Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Raja Nilmoni Singh Deo Bahadoor v. *Ram Bundhoo Roy and others, from the High Court of Judicature, at Fort William, in Bengal; delivered, 9th March* 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE history of this case, as far as it is material to the judgment, is as follows:—The Government of India, requiring land for a public purpose under the provisions of Act X. of 1870, gave the requisite notices, and proceeded to take 58 bighas of land within the zemindari of the Rajah of Pachete. These 58 bighas were occupied by persons who held under the title of jagirdars, but were undoubtedly subject to the superior tenure of the Rajah, and may be described as mal lands of his zemindari. The Act referred to, No. X. of 1870, contains a number of elaborate provisions applicable to the acquisition of lands and the payment of the purchase money for them. Under the circumstances of this case it will be enough to refer to three of the clauses. It appears that in certain cases an award of compensation may be made by the Collector, as between the Government and the claimants. Section 14 is in these terms:—"If the Collector "and the persons interested agree as to the "amount of compensation to be allowed, the

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" Collector shall make an award under his hand " for the same;" and there follow provisions that it shall be final. Clause 38 is in these terms:—" When the amount of compensation " has been settled under section 14, if any " dispute arises as to the apportionment of the " same, or any part thereof, the Collector shall " refer such dispute to the decision of the Court." Section 39 goes on to say:—" When a reference " to the Court has been made under section 38 " the Judge sitting alone shall decide the pro- " portions in which the persons interested are " entitled to share in such amount." It further provides that: "An appeal shall lie from such " decision to the High Court, unless the Judge " whose decision is appealed from is not the " District Judge, in which case the appeal shall " lie in the first instance to the District Judge."

The proceedings in this case were under these sections. Under section 14, the Collector made an award for the whole amount of the compensation, which was, in round numbers, Rs. 15,000. There was a dispute between the Rajah and the tenants, as they may be called, with reference to the apportionment of the amount between them. The question was duly referred to a Judge sitting alone to decide the proportions in which the persons interested were entitled to share, and that Judge made a decision in pursuance of such reference, whereby he awarded to the Rajah Rs. 84, and to the other claimants, of whom there are a great number, the rest of the compensation money. The Rajah did not appeal from this decision, as he had a right to do, but he brings the present suit for the purpose of in effect setting it aside. In his plaint he characterises his suit as—" A suit to recover Rs. 13,000 " in deposit in the collectorate of this district, " on account of compensation for 58 bighas " 5 cottas," and he contends that he is entitled to

a far larger amount than that which has been awarded to him. In other words, he brings the suit for the purpose of determining the very question which had been determined according to special statutory process by a Judge from whose decision he did not appeal.

It has been very fairly admitted by Mr. Doyne that, unless he can avail himself of section 40, the proceedings which have been taken are conclusive as to the amount and apportionment of the compensation. Section 40 is in these terms:— "Payment of the compensation shall be made "by the Collector, according to the award, to "the persons named therein, or, in the case of "an appeal under section 39, according to the "decision on such appeal; provided"—and this is the part of the section on which he relies— "that nothing herein contained shall affect the "liability of any person who may receive the "whole or any part of any compensation "awarded under this Act to pay the same to "the person lawfully entitled thereto." He contends that, under that proviso, the Rajah is entitled to bring this suit. It appears to their Lordships that the proviso has no such effect. Such a proviso, which appears to have been but a repetition of a provision in a previous Act *in pari materiâ*, is necessary in this, as in almost all Acts of a similar character. It is necessary for the Government, or the persons or company entitled to take property compulsorily, to deal with those who are in possession or ostensibly the owners; but it may happen, and frequently does happen, that the real owners, possibly being infants or persons under disability, do not appear, and are not dealt with in the first instance: and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation money.

Their Lordships are of opinion that the Courts in India, who both concur on this point, have rightly held that this proviso applies only to persons whose rights have not been adjudicated upon in pursuance of the sections 38 and 39, and that it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act to have that claim reopened and again heard in another suit. Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended to be final; and that the amount and distribution of the compensation having been settled in this case by a competent Court, and the decision not having been appealed against, the settlement is final, and the present suit cannot be maintained. They will, therefore, humbly advise Her Majesty that this judgment be affirmed, and the Appeal dismissed with costs.