Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Belchambers, Executor of Tiery, v. Ashootosh Dhur, from the High Court of Judicature, at Fort William, in Bengal; delivered Thursday, June 10th, 1880.

PRESENT:

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

THIS suit involves a question whether a portion of land, consisting of 8,050 beegahs, belongs to lot 104 or lot 100, which are conterminous lots of land in the Soonderbunds, the northern boundary of one being the southern boundary of the other. The Plaintiff, Ashootosh Dhur, hereafter called Dhur, the owner of lot 100, claimed the disputed land as part of that lot. The Defendant, as the representative of a Mr. Tiery, who appears originally to have been a manager of the Nawab Nazim, claims the disputed land as a part of lot 104. The High Court, reversing the decision of the Lower Court, found in favour of the Plaintiff, and from that decision an appeal has been preferred to Her Majesty in Council.

The Appellants contend that on two grounds, independently of the merits of the case, the action is not maintainable. The first is *res judicata;* the second is the Statute of Limitations. Their Lordships have only heard an argument upon the first point, but they have come to so clear a conclusion upon that that it becomes unnecessary to hear the rest of the

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case. The question of *res judicata* arises in this way:—Mr. Tiery, in 1852, acquired lot 104. Inasmuch as no question has ever been raised with regard to his title to it, it is enough to say that he became grantee of it under the Government at that time, and he appears from the beginning to have claimed the 8,050 beegahs as part of that lot, to have cultivated and built upon them, and to have improved them and rescued them from the jungle. In the year 1851 the Nawab Nazim, claiming then to be the owner of lot 100, granted a gantidari lease of it to one Bharut Chunder Roy. In 1853 one Nazir Ali, about whom their Lordships have had very little information, but who appears to have been a kind of agent or manager of the Nawab, claiming, it does not appear how or why or by what title, this same lot 100, granted another gantidari lease of it to Nund Lall Ghose. Nund Lall Ghose, in the year 1859, instituted a suit against Mr. Tiery on the ground that Mr. Tiery, trespassing beyond his bounds, had appropriated the 8,050 beeghas. which in fact were parcel of lot 100. That failed in the first Court, but succeeded in the second; and Ghose, on the 14th of August 1862, obtained a judgment in his favour, which judgment was appealed against to Her Majesty in Council. But in the meantime Bharut Chunder, who had obtained the gantidari lease which has been before spoken of, in 1851, of lot 100, brought an action against Ghose, Ghose's lessor, and Tiery—suing Tiery, not indeed as the owner of lot 104, but as a manager of the Nawab—for the purpose of obtaining possession of lot 100. Tiery disclaimed any interest in lot 100, and was dismissed from the suit. Bharut Chunder succeeded in both Courts, and obtained judgment for lot 100, with one or two other lots which are not material, on the 30th of August 1862; so that Ghose

apparently derived no great advantage from his judgment which he had obtained a fortnight before, inasmuch as it was decided in that judgment of the 30th of August that he had no title to lot 100. An appeal was preferred by Tiery to the Queen in Council from the decision before stated of the 14th August of 1862. Great delays arose in the prosecution of that appeal from various causes. It is enough to say that Tiery died; that he was succeeded by his widow, who married; that she subsequently died; and finally the estate and interest of Tiery devolved upon Belchambers, who is the present Appellant. But there probably was another cause for the delay: namely, that Nund Lall Ghose, the Respondent, had no interest in pressing on the appeal, because it had been held that he had no title to the lot to which it was alleged that the 8,050 beegahs appertained. During this time Bharut Chunder failed to pay his rent; and upon a suit being brought against him and judgment obtained, lot 100 was put up for sale, and was bought by the present Respondent, Dhur. Bharut Chunder and, after him Dhur, made, it appears, various endeavours to obtain possession of this disputed land in execution of the decree which had been obtained on the 30th of August 1862; but, without going into these proceedings, it is enough to say that the Courts appear to have refused to allow them to obtain possession of the disputed land in execution of the decree, on the ground that the question of parcel or no parcel was pending before the Privy Council in the appeal of Tiery, or his representatives, against the decree obtained by Nund Lall Ghose.

