Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sheikh Zuhoorooddeen and others v. *the Collector of Goruckpore, from the late Sudder Dewanny Adawlut at Agra: delivered 22nd February*, 1870.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THERE is little, if any, dispute concerning the facts of this Case. It is admitted that, on the 14th of January, 1819, Lord Hastings, the then Governor-General, executed in favour of the Pindara Chief, Kadir Buksh, the Sunnud of which the construction has been so keenly contested, that the grant, whatever it comprised, was made in lieu of a money allowance of 300 sicca rupees per mensem, which the Government had previously undertaken to pay to the Pindara for his support; that the lands granted by way of Jagheer were to be held by him rent-free during his life, but were to be subject to the payment of Government revenue in the hands of his heirs and successors; and that in January 1822, Lord Hastings' Government, on the application of Kadir Buksh, determined that the lands comprised in the Jagheer should on his decease be continued to his heirs to be held by them at an Istumraree Jumma of 1,877 rupees 8 annas.

The principal question in the cause is what passed by the Sunnud. The Appellants contend that the subject of the grant was the whole of Talooqua Guneshpoor which had been purchased by Govern-

ment from one Motee Khanum, with a view to its being granted to Kadir Buksh. The Respondents assert that it was only 3,933 beegahs part and parcel of that Talook.

Talooqua Guneshpoor, as purchased by Motee Khanum at an auction sale, and as conveyed by her to Government, consisted of twenty-seven principal mouzahs or villages; and to one or other of these villages were attached five Towfeer villages, of which the names do not appear either in the conveyance of Motee Khanum to the Government, or in the Sunnud. Each principal village, as the Talooqua originally stood, consisted of some cleared and cultivated land, and of a considerable amount of forest; and thus the twenty-seven villages amongst them included the whole of the forest land now in dispute. The cleared or cultivated lands were comprised in the 3,933 beegahs to which the Respondents says the grant was confined, and these were scattered about the surrounding forest in the manner shown by the first of the maps in evidence, which is admitted to be a correct map of the whole Talooqua sold by Motee Khanum to Government.

Kadir Buksh was put into possession of his Jagheer by a Government officer, Captain Stoneham, described as Superintendent of the Pindara chiefs. He, by letter dated the 25th of January 1819, brought to the notice of the Collector the five Towfeer villages, and stated that they had been represented to him to form part of the Guneshpoor estate. It is difficult to read his letter without coming to the conclusion that it assumes the whole of that estate to have been granted to Kadir Buksh. The Collector also, on the 9th of February, 1819, announced to the Board of Commissioners (then the highest authority under the supreme Government in the ceded provinces), that Kadir Buksh had been put in possession of the Talooqua Guneshpore; and that the establishment entertained for collecting the revenues of the estate, whilst it belonged to Government, had been discharged. In 1821 there was a dispute between the Rajah of Nuggur and Kadir Buksh, in respect of the boundary lands and jungle attached to the Jagheer, which was decided in favour of the latter. This was followed in 1826, in 1834, and in 1835 by other Suits in which the boundaries of Talooqua Guneshpoor, and the right to forest lands on those

boundaries were in dispute; and in each of these Kadir Buksh was successful, and was recognized as the proprietor of Talooqua Guneshpoor including all that had passed under that description by the auction sale to Motee Khanum and from her to the Government. The most important of these Suits is that of 1826, because to it the Collector was a party; and the direct issue raised was whether the Towfeer villages were part and parcel of Talooqua Guneshpoor. In the presence of the Collector they were decided to be so, and were treated as belonging to Kadir Buksh. Again, it appears that the title of Kadir Buksh to the whole Talooqua was recognized in the years 1836 and 1837 in various proceedings taken by the original proprietors under Regulation I of 1821, and Act III of 1835 to set aside or modify the auction sales. In these proceedings Kadir Buksh intervened as the actual proprietor of the whole of what had been sold at the auction sales, which were impeached. And on the other hand the Government did not intervene to claim or defend a title to any part of what had been so sold. The fact has been questioned by Mr. Pontifex, if not also by Mr. Forsyth, but on this evidence their Lordships have no difficulty in finding that from 1819 up to the time of his death, Kadir Buksh was with the knowledge of the Government and its revenue officers in possession of the whole Talooqua and was recognized as its owner, in various judicial proceedings. Nor is there the slightest evidence, that during that period the Government asserted a title to, or exercised any right of ownership in, the forests comprised in the Talook.

