

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeals of
Koer Poesh Narain Roy v. Robert Watson
and Company, and Ranee Surrut Soondree
v. Robert Watson and Company, from the
High Court of Judicature at Fort William
in Bengal; delivered Friday, April 16th,
1875.*

Present:

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

IN the first Appeal of Koer Poesh Narain Roy against Robert Watson and Company their Lordships think that there is no other course to take than to dismiss the Appeal.

The suit was brought to recover some chur land which was alleged to have accreted to five different estates or parcels of estates. As to the three first, Ramkristopore, Jotashahye, and Chuck Futtehpore, it was admitted by Mr. Bell, the learned counsel for the Appellant, that the questions arising with regard to those estates were purely questions of fact, and that the decisions of both Courts below were against him. Therefore he felt that consistently with the general rules of this Committee he could not hope to succeed in the Appeal as regards those estates.

With respect to the fourth and fifth parcels, namely, the original Nowshurra and the resumed Nowshurra Sooltanpore Futtehpore, he argued that the Appeal should be heard, and, if heard, decided in his favour, although

there were the judgments of both the Courts against him, upon the ground that the Ameen, who had been directed to make a local inquiry by the first judge, had reported in favour of the Appellant as regarded those estates. But upon investigation it appeared that the materials upon which the Ameen had reported were not in the record, and their Lordships feel that it would be quite impossible to reverse the concurrent judgments of the Courts below upon questions of fact merely on the ground that the Ameen had reported in a different way, when they have not the materials before them upon which the Ameen formed his opinion.

Mr. Bell then contended that as regarded the resumed Nowshurra he was entitled to succeed as to the parcel in front of that resumed Nowshurra, by reason of a special finding of the judge, Mr. Belli, which finding was as follows :—“There
 “ only remains Nowshurra Sooltanpore Futteh-
 “ pore, which is a Government khas mehal, now
 “ under resettlement. The Watsons admit that
 “ the proprietary right of Poresh Narain in this
 “ has been allowed by the Government officers
 “ to be coincident with his proprietary title in
 “ Pergunnah Lushkurpore, viz., annas 4. 13. 1. 1.
 “ and that the remainder was farmed by the
 “ Government to them. If, however, it is
 “ a khas mehal, the proprietary right in
 “ it belongs to no one but the Government,
 “ who may settle it with the Watsons or with
 “ Poresh Narain or with any one else whom
 “ it likes; and the fact of the last settlement
 “ having been made between the Watsons and
 “ Poresh Narain must be regarded as merely
 “ a happy accident for those parties. I say
 “ therefore with regard to the land opposite to
 “ Nowshurra Sooltanpore Futtehpore the right
 “ to it will appertain to any party with whom
 “ the Government may settle that mehal.”

Now it is true that the Watsons admit that the proprietary right of Poresh Narain has been allowed by the Government officers to be coincident with his proprietary title to Pergunnah Lushkorpore, which shows that they disclaim any title in themselves ; but that is not sufficient to entitle the Plaintiff to a decree unless he can show, which he fails to do, that the judge was wrong in saying that Nowshurra was a Government khas mehal then under resettlement ; the finding must be taken altogether ; and apparently the judge is right in coming to the conclusion that it was a khas mehal in the hands of the Government which had not been resettled ; and if he was right in that, then of course neither the Appellant nor any other person until the settlement can be entitled to a decree with regard to the chur land in front of that resumed Nowshurra.

