*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Syud Meer Wahid Ali* v. *Rani Sadha Bebee, from the Court of the Financial Commissioner, Oudh; delivered January 15th,* 1875.

---

Present:

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

WHATEVER may have been the questions originally in dispute between the parties Appellant and Respondent on this Appeal, they are now reduced to this,—whether the Appellant is entitled to a sub-settlement of Taluka Beoramow upon the terms on which that sub-settlement was decreed to him by Mr. Nicholson, the settlement extra assistant commissioner, on the 23rd of November 1867. The case must be taken to admit that the Respondent, as the talookdar of this property, has those proprietary rights which are assured to talookdars of Oudh holding talookdari sunnuds by "The Oudh Estates Act, 1869," and the only question is whether the Respondent, whom we may treat as alleging himself to be the Zemindar of Taluka Beoramow, is entitled to a sub-settlement under the terms of "The Oudh Sub-settlement Act, 1866."

Now, in order to entitle him to such a sub-settlement, it was necessary that he should prove that he, or some person under whom he claims, had within the prescribed period held these lands as an under proprietor under the talookdar or the predecessors of that talookdar. It was,

indeed, contended by Mr. Arathoon that it was sufficient for him to show that he had been a proprietor of those lands by a title adverse to the talookdar, and that although he might have lost his right to engage for the government revenue under the peculiar laws that have prevailed in the province of Oudh since the reconquest of that province, it was to be presumed that, having once had the better title to the lands, he had still a right to a sub-settlement. But it does not appear to their Lordships that this broad proposition can be maintained, or that it receives any support from the decision of this Board, which has been referred to, in the case of *The widow of Shunker Sahai* v. *Rajah Kishen Pershad.* The material question, therefore, to be decided was whether the relation of superior and under proprietor had ever existed between the two parties.

The case made by the Appellant was shortly this:—Rajah Newaz Khan was the proprietor of Taluka Beoramow. He was the common ancestor of Ali Buksh Khan, the Respondent's husband, through whom she claims, and Peer Gholam Khan, whose widow, the mother-in-law of the Appellant, was one Sada Bibi. Ali Buksh Khan having dispossessed Peer Gholam Khan's branch of the family, Sada Bibi appealed to the King's Court, and in 1847 obtained a decree declaring her to be proprietor of Beoramow. She had previously transferred her rights by deed of gift to her son-in-law, the Appellant, and he, by virtue of this decree, obtained possession of the Taluka. Ali Buksh Khan, however, continued to disturb him in that possession, and in 1851 the two parties came to an agreement, the terms whereof were embodied in an ikrahnamah executed by Ali Buksh Khan, to the effect that the Appellant should hold Beoramow as subordinate proprietor under Ali Buksh Khan,

who was to hold the Kubooliat for that as well as for the Taluka Mahona, to which he was entitled in his own right. This state of things subsisted until the annexation of the province in 1856.

The extra assistant commissioner, Mr. Nicholson, held that this case, including the execution of the ikrahnamah, had been established. The commissioner, Mr. Capper, held that the ikrahnamah was not proved, and further that "the "Respondent had failed to prove that the "relationship of over and under proprietor was "ever established between the parties." This was the ultimate decision upon this cardinal issue of fact. There was then a special Appeal to the Financial Commissioner, and the grounds of appeal were four. They were as follows: "That "the Court of first instance had of necessity "far better opportunity of testing the genuine- "ness of the ikrahnamah under which Plaintiff "(Appellant) claims, and that the grounds on "which the Commissioner had set aside the "ikrahnamah are insufficient. 2nd, That the "village papers and accounts from 1858 to "1862, filed by Appellant, together with the "Coomedan's perwanah, are additional proofs "of the genuineness of the ikrahnamah. 3rd, "That the circumstances of the canoongoe "having been unfavourably reported of on a "previous occasion is no proof that his evidence "in Appellant's case is untrustworthy." Now as to these first three grounds, it is obvious that they all go to the genuineness of the ikrahnamah, and that they simply raise a question as to the effect of the finding of Mr. Capper upon the fact of the execution or genuineness of that instrument, and the appreciation that he should have given to the evidence in support of it. The 4th ground is, "That Appellant has on no oc- "casion either confined his claim to a nankar

" or waived his right, to a sub-settlement; on " the contrary, a reference to Appellant's " petition of 8th December 1863 will show " that Appellant then asserted his present " rights." The order of the Financial Commissioner dismissed the special Appeal, and it is against that order that the present Appeal is brought.

