether the Appellant was or was not in proprietary possession of a third share in Mouzah Sessendee had been regularly framed and tried in the suit. It contends that such possession was established by, amongst other evidence, a Kheut and settlement statement forming part of the proceedings on the summary settlement of 1858. It then contests the conclusions of the Settlement Commissioner, in his Order of the 22nd of September, 1864, to the effect that the Appellant's claim was barred by the Respondent's Summad; and that any

possession which she may have had in the village having been of a proprietary, and not of an under-proprietary character, it could not entitle her to be recognized as under-proprietor. It then cites certain paragraphs of a Circular Letter, No. 6 of 1862, and submits that the Petitioner's case falls within the 6th of those paragraphs, and entitles her to have it referred for the orders of the Governor-General in Council, in order to have the Respondent's Sunnud reformed. The prayer of this Petition was that the Court would be pleased to decree to her the continuance and enjoyment of the rights she was entitled to under and by virtue of the Kheut and Settlement Statement A; or to refer the case for the order of the Governor-General in Council, in conformity with the ruling laid down in paragraph 6 of Circular No. 6 of 1862.

This application would seem, from a Petition filed by the Respondent, on the 21st of March, 1866 (Appendix, p. 20), to have been heard by the Financial Commissioner on the 1st of March, *ex parte*. The Petitioner complained of this, and finally begged that if his objections were not still to be heard, his Petition might be forwarded to his Excellency the Governor-General in Council, with the report which the Financial Commissioner proposed to make in the case. The first step taken by the Financial Commissioner was to write, on the 28th of March, 1866, the letter to the Secretary of the Chief Commissioner of Oudh, which is at page 21 of the Record.

The important paragraphs in that letter are the following:—

"2. The widow brought her claims in the regular way before the Courts, both for the proprietary rights and then for under-proprietary rights; but it was held that her suit for the first was barred by the Sunnud being in the name of Raja Kashi Pershad only, and for the second because any title she may have had independently of our arrangements must have been to full proprietary rights, and that she had none to rights held in subordination to the Talooqua.

"3. But having allowed her case to be again argued by counsel, I find that although the Sunnud was made out in the name of Raja Kashi Pershad alone, it is not in agreement with the orders for the settlement of 1858 A.D.

"4. That settlement was made by a proceeding of Captain L. Barrow, Special Commissioner of Revenue, a translation of which is annexed for reference. It will be seen that after stating that in 1264 F. (1856 A.D.), fifteen villages were settled with

the Talooqdar (Raja Kashi Pershad), four* with the widow of Shunkur Sahai, and seven with both as co-partners, and that in the co-parcenary villages two-thirds belonged to to the Talooqdar, and one-third to the widow, the Record goes on as follows:—"It is therefore ordered that the triennial settlement of the Talooqua be made with Raja Kashi Pershad, Talooqdar, on a Juma of 23,251 rupees, according to the assessment of 1264 F., and that the widow of Shunkur Sahai be recorded as co-partner."

"5. The widow's name was duly entered in the Kheut as one-third owner of the seven villages referred to, but this document would be of no effect *per se*, and apart from the specific recognition of the widow's right in the settlement proceeding.

"6. According to the Governor-General's Order of the 10th October, 1859, it is ruled that Talooqdars with whom the summary settlement was made, thereby acquired the proprietary title in their Taluquas. This Order is generally held to be law. It would follow, therefore, that the widow is entitled to have her name entered in the Taluqdaree Sunnud as owner of the four villages, and in one-third of the seven villages, her proprietary right to which was affirmed by the settlement proceeding."

"13. If the case were within the ordinary jurisdiction of the Courts, nice questions would arise as to the right of the widow of Shunkur Sahai to more than a life-interest in her husband's estate, and as to the title of the husband of her brother-in-law's widow to succeed to it. But there is no occasion to discuss these. The Taluqdar's title is good under his Sunnud, but it appears to me that the widow, is equally good to her share as defined under the proceeding of summary settlement.

