Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Farquharson v. The Government of Bengal and others, from the High Court of Judicature at Fort William in Bengal; delivered July 4th, 1871.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THIS suit was originally brought to recover a large quantity, nearly 3000 beeghas of land. The Plaintiff, who was the purchaser of a Putnee under a sale for the non-payment of the rent of the Putnee, claimed that under the Act VIII. of 1819, Section 11, having purchased under those circumstances, he was entitled to set aside all estates which had been created after the origin of the Putnee, and to recover all the lands which were originally part of the Putnee. However, it appearing that the Defendant had been in possession of those lands for a very long time, the Plaintiff afterwards admitted the Defendant's right to the possession of the land, and sued for a right to increase the rent, and have a proper rent payable to him out of the lands.

The evidence which the Plaintiff produced in support of his case entirely consisted of three documents. At first only one document was produced, which was an Isumnovisee of the year 1811. Subsequently two other Isumnovisees were produced, which are Returns made by the Police, and there is evidence to show that they are made generally on the information of the Ghautwalee holder, stating his name, the quantity of land which he holds, and the pujjak rent which he

pays for it; and it appears in all the Returns for those three years, that the then holder of the Estate which the Defendants now hold, the Ghautwalee holder, had returned that the quantity of his land was 100 beeghas. That was the sole evidence for the Plaintiff. He did not produce any evidence at all to show how it happened that if 100 beeghas was all that the Ghautwalee holder was entitled to in the years 1811, 1812, and 1813, that quantity of 100 beeghas had been allowed to grow by encroachment unchallenged to the very large quantity of 3000 beeghas at the time when the sale took place. On the other hand, the Defendant produced evidence to show that as far back as living memory went, the whole quantity of 3000 beeghas had been held by him as part of his Ghautwalee land. He produced one witness of eighty years old, and another of seventy-five years old, who had known the land all their lives, who said that the Ghautwalee holder had held the whole 3000 beeghas during all the time that they remembered the property. Both the Courts below believed those witnesses, there being no evidence whatever to contradict them, and thought that for sixty years the land had been so held. Then the question arose as a simple question of fact before the Courts below, taking the evidence on both sides, whether they ought to find that this original estate of the Ghautwalee holder consisted of 100 beeghas only, or of 3000 beeghas. Both the Courts below found, as a matter of fact, on this evidence that the original Ghautwal consisted of the whole number of beeghas of which the Defendant was in possession, and that, therefore, the Plaintiff was not entitled to maintain this suit.

Their Lordships entirely agree with these decisions. Not only does this case come within their ordinary rule, that on a mere question of fact where both the Courts below have agreed, and where there has been no mistake in point of law, they will not reverse the decisions of the Courts below, unless they can see that those decisions are clearly wrong, but their Lordships have come to the same conclusion. It appears to them that weight must be given to ancient possession, and that there may be a variety of causes to explain

why this quantity was inserted in the returns in these years. They may have stated the amount under cultivation or producing profit only. It may have been that the police officer was careless, and did not care about what he returned, or it may have been that the Ghautwalee holder at that time had some reasons for giving incorrect information; or possibly it may have been that the ancient Ghautwals originally held only 100 beeghas, but that the estate had increased to 3000 beeghas many years before, and before the creation of the Putnee, which, notwithstanding the Act VIII. of 1819, would entitle the Ghautwalee holder to hold, as against the Putneedar at least, the whole quantity. But whatever the reason may have been, their Lordships are of opinion that the long uninterrupted possession of the Ghautwalee holder ought clearly to have greater weight than these Returns. Upon those grounds, therefore, they think that the Judgment of the Court below must be affirmed.

With respect to the cases which have been referred to, all that they really show is this, that different Courts at different times have given greater or less weight to similar Returns. All the Courts agree that they are admissible in evidence, and they have been admitted in evidence in this case. In each particular case the Courts have considered what weight ought to be given to them; and it is nothing very surprising if the Courts at different times have not given exactly the same weight to these documents. Their Lordships are of opinion that the Courts in this particular case have given quite as much weight to these Returns as they deserve, and the weight of evidence cannot be regulated by precise rules, as the admissibility of evidence may be.

Their Lordships will, therefore, humbly recommend to Her Majesty that this Appeal be dismissed with Costs.