Kadir Buksh died in 1837, and his death was the occasion of proceedings wherein the then Government recognized still more unequivocally his title under the Sunnud to the whole Talooqua including the lands in dispute. Upon his death it became necessary to apportion the fixed revenue or jumma of 1,877 rupees 8 annas amongst the different villages. This was done by a Mr. Chester, acting as Assistant Collector and Settlement officer. It is admitted that the measurements of the different villages on which he proceeded included all the forest and other land in dispute; and that his settlement, in fact, treated the heirs of Kadir Buksh as the proprietors of the whole Talooqua, subject to

a fixed revenue then to be apportioned among the twenty-seven mouzahs, or villages, into which the total area of the Talooqua (being 10,592 acres) was taken to be divided.

Nor can this settlement be treated as the act of a subordinate officer liable to error and acting in ignorance or forgetfulness of the history of the Talooqua. The smallness of the revenue attracted the attention of the Commissioner. He demanded an explanation on the 5th of July, which was given by Mr. Chester on the 9th of July, 1838. The settlement went in due course to the Board of Revenue, was pronounced by it to be "fair, moderate, worthy of approval, and creditable to Mr. Chester," and as such was, on the 14th of January, 1840, reported to the Governor-General, and so confirmed. It is hardly conceivable that if the former Government had, by its Sunnud, granted only a portion of the Talooqua, retaining its rights in large and valuable forests, there should have been no record of such retention in one or other of the various offices and departments through which this settlement passed with approval. Yet the present claim of Government rests on the assumption that the settlement proceeded on a gross and palpable error.

It is further remarkable that the alleged error was brought to the attention of the revenue officers by the zeal of the ex-proprietors of the Guneshpoor estate in proceedings extending over a period beginning in September 1843 and ending in February 1845. By petitions they brought almost the very case now made, first before the Collector, then before the Commissioner, and finally before the Board of Revenue. Yet each of these authorities refused to recognize the error, and dismissed the Petitions.

So things remained until 1862, when the point thus disposed of was again revived by Mr. White, a Deputy Collector on settlement duty in that part of Goruckpoor wherein this estate lies. It would appear by Act VIII of 1846, section 1, that the previous settlement of Goruckpoor expired in July 1859, and it is to be presumed that Mr. White, was employed in making the new settlement which then became necessary. It is to be observed, however, that the 3rd Section of the Act expressly

declares that persons holding lands on special grants shall continue to hold them according to the terms of their grants. If, therefore, the whole of Talooqua Guneshpoor, was held by the Respondents under the Sunnud at the fixed Jumma imposed by the Letter of Government of January 1822, it was wholly out of the scope of new settlement which was then in progress. Mr. White, however, on the 9th of April, 1862, in a paper more remarkable for zeal than for sound reasoning, communicated to the Collector his reasons for holding that the major part of the Talooqua was liable to resumption and full assessment as khiraji lands.

Assuming that the intention of Government in 1818 was to give Kadir Buksh nothing but a strict equivalent for the allowance of 4,000 rupees per annum, and proceeding also upon his own construction of the Sunnud and other documents, he held that nothing was effectually granted beyond the 3,933 beegahs; that the fixed jumma was referrible only to that portion of the Talooqua; and that the rest remained liable to a fresh assessment of revenue, if indeed the Respondents were entitled to be treated as in rightful possession of it, or as the parties entitled to engage for the revenue so to be assessed upon it. He charged Kadir Buksh and his representatives with having "dishonestly" enlarged the borders of the Jagheer "by imposition and artifice," favoured by "a rare combination of chances," in which last phrase their Lordships conceive is included the remarkable consensus in favour of the Appellants' title of all the Government officers, whether revenue or judicial, to whose notice the subject had been drawn during a period of more than forty years. The acts of those officers are accounted for by suggestions of error, mistake, or the omission to make due inquiry.

Mr. Bird, the collector, to whom this communication was made, took the contrary view of the Appellants' rights, and seems to have held that the former settlement could not be disturbed. He was, however, overruled by the Commissioner, whose decision was confirmed by the Board of Revenue, and the result was that by the Revenue Authorities the Talooqua, *ultra* the 3,933 beegahs, was held to be subject to resumption and assessment of revenue at the current rates. The Respondents thereupon

brought their regular Suit to contest these revenue awards, and to establish their proprietary right in the whole Talooqua under the Sunnud at the fixed rent. But their suit was dismissed by the Judge of First Instance, and his Decree has been affirmed by the Sudder Court, both Courts holding that the claim of Government was well-founded.

