Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Stri Raja Vyricherla Raz Bahadoor v. *Nadiminti Bagavat Sastri, from the High Court of Judicature at Madras; delivered 19th November* 1875.

Present:

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

THE question to be determined on this Appeal is whether the Appellant, the Zemindar of Kurupan, is entitled to turn the Respondents, who are certain Brahmins claiming to have an agraharum tenure in the village of Turakanayuduvalasa, out of possession of that village, and to recover the mesne profits from the time specified in the plaint. The case of the Plaintiff is thus stated in the 9th paragraph of the plaint. He there says, "In the year 1857 I attained my "majority, and took charge of the zemindary. "The said village was until then enjoyed as a "jeroyti portion of my zemindary for many "years, and was severed therefrom only in the "year 1857. It is therefore prayed that the "Court may adjudge to me the jeroyti village "of Turakanayuduvalasa (situated within the "boundaries hereunder specified, and yielding "at present an annual income of Rs. 1,000), "together with the produce made over to the "Defendant by the Court, as also the produce "subsequently enjoyed by him, with interest "thereon, amounting to Rs. 39,577. 13. 4. as

" per schedule." The plaint therefore treats the restoration of possession to the Defendants under a former decree, of which the execution was in 1855 directed by the Sudder Court to be made, as a species of trespass. It seeks to reopen the settlement of account made by or in conformity with that decree; and to recover back the sum then paid with subsequent mesne profits. The suit is brought not upon any notice to determine an alleged tenancy at will, but as upon an act of trespass giving a right of action from a particular time. It is difficult to reconcile such a claim with the admitted facts of the case; or to see how upon any view of the evidence in the cause the Plaintiff conld obtain the particular relief which he has prayed.

It is not their Lordships' intention to follow Mr. Mayne through that wilderness of litigation, in which they have been very clearly guided by him; the history of which does not present by any means a favourable picture of the administration of justice in the Presidency of Madras (or at all events in the district of Vizagapatam), during the greater part of the present century. It may be necessary hereafter to refer to some of those proceedings which have a peculiar bearing upon the points raised by the present appeal. It is sufficient, however, for the present to observe that in 1861, when the former decree above referred to was finally executed, there was, as it were, a new point of departure.

The Brahmins were then reinstated, under the authority of the Court, in possession of their village, and recovered a certain portion of the mesne profits received by the Zemindar after the estate had been made over to him upon the taking off of the zuft or attachment. The Zemindar on the other hand was left to assert what rights he had to impeach this agraharum tenure in a new and independent suit; and this

suit, which was commenced in 1864, has been treated in the Courts below, and may here be treated, as one brought for that purpose. Nor again is it necessary to consider in detail the earlier stages of this new litigation, or in particular the proceedings in which his right, whatever it might be, was held to be barred by the decree obtained in 1807, because the High Court having rejected that view of the case; and also departed from the view which it had itself originally entertained, to the effect that the suit was barred by the Statute of Limitations; finally, by the order of the 26th of March 1866, sent the parties back to trial on these two issues, viz., 1st, "Whether the Defendant at "the date of the suit held the village in "question under the grant made to his ancestor "before the date of the permanent settlement?" and, 2nd, "Whether the Defendants holding under "such grant was kattubadi or other tenure, "subject to a fixed quitrent which the Plaintiff "could not legally determine?"

Now, as the case comes before their Lordships, those two issues have been found by the two Indian courts which last dealt with them in favour of the Plaintiff. Therefore, so far as they are findings upon matters of fact, they are findings which this tribunal, in accordance with its ordinary rule, will not be disposed to question. As to the first issue, Mr. Mayne, in the course of his able argument, was almost constrained to admit that he could not impeach the correctness of it. The evidence upon which the Court came to its conclusion on the first issue depended in part upon two documents, of which the genuineness had been contested, but which both Courts have found to be genuine,—I mean the dombala of Mr. Webb on the 20th May 1800, which clearly treated the village as then held as an agraharam

by the Brahmins, and directed that it should be relinquished to him on his paying the customary yearly shrotrium to the Zemindar of Kurupam of Rs. 150. That was followed by a putta, also found to be genuine, whereby the then Zemindar, or his guardian in his name, stated that, "As my ancestors have granted " to you the agraharam of Turukanayadivalasa, " attached to our jagheir of Kurupam Taluk, " I again grant it to you as ekabhogam (entirely) " in the name of Shri Swami, fixing a shrotrium " (revenue) of Rs. 150. Therefore you and " your descendants may extensively improve " and enjoy it, paying the shrotrium (revenue) " every year, and bestowing blessings upon us. " He who maintains what another gives, gains " a virtue double that he gets by giving it " himself."

