

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Chow-
dree Gholam Furreed and others v. Ruzzak
Buksh and others, from the Court of the
Judicial Commissioner, Oudh; delivered
1st December 1874.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit brought in the Court of the Settlement Officer for the purpose of recovering a certain village called Alhun Mow, situate in the province of Oudh.

The facts material to the decision of the case may be thus stated : The Plaintiff's case is, that he and his ancestors were in possession of this village for upwards of 100 years, up to, at all events, the year 1849 or 1850, and his case now is, that he was originally a mortgagee, and at some subsequent time purchased what is called the equity of redemption, if that term is applicable to mortgages in Oudh. The case of the Defendant is, that he is entitled to this property; that in 1827 there was a judgment in his favour which comprised this property, and, although that point has been contested, their Lordships are of opinion that it does apply to this property, and that in 1849 he took possession under that judgment. It may be as well, with reference to that judgment, so as to dispose of it,

to add, that the Plaintiff alleges that, after it was given an ikrarnamah was executed by those who obtained it, renouncing all rights under it, and declaring it to have been of no effect. But *per contra* there is the fact, as appears or may be collected from the evidence, that that judgment was acted upon, though late, some eighteen years afterwards. But, in their Lordships' opinion, there are sufficient grounds for determining this case, wholly irrespective of that judgment. In 1852 the Oudh Government made a settlement of this property with the Defendant. If that act had stood alone, probably that would have been enough; but it would further appear that, at the instance of the English Resident, the King of Oudh was induced to refer the question of title to a competent Court. The Court was a special tribunal existing in Oudh for the purpose of adjudicating cases of, as it is termed, "people connected with the British Government." That Court, in pursuance of the directions of the king, investigated the whole matter; and we have before us a careful and apparently well considered judgment of that Court. We have, in that judgment, the cases of both sides set out, and it would appear that the Plaintiff's case was not that which he now sets up. Now, he says that he was the mortgagee, and that he subsequently purchased the mortgage, but at that time he asserted that the village in litigation was his ancestral zemindary, held uninterruptedly by him for a considerable period, and subsequently his agent referred his long possession to a farm lease. It would appear that, upon that occasion, the Plaintiff gave a good deal of evidence, calling nineteen witnesses, and putting in a number of documents. The Defendant's then agent filed a memorandum, attested by certain seeghadars, in support of his client's assertions. He relied on his client's alleged long possession by virtue

of a farming lease, and declared his inability to produce the witnesses to prove his proprietary right, and presented no document in support of his client's title. That being so, the judge of that Court decided in favour of the present Defendant.

It is true that that judgment required the confirmation of the King of Oudh, probably a confirmation which was given to a great degree in the usual course, as judgments of this Board are affirmed by the Queen. The explanation of its non-confirmation is not difficult to arrive at, inasmuch as the annexation took place about a month after the delivery of the judgment, therefore, there was scarcely time to procure the confirmation. Their Lordships, therefore, go so far with the counsel for the Appellants as to agree that this is not a binding and conclusive judgment, so that the matter between the parties can be treated as *res judicata*. But, nevertheless, it is a document very important as evidence; it is the judgment of a court which only requires what may be called the ceremony of confirmation to make it a binding judgment. It is given by a magistrate, whom they are bound to assume competent, upon both parties appearing before him, at a time when probably it was easier to determine their rights than it became at the subsequent period when this suit was instituted. At all events, their Lordships think it lay upon the Appellants to impeach this judgment, and to show in what respect, if at all, it was wrong. In their Lordships' opinion the Appellants have not sufficiently satisfied them that there is any error in this judgment. They think that this judgment, coupled with the possession of the Defendants for several years previously under a settlement made with the then Government of Oudh, is sufficient to establish their title, and that the case which the Appellants have made

out is by no means as strong as that of the Defendants. It was argued that the judgment of Mr. Capper, the Judicial Commissioner, which was passed on special appeal, had irregularly disturbed the previous findings of fact. On this their Lordships have to observe that the latest judgment on the issue of fact settled in the cause, was that of the Commissioner, Colonel Barrow, which Mr. Capper affirmed. There is therefore no ground for this technical objection; and upon the merits their Lordships are of opinion that the judgment of Mr. Capper, affirming the previous judgment of Colonel Barrow, is right, and they will humbly advise Her Majesty that that judgment be affirmed and the Appeal dismissed.