Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharajah Rajender Kishore Singh v. *Rajah Saheb Perhlad Sein, from the High Court of Judicature at Fort William in Bengal; delivered Thursday, May 21st,* 1874.

Present:

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

SIR LAWRENCE PEEL.

IN this case the Plaintiff and the Defendant are two neighbouring Rajahs, each possessing a large tract of land, and the question is to which of their conterminous estates the villages in dispute belong. It would appear that disputes arose between the predecessors of these Rajahs in the early part of this century, and two cross suits were instituted between them in the beginning of the century. The then Rajah of Ramnugger claimed 12½ tuppehs, and on the other hand the then Rajah of Bettiah claimed some 85 villages, which are said to have formed a mehal called Hamrah. The result was that each failed. The Rajah of Ramnugger failed in establishing his title to those tuppehs, the tuppehs being accorded to the Rajah of Bettiah, and on the other hand the Rajah of Bettiah failed to obtain the 85 villages, the villages being declared to belong to the Rajah of Ramnugger. In 1861 the present Rajah of Ramnugger instituted a suit against the present Rajah of

Bettiah for the recovery of nine villages, alleging them to be part of the 85 villages decreed to his predecessor, and that the Rajah of Bettiah had dispossessed him of them, and he put his case in this way. In 1840, on the death of the then Ranee of Ramnugger, the Government laid claim to the estate as having escheated to them for want of heirs and took possession of it; and the Plaintiff now alleges that shortly before or upon the Government taking such possession the Rajah of Bettiah contrived to possess himself of the nine villages in question. The Principal Sudder Ameen, before whom the case came in the first instance, decided against the Plaintiff *in toto*. The High Court, being dissatisfied with that decision, remanded the case, and ordered a local investigation. The Ameen who conducted the local investigation reported in favour of the Plaintiff as to one of the nine villages only; but the Principal Sudder Ameen adhered to his opinion that the Plaintiff was entitled to none.

On the case coming again before the High Court, they came to the conclusion that the evidence of the Plaintiff on the whole preponderated as to three of the villages, and accordingly they decreed to him those three dismissing his suit as to the other six. There was however on the record an issue whether the suit was not barred by the statute of limitations, which was disposed of by the High Court in this way:—"As to limitation, it is clear that "if we believe the evidence of the Plaintiff "regarding the villages we have decreed to "him, that Plaintiff is in time as regards the "villages decreed to him, because the cause of "action arose to the Plaintiff at a time when it "was impossible for him to bring the present "suit, until he had first obtained a decree in "proof of his own rights of inheritance, and so "shown his having a *locus standi* in Court."

Their Lordships propose now to deal with this question of limitation, to which the argument before them was chiefly if not wholly confined.

The facts bearing upon this question may be shortly stated thus. The Government took possession of the estate in 1840 or 1841. That is the time at which the Plaintiff alleges dispossession on the part of the Defendant, and therefore the time when his cause of action arose. It appears that the Plaintiff brought a suit against the Government and another Defendant, for the purpose of establishing his title as heir to this estate. A decision was pronounced in his favour in the year 1845 by the Principal Sudder Ameen, which decision was confirmed by the Court of Sudder Dewanny Adawlut in 1846. In 1848 he was actually put into possession, and he remained in possession until 1854. He was afterwards called upon to give further security to abide the event of the appeal, and on his failure to do so the Court of Sudder Dewanny Adawlut caused the estate to be put under attachment. The appeal was decided finally in his favour in 1858 by the Judicial Committee of the Privy Council, and thereupon he was again put into possession.

The very question now to be decided arose between these same parties in a suit wherein the present Plaintiff sought to recover from the present Defendants certain other lands which he alleged were within the limits of the zemindary of Ramnugger, and not within those of Bettiah. This suit, though commenced on the same day as the present, came on appeal before this Board in February 1869. In that case, as in the present, it was contended on the part of the Plaintiff that the operation of the statute had been suspended by the litigation in which he had been engaged in order to establish his title to his estate and by his dispossession in 1848.

In order to show that the case is precisely in point it is enough to read a few sentences of the judgment. It is reported in the 12th Moore's Indian Appeals, and at page 341 this is stated :—"If, however, it were granted "that a right of action accrued to the Appellant "at the date of the Thakbust proceeding,' (that would be the year 1845, three or four years later than the cause of action would arise in the present case,) "and their Lord- "ships think it impossible on the evidence "to fix the dispossession at a later date, "the suit would nevertheless fall within the "12 years limitation, unless the Appellant "could show that he is entitled to deduct "the whole or some part of the period between "February 1848 and the beginning of 1858," "and to support this claim to deduction he "must show that during the period to be "deducted he was, in the words of the Regu- "lation, 'from good and sufficient cause "'precluded from obtaining redress.' Their "Lordships would have great difficulty in "affirming the proposition that such good "and sufficient cause had here been shown to "exist. The Appellant's title to the Raj of "Ramnugger was established in the courts of "India in September 1846. He was put in "possession of the property in June 1848, "though between May 1854 and some day in "the beginning of 1858 it was again under "attachment. How can it be said in these "circumstances he was between 1848 and 1858 "precluded from maintaining a suit for pro- "tecting his zemindary and recovering lands "taken from it by encroachment? It would "be very dangerous in their Lordships' opinion "to lay down as a rule that the pendency of "an appeal to England puts the party who, "subject to that appeal, is the owner of an

" estate under a legal disability to bring a suit " in that character against third parties." Their Lordships therefore affirmed the decision of the Indian Court, which in that case had held that the statute of limitations was a bar to the Plaintiff's claim.

