Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Seth Seetaram and another v. *Janki Pershad and another, from the Court of the Financial Commissioner, Oudh; delivered February 19th*, 1874.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE appeal in this case is against the final order of the Financial Commissioner, who, upon special appeal, confirmed the order passed by the settlement officer, Captain Young, and an intermediate order of the Commissioner, Mr. Thompson. The question was, whether, upon the permanent settlement of the talook belonging to the Appellants, Respondents, who were the Plaintiffs in the suit, were entitled to be entered in the settlement papers as tikadars of the Mouzah Nikara under the talookdars.

It is clear, so far as the facts appear upon this record, that this particular village did not originally form part of the Appellants' talook. It appears to have belonged to one Sheo Singh, who mortgaged it to the Respondents. For the purposes of this appeal their Lordships cannot enter into any question of right which may be subsisting between Sheo Singh and the Respondents. It must be taken that the Respondents, as between them and the talookdars, were, before the village was brought into the talook, the proprietors of it. By an arrangement not uncommon

between the weak and the strong when Oudh was under native rule, the Respondents, or those whom they represent, brought their village within the talook of the Appellants, and caused it to be included in their kaboolyat. That they might have undone this, and resumed their original right to settle for the village, in the course of the settlement which was begun immediately after the annexation of Oudh, seems clear. And indeed the judgment of the Deputy Commissioner in the summary settlement proceedings, which will be hereafter noticed, states as a fact, that in 1264 F. the Plaintiff (being one of the Respondents) was settled with separately. Then came the mutiny, and the proceedings of confiscation and restoration which took place after the re-establishment of British rule. The effect of the latter may have been to annex the village permanently to the talook; but they did not deprive the Respondents of the right to a sub-settlement, which is all that they now assert. Upon the summary settlement of 1859 that right came in question, and what I have stated as to the original acquisition by the talook of the particular property seems to have been admitted by the ancestor of the present Appellants. His plea stated: "I admit that the estate belongs "to Sheo Singh, and Plaintiff has taken it in "mortgage, who deposited this estate in my "taluka since 1255 Fuslee, and I remained in "possession of its kabooliut up to 1263 Fuslee." And the only case which he set up was that as it had got into the talooka, he was, according to the present orders of the Government, entitled to keep it. It was, in fact, as much as saying, I have got another man's property, and I intend to keep it. That question was tried upon the summary settlement, and the settlement officer, after full consideration of the rights of the parties, came to the conclusion that the talook-

dar's claim to absorb the whole proprietary rights of the village was invalid. He accordingly fixed the proportion above the Government revenue, which was to be paid by the Respondents to the talookdars by way of nazurana. The effect of this decision was the talookdar got that nazurana, and the other parties got or retained possession of their lands. That decision was confirmed by the Commissioner. It seems to have regulated the rights of the parties, and to have been acquiesced in by them from 1859 until 1870, when the Respondents made this application to be entered as tikadars in the permanent settlement which was then in the course of being made in the district. The defence made to that application by the Appellants is at page 8; and is thus stated by the settlement officer: "The "proceedings alluded to are before me, and the "Defendants are in Court; they object to "Plaintiffs being recorded as permanent lessees, "and quote Act XXVI., and present circulars "and rules in bar of the claim." The question then is whether this Act XXVI. of 1866 presents a bar to the claim. The settlement officer thought that under the peculiar circumstances of the case the summary settlement was conclusive. The Commissioner affirmed that judgment; and upon special appeal, the Financial Commissioner overruled the objections which had been taken as the grounds for the special appeal; and held that the acquiescence of the talookdars in the judgment of the Deputy Commissioner, as confirmed by the Commissioner, for a number of years amounted to a tacit assent or recognition of the tenure. He also ruled that under the circular order No. 50, of 1867, any application for the revision of the summary settlement should have been applied for within six months of the date of that circular order.

It has been strongly argued that this is wrong; and that upon this application to be entered on

the permanent settlement the whole burden of proof was thrown by Act XXVI. of 1866, and the rules contained in the Schedule thereto, on the Plaintiffs, and that they were bound under the second of those rules to prove their title *ab initio*. Their Lordships are of opinion that the proceedings upon the summary settlement do afford *primâ facie* evidence at least of the Respondents right. The only point which has at all pressed upon their Lordships was whether there may not have been some miscarriage in the Courts below in treating those proceedings as final and conclusive, and whether the other party may not have lost the right, to which he otherwise would have been entitled, of meeking that *primâ facie* case. Upon general principles it is not easy to see how a title established by an adjudication between the parties upon proceedings, however summary, could, after ten years enjoyment of the property under that adjudication, have been successfully impugned. And accordingly the Appellants objections are almost entirely of a technical kind, and founded on the rules embodied in Act XXVI. of 1866. Now their Lordships always feel considerable difficulty in dealing with these Oudh cases, and particularly with the effect of the circular orders and the rules which from time to time are laid down for the guidance of the Courts of that province, whose action is somewhat irregular. If Col. Barrow is right in his view of the effect of the circular order quoted by him, then *cadit quæstio;* but if Mr. Arathoon, on the other hand, is correct in saying that that rule applies only to a decision under the permanent settlement, or if the issuing of the circular order were *ultra vires,* that particular ground of Col. Barrow's decision would fail. Their Lordships have to deal with a very stringent Act, and an Act which is said to be in its operation retrospective, and, therefore, one which ought to be construed very strictly,

The 13th rule is certainly not in terms limited to decisions upon claims preferred on the occasion of the permanent settlement. It says generally, "Cases in which claims to under-proprietary "rights have been disposed of otherwise than in "accordance with these rules will be open to "revision, but this rule will not apply to cases "disposed of by arbitration or by agreement of "the parties." If it includes a case in which a claim has been formally decided between the parties upon a summary proceeding, and their Lordships are not disposed to say that it does not, then it is difficult to say that the claim to the under-proprietary right was disposed of otherwise than in accordance with the rules, or that the Plaintiffs did not when before the settlement officer on the occasion of the summary settlement give substantially all the proof of their title which by the second of those rules they are required to give. Nor are their Lordships prepared to affirm that the Financial Commissioner of the day exceeded his authority when he issued the circular order in question. Again, this case was of a special kind, the officer who made the summary settlement expressly said that it would not be open to question afterwards; the parties acquiesced in that for a considerable number of years, and it seems to fall within the spirit, if not within the letter, of the exception which embraces cases disposed of by arbitration or by agreement between the parties. Upon the whole their Lordships are strongly of opinion that substantial justice has been done in this case, and that they are not compelled by any of the formal objections which have been taken to reverse the concurrent judgments of three Courts or to send the case back for re-trial.

Their Lordships must, therefore, humbly advise Her Majesty to affirm the judgment of the Court below, and to dismiss this Appeal.