Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Nilmoney Deo Bahadoor v. *Modhoo Soodun Roy and others, from the High Court of Judicature at Fort William in Bengal; delivered May 24th*, 1878.

Present:

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

THIS suit was brought by the Rajah of Pachete, in his character of Zemindar, against the Respondents for enhancement of the rent of lands occupied by them. Of the only two issues that were settled in the cause one was, whether the notice of enhancement was legal, and whether it had been properly served; and the other, which was expressed in very broad and general terms, was whether the tenure was liable to enhancement. The first issue may be dismissed from their Lordships' consideration, both Courts having apparently held that the notice was legal and properly served.

The Respondent Defendants may be taken to be ryots within the meaning of the 4th section of the Bengal Act No. 8 of 1869, which is in these words: "Whenever in any suit "under this Act it shall be proved that the "rent at which land is held by a ryot in any "such province has not been changed for a "period of 20 years before the commencement "of the suit, it shall be presumed that the land "has been held at that rent from the time of "the permanent settlement, unless the contrary

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" be shown, or unless it be proved that such " rent was fixed at some later period." It is clearly established by the evidence, and indeed the fact is no longer contested, that the Defendants have held the lands, the rent of which the Plaintiff now seeks to enhance, for a period of 20 years before the commencement of the suit, without any change in the amount of that rent, that amount being 65 sicca rupees. The Defendants therefore having the benefit of the statutory presumption, it lay upon the Plaintiff to show that the rent had been varied since the time of the perpetual settlement, or that it was fixed at some later period. He has sought to do this in two ways. In the first place, he has attempted to show that, under certain former proceedings, there has been an adjudication that those lands were held at a variable rent, and that his right to enhance was thereby established. The following are the proceedings relied on. In 1837 a suit was brought by a person claiming as lessee under the then Rajah for the enhancement of this rent; the Rajah intervened and objected that to any suit for enhancement of the rent, he was a necessary party, either as sole or joint Plaintiff. That objection prevailed, and the suit was dismissed on the 25th February 1837. The suit, which has been called in the Record No. 98 of 1838, was then brought by the Rajah jointly with the other party for the enhancement of the rent, and on the 25th January 1841 judgment was given by the Moonsiff in favour of the right to enhance. From that judgment there was an appeal, either nominally to the Governor-General's agent in that part of the country, which was then a non-regulation province or district forming part of Lower Bengal, or directly to the Principal Sudder Ameen. But, however that may have been, the cause undoubtedly came, either by transmission from the Governor-

General's agent, or in the ordinary way, before the Principal Sudder Ameen, who affirmed the judgment of the Moonsiff, and dismissed the Appeal.

Upon the last two judgments the Plaintiff relies as being in the nature of *res judicata* and establishing his title to enhance. On this part of his case, however, he is met by a decree produced on the part of the Defendant, namely, that of the Moonsiff of the 18th of August 1846. From the recitals in that decree, it appears that in 1846 the Plaintiff with one Boidyonath, the son and representative of the Ijaradar, who had been his co-Plaintiff in the suit No. 98 of 1838, brought a fresh suit, not for an enhancement of the rent on proceedings taken in the ordinary way, but for the recovery of the enhanced rent alleged to have been decreed in the suit No. 98 of 1838; that on the face of their plaint it appeared that in that former suit, after the decree of the Principal Sudder Ameen, there had been a special appeal to some higher court, which had directed the Plaintiffs to give further proof of the receipt of rents at varying rates, and had remanded the cause to the Moonsiff's Court for re-trial on that point; and that on that remand the cause had been finally disposed of by an order in the nature of a nonsuit. The decree further shows that this suit of 1846 also resulted in a nonsuit. If, then, this alleged decree of 1846 has been satisfactorily proved, it is clear that in the former litigation there has been no final adjudication as between the parties to this suit, either in favour of or against the Rajah's title to enhance. That being so, the material question on this part of the case is, whether the existence of the suit and decree of 1846 have been satisfactorily established by the office copy of the decree which has been produced in this suit.

Their Lordships do not deny that some suspicion attaches to the document by reason

of the manner in which it was brought in by a witness who has been pronounced to be untrustworthy, and still more by reason of its purporting on the face of it to have been delivered out, not to the Defendants or those whom they represent, but to the Mohurrir of the Plaintiff, the then Rajah. Nevertheless they feel it impossible, upon the evidence before them, to dissent from the conclusion which the High Court have drawn in favour of this document, founded upon these two considerations: first, that if that of which it purports to be a copy were not a genuine decree, or there never was, as suggested, any suit in which such a decree could have been made, the natural course would have been to examine Boidyonath, who was a witness in this cause, and is stated to have been one of the Plaintiffs in the suit of 1846, as to the existence of that suit and the proceedings therein. Secondly, that if there never was such a decree or such a suit as that in which it purports to have been made, the decree of the Moonsiff, confirmed by the Principal Sudder Ameen in suit No. 98 of 1838, presumably would have stood. And yet we find it established beyond all possibility of doubt that for 20 years and more since the making of that decree, the Defendants have been allowed to remain in undisturbed possession of their lands at the old rent of 65 sicca rupees. Their Lordships therefore think that the case of the Plaintiff, if it is to be established at all, is not assisted by the judicial documents on which he relies, but must rest entirely upon the oral evidence given in the cause.

With respect to this, their Lordships concur with the learned Judges of the High Court in thinking that it is insufficient to support the Plaintiff's case. It seems to have been suggested in the course of the former proceedings that the rent payable at the time of the decennial settle-

ment was only Rs. 33. and therefore that it must have been at some subsequent date raised to 65 rupees. Again, Boidyonath has deposed that during the tenure of his father, which was determined some time about 1844, the rent was raised from 49 rupees to 65 sicca rupees. But this statement is unsupported by documentary evidence, nor is there any specific mention of this alleged variation in the proceedings in the suit No. 98 of 1838. The other witnesses, although entitled to whatever weight may be due to them, from the fact that the Judge of the Court below was pleased with their demeanour and thought them credible, gave evidence of so loose a character that their Lordships feel themselves unable to act upon it in opposition to the judgment of the High Court. It is further to be observed, with respect to the alleged variation from 33 rupees to some higher sum, that, although that case was attempted to be proved in some of the earlier proceedings by the quinquennial papers, no such quinquennial papers have been produced in the present suit; and no sufficient grounds have been assigned why the Rajah, if he was able to produce evidence of that kind on the former occasion, was unable to produce it in this suit.

On the whole, therefore, their Lordships feel it impossible to say that the learned Judges of the High Court were in error in holding that the Plaintiff had failed to sustain the burthen which the statute casts upon him, of proving that the lands had not been held at the fixed rent of 65 sicca rupees from the time of the permanent settlement, and in reversing the judgment of the Court of First Instance; and they must humbly recommend Her Majesty to affirm their decree, and to dismiss this Appeal.