It seems to their Lordships that the Court, finding those documents to be genuine, have rightly come to the conclusion that they establish the affirmative of the issue in favour of the Plaintiff, that whatever may have been the original grant, of which the first seems to have been a grant absolutely rent free to the Brahmins, it must be taken that in some way or another the rights of the Brahmins had become modified to that extent that they were to hold this village only subject to the payment of the shrotrium or fixed rent of Rs. 150, and that that was the state of things in 1800, and before the completion of the perpetual settlement of the zemindary.

That being so, the only question that would remain would be whether the Court, finding that, was correct in coming, from that conclusion and upon the other evidence in the cause, to its finding on the second issue, "that the " Defendant's holding under that grant was " kattubadi, or other tenure subject to a fixed " quitrent, which the Plaintiff could not legally " determine."

The principal ground upon which the correctness of that finding has been attacked is that it is conclusively shown by the lists of the zemindary property, upon which the perpetual settlement was made, that the village was entered in those lists, and must therefore have been treated in the settlement made upon them as a jerayeti village, and not as a shrotrium or agraharum village. That raises the question what is the effect of a mistake in this description of the village upon the second issue raised in this cause. That there was in the proper sense of the term a mistake, is reasonable to conclude from the dombala of Mr. Webb, because Mr. Webb appears to have been the collector who was taking a large if not the sole part in making the permanent settlement, and if he in 1800 was satisfied that this was a shrotrium village and directed that as a shrotrium village it should be delivered over to the Brahmins, he would hardly proceed consciously or intentionally to enter it as a jerayeti village in the settlement. But however that may be, the question is, what is the effect of the entry upon the interest of the holders of an agraharum tenure? Their Lordships cannot find any authority for saying that it is conclusive against the rights of the tenants. They were not necessarily parties to the proceedings which resulted in the settlement between the Zemindar and the Government. It may be conceived that the Brahmins, as they said they were in fact, though the evidence does not support their allegation, might have been absent whilst the proceedings were pending. There seems to be nothing in the regulations, as their Lordships read them, which would so conclude them. No doubt if the village had been entered as a shrotrium village in the settlement papers that would have been conclusive as to the rights of the Brahmins against

the Zemindar, against the Government, against any purchaser at a sale for arrears of revenue, and in fact against all the world. But the settlement regulation XXV of 1802 does not contain anything which says that if the parties by carelessness or by accident allow their village to be misdescribed they are to forfeit their rights. It does not even say that all the shrotrium grants which then existed, and which were to be protected against future enhancement, were to be registered; and, on the other hand, that regulation is followed by a subsequent regulation of 1822, which declares that the provisions of the former regulation were not meant to define, limit, infringe, or destroy the actual rights of any description of landlords or tenants, but merely to point out in what way the tenants might be proceeded against in the event of their not paying the rents justly due from them, leaving them to recover their rights infringed, with full costs and damages, in the Courts of Justice. It cannot be said that as a matter of law and of right the parties have forfeited the interest which they would otherwise have in this tenure, by reason of the misdescription of the village in the settlement papers.

It has, however, been agreed by Mr. Mayne that the insertion of the village as a jerayeti village at least affords the strongest presumption that the parties then knew that they had not a good agraharum, and of their acquiescence in that description as correct; but that presumption seems to their Lordships to be rebutted by all that subsequently took place. They were first dispossessed some short time after the settlement in 1807. They immediately asserted their rights, and the decision of the Court, so far as it went, was in their favour. The effect of it was that the Zemindar had taken possession of the village forcibly, or at all events not under a judicial

decision; and that according to the law as laid down in the regulations, the only way in which he could interfere with the right claimed by the Brahmins was by a regular suit. Accordingly the Brahmins were again put into possession. The Zemindars for the time being seem to have acquiesced for nearly 20 years in that decision; and but for the decisions in India, by which it has been ruled that questions between landlord and tenant, and particularly questions of enhancement of rent, are not within the operation of the Statute of Limitations, there would have been no answer whatever to the proposition that the right of re-entry of the Zemindar, if it had ever existed, had been barred by lapse of time.

Their Lordships are therefore of opinion that both the issues have properly been found in favour of the Defendant.

There remains to be noticed the further question which was raised by Mr. Mayne, viz., that these grants were, at most, grants by the Zemindar which could take effect only during the life of the particular Zemindar, and, unless affirmed by his successor, were voidable. Whether assuming that proposition to be correct the particular suit as it is framed could have been supported may well be doubted. But their Lordships have already intimated their opinion that this point, which was not taken in the present suit in the courts below, is not open to Mr. Mayne upon the present appeal. They will not therefore say more upon it, than that it would have required strong authority to convince them that grants made by a Zemindar before the estate was permanently settled, and became subject to the rules which may have been laid down in the Madras Regulations as to subsequent alienations of this kind, were not binding upon the successors of the grantor.

Their Lordships will humbly advise Her Majesty to affirm the decree of the High Court which is the subject of the present appeal, and to dismiss the appeal with costs.