

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Jogendro Chunder Ghose v. Nawab Nuzeer
Ally Khan and the Commissioner of the
Soonderbuns from the High Court of Judi-
cature at Fort William in Bengal; deli-
vered 27th March 1873.*

Present :

SIR J. W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a suit brought by the Plaintiff, who was the purchaser of a lot of land sold by auction by the Government, against an adjoining landed proprietor and the Government, wherein he seeks a rectification of his boundaries and to recover possession of a certain portion of land which has been for a long time in the possession of the first Defendant Nuzeer Ally Khan.

The case arose in this way:—In the year 1830 various Soonderbun grants were made by the Government, and among them the grant of a lot No. 57. Lot No. 57 was divided into four portions. The situation of the fourth is immaterial. The situation of Nos, 1, 2, and 3 is this:—No. 1 to the north, No. 2 immediately to the south of No. 1, and No. 3 immediately to the south of No. 2. After various mesne assignments all these three portions came into the possession of Nuzeer Ally Khan the first Respondent. In the year 1858 the Government resumed possession of a portion of these lands on the ground of insufficient cultivation on the part of Nuzeer

Ally Khan and sold it by auction to the Defendant. The lands of which they resumed possession are described as lot No. 2, but they are also more particularly described by certain metes and bounds. The contention of the Plaintiff is that he is entitled to extend his boundary both north and south further than the line admitted by the Defendants, because the original boundary of these portions of the lot was what he now contends for. But it appears to their Lordships that the question is not what was in 1830, or at any time after that, the actual boundary of the three lots, but what was conveyed to the Plaintiff. That is the sole question.

In order to ascertain what was conveyed to him it is necessary to look to the proceedings with reference to the sale and the conveyance to him. The advertisement for the sale is in these terms. It appears that notice was given of the sale of various allotments, and in the first column appended to this notice was "No. of lots according to Captain Hodges' map," and then we come to "second portion of Lot No. 57," and the words are these:—"There are 151 beeghas of
 " cultivated land in this lot which have been
 " settled with the occupants under Rule 4th of
 " the Government Orders of the 24th September
 " 1853, and which will be made over to the
 " purchaser of this lot on his entering into
 " settlement for the same. The jungle portion
 " will be granted under Rule 2nd of the
 " 24th September 1853. These lands are oppo-
 " site to the cultivated lands of lot 56 and not
 " far from Government lot 54." Then in the third paragraph of the notice this is said:—"It
 " is further notified that intending purchasers
 " who are desirous to inspect the map of the lots,
 " or to obtain any information connected with
 " them and their present condition, can have the
 " same by attending, either personally or through

“ their agents, at the office of the Commissioners
“ in the Soonderbuns at Alipore.” It appears
that before this at least three maps had been
prepared by order of the Government, each
of which contained a boundary line, and ac-
cording to the Sudder Ameen who was deputed
to make an inquiry on the subject, it was these
maps, (or one of them,) which were referred to in
that third paragraph. Their Lordships think
that that must be so, inasmuch as Captain
Hodges’ map, made in 1830 or thereabouts, only
contained the number of the lots, and contained
no description whatever of their metes and
bounds. On the auction sale an amulnamah
was given to the purchaser, the Plaintiff, on the
10th September 1858, which is very much in the
same terms, though not precisely, as a subse-
quent pottah which was granted to him. This
amulnamah recites: “Whereas of the 17,700
“ beeghas of land of the 2nd plot of lot No. 57,
“ 151 beeghas of cultivated lands having been
“ deducted, the remaining 17,549 beeghas were
“ sold by public auction, and whereas you have
“ purchased the same at a value of Rupees 5,950,
“ and have paid the whole of the consideration
“ money, and have signed the dowl in respect of
“ the said cultivated lands, and whereas it is
“ probable that there will be delay in granting the
“ pottah with the sanction of the Government,
“ therefore at present this amulnamah containing
“ the under-mentioned boundaries of the lands
“ of the said plot is granted to you, and it is
“ hereby written to you, that after taking pos-
“ session of the lands of the said plot, you shall
“ set about clearing the jungle according to the
“ boundaries. Hereafter a pottah will be
“ granted to you with the sanction of the
“ Government, the rent free term being reckoned
“ from the date of this amulnamah.” Then the
boundaries are thus described, the northern and

southern boundaries only being in dispute:—

“Northern boundary.— A straight line facing
 “ the east, drawn from the place where Dhootree
 “ and Khoratea, otherwise called Mena Khal,
 “ join together as far as Takor Khal, which
 “ passes at a distance of 2 chains 50 links to
 “ the south of Kachoor Pooshkurny tank.”
 “ Southern boundary.— A straight line drawn
 “ facing due west from the place which is at a
 “ distance of one pooah (half a mile) of the
 “ Atharo Banka River on the south side from
 “ the place where Takor Khal, Rampoor, and
 “ Atharo Banka join together as far as the
 “ Khoratea Khal.”

On the same day, the 10th September, a dowl was executed in which again these cultivated lands are referred to, and among the details are
 “ cultivated lands according to measurement
 “ made by Baboo Ramnarain Bundopadhya,
 “ surveyor, 151 13 3. Deduct irreclaimable
 “ waste land, 3 17 8;” and the rest are jungle lands. Different rates are paid respectively for jungle lands and cultivated lands. The Plaintiff took possession upon the footing of this amulnamah subsequently confirmed by the pottah, and afterwards a measurement was made by Mr. Gomes, a government surveyor, upon that land. Mr. Gomes went to the land and laid down the boundary on the spot, and a receipt was signed by the Plaintiff, in these terms. “ I, Serish
 “ Choudro Ghose, holder of the second part of
 “ lot No. 57, do write this receipt to the effect:
 “ That your presence having proceeded to the
 “ locality in order to point out the northern
 “ boundary of the first part of the said lot, has
 “ in the presence of both the parties fixed it
 “ from the south of Kochoopookurea,” that is the tank “ up to the Gamorea river, by fixing
 “ eight pillars and posts. I accept the same,
 “ and consider the boundary to be valid, and

“ write this receipt in acknowledgment of having received the boundaries shown to me.”