Their Lordships consider themselves precluded from considering whether the present case is taken out of the Statute by the exception in section 14 of Regulation 3 of 1793,—viz., " or shall prove that from minority or other good " and sufficient cause he is precluded from " obtaining redress," because this question is actually *res judicata* by this very tribunal between the same parties. It has, however, been argued on the part of the Plaintiff that in this case he brings himself within an exception to be found in the subsequent Regulation 2 of 1805, section 3,—" The limi- " tation of 12 years fixed by section XIV, " Regulation III, 1793; section VIII, Regu- " lation VII, 1795; and section XVIII, Regu- " lation II, 1803, shall also not be considered " applicable to any private claims of right to " lands, houses, or other permanent immovable " property if the person or persons in possession " of such property when the claim of right " thereto may be preferred in a competent " Court of Judicature shall have acquired " possession thereof by violence, fraud, or by any " other unjust dishonest means whatever;" and the Regulation goes on to say that if the Plaintiff seeks to exempt himself from the ordinary rule, he must state the fraud or violence in his declaration or replication. It has been argued that the Plaintiff does sufficiently state a case of dispossession by fraud and violence in his plaint and subsequent statement by his pleader, and that the evidence is sufficient to satisfy their Lordships that he was dispossessed by fraud or

violence within the meaning of the words of this statute. Although it may be perhaps fairly contended that there is a sufficient statement in the declaration to bring the Plaintiff within this exception, no issue appears to have been directed to this question, and the attention of the High Court does not appear to have been directed to it at all, inasmuch as they confined their attention entirely to the question whether the Plaintiff could bring himself within the exception of section 14 of Regulation III of 1793. But their Lordships nevertheless are asked to consider the evidence and to say that the Plaintiff has brought himself within this exception. They think it right to observe that this is an exception which they think must be construed with some strictness, for the door would be opened widely to a large class of claims which ought properly to be barred by limitation, if at any period less than 60 years a Plaintiff were enabled to evade the operation of the Statute of Limitation merely by alleging and giving some evidence of fraudulent or forcible dispossession. Their Lordships think that such fraudulent or forcible dispossession must be clearly established.

Applying their minds to the evidence which has been relied upon on the part of the Plaintiff, they have to observe in the first place that in the suit as originally brought and heard before the Principal Sudder Ameen there was no allegation of violent or fraudulent dispossession. There was simply a statement of dispossession. Upon the case being remanded evidence of dispossession was brought forward for the first time, and it was to this effect:—With respect to each of the three villages,—(and their Lordships believe with respect to each of the nine also,)—one or two witnesses depose to the agents of the

Rajah of Bettiah having come upon the land while the putwaree was in the act of collecting the rents; that they happened to have found upon him the rent rolls and official documents connected with the land, that they took them forcibly from him, and expelled him and took possession. The same story is told in each of the cases, and what appears more singular, it is also said that although the attention of the Government authorities was called to the matter they refused to take any notice of it. It should be recollected that the putwaree then dispossessed was the putwaree acting on behalf of the Government, and it is further to be observed that the Plaintiff himself states more than once that he received all these 85 villages from the Government, who were in possession of them, without making any statement at all as to this alleged forcible dispossession. It is further to be observed that the Principal Sudder Ameen would appear to have wholly disbelieved this evidence, and that the attention of the High Court was never called to it.

Under these circumstances their Lordships have no difficulty in coming to the conclusion that no such fraudulent or forcible dispossession has been proved as would bring the Plaintiff within the exception of section three of the regulation of 1805, and they feel bound to decide that the Plaintiff's claim is barred by the statute of limitations. The Plaintiff's suit must be dismissed upon that ground; and it is therefore unnecessary for their Lordships to express any opinion upon the merits of the case.

Their Lordships will therefore humbly advise Her Majesty that the decree of the High Court be reversed, that the suit of the Respondent be dismissed, and that the Appellant have his costs in both the Courts below and of this Appeal.

Their Lordships think it right to add that the report of the judgment of the High Court transmitted to them is in many respects unintelligible and ungrammatical, and that some words or paragraphs have been obviously omitted from it. Their Lordships feel it quite impossible to suppose that such a judgment was pronounced by the High Court. The copy sent from India has been compared with the printed copy, and has been found to correspond with it. They are therefore driven to the conclusion that the judgment must have been very negligently copied by the officer or officers whose duty it was to copy it in Calcutta.