Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Ranee of Chillaree v. *the Government of India, from the Court of the Financial Commissioner of the Province of Oude; delivered 29th July*, 1873.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague Smith.
Sir Robert P. Collier.

Sir Lawrence Peel.

THIS is an Appeal from a decision of the Financial Commissioner of Oudh, dated the 21st October, 1868, reversing on special appeal a Judgment of the Commissioner of Seetapore.

The suit was brought by the present Appellant against the Government of India, the present Respondents and others in the Court of the Assistant Settlement Officer of Zillah Seetapore in the course of a regular revenue settlement for the Province of Oudh. The object of the suit was to establish the alleged right of the Plaintiff to the proprietorship of Talooqua Chillaree. The plaint was filed on the 26th January, 1867.

The Plaintiff was the mother of Rajah Bulbhudur Singh, who was killed at Nawabgunj in the year 1858, whilst fighting in open rebellion against the British Government. He left a widow *enceinte*, who shortly afterwards gave birth to a son, Rajah Digbehoy Sing. It was found by the Assistant Settlement

Officer, the Court of First Instance, that a summary settlement *for* the Talooqua, comprising ninety-two villages, was made with the infant Rajah Digbehoy Sing by Mr. Forbes; that it was confirmed by the Financial Commissioner, and that it remained in force until the child's death on the 25th March, 1859 (Record, p. 36). The mother died a few days later, leaving the Plaintiff, the grandmother, the heiress of the child, according to the Hindoo law. It was also found by the Assistant Settlement Officer, that, "in July 1859, Captain Thomson, the Deputy Commissioner, wrote to the Commissioner giving a statement of the case, and recommending, apparently on grounds of policy, that the Talooqua should be resumed; that the case was forwarded to the Chief Commissioner for orders, who, after consulting the Judicial Commissioner as to the nature of the present claimant's rights, finally rejected her claim and reported the resumption of the estate to the Government of India."

The estate was, in fact, resumed, and in September 1859 an allowance of 5,000 rupees a-year out of the estate, commencing from the death of the child was, with the sanction of Government, reserved to the Plaintiff for life.—(Letters Nos. 27 and 28 Record p. 16).

The Assistant Settlement Officer gave judgment in favour of the Plaintiff and decreed to her the absolute hereditary and transferable right in all the villages included in the Settlement with Rajah Digbehoy Sing. On regular appeal to the Commissioner, the decree was modified by ordering that the Plaintiff was to have only a life interest in the property, and that execution should issue in a month. The effect of those decrees, if upheld, would be to subject the present holders, to whom the greater portion of the estate has been granted for loyal services, to be turned out of possession at any rate during the life of the Plaintiff. The Financial Commissioner, upon special appeal, reversed the decision of the lower Courts and dismissed the Plaintiff's suit.

It was contended at the bar by the learned Counsel for the Respondents, that the revenue settlement with Rajah Digbehoy Sing was never completed, and, indeed, it was so held by the

Financial Commissioner in the third reason given in the conclusion of his Judgment. But their Lordships are of opinion that the first two lower Courts, having substantially found that a revenue settlement was made with the infant, it was not open to the Financial Commissioner on special appeal to overrule those findings. Indeed, the grounds of special appeal to the Financial Commissioner did not raise the question whether a summary revenue settlement was in fact made with the infant Digbehoy Sing, but merely the questions whether the summary settlement was ratified by the letter of Government of the 10th October, 1859, and whether the estate sued for was legally vested in the infant. (See 4th and 5th grounds of special appeal, Record page 70.)

It appears to their Lordships that it must be assumed, in accordance with the findings of the first two Courts, that a Revenue Settlement was in fact entered into with the infant Rajah, but that the Talooqua was resumed by Government after his death, and long before the letter of the 10th October, 1859.