"14 It should be mentioned that Raja Kashi Pershad is one of those Talooqdars whose proprietary rights were specially reserved in the Proclamation of the Governor-General, under which the soil of Oudh was confiscated. The Raja maintains that he thus became proprietor of the whole Taluqua, how many soever shareholders there may have been previously. Without discussing this point on its merits, I may observe that it is not available to the Raja in the particular case, as the terms of the Government Order of the 10th October, 1859, are distinct, that those with whom the summary settlement was made, became *ipso facto* proprietors without reference to any antecedent rights.

"15. As much stress is laid on the rigid maintenance of the literal terms of the settlement of 1858, and as the widow has gone to much expense to have the case argued on that ground, I hold that it is not open to me to do otherwise than state the case as above for the consideration of the Chief Commissioner."

There is considerable confusion in the Record as to what was done, or intended to be done, on this report. This is a question which will be hereafter considered. One thing is certain, that nothing final was done until the 7th of November, 1868, when Colonel Barrow, who had then become

* For these four villages the widow has obtained a sub-settlement after a good deal of litigation. Their names are 1, Uttergaon; 2, Deburreha; 3, Bursowan; 4, Kurrowlee.

Financial Commissioner, made an Order, of which the substance is contained in the following paragraph :—"On these grounds, therefore, a life interest in the four villages named in the margin is decreed to the widow of Shunkur Sahai, who will pay the Government demand, plus 10 per cent. only, to the Talookdar : and she will be also entitled to a one-third share of the profits in the seven villages named in margin when the annual accounts are made up." Against this Order the Appellant under leave of the Court in Oudh has appealed to Her Majesty in Council, and the Respondent, with the like leave, has preferred a Cross Appeal.

The Appellant in her case describes the order as *a proceeding purporting to be a Judgment* of the then Financial Commissioner; and her learned Counsel on the opening of the Appeal treated the order as one made *ultra vires*. Their argument on this point seemed to assume that the memorandum of Major MacAndrew, at p. 22 of the Record, was in the nature of an order made by competent authority, which sent the case back to the Judicial Commissioner for adjudication upon one point only, viz., whether, by the summary settlement, the widow was declared entitled to the third of the whole estate, or only to the four villages and one-third of the seven. It seemed also to assume that, by the report of Mr. Davies of the 28th of March, 1866, whatever power the Financial Commissioner might have had to determine generally the rights of the parties on the merits was spent ; and, further, that the Chief Commissioner either had determined to refer the case to the Governor-General in Council, in order to have the Respondent's Sunnud altered according to the result of Major Barrow's answer to the specific question referred to him, or at least had reserved to himself the power of so determining when he should receive the answer. If this were the true view of the case, it would, in their Lordships' opinion, be a very grave question whether any Appeal against the order would lie to Her Majesty in Council. It was indeed suggested that the order, though made without jurisdiction, purported to be a judicial order, and consequently that the Appeal would lie. But even if that were so, the utmost their Lordships could do would be to discharge Colonel Barrow's order as made without jurisdiction.

They would certainly decline to adjudicate upon the propriety of the reformation of the Respondent's Sunnud by the Governor-General in Council, an act to be done, not by any Court of Justice, but by the Supreme Executive Authority in India.

Their Lordships, however, having come to the conclusion that this view of the case is erroneous, do not think it necessary to consider more particularly what could or ought to have been done, had it been correct. They conceive that the argument ascribed a force and an effect to the Memorandum of Major MacAndrew which do not belong to it. That gentlemen had no power or authority to direct a judicial inquiry into any matter. He was but the Secretary of the Chief Commissioner, also an executive officer. The Memorandum in question does not even purport to be an extract from a despatch written by the authority of the Chief Commissioner. It is more like the mere memorandum of a secretary or *précis* writer submitting, for the information of his superior, his own view of the documents on which the latter was to pass an order. Again this paper is dated the 10th of April, 1866; and it appears from the Record that, on that date the Respondent was petitioning the Chief Commissioner (Appendix, p. 22); that the Appellant's Counsel was addressing the same officer on the 6th of October, 1866 (Appendix, p. 24); that in October, 1867, the Appellant was memorialising the Governor-General in Council and treating the question as still open; that the Chief Commissioner had returned the files to the officiating Financial Commissioner, suggesting that this case should be disposed of by mutual agreement or by the Talookdar's association; that some such arbitration was attempted, but that in December 1867, the Appellant, dissatisfied with that course of proceeding, prayed that the trial of her case should be sent back to the Financial Commissioner; and that, finally, both parties appeared by Counsel before Colonel Barrow, as Financial Commissioner, on the 7th of November, 1868, and argued their respective cases before him. The conclusion, therefore, to which their Lordships have come upon these confused, and perhaps somewhat irregular proceedings, is that the Chief Commissioner never took action upon Mr. Davies' Report, in order to have the Respondent's

