

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Ramrunjun Chuckerbutty, Bahadoor, v. Baboo Ramprosad Dass, from the High Court of Judicature, at Fort William, in Bengal; delivered 20th February 1883.

Present:

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS Appeal arises out of a dispute between two zemindars whose properties adjoin, the Plaintiff, Baboo Ramprosad Dass, being the zemindar of a tuppa called Belputta, and the Defendant, Raja Ramrunjun Chuckerbutty, (with whom were joined several lessees of his,) being the zemindar of Mohumudabad. The Plaintiff's property is to the north of that of the Raja. The Plaintiff, though in terms his action is described as one to quiet his possession, has been treated, their Lordships are not prepared to say wrongly, by the two Courts, as suing to obtain possession of certain property in dispute, amounting to 1,336 bigahs and 17 cottahs, which the Plaintiff alleged to be to the north, the Defendant to the south, of the proper boundary line between the two estates. The Plaintiff's main proof, indeed the only proof which now need be considered, is a certain award which was made under these circumstances. In the year 1877, Mr. Wood, a settlement officer, was employed in the district in which these estates lie, and thereupon both proprietors joined in a petition to Mr. Wood to

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appoint arbitrators for the purpose of settling the boundary between the estates. In pursuance of this request Mr. Wood appointed arbitrators, who made an award in which they say:—"Having, " in the presence of the harpurdazes of both the " parties, taken down the depositions of the " witnesses of both parties on the disputed " locality, and made investigation and inquiry on " the spot, and having observed the aspect of " the place, we have ascertained as follows." Then they proceed to lay down, with much minuteness, and, as it would seem with respect to a good part of the award, with much accuracy, the boundaries between the two properties. The paragraph in the award which has led to the present dispute is the following:— " Going along west from the high peak of " Satbor Pahar, which is on the south of Luf- " shapara, one comes to a guruh called Rajguruh. " On the south of it is Doobhiadihi, in Mohumu- " dabad. On the north of that guruh is Kolar- " koonda, in Belputta. On the west of it is " Terma hill; on the east, south, and west is " Mohumudabad. On the north is Balputta."

It is contended on behalf of the Defendant, in the first place, that he never agreed to be bound by this award, and is not bound by it; secondly, that the award is ambiguous on the face of it, and therefore is null and void; thirdly, that the true construction of it gives to him the property in dispute.

With respect to the first question, their Lordships are clearly of opinion, as has been found by both Courts, that the Defendant did submit to this arbitration, and that he ratified and adopted the award after it had been made; and, further, that the arbitration was intended by both parties, not merely to determine possession at the time, but to determine the right to the land between the parties.

Upon the award being made both parties appear to have been quite satisfied with it; so satisfied that they petitioned the Settlement Officer to lay down solid brick pillars along the line settled by the arbitrators in order that the boundary should remain a perpetual record of their respective rights. The Settlement Officer did not comply with this request, but made the following order:—"That if the petitioners construct the pillars themselves, there will be no likelihood of objection hereafter. It is not necessary for the Court to pass any order in this matter." At the end of the award at page 35, there is this statement:—"Decision of the arbitrators confirmed. The 26th April 1877. Syud Sher Ally, Deputy Collector."

Their Lordships are of opinion that this document, together with the submission and other evidence, clearly shows, as the Courts have found, that both parties accepted and adopted the award, and that it was confirmed by the Settlement Officer.

The next question is whether the award is, upon the face of it, so ambiguous that it cannot be enforced? Their Lordships see no such patent ambiguity. The words which have been read may or may not become clear when they are applied to the ground, but there is nothing in them which shows that a distinct boundary line cannot be drawn in accordance with them. It is only necessary to read these words in the award:—"On the west of it (Rajgurh) is Terma hill; on the east, south, and west is Mohumudabad; on the north is Belputta." That is to say, taking the ridge of Terma hill as the dividing line, the land of the Plaintiff is to the north and the land of the Defendant is on the other sides of it.

Now comes the question of how this description is applied to the ground. One would be led

from it to suppose that Terma hill adjoined Rajgurh. A kanoongo who has been deputed to make a local examination, the Judge of the First Court, and the High Court, have all come to the conclusion that Terma hill does adjoin Rajgurth; *i.e.*, that it consists of a range of low hills or spurs leading from Rajgurth to a high peak, which may be called "Terma Proper," at a distance of about $1\frac{1}{4}$ miles, and that the boundary of the Plaintiff is to the north of the ridge or watershed of these hills. Mr. Justice White observes, quite accurately according to their Lordships' view: "The meaning of the award is to be ascertained by its language as explained by evidence of the topography of the place, and of the local meaning attached to the names of the places mentioned in the award." This is the manner in which it has been ascertained by two local inquiries, affirmed by the High Court, and the boundary laid down in accordance with it gives the disputed land to the Plaintiff.

The case of the Plaintiff is easily intelligible; the case of the Defendant is by no means so intelligible. He contends for a line to be drawn from Rajgurh in a straight line—he does not say in what direction—to Terma hill, to what part of Terma hill he does not say. It is to be supposed that he contends that the line should be drawn in such a direction as to give him the north of Terma hill proper, and also the north sides of the adjoining hills, which are described by the Plaintiff as spurs of Terma hill. The question has been reduced to a question purely of fact, and their Lordships are of opinion that it has been rightly found by the two Courts.

Their Lordships will therefore humbly advise Her Majesty that the judgment of the High Court should be affirmed, and this Appeal should be dismissed, and it should be dismissed with costs.