Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rani Hemanta Kumari Debi v. *Maharaja Jagadindra Nath Roy Bahadur and the Secretary of State for India in Council, from the High Court of Judicature at Fort William in Bengal; delivered the* 21*st March* 1906.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

This dispute relates to 497 begahs of land, adjacent to the Brahmaputra river. This land was, at the date of the plaint, viz., 3rd October 1893, in the possession of the first Respondent (who will be referred to as "the Respondent"), and the suit was in substance one of ejectment at the instance of the Appellant.

The earliest and not the least material fact in the case is a decree of 27th March 1835, which is the basis of the Appellant's case; but the complete elucidation of her title was effected by a judicial order of 14th March 1859 which affirmed the correctness of a Thak map made in 1853. The Order of 1859 and the map of 1853 conclusively establish that the Appellant's title includes the whole of the land in dispute.

The case of the Respondent is rested on possession. Even on the showing of the Appellant, the Respondent at the date of the plaint

had been in possession for eleven years, and the Respondent says for twelve years (the period of limitation), and longer. The difference between the admitted possession and the period of limitation being so narrow (one year) the question of *onus* is important; and their Lordships adhere to the principle stated in the Privy Council case cited by the learned Judge in the High Court (*Mohima Chundar Mozoomdar* v. *Mohesh Chundar Neogi,* L.R. 16, Ind. A. 23), and hold that it is for the Appellant, as Plaintiff in a suit of ejectment, to prove possession prior to the dispossession which she alleges. At the same time, their Lordships consider that in this question of evidence the initial fact of the Appellant's title comes to her aid, with greater or less force according to the circumstances established in evidence.

Now, on this question of fact, very voluminous evidence was placed before the Judge of First Instance, and after very careful consideration, as shown in his Judgment, he decided in favour of the Appellant. His Judgment was reversed on appeal; but, while the Judgment in the High Court of Judicature at Fort William is careful and able, it does not come to close quarters with the Judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge. This characteristic of the Judgment of the High Court seriously invalidates its authority when it is remembered that the case of the Appellant is that, in a specified month of a specified year, she was forcibly dispossessed under circumstances graphically described. If her averments be true, the Appellant was in possession within the period of limitation, and her case is made out. That they are true the Subordinate Judge has held. Yet of this crucial question in the case the High Court takes no notice whatever.

In these circumstances, it is so far satisfactory to observe that there is a long train of facts ensuing on the Order of 1859 (which establishes the Appellant's title) and before the date of dispossession, adequately supporting the Appellant's contention that she and her predecessors possessed the disputed land from the date of her title downwards until the date of dispossession. On the other hand, the counter-theory of the Respondent that this land is part of their Kajiar Chur derives no support from any of the plans produced, except one (that of 1873); is irreconciliable with the boundaries given to Kajiar Chur; and would leave no room for Decreer Chur, the existence of which to the east of Kajiar Chur, and the measurements of which, are placed beyond doubt. The plan of 1873 undoubtedly makes the lands in dispute fall within the Respondent's property. But it is a plan of a very large territory; it is, on the face of it, open to the criticism expressed by the Subordinate Judge; and it was not prepared with the same concentrated attention to this specific ground which necessarily characterises the Thak map of 1853.

Their Lordships do not deem it necessary to discuss at length the multifarious topics advanced in argument, for the case admits of decision on comparatively simple grounds, of the merits of which no one can be in a better position to discriminate than the Judge who tried the suit and heard the witnesses.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed, the Decree of the High Court of Judicature reversed with costs, and the Decree of the Subordinate Judge restored. The Respondent will pay the costs of the Appeal.