On the argument of this Appeal the absurd and groundless imputations of fraud, which were cast by Mr. White's Report upon Kadir Buksh, have been very properly withdrawn. It was still suggested that the possession by the family in 1837 of great part of the lands then settled, is to be accounted for by the hypothesis of accretion by means of gradual encroachment. Their Lordships can find in this record no proof that the family then possessed a rood of land other than that into the possession whereof Kadir Buksh had been put by Captain Stoneham, the Government officer, under whose superintendence he was placed. Of lands beyond the boundaries of the Talooqua, as it passed from Motee Khanum to Government, there can on this Suit be no question. The existence of such, and their liability to assessment, must be determined in some other proceeding. The fact that the more recent measurements assign a larger area to the Talooqua than is shown by the earlier Documents, is to be accounted for by the more accurate survey that preceded the thirty years' settlement of the North-West Provinces. The only questions for their Lordships' determination are, 1st, Did the grant by the Sunnud pass the whole Talooqua as it was purchased by Government, or only the 3,933 beegahs? 2ndly, Was the perpetual jumma of 1,877 rupees 8 annas fixed by Government in 1822 upon the 3,933 beegahs, leaving the rest of the Jagheer (if any) subject to future assessment? and 3rdly, Was either act (supposing the two former questions to be determined in favour of the Appellants) the result of a mistake on the part of Government, which is capable of rectification in this Suit?

The construction of the Sunnud must, of course, be determined by the terms of the instrument. It is, however, not too much to say that where general descriptive terms such as "villages" or the like have been used in a grant, and both the parties have by

their acts put a particular construction upon them, and rights depending on that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. How is this attempted in the present case?

The Sunnud is in form a notification "that the villages comprised in the Talooqua Guneshpoor whether principal villages or dependencies, according to the subjoined details purchased by the Government, including all lands cultivated and waste, with fish and forest rights, have from the beginning of the autumnal season of 1226 Fuslee, been granted by the Government as a rent-free Jagheer to Kadir Buksh in lieu of 4,000 rupees allowed him as a maintenance under the orders of the Most Noble the Governor-General, dated April 10, 1818." And the subjoined details consist of an enumeration of the twenty-seven villages showing under the head of "estimated area," areas aggregating 3,933 beegahs, and giving no specification of boundaries. The learned Counsel for the Respondent contrast this with the language of the conveyance from Motee Khanum to Government (at p. 16), which, after declaring that Talooqua Guneshpoor, consisting of the twenty-seven villages detailed below, was by auction-purchase the property of the lady, conveyed "her ownership of the said villages, together with all the rights and interests, original and attached, having distinct boundaries, inclusive of all the lands, arable and not arable, forests, wells, ponds, tanks, and pools, rights of forests and fisheries, fruits, gardens, trees, both fruitful and barren, saline land, and the houses of tenants." And they rely much on the larger general words here used, and particularly on the word "forests," which was not to be found in the Sunnud. They meet the argument founded on the other side upon the words "fish and forest rights" ("julkur" and "bunkur") by saying that the term "bunkur" does not necessarily imply title to the soil of the forest in which it is exercised, since it may import rights to be exercised over the forests of another; and that even if taken in the former sense it may be understood to be the bunkur derivable from that portion of the 3,933 beegahs which by the statement of the 22nd of August, 1818, at p. 72, is shown to have been either barren or still

uncultivated, though fit for cultivation. They further rely strongly on the words "according to the subjoined details," coupled with the schedule specifying only as the areas of the villages such as made up the 3,933 beegahs.

It appears to their Lordships that these arguments though more or less plausible, afford no ground for cutting down the grant of Government to the 3,933 beegahs. The subject of the grant, like the subject of the conveyance consisted of the twenty-seven villages described in each case by the same names. It is shown beyond a doubt by the conveyance, and by the earlier Ruqbabundee at page 10; and it has even been admitted in argument, that these villages, as conveyed by Mootee Khanum, make up the whole Talooqua, as delineated by the first of the maps, and comprised amongst them all the lands in dispute. An Indian village or mouzah is not a mere village in the sense of an aggregation of houses or huts, with the land actually cultivated by its inhabitants. It is a division of a Pergunnah and may, as in the present instance, consist of dwellings, of lands cultivated, and of a large extent of forest in which the rights of a Zemindar may co-exist with rights belonging to the villagers. If then there be nothing else in the Sunnud to show that the villages granted by it and by the former conveyance, under the same names, are in the one case the villages defined by their known and ascertained boundaries; and, in the other case, the same villages *minus* their appendent forest, the mere fact that the general words are somewhat larger in the one instrument than they are in the other goes for very little. Is it then a legitimate inference from the words "according to the subjoined details" coupled with the list of the villages that the Sunnud granted only a portion of each village, and that a portion defined by no boundaries, and further that the whole subject of the grant was a congeries of unconnected plots of cultivated land scattered about the Talooqua of which they formed part, and separated by forest retained by Government. Their Lordships can find in the passages relied upon nothing which warrants so violent and improbable a construction of the whole instrument. The words "according to the subjoined details" are followed by the words "purchased by Govern-

