

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Khajah Abdool Gunny v. the Commissioner of the Soonderbuns, on behalf of Government ; and the Commissioner of the Soonderbuns, on behalf of Government, v. Khajah Abdool Gunny, from Bengal ; delivered 26th January, 1870.*

---

Present :

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

---

SIR LAWRENCE PEEL.

THESE two Appeals relate to different parcels of land ; but they involve the same question, viz., the construction of the definition which a Pottah, executed in 1805, has given of the boundaries of the land granted by it.

In both suits the Plaintiffs were Abdool Gunny and other persons, claiming as purchasers from the original grantee under the Pottah, and the Defendant was the Commissioner of the Soonderbuns, representing the Government. The final decision in India was favourable to the Government in one suit, and adverse to it in the other ; and each party being here as Appellant in one case, and as Respondent in the other, it will be convenient to speak of them respectively as the Plaintiffs and the Defendant.

The Pottah in question was granted on the application of one Ramdhone Chatterjee. By his Petition to the Collector of Dacca, dated the 12th of Falgoun, B. S., 1211, he petitioned for Talookdaree Pottah of

the woody Mouzah Aelateerkhallee and Mouzah Phooljhooree, per boundaries detailed at the foot, excepting what has been given in Butwara in Gursunderbun, at the fixed gross rent of 349 sicca rupees, including cesses, with allowance for seven years for cultivation. And the boundaries stated at the foot of the Petition were as follows :—

Mouzah Aelateerkhallee, bounded the north and east by the Aeladon, on the south by the Purwah River, the west by the River Bhyong down to the Khagdoon.

Mouzah Phooljhooree, bounded on the north by Phooljhooree doon, on the east and south by Khagdoon, and on the west by the Bheeskhally River.

The Collector on the 18th of March, 1805, submitted this Petition to the Board of Revenue, with a recommendation that its prayer should be granted; and having obtained the sanction of Government he executed the Pottah in favour of Ramdhone Chatterjee on the 9th of April, 1805.

The original instrument was in Persian, and some additional uncertainty has been introduced into the case, by the circumstance that in some of the proceedings the only evidence of the grant that was produced was a Bengalee translation of the Persian Pottah.

Their Lordships have now at p. 57 of the second record, what purports to be, and what they have no doubt is, an English translation of the Persian document. The translation of the Bengalee document is at p. 12 of the first record.

The only material difference between them is that whereas the description of the western boundary of Mouzah Aelateerkhallee in the Persian document, exactly corresponds with that given by the Petition, on which the Pottah was granted, viz., "the River Bhyong down to the Khagdoon;" the western boundary of that Mouzah is defined by the Bengalee document to be "the ebb of the Bhyong river as far as the Khagdoon."

In all other respects the two instruments substantially agree; each purporting to be a Talookdaree Pottah, granting the lands in question for ever, on the terms of paying no rent for the first seven years, and of paying after the expiration of that period a fixed immutable rent of 349 sicca rupees.

Rhamdhone Chatterjee obtained possession under

this Pottah, and the Plaintiffs are admitted to have acquired his rights, whatever they may have been, by purchase. The devolution of their title it is unnecessary to trace.

The present litigation began as early as 1830. On the 12th of March in that year, Mr. Dampier visited the spot as the Commissioner of the Soonderbuns, appointed under the then recent Statute, Regulation 111, of 1828. His functions were to define the limits of the Soonderbuns, which were expressly excepted from the decennial settlement, and declared to remain the property of Government; and to resume and re-assess all lands under cultivation within their limits, unless the Government had by some means lost its right to resume them. This resumption was to be effected by proceedings under Regulation 11, of 1819, which was passed for regulating the procedure for the resumption and assessment of lands held under a disputed claim to hold them as *la-khiraj*.

Mr. Dampier's proceeding of the 12th of March, 1830, states that he found west of the Aeladon an "abad" called Aela, the property of Moulvie Hafizoollah (through whom the present Plaintiff's claim); that the above-named Hafizoollah took possession of the lands of the jungles of the Soonderbuns, the property of Government, called it Aela, cultivated it, and was doing so then; that the "abad" was part of the reclaimed jungles of the Soonderbuns; and that the lands and jungles comprised in it did not form part of the decennially settled Zemindary of any Zemindar. He accordingly declared it subject to the claim of Government for resumption and re-assessment; but left to the Collector of the District the task of taking the steps necessary for the assertion of that claim; and directed a map of the jungles to be made; and notice of his proceedings to be issued to the Zemindars, Tahsildars, &c.