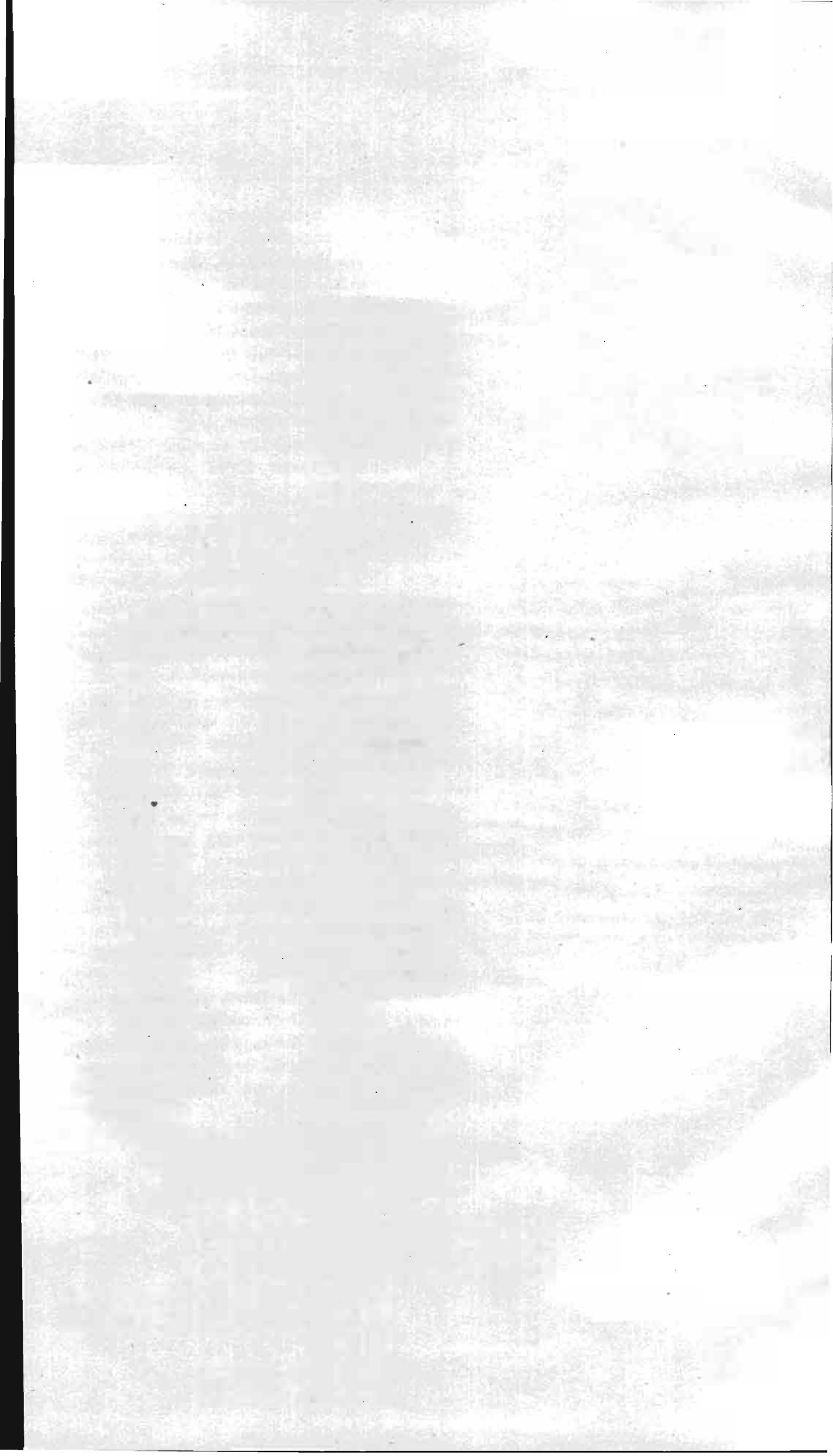
The result is that the Appellant has entirely failed in the present Appeal, and their Lordships will therefore humbly advise Her Majesty to affirm the judgments of the courts below and to dismiss the Appeal with costs.

The other Appeal of Ranee Surrut Soondree against Watson and Company, it is conceded, must follow the same fate, and be dismissed as regards the main part of the claim ; but in the course of the argument it was stated by Mr. Bell that the judgment of the High Court had taken no notice of a finding of the judge upon the remand. It appears that upon the remand there was no second judgment of Mr. Belli, but merely a report by him to the High Court which was to make the decree in the cause ; and no doubt Mr. Belli says :—“ I find this, that at the date
“ of the thackbust proceedings, that the recorded
“ proprietors of Ratapore, as ascertained from
“ the thackbust map, were Mohesh Narain Roy,
“ who was represented as holding 3 annas 10

" gundahs; Bhojrub Narain Roy, 5 annas 10
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 " Watsons and Ranee Surrut Soondree as joint
 " holders, in the proportion of nine and seven
 " annas." It appears that upon the appeal from
 this judgment objections were made on the part
 of the present Respondents to that finding, which
 will be found on page 355 of the Record in the
 other appeal. The objection is:—The share of
 " petitioners in Rajapore is 12 annas, and the
 " Judge has made a mistake in supposing
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 son and Company claim to be entitled to
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 put forward a claim to a large portion of land
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 That circumstance may account for the High
 Court not having noticed that finding or given

any decree based upon it, and they may also have felt, inasmuch as there was no claim in respect of Rajapore in the plaint, that it was not competent for them to deal with it in this suit. Their Lordships, therefore, think that although there is a finding, which, if it be a correct one, the Appellant ought to have the benefit of in some future proceeding, yet that the Appellant is not in a position to ask for a decree based upon it in the present Appeal.

Their Lordships will therefore humbly advise Her Majesty that this Appeal also ought to be dismissed, and with costs, but they desire that this should be without prejudice to any claim that the Appellant may have in respect of land accreted to Rajapore, and therefore they propose to advise Her Majesty to declare, in the terms which were read by one of their Lordships in the course of the argument, that the dismissal of this Appeal shall be without prejudice to the Appellant's right to any portion of the chur land in dispute, as a shareholder in Rajapore, and without prejudice to the question whether she is entitled to a seven annas share or to any and what other share in Rajapore.



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