It is clear that, by the proclamation of the Governor-General of the 15th March, 1858, the authority of which cannot now be disputed, the proprietary right in the Talook in question was together, with nearly the whole of the proprietary rights in the soil of the Province of Oudh, confiscated to the British Government; and that that right was liable to be disposed of in such manner as the Government might think fit. It is equally clear that the temporary Revenue Settlement entered into with the infant Rajah did not of itself vest in him the absolute proprietary and inheritable right in the Talooqua. The duration of the Revenue Settlement was limited to three years, which period had expired long before the Plaintiff's suit was commenced. The sole question is, whether the letter of the Governor-General of India in Council of the 10th October, 1859, coupled with that Revenue Settlement, vested an absolute proprietary and inheritable right to the Talooqua in the young Rajah, who died on the 25th March, 1859, more than six months before that letter was written; or if not, whether it vested in his heirs at law as

grantees, an inheritable proprietary right which the deceased Rajah himself never possessed.

The letter, which was from the Secretary to the Government of India, Foreign Department, to the Chief Commissioner of Oudh, is set out in the first Schedule to the Oudh Estates Act, No. 1 of 1869. The second paragraph of the letter is as follows:—

"2. His Excellency in Council, agreeing with you as to the expediency of removing all doubts as to the intention of the Government to maintain the Taluqdars in possession of the taluqas for which *they* have been permitted to engage, is pleased to declare that every Taluqdar with whom a summary settlement *has been made* since the re-occupation of the province, *has* thereby acquired a permanent, hereditary, and transferable proprietary right, viz., in the taluqa for which *he has* engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa."

The letter and the recital contained in it show that the object of the Government was to maintain in possession those talookdars who then were in possession under summary settlements entered into with them after the re-occupation of the province. The talookdars who were declared to have acquired the right conferred by the letter, were those who had been permitted to engage. Nothing was said as to the heirs of talookdars who had been permitted to engage, and who had died between the time of the engagement and the date of the letter. It is not necessary to decide whether such heirs, if in possession at the date of the letter, would have been within the spirit or meaning of it. It is clear that the letter, which was a mere act of grace, was not intended to operate as an original grant to such heirs, for, if such were the case, the heir, if a widow, mother, or grandmother, would have taken an estate descendible to her own heirs instead of the estate of a Hindoo female heiress descendible to the heirs of the person to whom she succeeded; and thus the estate would have been taken out of the family of the talookdar who had been permitted to engage. The letter could not operate as a grant of an hereditary estate to a deceased talookdar and his heirs. The only way in which it could operate for the benefit of the heirs of a deceased talookdar,

who had been permitted to engage in a summary settlement, would be, by its being treated as a retrospective declaration of the effect of the revenue settlement for which he had been permitted to engage. Such a construction cannot be put upon the letter with reference to a talookdar who had died long before the date of the letter; upon whose death the estate had been resumed by Government, and whose heirs had not been permitted by Government to succeed to the talook even during the continuance of the temporary Revenue Settlement.

Their Lordships are of opinion that the letter ought to receive a liberal interpretation in order to effectuate the intentions of the Government; but they consider that it would be acting in direct opposition to those intentions if the letter were to be read in the sense contended for, as one which pledged the Government to restore a possession to which they had, in fact, put an end, and to vest in a dispossessed claimant an interest which the settlement itself did not give. Such an interpretation would be contrary both to the letter and spirit of the document, and at variance with every legitimate rule of construction. Their Lordships, therefore, concur in the view of the Financial Commissioner that the letter of the Governor-General in Council of the 10th October, 1859, did not apply to the Revenue Settlement for which the infant Rajah was permitted to engage and which was resumed by Government after his death, and before the letter was written; and that it was not intended by that letter to create in the Plaintiff a proprietary right by inheritance in the talook by virtue of a temporary Revenue Settlement for three years to which she had not been allowed to succeed. The temporary Revenue Settlement was resumed in 1859, and the suit was not brought until 1867.

Their Lordships are of opinion that Act No. 1 of 1869 cannot apply to this case, in which the suit was commenced in 1867, and finally decided by the Courts in Oudh in 1868; but even if the Act could apply by retrospective operation it would not vest a right in the Plaintiff for the word "talookdar" in the 3rd Section of the Act, was defined to mean "a person whose name is entered in the first of the

lists mentioned in Section 8," and the Plaintiff's name has never been entered in such list. The case of the Appellant does not appear to their Lordships to fall within either the words or the spirit of the letter of the 10th October, 1859, or of the Oudh Estates' Act of 1869. They will, therefore, humbly recommend Her Majesty in Council to affirm the decision of the Financial Commissioner with the costs of this Appeal.

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