On the 5th of March, 1830, Mr. Dampier had passed a similar order as to Phooljhooree. The Plaintiffs, or some of them appealed from these proceedings to Mr. Walpole, an officer described as the Commissioner of Calcutta, under the provisions of Regulation 111, of 1828. They admitted that the lands in dispute were within the limits of the Soonderbuns jungles, but set up their title under the

pottah of 1805. The proceeding of Mr. Walpole, of the 24th of the August, 1830, states that Mr. Dampier on being referred to for explanation, had stated that at the date of proceeding, no original pottah had been produced, but that on inquiry it appeared that such a pottah had been granted, and that accordingly Government withdrew its claim. The order was that the lands included within the pottah, be as before, in the possession of the Declarants under the conditions therein mentioned. But no attempt seems then to have been made to ascertain precisely what lands were included in the pottah.

At that time, therefore, it seems to have been admitted on both sides that the lands in dispute were within the limits of the Soonderbuns; that the Plaintiffs, under the Pottah granted in 1805, were entitled to hold at the fixed rent of 349 sicca rupees, some lands within those limits, and that the only question between the parties as to any particular lands in dispute, was whether they were within the boundaries defined by the Pottah.

It would appear, however, that proceedings had in the meantime been commenced under Regulation II of 1819, for the assessment of Aela Theerkhallee, pursuant to Mr. Dampier's first order; for by a proceeding of the 19th of August, 1831, Mr. Dampier, as Commissioner of the Soonderbuns, formally dismissed such a suit. And his proceeding was afterwards confirmed by the Commissioner of the Division, Mr. Barwell, on the 31st of January, 1833.

The subsequent proceedings before the Revenue Authorities, though very voluminous, and extending over many years, seem to their Lordships to require but brief notice.

The position of the parties remained as the above-mentioned proceedings before Mr. Dampier had left it until 1843. In that year Mr. Sturt, the Collector of Backergunge, being on an official tour through this part of the Soonderbuns, observed the extension of cultivation in parts of the land in dispute, and conceiving that it was liable to assessment for Government Revenue, caused the map of it, which in the argument has been called "Sturt's Map," to be made. That map divides the whole land in dispute into the following portions or

chucks, viz.: No. 1 being Phooljhooree; No. 2 called Kewraboonia; No. 3 called Aela Theerk-hallee; No. 4 called Boorissur; No. 5 called Burgonah; No. 6 called Dhullooh; and No. 7 Nultollah. He seems to have intended to institute seven separate suits for the resumption of these seven chucks; but his hand was stayed by an order of the Commissioner of the Division, Mr. Dunbar, of the 16th of September, 1845, which directed him to refrain from instituting any claim for the assessment of revenue on any lands within the boundaries recorded in the Pottah; but left him free to sue in respect of any land beyond those boundaries. No suit, however, was then brought.

In January 1846, the office of Commissioner of the Soonderbuns, which for a time had been suppressed, was revived; and in 1849 proceedings embracing all the seven chucks were pending before Roy Omacaunt Sein, the then Commissioner of the Soonderbuns, for ascertaining the extent of land beyond the Pottah granted by Government on the 17th of April, 1805, and for the assessment of revenue thereon. By his proceeding, dated the 6th of May, 1849, the last-named Commissioner ruled that, although the Talookdars had "by means of cunning improperly appropriated and taken possession of some land belonging to Government on the plea of their Pottah, but which was unconnected with and beyond the boundaries recorded in the Pottah; the question before him was, nevertheless, concluded by the proceedings before Mr. Dampier, and he accordingly struck the case off the file. This decision was brought by appeal before Mr. Mills, who, as one of the Judges of the Sudr Dewanny Adalut, had special jurisdiction, as the ultimate Court of Appeal, over the awards of the Revenue officers in resumption cases; and he by an order, dated the 17th December, 1851, reversed it; and remitted the case for trial, on the question whether the lands in dispute were within the boundaries mentioned in the Pottah, or were included in the decision of Mr. Dampier.

The case so remanded was tried first by Mr. Deputy-Collector Smith, and afterwards came on appeal before Mr. Grote, as Commissioner. The result was that chuck No. 1, being Phooljhooree, was permanently released from the claim of Govern-

ment, being found to be within the Pottah boundaries, and as such to have been released by Mr. Dampier; that chucks Nos. 5, 6, and 7 were resumed as being beyond the Pottah boundaries; and that chucks Nos. 2, 3, and 4 were reserved for further consideration by the Commissioner, who directed another survey map to be prepared of them. Mr. Grote's order bore date the 25th of July, 1856.