Sunnud reformed, or determined to take such action; but that in November 1868 the case raised by the Appellant's petition of the 18th of July, 1865, was still open for adjudication by the Financial Commissioner; and that the order under appeal must be taken to be the final judicial order on that petition. The learned Counsel for the Appellant, at the close of the argument, seemed to intimate their desire to have the case thus dealt with. The learned Counsel for the Respondent, however, did not abandon their contention that the suit had been finally disposed of when Mr. Davies rejected the first petition for review; and that the petition of the 18th of July, 1865, and all the subsequent proceedings were irregular. Looking, however, to the proceedings of the Courts below; to the conduct of the Respondent therein; and, indeed, to his printed case filed on this Appeal; their Lordships are not disposed to adopt this view, but consider that it is open to them to review, as they will now proceed to do, Colonel Barrow's order on its merits.

The first question is, whether the Appellant has made out a title to any Talookdary rights. It is admitted on all hands that the Respondent's Sunnud, whilst it stands, is an effectual bar to her claim of such rights. And, since she has no interest in many of the villages comprised in the Talook, it would apparently be necessary, in order to make her a Talookdar, not only to reform the Respondent's Sunnud, but also to break up the existing settlement, and to resettle the estate in three different portions. Whether, since the passing of "the Oudh Estates Act," the first of these objects could be effected even by the Governor-General in Council without a special Act of Legislature, seems to their Lordships to be very questionable. The second will be found to be inconsistent with the the title to Talookdary rights which she sets up. For it is admitted by Mr. Davies, the officer most favourable to her, that the sole foundation on which her title rests is to be found in the summary settlement of 1858, and the effect given thereto by the Governor-General's Order of the 10th of October, 1859. In paragraph 8 of his letter he says distinctly: "It is nothing to the purpose to inquire whether the widow had any rights independent of

the summary settlement, or whether under it she got more or less than she was entitled to, as its effect has been made absolute and irrevocable." It is, however, clear that, if the summary settlement did anything, it treated all the twenty-six villages as forming one Talook, to be settled for with somebody as Talookdar, at one aggregate Jumma.

Again, their Lordships are not disposed to assent to the proposition contained in the 14th paragraph of Mr. Davies' letter, to the effect that a title derived from the summary settlement and the Governor-General's Order must be taken to override the rights acquired by the Respondent under the Proclamation. Before the summary settlement the Respondent had been declared sole hereditary proprietor of the lands which he held when Oudh came under British rule (he seems to have been then Talookdar), subject only to such moderate assessment as might be imposed on them; and the proprietary right of all other persons in the soil stood confiscated to the British Government, which reserved to itself the right of disposing of it. He had, therefore, at the date of the settlement, the declared right to engage for the revenue. His doing so could not supersede or detract from the rights which he had already acquired, or become the foundation of his title. On the other hand, the general body of Talookdars re-acquired no interest in their forfeited lands until they had been admitted to make the settlement. Accordingly, "the Oudh Estates Act," though it enacts that the estates of both classes of Talookdars shall be of the same nature, and be held subject to the same conditions, recognizes the distinction between them in the matter of title; and directs that the Respondent and the four other loyal Talookdars in the same category with him, shall have their names entered in a separate schedule.

