

Privy Council Appeal No. 97 of 1938

Malik Mohammad Ikhtiar and others	-	-	-	-	-	<i>Appellants</i>
					<i>v.</i>	
Himtu Ram and others	-	-	-	-	-	<i>Respondents</i>
Nawaz and others	-	-	-	-	-	<i>Appellants</i>
					<i>v.</i>	
Himtu Ram and others	-	-	-	-	-	<i>Respondents</i>
Jiwan Das and another	-	-	-	-	-	<i>Appellants</i>
					<i>v.</i>	
Himtu Ram and others	-	-	-	-	-	<i>Respondents</i>
Latif	-	-	-	-	-	<i>Appellant</i>
					<i>v.</i>	
Himtu Ram and others	-	-	-	-	-	<i>Respondents</i>
Yasim	-	-	-	-	-	<i>Appellant</i>
					<i>v.</i>	
Musammat Alam Khatun and others	-	-	-	-	-	<i>Respondents</i>

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER, 1940

Present at the Hearing:

LORD ATKIN

LORD THANKERTON

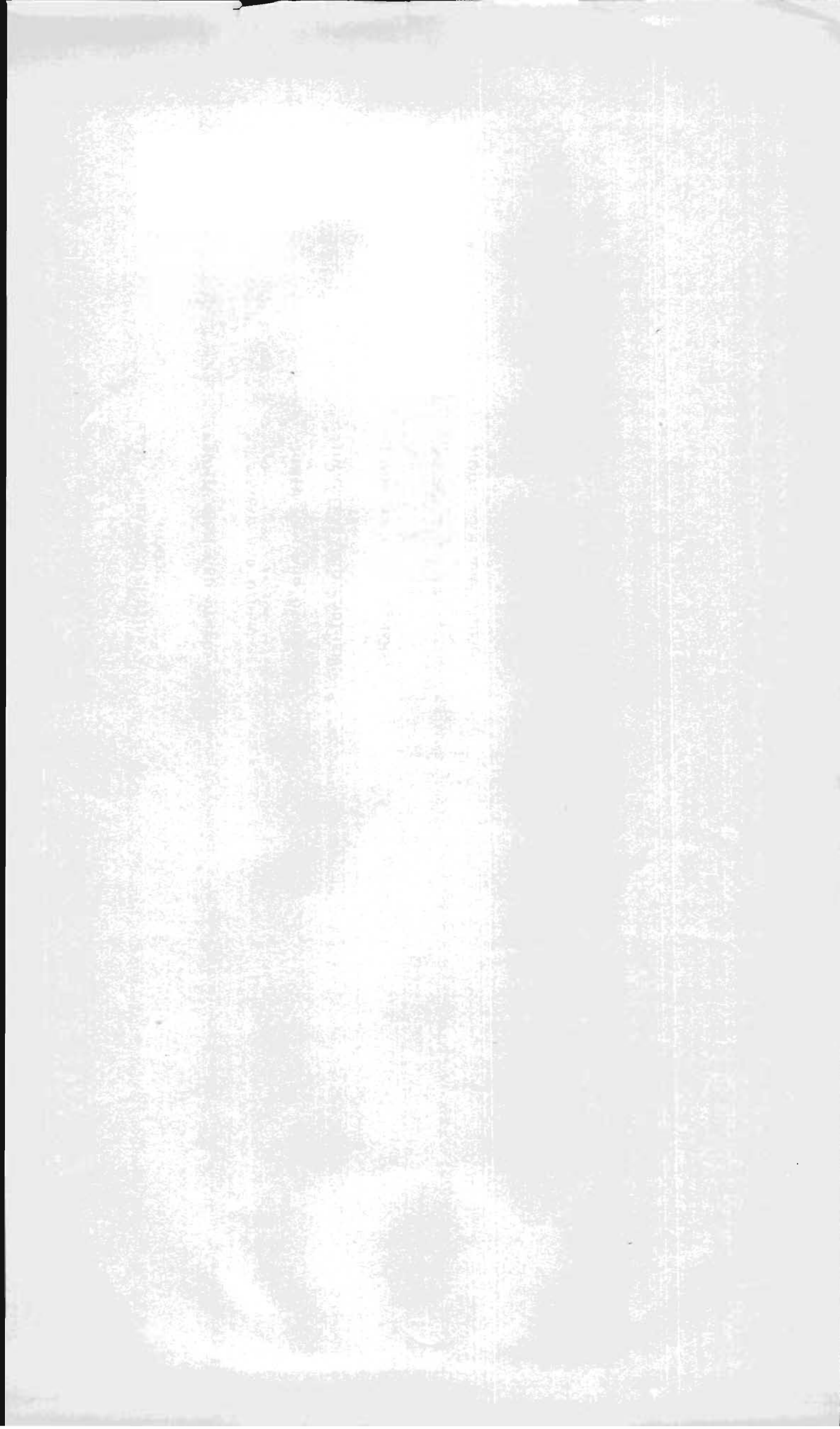
SIR GEORGE RANKIN

[*Delivered by LORD ATKIN*]