The point to which their Lordships have, in the first instance at least, to direct their attention, is whether,—they being merely in the position of the Financial Commissioner who had to deal with a special Appeal,—there are any grounds upon which they can interfere with the finding of Mr. Capper, which was in effect that the relation which it was necessary to establish in order to entitle the Appellant to a sub-settlement, never existed between the two parties. Their Lordships have to observe that, so far as the title of the Appellant depends upon the proof of the ikrahnamah, there can be no ground whatever for interfering upon special Appeal with the judgment of Mr. Capper on that pure question of fact; and though it is not necessary for them to do so, they may add that, as far as they can see, the reasons given by Mr. Capper are sound, and that they, if sitting as judges of the fact, would probably, on the same evidence as to the execution of that instrument, have come to the same conclusion. The fourth ground of Appeal seems to refer specially to an observation which was made by Mr. Capper, to this effect: " Before " Mr. Forbes, assistant settlement officer, and " Mr. Currie, settlement commissioner, it has " been admitted for Wahid Ali, that he held " nothing under the Rajah but his nankar; " and in his petition to the Financial Com- " missioner of 12th March 1865, re-asserting his " proprietary title, he is silent as to having held " under the present talookdar." Now as to the

admission that the Appellant held under the Rajah nothing but his nankar, it is undoubtedly stated by Mr. Currie, in the judgment delivered by him in one of the earlier proceedings at page 7, that the Appellant had admitted having held nothing but nankar under the Rajah, and this seems to have been the ground of Mr. Capper's observation. But, at most, it is an observation which follows his finding, to the effect that the Appellant had failed to prove the relationship, and does not appear very materially to have influenced that decision, though it may have been used to construct it. And considering the inconsistency of the cases which were put forward by the Appellant at various times in the course of this long litigation, their Lordships cannot feel certain that no such admission was ever made before Mr. Currie.

The argument which Mr. Arathoon founded on the finding of Mr. Capper, that Sada Bibi did obtain a decree in the King's Court in favour of his title and against that of Ali Buksh Khan has already been dealt with. It was more plausibly urged by him that Mr. Capper's judgment might be impeached, upon special appeal, upon the ground that he had decided the case on the failure of the Appellant to establish the genuineness of the ikrahnamah, and had altogether omitted, and as it were rejected, from his consideration other and independent evidence which ought to have led him to the conclusion that the alleged relationship of over and under proprietor had existed between the Appellant and the Respondent. Their Lordships, however, are unable to come to this conclusion. They think that there is nothing to show that the evidence in question was altogether rejected by Mr. Capper, or that it was of such a character that it ought necessarily to have led him to a

contrary conclusion to that to which he came. And assuming for the sake of argument that he may have failed to give to this or that portion of the evidence the full weight which their Lordships, sitting as a tribunal competent to determine the facts, would have assigned to it, they must observe that this would be no ground for reversing his decision upon the facts on special appeal. In the course of the argument some attempt was made to re-open generally Mr. Capper's decision. It appeared, however, that the Appellant some time ago petitioned this Committee for special leave to appeal against that decision, and that the petition was dismissed. This circumstance, independently of the general practice recently adopted by their Lordships, of not allowing such applications to be made at the hearing of an appeal, necessarily precluded them from treating this otherwise than as a special Appeal. They may however observe, that so far as they can form an opinion from what they have seen in the record or heard in argument, they are not disposed to think that the Appellant would have succeeded in disturbing Mr. Capper's finding on the facts, had it been open to him to question its correctness by regular appeal.

Their Lordships will humbly advise Her Majesty to dismiss the Appeal, and to affirm the judgment of the Financial Commissioner, with costs.