

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ranee Shurnomoyee, Widow and Heiress-at-law of the late Rajah Kristonauth Roy, Bahadoor, deceased, v. Maharajah Suttleschunder Roy, Bahadoor, Son and Heir-at-law of the late Maharajah Sreeschunder Roy, Bahadoor, deceased, from the late Sudder Dewanny Adawlut of Calcutta; delivered 23rd July, 1864.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILLE.

THIS was an Appeal from a Decree of the Sudder Dewanny Adawlut at Calcutta of the 26th of March, 1859, from a Decree of the Judge of the Zillah Court of Nuddea, in Bengal, of the 21st of July, 1858, confirming substantially a Decree of the Principal Sudder Ameen of Nuddea, in Bengal, of the 19th of November 1857. The suit was originally brought by the Respondent's father, and the relations of the parties to each other were those of Zemindar and Talookdar, the Appellant holding as mesne tenant a portion of the zemindary. The object of the suit is to enhance the rent at which the Appellant holds that portion, and no question is made upon the Respondent's general title, nor upon the relation in which the Appellant stands towards him. She does not dispute his right under other circumstances to bring this sort of action against her, and their Lordships therefore do not

enter into the question whether the action has been properly so brought. They give no opinion on that point. What the Appellant insists upon is that this present action must fail because her tenure is hereditary and at a fixed rent, which the Zemindar has no power to enhance.

It will be convenient in the first place to state what, upon the evidence, their Lordships consider to be established as to the Appellant's title, omitting for the present some parts of the evidence on which she relies, and to which too much importance has been, as it appears to their Lordships attached in the Courts below. The interest which she represents was first created by grant in favour of a Mr. Alexander Seaton at some date prior to the commencement of this century. On parts of the land comprised within his grant he laid out gardens and erected factories and other buildings, but there is no direct evidence that the grant was made for these purposes. He appears to have been a Civil Servant of the East India Company; and after some years, when leaving India for England, he sold the whole property to the grandfather of the Appellant's husband; on his death it descended to the father, and thence in due course to her husband, from whom she has inherited it as his widow. A portion of the land during this course of years has been granted to the Government, and a public college erected thereon. And during the whole time of the occupation of these five tenants, the same rent has always been paid. Upon this state of facts the Appellant contends that she is not merely a Mouroossee tenant, that is, one holding by hereditary tenure, but that she holds at a fixed rent, and under such circumstances as protect her from any enhancement of it.

The state of facts on the part of the Respondent is this: It appears that while Hurrenath Roy Bahadur, the father of the Appellant's husband, was in possession, the Government revenue payable by the Zemindary fell into arrear, and the property was therefore put up to public auction; one Modoo Soodun Sandial became the purchaser, and he acquired the rights which the then subsisting Regulations gave to a purchaser at such a sale. After some time he sold the Zemindary by private contract to one Mr. Harris, from whom on his death

it passed to his widow Mrs. Helen Harris; from her it was purchased by the Maharajah Sreeschunder Roy, now deceased, who in August 1856 commenced the present suit, and on his death the Respondent, inheriting the Zemindary, has continued it.

Upon this state of facts the Respondent contends that as he claims under Modoo Soodun Sandial, he has acquired all rights which Modoo Soodun Sandial had, and that as *he* purchased at a Government auction, he was entitled by the Regulations then in force to cancel the lease under which the Appellant's ancestor was holding, and of course to impose new terms as to the rent.

It is, as it seems to their Lordships, necessary to the Respondent's success, that Modoo Soodun Sandial should have had in him, at the time when he sold to Mr. Harris, the rights above stated, so that he himself might at that time have enhanced the rent of these lands; that these rights should have passed to Mr. Harris, and the subsequent purchasers of the property down to and including the Respondent's father; and that they either could not have been or have not been in fact waived by the Respondent's father or by any one of the prior owners, for unless this be the case, their Lordships see no ground on which the hereditary tenure could be disturbed or the rent enhanced.