On the 11th of May, 1857, the Plaintiffs commenced the regular Suit out of which the first of these Appeals arises. Its object was to set aside the Commissioner's order of the 25th of July, 1856, and for the maintenance as theretofore of the Plaintiffs' title and possession as Talookdars over the three chucks described as Nos. 5, 6, and 7, containing about 80,000 beegahs, in the village of Aela Theerkhallee.

Of the issues settled in the suit it is necessary to notice only two, viz. :—

1st. Are the lands claimed within the limits of the pottah of the 17th of April, 1805, or not?

2ndly. (And this is an additional issue framed at a later period by the Judge.) Did Mr. Dampier, the Commissioner of the Soonderbuns, include the land in dispute within the scope of his inquiries? Did he release the disputed lands, and were his orders confirmed by the Special Commissioner? And is the land in dispute beyond the scope of the inquiries instituted by Mr. Dampier, the former Commissioner of the Soonderbuns.

Mr. Kemp, the Judge of Zillah Backergunge, found both these issues in favour of the Defendant, and dismissed the Suit. His judgment was confirmed on appeal by the High Court of Calcutta, on the 11th of May, 1863, and the first Appeal, of which it will be convenient now to dispose, is against those two Deerees.

On the additional issue it is not necessary to say much. Mr. Dampier never professed by his proceedings to determine the precise limits of the grant; and their Lordships concur with the Judges of both the Courts below in thinking that there is no evidence that Mr. Dampier visited or surveyed the land comprised in the three chucks which was the subject of this suit (all of which lie to the south of the Khagdoon); or passed, as intended to pass, any order concerning them. Indeed,

although the Appellant's printed case contains a good deal of matter on this point, little was said at their Lordships' bar concerning this issue. The strength of the argument on both sides was directed to the other, and more material question whether the three chucks are in point of fact within the boundaries defined by the pottah.

It has very properly been admitted by all the Judges who have tried these cases in the Civil Courts, that if those boundaries can be identified, the Plaintiffs are entitled to whatever area is contained within them. If the grant was an imprudent one the present Government of India must bear the burden of its predecessor's imprudence. On the other hand, if it be uncertain on the evidence which of two lines was the boundary contemplated by the parties to the instrument, the improbability of a grant of 140,000 beegahs at a fixed perpetual rent of 349 sicca rupees, may afford an argument for the preference of one line to the other.

The three chucks, which are the subject of the first suit, form an irregular quadrilateral, of which the actual boundaries are the following. The northerly boundary is the Khagdoon, between its junction with the Beeskhallee river and the mouth of the Burgoonah Khal, which connects the Khagdoon with the Boorissur; the easterly boundary is partly the last mentioned Khal and partly the course of the Boorissur river to its mouth; and the westerly boundary is the Beeskhallee, from its junction with the Khagdoon to its mouth. But neither the course of the Boorissur nor that of the Beeskhallee is due north and south; the former river trends somewhat to the west, and the latter to the east. And there is a space between their mouths at which the southerly or south-westerly boundary of the quadrilateral is the sea or the estuary of the Horrinhotta, into which both the Boorissur and the Beeskhallee fall.

How, then, is the land thus surrounded to be brought within the boundaries of Aelateerkhallee as defined by the pottah.

The contention of the Plaintiffs is this: They say that the northern boundary of Aela Theerkhallee treated as consisting of chucks Nos. 2, 3, 4, 5, 6, and 7, is, as defined by the pottah, the Aeladoon; that the eastern boundary is also the Aela; that the

term used by the pottah to define the western boundary, viz., "the ebb of the Boyang river as far as the Khagdoon," means the ebb of the Boyang river, through what is marked on the maps as the Khagdoon, and thence through the river Beeskhallee to the sea; and that the southern boundary of the six chucks is the Purwah river mentioned in the pottah as the southern boundary of the Mouzah.

The northern boundary is not in question in this suit. The eastern, as contended for by the Plaintiffs, involves this difficulty. The same stream is treated as being in one part of its course the Aela; in another the Boorissur or Purwa. Their Lordships accept, as the Courts below have accepted, the hypothesis that the "Purwa" of the pottah and the Boorissur of the maps are the same. But although there is no conclusive evidence on either side which shows at what precise spot the Aela becomes the Purwa or Boorissur, it seems clear that the stream ceases to bear the name of Aela long before it reaches any part of the land in dispute in this first suit. And the general course of the Purwa if not due north and south is far more in that direction than it is from east to west, and if it does not form the eastern boundary of the three chucks in dispute, it is impossible to say what that eastern boundary is.