Lastly, their Lordships are of opinion that there is no ground for holding that the summary settlement, and the subsequent Order of 1859 have conferred Talookdary rights on the Appellant. The order declared that every Talookdar with whom a summary settlement had been made since the reoccupation of the province, had thereby acquired certain rights. To bring any person within the operation of this clause, he must be shown to be

one with whom a summary settlement was made between the 1st of April, 1858, and the 10th of October, 1859, as *Talookdar*. It does not appear to their Lordships that this can be predicated of the Appellant. She never entered into any engagement for the revenue. From the settlement proceedings, the Statement A, and the Roobacarry (Appendix, pp. 45 and 46), it appears that the Raja was the only person who applied for the settlement; that he sought to settle for all the twenty-six villages as one estate or Talook; that he was described on the face of the proceedings as "the Talookdar," the Appellant being spoken of only as the widow of Shunker Sahai; and that the triennial settlement was then directed to be made, and was made with him, the Kaboolyut being taken from him alone. Undoubtedly the application of the Raja stated the interest of the applicant both in the four, and in the seven villages, and admitted that, in 1856, and immediately after the annexation of Oudh, there had been three distinct settlements of the villages, for which he was then seeking to settle as one entire estate or Talook. But this latter fact, though consistent with the fiscal policy which prevailed between the annexation and the mutiny, is alike inconsistent with the policy inaugurated by Lord Canning's Proclamation, with the status of Talookdar thereby assured to the Respondent, and with the final order of the Settlement Officer. The construction which their Lordships would put on the words "and that the name of Shunker Sahai's widow be recorded as shareholder" is not that the Settlement Officer gave or intended to give to the Appellant the right of making a summary settlement as Talookdar, but simply desired to place on record, for her benefit, her admitted proprietary and beneficial interest in some, and some only, of the villages which made up the settled Talook.

If this be so, the next question is to what, if any, relief is the Appellant entitled, though she has failed to establish a title to Talookdary, or even to Malgoozaree rights. It will be convenient to consider this first with respect to her interest in the seven villages, and afterwards with respect to the four villages, since her interests in the two classes of villages may admit of different considerations.

As to both, however, it is to be observed that the necessary consequence of holding that the twenty-

six villages have been conclusively thrown into one Talook, of which the Respondent is sole Talookdar, is that the interest of the Appellant in the villages in which she is interested, whatever it may have been originally, has become in some sense subordinate, or sub-proprietary. The Oudh Blue Book, and in particular the Memorandum of Mr. Charles Currie at p. 216, show how, under the native Government, the great Talooks grew up, and how, sometimes by a process of disintegration, sometimes by one of acquisition, they came to include Zemindaries in which all proprietary right, short of a nominal superiority, was vested in persons other than the Talookdar. In such cases the Talookdar alone held, as it were, *de capite* from the State, and alone engaged for the payment of the public revenue; but he held his lands subject to the rights of the proprietors intermediate between him and the cultivators of the soil. It seems to have been the general policy of the Oudh settlement, begun by Lord Canning and continued by his successors, to perpetuate this system, however much the authorities may from time to time have somewhat oscillated between the policy of creating a landed aristocracy and that of protecting against such an aristocracy the rights, real or supposed, of others in the soil. Their Lordships can see no reason why the Appellant, because she may have originally claimed the superior, should not be allowed to assert in this suit any subordinate right to which she may be entitled. And this, which was originally the view of Mr. Capper, seems to have been finally ruled by Colonel Barrow. And it may be observed that in some of the earlier proceedings she has put her case in the alternative.

Again, Mr. Capper seems to have admitted, as to the seven villages, that though the Appellant had not been in independent possession of one-third of the collections of these villages; though the collections were made in common, and, therefore, presumably by the Respondent, the Talookdar; yet that the latter might have so bound himself by writing as to have incurred the obligation of accounting to her for one-third of the profits. He ultimately dismissed her suit, because her agent had failed to produce a deed in writing so binding

the Talookdar. Colonel Barrow, however, appears to have held that the admission of the Raja at the time of the summary settlement, and on other occasions (the former being in the nature of an admission on record), were equivalent to such a deed; and that accordingly the relation of Trustee and *cestui que trust* having, so to speak, been established between them, she was entitled to a one-third share of the profits of these villages when the annual accounts were made up. In this part of the Financial Commissioner's Order their Lordships entirely concur.