These are consolidated appeals from the High Court of Judicature at Lahore who affirmed a decree of the Senior Subordinate Judge at Mianwali dismissing the suit of the plaintiffs so far as the present dispute is concerned. The plaintiffs are some of the proprietors in various villages in the Mianwali District. According to the respective village wajibularz prepared at the time of the first settlement in 1878 a proprietor had the right under certain conditions to reclaim the Shamilat (waste land) of the village and become Adna Maliks of the land. The plaintiffs claim that in the last 30 years they have reclaimed such land in their respective villages and are entitled to the rights stated in the relevant wajibularz. But the original position as defined in 1878 was altered in consequence of a scheme of the Government of the Punjab to make a canal in the Sind-Sagar Doab for the purpose of irrigating tracts in that district. In furtherance of the scheme the Sind-Sagar Doab Colonisation Act was passed in 1902. Amongst other provisions it empowered the Government to make agreements between proprietors in the district for the surrender of their lands to Government on condition that they would receive back an area equal to one fourth in the improved land. Such surrenders, however, were

only to take effect on and from the date on which the excavation of the proposed canal should be begun.

In 1901, after the Act had received the assent of the Lieutenant-Governor, agreements were entered into by the proprietors of all the lands in the villages in question for the surrender of the lands on the statutory terms. The agreement contained the term that from the date of the agreement up to the date of the surrender no one should notwithstanding any law or custom to the contrary acquire or be considered entitled to either proprietary or occupancy tenancy rights in the said lands. So far the agreement was with the Government but at the second regular settlement in 1902 the *wajibularz* in each case records the agreement between the villagers in this form, " We the proprietors of the village have signed the agreement under the Sind-Sagar Doab Act of 1902. . . . No one can acquire proprietary rights in the village *Shamilat* till then. The same agreement is recorded in the *wajibularz* prepared at the third regular settlement in 1926. No one disputes that all the parties were bound at the time by the agreements so recorded in the respective *wajibularz*, whose function in the Punjab at least is amongst other things to record village agreements of the kind. The project of the canal, however, was never carried into effect. The excavation was never begun: and in 1929 when the scheme had been finally abandoned the Sind-Sagar Act of 1902 was repealed (Act VI of 1929). The plaintiffs claim that by reason of the repeal the rights as in 1878 revived and must be taken never to have been affected. They had in fact during the interim period been engaged in reclaiming waste lands, and they now seek to enjoy the rights to become proprietors of the lands so reclaimed as though the various agreements had not been made. The Act, it is said, once repealed, is to be taken never to have been passed. One sufficient answer to this contention is that the effect of repeal is now determined in the Punjab by the Punjab General Clauses Act, 1898, s. 4, which provides that unless a different intention appears repeal shall not (*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or (*c*) affect any right privilege obligation or liability acquired accrued or incurred under any enactment so repealed. But apart altogether from the effect of repeal the agreements recorded in the second and third *wajibularz* operate independently of the Act. They expressly determine the rights of the parties during a known period of transition. Until the surrender under the Government agreement the parties agree that the ordinary rights are not to operate. The plaintiffs must be held to their agreement: a result which is the more clearly just because as pointed out by the Courts in India the other proprietors acting on their agreement have lost rights of preventing the plaintiffs from acquiring the rights over the land they now claim. Their Lordships find themselves in agreement with the reasons given by the Subordinate Judge in these cases, and by the High Court in their judgment in a previous case of *Ahmad Khan v. Jiwand Ram*, dated January 15, 1935 (38 P.L.R. 133), which was pronounced on a similar claim and which they followed in the present case. Their Lordships will humbly advise His Majesty that these appeals be dismissed. The respondents entered an appearance, but did not lodge a printed case, nor were they represented at the hearing. The appellants must pay such costs as the respondents have properly incurred.



In the Privy Council

MALIK MOHAMMAD IKHTIAR AND
OTHERS

2.

HIMTU RAM AND OTHERS

NAWAZ AND OTHERS

2.

HIMTU RAM AND OTHERS

JIWAN DAS AND ANOTHER

2.

HIMTU RAM AND OTHERS

LATIF

2.

HIMTU RAM AND OTHERS

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2.

MUSANMAT ALAM KHATUN AND
OTHERS

DELIVERED BY LORD ATKIN