

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Nuffer
Chunder Paul Chowdry and another v.
Jonathan Poulson, from the High Court of
Judicature at Fort William in Bengal; de-
livered 24th January 1873.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit for enhancement of rent, to which the defence in substance was that the land with reference to which the question arose had been held at a uniform rent from the decennial settlement, and the Defendant sought to avail himself of sections 15 and 16 of Act X. of 1859. The Deputy Collector gave his decision for the Plaintiff, and determined upon a certain enhanced rent in pursuance of inquiries which he had made. This decision was reversed by the High Court, who held that the Plaintiff was not entitled to enhance.

The question has been reduced to one of comparatively small dimensions. The Defendant, as has been stated, relies upon sections 15 and 16 of the Act X. of 1859.

Those sections are in these terms :—

Section 15 says : “ No dependant talookdar, or
“ other person possessing a permanent trans-
“ ferable interest in land, intermediate between
“ the proprietor of an estate and the ryots,”
which is this case, “ who in the provinces of
“ Bengal, Behar, Orissa, and Benares holds his
“ taluk or tenure (otherwise than under a ter-
“ minable lease) at a fixed rent, which has not
“ been changed from the time of the permanent
“ settlement, shall be liable to any enhancement
“ of such rent, anything in section II., regu-

“ lation VIII., 1793, or in any other law to the
“ contrary notwithstanding.” Then section 16
goes on to say: “ Whenever in any suit under
“ this Act it shall be proved that the rent at
“ which a taluk or other tenure is held in the
“ said provinces has not been changed for a
“ period of 20 years before the commence-
“ ment of the suit, it shall be presumed that
“ such taluk or tenure has been held at that
“ rent from the time of the permanent settle-
“ ment, unless the contrary be shown, or it be
“ proved that such rent was fixed at some later
“ period.”

In their Lordships' opinion, the Defendant did establish that the rent at which the taluk was held had not been changed for a period of 20 years before the commencement of this suit, and that he thereby cast upon the Plaintiff the burden of showing “ the contrary ” (in the words of the Act), or that the rent had been fixed at some later period, and their Lordships are of opinion that the Plaintiff has succeeded in proving that which was cast upon him to prove. His proof consisted mainly in this: that in 1860 a suit was brought, which was decided in 1863 by the High Court, by the Plaintiff or his predecessor in title against the Defendant's father, under whom the Defendant claims, for enhancement of rent. The case of the Defendant was then this: in the first place he said that no sufficient notice had been proved; secondly, he said that the taluk had been granted to him, or his predecessor in title, in the year 1824, by various pottahs, and that they fixed a uniform mokurruree rent which could not subsequently be changed. But he did not set up any title previous to those pottahs. He did not set up that which was open to him to set up, namely, that he had held at a fixed rent from the permanent settlement, or, indeed, 12 years before it, which at that time would have been an answer to the case. It should be stated that this suit was decided before Act X., to which previous reference has been made, came

into operation. The state of the law then was that he could defend himself by showing an ancient tenure, going back 12 years before the decennial settlement; but he made no case of the kind. He made a case of mokurruree tenure, established by pottahs in 1824. Upon that case the Court below gave a decree to the Plaintiff on both points, on the ground that the notice was sufficient, the pottahs not being established, and that the power to enhance had been proved. The High Court upon appeal disagreed with the Lower Court upon the first point. They held that the notice was not sufficient, but they proceeded to decide that the Plaintiff had a right to enhance.

It has been said that this declaration on their part, that the Plaintiff had a right to enhance, although he had given no sufficient notice, was *ultra vires*; that upon failure of proof of notice, the Court had no right to make any such declaration, and, consequently, that such declaration is of no effect; but their Lordships upon this point entirely adopt a decision which is reported in Marshall's Reports of Cases in Appeal to the High Court in Bengal, vol. 1. p. 523, heard in full before Sir Barnes Peacock, Mr. Justice Steer, Mr. Justice Norman, Mr. Justice Kemp, and Mr. Justice Seton Karr, which is precisely in point upon this question. It is there stated that "In a suit to recover arrears of rent at enhanced rates, when the question of the liability of the tenure to enhancement has been put in issue and fully tried, a decree may be given declaring the tenure liable to enhancement, though notice to enhance is not proved." In this case the question of the right to enhancement was tried, as well as the question of notice, and the Court gave a declaratory decree as to the right to enhance.

That being so, their Lordships are of opinion that this decree of the Court in 1863 does amount to proof sufficient to rebut the presump-

tion referred to in section 16 of Act X. of 1859, arising from 20 years uniform payment of rent, that that uniform payment had extended to the time of the decennial settlement. It also amounts to proof that the rent was fixed at some later period.

On this ground, therefore, their Lordships are of opinion that the Plaintiff has satisfied the burden of proof which was thrown upon him. This decision of their Lordships is very much in accordance with a case in the High Court, on the 15th February 1865, of *Rakbal Doss Bose v. Sheikh Golam Surwur*, which is thus described in the marginal note: "The bringing of a suit
 " by a landlord to recover arrears of rent at
 " enhanced rates, under Act X. of 1859, cannot
 " annul the former decree of a competent Court,
 " declaring the ryots holding to be liable to
 " enhancement, by entitling the ryot (on proof
 " of payment of uniform rent for 20 years) to
 " claim the benefit of the presumption under
 " section 4." It is to be observed that section 16 is almost in the same words as section 4, the one referring to ryots and the other to under-tenants or talukdars.

With respect to the question of the pottahs, which were put in evidence by the Defendant in the former suit which has been referred to, but which were not believed to be genuine at that time, either by the Court of First Instance or the Court of Appeal, it appears that these pottahs were rejected also in the present suit, both by the Court of First Instance and the Court of Appeal. Their Lordships are not prepared to say that that rejection was wrong; but even if they had been received in evidence their Lordships are of opinion, upon referring to them, that they would not have established the contention of the Defendant in this suit, that he had held by a uniform tenure, commencing, at all events, as early as the decennial settlement. The effect of those grants does not appear to be to show a

mere continuance of possession, but according to their Lordships' view they rather point to the creation of a new title.

For these reasons, their Lordships are of opinion that the decision of the High Court should be reversed; that the appeal of the Respondent from the Court of the Assistant Collector to the High Court should be dismissed, with costs; and that the last-mentioned Judgment of the Assistant Collector should be confirmed. Their Lordships will humbly advise Her Majesty to this effect. The Respondents will pay the costs of this Appeal.