Again the contention of the Plaintiffs as to the western boundary involves still greater difficulties. The admitted boundaries of Phooljhooree show that at the date of the Pottah the Khagdoon and the Beeskhallee were known as two distinct streams, the latter being a considerable river, flowing from north to south, the former flowing first from north to south, parallel with the Beeskhallee, and there forming the eastern boundary of Phooljhooree, and afterwards from east to west, and so forming the southern boundary of Phooljhooree. If it be said that after their junction the united streams may take the name of the less considerable confluent, the Khagdoon, the answer is that that theory is contradicted by every map of authority from that of Rennell's downwards. Again, if it be conceded for the sake of argument, though that is a material question to be considered on the second Appeal, that the branch of the Khagdoon which is stated in the Pottah to be the eastern boundary of



Phooljhooree is identical with "the river BhoYang as far as the Khagdoon" in the Persian document, or "the ebb of the BhoYang as far as the Khagdoon" in the Bengalee document, by what reasonable construction can either phrase, and especially the first, which is that found in the original pottah, be interpreted to mean the reflux of the BhoYang through the Khagdoon, and the Beeskhallee, or through either of them to the sea? The words "as far as" seem to import that the Khagdoon, wherever that name was to be applied to the stream, was the *terminus ad quem*; the point beyond which the western boundary was not to extend. It is, therefore, difficult to see by what construction either the eastern or the western boundary, as laid down in the pottah can be extended so as to comprehend within Mouzah Aela Theerkhallee any portion of the three chucks in dispute, in this first Suit. The argument, however, of the Plaintiffs is this:—the southern boundary is clearly defined to be the river Purwa. We must start from that boundary and proceed to the northern boundary, the Aela Doon. Whatever lies between the two must belong to the Mouzah; and the western and eastern boundaries must be prolonged accordingly. The argument would be more plausible if the river Purwa could be shown to be the complete southern boundary of the disputed lands. But it has been seen that during the greater part of its course it is the easterly rather than the southerly boundary of the land in dispute, and that although at its mouth it may trend more to the westward and so overlap the southern end of a portion of that land, there is a definite space between the mouths of the Purwa and the Beeskhallee, at which the land forming the southern and south-western extremities of the disputed chucks is washed by the estuary of the Horryngotta. That space Mr. Reilly, the Commissioner, somewhere states to be from 4 to 5 miles in length; and by measurement on any map laid down to scale it will be seen that his estimate is not greatly beside the mark. It follows then that the Plaintiffs have failed to identify three out of four of the pottah boundaries (being the only boundaries which could touch the land in question), so as to comprehend any portion of chucks Nos. 5, 6, and 7. This con-

sideration would alone suffice to justify the dismissal of the first Suit. But it is of course desirable to have on the other side some theory which may account for the definition of the southern boundary of the Mouzah as the river Purwa. Their Lordships are unable to suggest any one more plausible than that of Mr. Justice Campbell, which makes the Purwa a partial boundary to the south at the point at which it makes a marked trending to the westward; and at which its existence as such boundary is in some degree consistent with the lateral boundaries. The result is, that their Lordships are unable to see any grounds for overruling the concurrent Judgment of the two Courts below in the first Suit.

They will now proceed to consider the second Appeal.

The question touching the three chucks which was reserved for further consideration by Mr. Grote, came in the first instance before Mr. Reilly, the then Commissioner of the Soonderbuns. He, in his proceeding of the 6th of December, 1860, seems to have come to the conclusion that the Plaintiffs had not established a title according to the pottah boundaries, to any land whatever except that comprised in Mouzah Phooljhooree, their title to which had been recognized by every Government officer who had had to do with the case. He therefore affirmed the strict right of Government to resume all the three chucks under consideration; but recommended that, inasmuch as the boundaries of one of them corresponded on two sides with the pottah boundaries, that should be released as a matter of favour. The chuck in question is inaccurately described in his Judgment as No. 2, and in Mr. Gomes' map is inaccurately laid down as Kewraboonea. It is obvious, however, that the chuck of which Mr. Reilly meant to recommend the release, and which has since been released, is No. 3, or the Aela Theerkhallee of Mr. Sturt's map. Mr. Lushington, the Commissioner of the Nuddea division, by his Order of the 10th of April, 1861, set this mistake right, but in all other respects confirmed Mr. Reilly's Order. The final result, therefore, of these proceedings before the Revenue authorities was that chuck No. 3 was released, and that chucks Nos. 2 and 4 were also resumed.