The reliance of the Respondent is on some one of the Regulations which have been made at different times in regard to purchasers at Government auction sales in the case of Zemindaries, from which the Government income has not been duly paid. These Regulations have been couched in different language, but all with the same policy in view, as regards the present question. It has been assumed, as the foundation of them, that the default of the Zemindar may have been occasioned by improvident grants of Talooks and other subordinate tenures at inadequate rents: that this was in breach of the condition on which the fund was originally created by the Sovereign Power; and the purchaser, therefore, has been set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created. These laws, however, cannot but occasionally operate very hardly on the grantees of

subordinate interests, and they have, therefore, been materially modified by an Act of 1859, not in force when this Decree was made, and not, therefore, directly applicable to it; but such Regulations must on general principles receive a strict construction. There seems to have been doubt in the minds of the Respondent's advisers on which of these Regulations his case could safely be rested, and it would appear from the proceedings in the Court below that it was intended to rest it on a Regulation, Act I of 1845, which certainly would not have supported it, because the sale relied on was not effected under that Regulation, and its provisions are limited to sales so effected. Upon the argument before their Lordships the Counsel for the Respondent relied on the 5th Section of Regulation 44 of the year 1793, which is the earliest of the Regulations on this subject, and they contended that although subsequent Regulations upon the subject have been passed in different language and repealed, this 5th Section of Regulation 44, 1793, has never been repealed, but was in force at the time when the sale in question was made and this action was commenced. Whether upon the true construction of all the Regulations taken together this particular Section ought to be taken to have been repealed or not, their Lordships do not think it necessary to determine. They assume in favour of the Respondent that it stands unrepealed and in full force, and will deal with the case upon that footing. The language of this Section is no doubt favourable to the Respondent's case. It provides that when a Zemindary is sold at a public sale for discharge of arrears due from the proprietors to the Government, "all engagements which *such proprietors* shall have contracted with dependent Talookdars, as also all leases to under-farmers and pottahs to ryots, *shall stand cancelled from the day of sale*, and the purchaser shall be at liberty to collect from such Talookdars, and from the ryots, whatever the former proprietors would have been entitled to demand according to the established usages and rates of the pergunnah or district in which the properties lie, had the engagement so cancelled never existed. But the 7th Section of this same Regulation 44 of 1793 provides that this is not to authorize the assessment of any increase upon the lands of such dependent

Talookdars, as were exempted from increase at the Decennial Settlement of 1793.

Their Lordships do not upon any evidence in the case, on which they think it safe to rely, see their way to the belief that the Appellant brings her case within the 7th section, but they cite it because it may have a bearing on the construction of the language of the 5th section. The Respondent contends that by the operation of the words "stand cancelled from the day of sale," the existing interests of the Talookdar *ipso facto* ceased to exist, without any act done by the purchaser; that it was incapable of confirmation or being set up by him or his successors; and that where, from the acquiescence of the purchaser or those claiming under him, the possession had remained in the Talookdar and those claiming under him undisturbed, and the original rent had been received, no matter for how long a period, or through whatever number of mesne conveyances, it still remained a bare possession at the will of the Zemindar for the time being, and the rent always liable to enhancement. In this hard and literal construction of the words cited above, their Lordships do not concur. They think that their meaning is properly to be collected from the policy and intent of the Regulation, from the language used in other parts of the same section, and from the 7th section, which creates an exception out of the provisions of that section. English lawyers are familiar with this principle of construction applied as early as the time of Lord Coke (see 1st Inst. 45) to the disabling Statute of 1 Eliz., cap. xix, sec. 5, and in several modern reported cases between landlord and tenant, on clauses of forfeiture in leases. Words which make a bishop's grant "utterly void and of none effect to all intents, constructions, and purposes," have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor; and so a proviso in a lease that it *should be void altogether* in case the tenant should neglect to do a certain act, has been held only to make it voidable at the option of the landlord. Their Lordships do not cite these as authorities governing this case, but mention them only as illustrating a general principle of construction which for its justice, reason-

ableness, and convenience, must be considered of universal application. In the present case the object of the Government was that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the Zemindars who had made default; but cases of default might often arise where no improvident grant had been made, where the Talookdars and the Ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes,—in such cases the Government cannot be supposed to have intended a wanton and unjust disturbance of vested interests. It is true that the Section makes no distinction in terms between the two classes of cases, and it would be unsafe in construction to make any such; but the consideration furnishes reason for such limitation, both as to time and extent of operation, as the words will admit, and indeed seem to require, in order to give effect to the whole sentence. Now, looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser supposes the Talookdars and the Ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent, “according to the established usages and rates of the pergunnah or district;” words in themselves showing that the section was directed to cases in which grants had been made with reservations of rent below those usages and rates. It is to be observed also that in terms this power is given only to the purchaser himself, which would ordinarily suffice to remedy the mischief in contemplation. The language of the exception, too, in Section 7 shows that what was aimed at by Section 5, was not the destruction of tenure, but the increase of rent, under certain specified and equitable limitations.

