

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Nilmoney Singh Deo v. The Government and Beer Singh from the High Court of Judicature at Fort William in Bengal; delivered 18th July 1872.

PRESENT.

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBT. P. COLLIER.

SIR LAWRENCE PEEL.

THE questions of fact in this case on which the right to resume depends were found against the Appellant by two Courts below, and the High Court, on special appeal, were bound by these concurrent judgments. Their Lordships, no special leave to appeal having been applied for, have also felt themselves bound by these findings. But it was suggested that the Courts below had erred in the construction of a Sunnud, and therefore that it was competent to this tribunal, on that ground, to hear the appeal. This Sunnud appears to be granted to Mohogur Singh, who, at the time it was granted, held the Jageer, and it professes to be only a confirmatory Sunnud. It appears really to emanate from the Government of India. It was issued with the sanction of the Rajah, which is proved by his signature, but it does not appear to be a grant by the Rajah, and his seal is not affixed to it. A grant from him was unnecessary. The effect of it appears to be no more than a confirmation by the governing powers, that is, the superior governing power, which was then the East India Company, and the Rajah, of the tenure under which Mohogur Singh then held the Jageer. It does not prove what it is necessary for the Appellant to prove in this case before he has any ground upon which the claim to resume this land can rest, namely, that the tenure

was a tenure of service, by which personal services only to the Rajah were to be performed by the Jageerdar. This Sunnud, purporting to be granted by those who had power over the land at that time, is merely this, that the Jageerdar shall remain in possession and in the performance of the services with his brothers. The kind of service is not described, and what it really was, must, therefore, depend on the extrinsic evidence. A great deal of evidence appears to have been given in the Courts below on that subject, and the two Courts have found on that evidence that the services were of a public nature, and not solely private or personal. It must be admitted, that if the former was the nature of the services, the Rajah cannot resume the land.

Their Lordships think they are bound, as the High Court felt itself bound, by the findings in fact of the two Courts before whom the case first came, and therefore, acting on the ordinary rule, their Lordships have no other course but to recommend Her Majesty to **affirm the judgment** under appeal, and to declare that this appeal must be dismissed with costs.