Colonel Barrow's order also recognises the proprietary interest, treating it as a sub-ordinate interest, of the Appellant in the four villages. But the Appellant insists that he has improperly subjected her to pay a per-centage of 10 per cent. to the Talookdar over and above the Government demand. It is somewhat difficult for their Lordships, in the absence from the record of the proceedings relating specifically to these villages to deal with this portion of the Appellant's case. In a marginal note to his letter of the 28th of March, 1866, Mr. Davies states that the widow had obtained a sub-settlement for these four villages. If that were a final settlement their Lordships, on the materials before them, would not see their way to disturbing it. Colonel Barrow, however, appears to have thought that the amount payable by the Appellant to the Respondent in respect of these villages was a point open to him for decision; and his finding thereon is now to be reviewed. If there were no positive law on the subject their Lordships would see no ground for subjecting the Appellant who, as Zemindar, must be in the collection of the rents to the payment of more than her proportion of the Government revenue. But the propriety of the imposition of this 10 per cent. seems to depend upon the effect of the provisions of the Oudh Settlement Act, No. XXVI of 1866. That Act was passed to give the force of law to certain Rules regarding sub-settlements and other subordinate rights of property in Oudh. They seem to apply to all persons possessed of subordinate rights of property in Talooks in Oudh; and the 3rd clause of the 7th of these Rules says, "In no case can the amount payable during

the currency of the settlement by the under proprietor to the Talookdar be less than the amount of the revised Government demand, with the addition of 10 per cent." Colonel Barrow appears, therefore, to have made the amount payable by the Appellant the least which, in his view of it, the law permitted.

Their Lordships conceive that they too are bound by this enactment. If the view which they have taken of the Respondent's rights as Talookdar is correct, it is impossible to treat the interest of the Appellant in these villages as other than that of a subordinate Zemindar. If she has lost the right of settling directly with Government for the revenue, she must, if she retains any interest in the villages, be treated as one entitled to, and liable to make a sub-settlement for them. And if this be so, she seems to fall within the provisions of the Statute.

The only remaining question relates to the extent and nature of the Appellant's interest in the property which has been found to belong to her. Colonel Barrow has decreed to her only a life interest. He seems to have had a notion that if her interest were more than this she would have an absolute power of disposing of the villages and of breaking up the Talook. This could only have happened had she been found entitled to full Talookdary rights; and even in that case it may be doubted whether the effect of the Governor-General's letter of 1859, and the subsequent legislation is to relieve a Hindoo widow, though a Talookdar, from the disabilities imposed upon her by the general law. Such a construction seems opposed to the 23rd section of the "Oudh Estates Act," at least as regards a widow who takes a Talook by inheritance. The Appellant, however, is now to be treated not as a Talookdar, but as the proprietor of certain villages and rights within a Talook. These she acquired by inheritance from her husband, and her estate is not a life interest, but the estate of inheritance of a Hindoo widow with all its rights and all its disabilities. Their Lordships, therefore, will humbly recommend Her Majesty to vary the Order under Appeal by declaring that the Appellant, as the widow and heiress of Shunker Sahai, is entitled to a Hindoo widow's estate of inheritance in the four Mouzahs, Daheria, Bursooa, Kuroulee, and Goturgaon, and in a one-third share

of the profits in the seven Mouzahs, Sessendikhas, Salsamow, Laloomur, Shahpur, Kharehra, Meerrampur, and Jubrelah, such share to be ascertained and paid when the annual accounts are made up, and that she is further entitled to have a sub-settlement of the said four villages on the terms of paying the Government demand plus 10 per cent.

In this case in which there are Appeal and Cross Appeal, neither of which has been wholly successful, their Lordships think that each party should bear his or her own costs.

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