To impeach these proceedings, the Plaintiffs commenced the regular suit, out of which this second Appeal arises, in the Civil Court.

The material issues were as in the former Suit—

1. Are the lands claimed within the limits of the pottah of 1805?

2. Were these chucks resumed under Regulations 11 of 1819, and 111 of 1828, and finally released to the Plaintiffs?

Both these issues were decided against the Plaintiffs, and their suit dismissed with costs by the Zillah Judge, Mr. Buckle, on the 24th of December, 1863. But his Judgment was reversed on Appeal, and the Plaintiff's title to the two chucks in question upheld by the High Court, on the 20th of March, 1865. And against this latter decision the second Appeal has been preferred.

Upon the second issue the High Court agreed with the Zillah Court; and their Lordships do not dissent from that finding. They think it impossible to say that all the lands in question in this suit were formally released by Mr. Dampier as falling within the pottah boundaries. It does not appear that the greater part of them was ever surveyed by him, or under his direction, or that he ever purported to decide what was included in the pottah boundaries. His order of dismissal and release therefore cannot operate as a bar to the trial of the first issue, though, as will hereafter be pointed out, the proceedings before him may afford some inferences not immaterial to its determination.

The first issue in this suit raises questions of greater difficulty than those presented by the like issue in the other suit; because it is necessary in this Suit to fix affirmatively three boundaries, to the definition whereof contained in the pottah, nothing in nature exactly corresponds. It is, in their Lordships' opinion, impossible to evade this difficulty by adopting the extreme view of Mr. Reilly, and saying that inasmuch as the Plaintiffs have failed to identify three of the pottah boundaries of Aelatheerkhallee satisfactorily, it must be taken that nothing was effectually granted by the pottah except Mouzah Phooljhooree. The pottah purports to grant both Mouzahs, and the Government cannot be allowed to say that their grant which purports to grant something has in fact granted nothing, if

by any reasonable construction it is possible to fix boundaries which shall define the second Mouzah.

What then are the boundaries of Mouzah Aela-theerkhallee? As to the northern boundary, there is no difficulty. All the maps show that the water which forms that boundary, whether it be measured from its junction with that branch of the Khagdoon, which is the admitted western boundary of Pool-jhooree, or from the point at which the Kewra-bonneah Khal leaves it (in other words, whether the Mouzah does or does not include chuck No. 2), may be correctly described as the Aeladoon. That the same stream takes a southerly turn; and, to some extent at least, forms in the strictest sense the eastern boundary of the Mouzah is also clear. The difficulty as to the eastern boundary is this. It is admitted that at some point of its course (the Defendant says at its confluence with the Badoora) the river loses the name of Aela, and becomes the Borissur or Purwa; and consequently that if the eastern boundary be prolonged beyond that point, it will no longer correspond with the pottah boundary.

Their Lordships, however, have to deal with the whole description in the pottah; and they are of opinion that if they can determine at what point the Purwah can be held to form, as stated by the pottah, wholly or in part the southern boundary, the prolongation of the eastern boundary beyond the point at which the river is in strictness called the Aela, becomes a circumstance of comparatively little importance; and one which the laxity with which the names of all these streams are used would suffice to explain. The learned Counsel for the Defendants were themselves not indisposed to accept Mr. Justice Campbell's theory as to the southern boundary. But they would place the bend of the river from which the southern boundary line is to be drawn nearly opposite to the mouth of the Badoora; the point at which it is said the Aela first becomes the Purwa. To their Lordships it appears that the well-defined trending of the river to the westward, which may reasonably be treated as the southern boundary in the contemplation of the parties, is considerably to the south of that point, and almost at the bottom of chuck No. 4. Again, it is necessary to connect the River Purwah from the point at which it ceases to form the southern bound-