ment," which support the hypothesis that what was granted was that which had been acquired by Government; and since these latter words make the subjoined details equally applicable to the estate purchased by Government, and to the estate granted by it, it follows that the Schedule must be treated as an imperfect description.

The learned counsel for the Respondent have also dwelt much on the improbability that the Government of 1819 would have granted property of such extent or value in commutation of an allowance of 300 rupees per mensem, and called in aid of their construction the official correspondence which preceded the grant. It was pointed out by one of their Lordships that this correspondence could not be legitimately admitted as a key to the construction of the Sunnud. They may go further, and say that it does not to their minds establish the antecedent improbability that such a grant should have been made. The estate had been purchased for a small sum; the frequency of the prior auction sales suggests a doubt whether, in its then state, it was equal to the payment of the revenue assessed upon it; it was granted rent free only for the life of Kadir Buksh; there was at that time no stipulation that his heirs should hold it at a fixed rent; and the Indian Government, which was then, and for many years afterwards, notoriously careless about the forests, may at the time of the grant have contemplated that, as the forests were reclaimed, the estate in the hands of Kadir Buksh's successors would become subject to a progressive revenue. Be that as it may, their Lordships have no difficulty in coming to the conclusion that, upon the true construction of the Sunnud, the whole of Talooqua Guneshpoor, as purchased by Government, passed under it.

If this be so, it is necessary to consider whether there is any ground for holding that, by the Government letter of the 18th of January, 1822, the Istumraree Jumma of 1,877 rupees 8 annas was fixed upon that part only of the Jagheer which had before the grant been assessed to revenue; leaving the rest subject to the liability to future assessment. Many ingenious arguments founded on the principles upon which the land revenue is from time to time assessed in the upper Provinces, under the regulations,

were addressed to their Lordships. But they are of opinion that these are beside the present question. The act of Government in fixing a permanent revenue on any lands comprised in the Jagheer was, *ex concessis*, an exceptional act of favour, and a departure from the general revenue law applicable to that part of India. The effect of the letter is to be determined by its language, and that seems to their Lordships to be conclusive. It expresses the determination of the Governor-General in Council that the lands comprised in the Jagheer should, on the death of Kadir Buksh, be continued to his heirs, to be held by them at the Istumraree Jumma. The Jumma was to cover whatever was included in the Jagheer. The grant may have been improvident; but if made by the Government of 1822, it is binding on the existing Government; and was properly so treated on the occasion of the settlement of 1837.

Upon the last point little need be said. If, as their Lordships think, the whole Talooqua was granted and afterwards made tenable at the permanent Jumma, it is clear that neither Act of Government can be rectified in such a Suit as this, upon a suggestion of mistake. But it is difficult to see how such a case could be successfully raised in any Suit. How is it possible, at this distance of time, to enter, as it were, into the Council Chamber of Lord Hastings, to measure the motives which prompted an act of grace in favour of a particular family, or to determine that his bounty proceeded upon mistake and not upon an appreciation of the facts, of which all might, and but for the assumed carelessness of his advisers must, have been before him.

A good deal was said on both sides touching the conduct of Government in taking the proceedings which have led to this Suit. Their Lordships fully concede that it is the right, nay, the duty, of a Government to protect the public revenue against unfounded claims to particular exemption from burthens to which the community is subject. But in the present case, their Lordships cannot but think that the rash views of Mr. White were too readily adopted by his official superiors, and that the Government was thus committed to dispute on insufficient grounds the effect of former grants, of which the more liberal construction was supported by an undisputed possession of forty years, and had

been formally sanctioned by the settlement of 1837.

Their Lordships will humbly advise Her Majesty to allow this Appeal, to reverse the Decree of the late Sudder Court at Agra, and to order that, in lieu thereof, a Decree be made granting to the Appellants the relief sought by their Plaint with the costs of the proceedings in both the Courts below. The Appellants must also have the costs of this Appeal.

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