That being the state of things in 1872, Dhur applied to be admitted in that appeal as a party respondent to it, and he filed an affidavit in which, after stating the greater part of the facts which have been related, he averred that the interest of

the original Respondents in the lands in dispute had ceased. He went on to say, "Bharut "Chunder Roy was, and I am now, the only "person, as purchaser of the tenure of Bharut "Chunder Roy, interested in lot 100;" and that under the execution orders referred to he was precluded from enforcing his right during the pending of the appeal in the Privy Council. Then followed this statement, "That, owing to "the Respondents in the said appeal being "quite uninterested in the lands in dispute in "said appeal, they have not taken any active "measure to bring it to a speedy hearing; that "the said 8,050 beegahs of land, the subject "matter of the said Privy Council Appeal, are "jungle lands of Soonderbunds, and are likely to "relapse into jungle unless properly banded and "taken care of. I am informed, and verily "believe, that during the pending of the said "Privy Council Appeal the clearance and culti-"vation of the said land are very much neglected, "and the greatest portion thereof has relapsed "into jungles." Then he said:—"I am advised "that unless I am allowed to appear in the said "Privy Council Appeal, and support the judg-"ment of the High Court, my interest in the said "land is likely to be materially affected by the "result of the said appeal;" and he applied to be heard to support the judgment of the High Court in that case, on the ground that his interest would be affected.

His application was granted by this Board; he was admitted as a Respondent to the appeal; and he afterwards filed a case in which he alleged as his reasons:—"Because the said Lewis Tiery "trespassed beyond his boundary, and the land "in dispute formed part of lot 100, and not of "lot 104." This case he filed jointly with one Gobind Chunder, a representative of Ghose, although Ghose, as he contended, had no interest

in the land, and that joint case was argued for both Respondents by the same Counsel, who contended that the disputed land formed part of lot 100, and not of lot 104. Their Lordships, upon hearing the case, came to the conclusion that the Plaintiff had not proved that the land in dispute belonged to lot 100; and, in fact, their decision was,—for that is the effect of it,—that the land in dispute belonged to lot 104. Inasmuch, however, as there appeared some obscurity in the case as to the title to lot 100; as Gobind Chunder appeared, who claimed, or who originally claimed at all events, under Nazir Ali; and as Dhur claimed by what he alleged to be a paramount title under the Nawab Nazim, their Lordships thought it well to explain that they did not adjudicate upon any question of title either between the Respondents, or between the Nawab Nazim, or Nazir Ali, or any other persons who might be interested in lot 100. It was enough that in that appeal it was taken as admitted that the Respondents and the Appellants respectively were in rightful possession of lots 100 and 104, and the sole question was to which the disputed land appertained. It was therefore that their Lordships observed, "It is scarcely necessary to "say that this judgment can only in this case "affect the parties to it,"—that is, the parties to the judgment, of which undoubtedly Dhur was one,—"and cannot give any other persons any "rights, or impose upon them any liabilities." If, indeed, Dhur, in the present action, had claimed by some superior or paramount title the 8,050 beezahs, he might have been heard to set it up, but he claims simply and solely in this action the 8,050 beezahs on the ground that they were parcel of lot 100, and not of lot 104. That is the very question on which he invoked their Lordships' decision. If the decision had been in his favour, undoubtedly he would have

availed himself of it, and, the decision being against him, he must be bound by it.

Their Lordships regret that an expression in their judgment which was intended to prevent misapprehension should have apparently led to it, and that the High Court should have interpreted the above passage as meaning that their Lordships did not intend to decide the only point which they did decide. The Chief Justice makes an observation,—that their Lordships did not impose costs upon Dhur. With regard to that, it is only necessary to say that it is manifest that a direction with regard to costs can have no effect whatever upon the judgment given in the issue raised between the parties to the appeal.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the High Court be reversed, and that the suit be dismissed with costs in both the Courts below. The Appellant will also have the costs of this Appeal.

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