

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Rajah Nilmony Singh Deo Bahadoor v.
Kally Churn Battacharjee, &c., from the
High Court of Judicature at Fort William
in Bengal; delivered Tuesday, 15th De-
cember 1874.*

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was a suit instituted by the Rajah of Pachete against a great number of his ryots, about fifty, "to," in his own language, "obtain possession of ten rekhs, or a ten annas share of Mouzah Raotara, Pergunnah Para, under a mâl title, by setting aside the false mogolee bromuttur title stated by the Defendants." The Defendants set up different defences; some of them alleged the mogolee bromuttur tenure, which the Rajah complained of their having set up; others repudiated any such tenure, and declared that they had never set it up, and therefore that the suit was brought unjustly against them; others did not appear. The case came in the first instance before the Assistant Commissioner, who in their Lordships' opinion did not sufficiently distinguish between the different classes of Defendants. He treated them substantially as all setting up this mogolee bromuttur tenure, and framed his issue with that view. He found in the result in favour of the Rajah, that the Rajah was entitled to possession of the lands in suit, and that the Defendants'

allegation of mogolee bromuttur holding be set aside.

An appeal was then presented to the High Court, and in their Lordships' judgment the High Court scarcely sufficiently adverted to the distinct defences on the part of the various Defendants; the case of some being that they had a bromuttur tenure, that of others being that they had not and never had set it up; as against those last it was necessary for the Rajah to prove that they had set up a bromuttur tenure. The High Court reversed the decision of the Lower Court, and the ground of their decision is expressed in the last paragraph of their judgment: "On the whole case we think
 " that the onus being shifted on the Plaintiff
 " to prove that these Defendants had, since
 " the year 1197, paid at a variable rate, and
 " that they have not paid at the rate of Rs. 121,
 " 9 annas, as per settlement of 1197, he has
 " altogether failed to do so. We therefore
 " dismiss the Plaintiff's case, and decree the
 " appeal with costs." In other words, the High Court appears to have found that the Defendants had proved a *prima facie* case of a mogolee bromuttur tenure, throwing upon the Plaintiff the onus of rebutting that case, and that he had failed to sustain the onus thrown upon him. The decree of the High Court is in these terms,—“It is ordered and decreed by
 “ the said Court that this appeal be decreed,
 “ and the decree of the Lower Court be
 “ reversed, and that the suit of the Plaintiff
 “ Respondent as against all the Defendants be
 “ and the same is hereby dismissed.” Their Lordships do not think it necessary to determine whether or not the High Court were right in the conclusion they came to, as to the proof or the rebuttal of proof of the bromuttur tenure, because in their Lordships' opinion the judgment

dismissing the suit is maintainable on totally different grounds. This is in substance a suit for a declaration of title, and it is a suit to set aside, not any deed nor any act, but a mere allegation of the Defendants that they had a certain tenure. In their Lordships' view such a suit is not maintainable. Section 15 of Act VIII. of 1859 is in these words,—“No suit “ shall be open to objection on the ground that “ a merely declaratory decree or order is sought “ thereby, and it shall be lawful for the Civil “ Court to make binding declarations of right “ without granting consequential relief.” A similar clause in this country has been held to give a right of obtaining a declaration of title only in those cases where the Court could have granted relief if relief had been prayed for; and that doctrine has been applied to this clause in the Indian Act.

Now, applying that test, in their Lordships' opinion this suit is not maintainable. The Rajah was not entitled to relief in the shape of an order giving him possession, inasmuch as he was in receipt of the rents and profits, and he sought for and could obtain no other description of possession than that which he had. He could not obtain relief by an order directing an enhancement of rent, inasmuch as the cognisance of suits for the enhancement of rent is confined to the Revenue Courts, and a certain procedure is assigned to claims of that kind in those Courts. His requisition of a declaration of a real title, by setting aside the false bromuttur title alleged by the Defendants, is really no more than this, that he should have his title, whatever it was, as a Zemindar, free from the allegation of the Defendants that they had some other title. If he had applied to set aside a deed set up by the Defendants impugning his ordinary title as a Zemindar, then relief might

be granted to him by cancelling that deed, but he cannot obtain relief in the shape of merely setting aside an assertion—an assertion, which for all that appears, may have been merely by word of mouth. On these grounds it appears to their Lordships that no relief could have been granted to him if he had prayed for it, and therefore that the suit was not maintainable. They think it right to add that even if no rule of law had barred the suit, still that in their opinion this was not a case in which, in the proper exercise of judicial discretion, a declaration of title should have been made.

The real object of the suit would appear to be to obtain a general declaration against a great number of persons holding by different rights that they had no bromuttur tenure, of which declaration the Rajah might avail himself in proceedings to be taken in the Revenue Court in suits for the enhancement of rent. It was and will continue to be open to the Rajah to institute any actions he may think fit in the Revenue Court for the purpose of enhancement of rent against all or any of these his tenants; but each of these cases must be tried upon its merits, and ought not to be prejudiced by a declaration such as he has sought to obtain.

Under these circumstances their Lordships, for the reasons given, are of opinion that the decree of the High Court was right, and they will humbly advise Her Majesty that that decree should be affirmed. It is scarcely necessary for their Lordships to add that, the decree being affirmed on these grounds, no adjudication has been given in favour of either party upon the question of mogolee bromuttur tenure.