The conclusion at which their Lordships are arrived as to the construction of the section is this — that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the pergunnah or district, it would have stood had the cancelled engagement so

avoided never existed. This gives it a just and reasonable operation, and virtually it would have had none, when the existing rent was already according to the usages and rate of the pergunnah.

This conclusion is of great importance in the determination of the remaining questions. The sale to Modoo Soodun Sandial, according to the Respondent's own case, took place some time before 1823, and he found those under whom the Appellant claims holding the land at an old rent of 64 rupees 1 anna 12 pice; he did not attempt to disturb the occupation or increase this rent, but received it during all the time he remained owner. He sold by private contract to Mr. Harris, from whom it passed to his widow, Mrs. Helen Harris, and from her again by private contract to the Respondent's father, Maharajah Schreeschunder Roy, as has been already stated. During all this time (and for a considerable period before, so far as appears indeed from the very creation of the tenure—more than sixty years ago), the same rent has always been paid; and there is no evidence that when first imposed, nay, even when the purchase was made, it was not a perfectly adequate rent for the property. Great changes in the value of property have now arisen, and the Respondent demands by his plaint an annual rent of 1,470 rupees, or nearly twenty-three times the amount of the original rent, according, as he states it, to the actual rate current in the village.

If the section in question did not authorize the purchaser to disturb the possession, and left him an option to confirm the existing rate of rent, there seems to be the strongest evidence that he exercised that option in favour of the Talookdar; and even if the same rights passed from him unimpaired to Mr. Harris, and in succession to those who claim under him, the evidence is equally strong: nay, as regards Mrs. Harris personally it is stronger. It is, therefore unnecessary to decide whether the section is to be construed as giving a power only to the purchaser, or to him and his heirs, or a power attached to the Zemindary, which passed to subsequent purchasers. Their Lordships, moreover, observe that the power given is to collect what the *former proprietor* would have been entitled to demand, if the cancelled engagement had never been made; words

which seem to point to something to be done on the change of ownership, not to something to be done after any indefinite lapse of time; and, as before remarked, in terms the power is given only to the purchaser himself, as to whom reasons might apply which would not extend to subsequent purchasers from him. Their Lordships, however, pronounce no opinion on this question, it not being necessary to decide it. They say no more than that a construction which would render the title to property unnecessarily uncertain, ought not in their judgment to be given to a power of this description.

On examining the Regulations their Lordships are satisfied that the Respondent's case can rest only on the powers given by the Section in question; and they are of opinion that those powers, assuming them to be in force, will not support the present action. They are glad to find that it is not their duty to support a claim which appears to them to be unjust. During the long period for which this property has been held at a small unvarying rent, it has been bought and sold, and changes and improvements have been made no doubt at a considerable expense, and upon the faith of the render to the Zemindar continuing unchanged: he has purchased while that state of things existed, and it must be presumed for a price calculated accordingly; and it is manifestly unjust that he should be allowed to disturb it.

It will have been observed that their Lordships have arrived at their conclusion without considering either the parol evidence of the Appellant, or a confirmatory pottah produced by her as having been granted by Modoo Soodun Sandial, which, if received by the Courts below, would have concluded the case in her favour. Both these Courts, however, treated the whole of the parol evidence as unworthy of credit, and the pottah as a forged instrument; and their Lordships regret that on the fullest consideration they are not prepared to differ from them in these conclusions. When false witnesses or forged documents are produced in support of a case, the fact naturally creates suspicion as to the case itself; and if the evidence on which their Lordships act depended in any degree for its credibility or weight on such witnesses or document, they



would have paused as to their conclusion. The fact is not so, however, in the present case; their Lordships believe they have to deal with a just case foolishly and wickedly attempted to be supported by false evidence. This misconduct must not mislead them in the advice they will have to tender to Her Majesty, which will be that the Appeal be sustained, the Decrees complained of reversed, the plaint in the suit dismissed, and any costs which may have been paid by the Appellant in the Courts below re-funded, but that no costs of the Appeal, or of any of the proceedings below, be allowed to the Appellant.