Now this boundary was laid down by Mr. Gomes, in pursuance of a map which he made, which is in accordance with a map of Mr. Mullins, as far as the northern boundary is concerned, and in accordance with the latest map made by Ramnarain Benerjee, who is sometimes called Ramnarain Bundopadhya, and who is the person referred to in the dowl executed by the Plaintiff as having made the measurement of the cultivated lands. It appears on this map of Ramnarain, which is the latest, that a line is drawn, professedly at least, in accordance with the description in the amulnamah. A straight line is drawn to the south of the tank 2 chains 50 links, cutting off exactly the 151 beeghas of cultivated land which the Plaintiff was to have, and extending on the west to what purports on the map, (whether it is correct or not, is another question,) to be the junction of the Dhootree and Khoratea, otherwise Mena Khal. In their Lordships' opinion this is to be taken to be the map, (agreeing as it does with two former maps, at least as to the northern boundary,) on which the Government resumed, on which they sold, on which the Plaintiff took, and in pursuance of which the boundary line was marked out. The boundary line was marked out as far as it could be on all the land which was cleared. It was not marked out beyond the tank to the west, because at that time the state of the jungle made it impossible to do so. The Plaintiff accepted possession upon the footing of this map, and the boundary so laid down in pursuance of it. But some five or six years afterwards he discovers, as he alleges, that he had in fact bought more than he was aware of, and he claims his right to extend his northern boundary upon this ground. He refers to former pottahs, describing this No. 2 plot. In these

former pottahs he finds that the boundary is taken from the junction of the Dhootree and Khoratea in what is called a parallel line—that is the expression—to the east, without any mention of the tank, and for the very good reason that it did not at that time exist. He says now that he is entitled to go upon the land, taking as his point of departure, the true situation of the junction, to draw his line due east, and that he is entitled to have that as his northern boundary. But by adopting that line he goes a long way north of the tank, and thereby contradicts the terms of his conveyance, viz., a line 2 chains 50 links to the south of the tank. It is true that the pottah does not use the word south, but it speaks of 2 chains 50 links from the tank. Their Lordships read the two documents, the amulnamah and pottah, together and regard the line as fixed at 2 chains 50 links to the south of the tank. The line which the Plaintiff contends for, is altogether inconsistent with the line of Ramnarain's map, and the other maps in another very important particular. Whereas the line of those maps gave him 151 beeghas of cultivated land, the line which he now contends for would give him 500 beeghas more of cultivated land, which there is no pretence that he ever bought or paid for, that cultivated land having been for a very long series of years in the possession of the Defendant. Their Lordships feel it impossible to adopt this construction.

It is true that the line drawn upon this map of Ramnarain does seem to be an impossible line. It is impossible to draw a line to the south of the tank cutting off the 151 beeghas of cultivated land and to produce it in a straight line to the west, so as to meet the junction. Produced in a straight line to the west, it would fall below the junction. Therefore some portion of this line must be rejected as erroneous, and some portion,

no doubt of the description in the amulnamah and the pottah. The question is, which part is to be rejected as erroneous? Their Lordships have come to the conclusion, upon the evidence (this being a case of latent ambiguity), that they will give effect to the true intention of the parties and do justice in the case by adopting the line on this map upon which, in their opinion, the Government resumed, upon which the Government sold, and upon which the Plaintiff bought. They therefore are of opinion that that line should be adopted, and, that being so, as far as the northern boundary is concerned, they agree with what they regard to be the effect of the judgment of the High Court, which in some degree varied the judgment of the Court below.

The question as to the southern boundary is, no doubt, of a different character, and may not be altogether free from difficulty. The words describing this boundary are these: "Southern boundary: a straight line drawn facing due west from the place which is at a distance of one pooah (half a mile) of the Atharo Banka River on the south side from the place where Takor Khal Rampoorah and Atharo Banka join together as far as the Khorateah Khal," the contention on the part of the Plaintiff is that, given this junction, you must draw a straight line due south from it, and that the southern boundary is a straight line drawn due east and west to such a point on the river (which is admitted to be eastern boundary) that if it be produced it will cut the line drawn due south at half a mile from the junction. The contention, on the other hand, on the part of the Respondent is that this line of half a mile is to be drawn not due south but in the direction of the river, which, whatever may have been its original direction, or its direction at the time of the grant, would appear, at the time of the sale to

the Plaintiff, to have sloped in a direction of somewhere about half a right angle towards the south-west. This, according to their Lordships' view, would appear to have been the understanding of the parties when the property was bought of the Government; it is in accordance with most, if not all, of the maps, and it is in accordance with the last map made by Mr. Ellison with a view to the rectification of boundaries; and although, as before observed, the question is not altogether free from difficulty, they agree with both the Courts below, that that is the line which should be so adopted in order to give effect to the true intention of the parties.

That being the view of their Lordships, they have come to the conclusion that the judgment of the High Court is right. They will therefore humbly advise Her Majesty that the decree be affirmed, and the Appeal dismissed, with costs.