dary with the proper western boundary. And this their Lordships think is more reasonably done by taking the Burgoonah Khal as the connecting link than by drawing an arbitrary line through the jungle. In the former case, the southern boundary (speaking roughly) of the Mouzah will throughout be the Purwah, or water issuing from or communicating with the Purwah. Their Lordships are, therefore, of opinion that the northern, eastern, and southern boundaries, as found by the High Court, may be accepted as the least inconsistent with the language of the Pottah that are capable of being assigned. The chief difficulty in the case is that of the western boundary. We have to determine what is meant by "the River Bhoyang as far as the Khagdoon;" or, "the ebb of the Bhoyang as far as the Khagdoon." The Bhoyang, so far as it has been identified, seems to be another name for the Mirza-gunj; a considerable stream, which, having probably by its deposits formed or largely contributed to form the land in dispute, divides itself at this point of the Delta into at least two branches; a part of its water finding its way westward through the Aela Doon to the Khagdoon, and other part flowing eastward through the Aela Doon to the Boorissur. The High Court has identified the boundary under consideration with the branch of the Khagdoon, which is admitted to be the eastern boundary of Phooljhooree. The Defendant contends that if this boundary is capable of identification at all, it must be taken to be the Kewrabooniah Khal, which starting from one point of the northern part of the Aela, meets the southern branch of the Khagdoon.

It is impossible to deny that there is very great force in the arguments which have been adduced against the theory of the High Court. It is in the highest degree improbable that the same water should in the same document have been described as "the Khagdoon," and as "the Bhoyang," or "ebb of the Bhoyang as far as the Khagdoon." But unless this singular laxity of expression is assumed, the Bhoyang or its ebb must be held to reach the Khagdoon at the extreme north-western corner of the Mouzah, and therefore in no sense to form its western boundary. Again it seems probable that if the two Mouzahs granted had been known to be

conterminous they would have been so described. Against the theory that the Kewraboonea Khal is the western boundary, the learned Judges of the High Court have assigned various reasons, none of which seem to their Lordships to be conclusive.

If Gomes' map be examined it will be seen that starting from the point at which the Burgoonah Khal joins the Khagdoon, following the Khagdoon to the mouth of Kewrabooneah Khal, and thence following that Khal to its junction with the Aela Doon, we have a boundary line which might be accepted as the western boundary with little more laxity of description than has been admitted in the fixation of the eastern and southern boundaries. If, therefore, the case rested here, their Lordships might be disposed to think that although neither theory is altogether satisfactory, that of the Defendant is the more plausible of the two. They are, however, pressed by this consideration. If this boundary line be adopted, it would, if taken in connection with the other boundaries, give to the Plaintiffs Chuck No. 4; but it would wholly exclude them from Chuck No. 2. It is, however, perfectly clear that Mr. Dampier, by his Order of the 19th August, 1831, released some part of the Mouzah Aela Theerkhallee, "as included within the boundaries mentioned in the pottah;" being that portion of which he contemplated the resumption by his proceeding of the 12th of March, 1830. And looking at the latter proceeding and at Captain Hodges' map, their Lordships are strongly of opinion that Mr. Dampier's investigation and subsequent release probably comprehended the whole northern border of what is now claimed as Mouzah Aela Theerkhallee, from the junction of the Aela with the Khagdoon, and certainly comprehended the village or haut which in most of the maps appears as "Aela" on the west of the Kewrabooneah Khal. If this be so, there arises a presumption against the theory that the Kewraboonea Khal was the western boundary contemplated by the pottah, which, in their Lordships' judgment is sufficient to turn the scale in favour of the other theory. And on the whole, their Lordships have come to the conclusion that, inasmuch as they are unable to assign any boundaries to the Mouzah which will more nearly correspond to the description in the pottah than those found by the

High Court, the second decision of that Court ought also to be affirmed.

Something was said at their Lordships' bar touching the hardship which the Plaintiffs have sustained by their exclusion from the three southern chucks, upon which it was represented they had expended large sums in reclamation of waste land. Their Lordships have to observe that the only question in issue in these suits was whether the Plaintiffs were entitled to hold as against the Government, at a perpetual rent, almost nominal, the large quantity of land which they alleged to be comprehended within the pottah boundaries. That was a question of strict legal right on each side. There is nothing in the present decision which need prevent the Government from taking into consideration in the assessment of revenue upon the resumed chucks whatever equities may arise from such an expenditure as that suggested; or from giving effect to any preferential right to a settlement which may ordinarily be allowed to the persons found in the occupation of such lands. Their Lordships entertain the hope that any claim of that kind which the Plaintiffs may prefer will receive full and fair consideration. To such consideration they seem the more entitled, inasmuch as they are not mere squatters or trespassers on the lands, but have held them under a claim of right which, if not altogether reasonable, cannot be said to have been put forward *malá fide*; and which was made more colourable by the somewhat intermittent action of the Revenue authorities during a long period of time. This question, however, is wholly beside the issues which their Lordships have to decide. The only Order which they can recommend Her Majesty to make is that both these Appeals be dismissed with costs.

