Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rai Raghu Nath Bali v. *Rai Maharaj Bali, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered March* 12*th*, 1885.

Present:

LORD BLACKBURN.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

IN this case Rai Raghu Nath Bali sued Rai Maharaj Bali for the purpose of recovering the half of a talook in Oudh, together with other property which is specified in the Plaint, of various descriptions, some real property, some personal property, and some "Muafi villages." The relationship of the parties is sufficiently stated in a short pedigree to be found at the beginning of the Judgement of the Subordinate Judge. It appears that Sital Parshad had three sons, Suraj Bali, Anand Bali, and Partab Bali. Anand Bali died without issue. Partab Bali had two sons, Sheoraj and the Plaintiff, Sheoraj having died some years before the suit was instituted. The other son of Sital, Suraj Bali, had a son, Abhram Bali, who died in 1880, leaving the Defendant his heir and successor.

The talook in question is one which for a very considerable time has descended to the eldest son, who has taken the whole of it, and has given maintenance to other members of the family. In 1858 a summary settlement of this talook was made with Abhram Bali, the father of the Defendant, and in 1860 Abhram received

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a Sanad in pursuance of that summary settlement, whereby the talook was granted to him and to his heirs on the principle of primogeniture, and his name was subsequently inserted in the first and second list of talookdars in the Oudh Estates Act of 1869. This being so, no question has been raised on the part of the Appellant as to the right to the talook, except on the suggestion of a trustee—the proof of which has entirely failed.

The other descriptions of property remain to be dealt with. First, with respect to the Muafi villages, it appears that there was a grant of them to Partab, the father of the Plaintiff, and Sheoraj, his eldest brother, for their lives. Those lives having determined, the property reverted to the Government, and was granted to the Defendant. With respect to them, also, no question arises.

We have only, therefore, to deal with accumulations which have been made by the Plaintiff or his father, or his ancestors. With respect to them it is admitted that any savings made from the proceeds of the talook since the summary settlement of 1858 would belong to the Defendant. The question, therefore, is still further reduced to savings and investments which have been made at an earlier time, or from proceeds other than those of the talook. As to them the Plaintiff contends that the family being joint, he is entitled to his share. A very able and ingenious argument has been addressed to their Lordships on the part of Mr. Mayne for the purpose of showing that the family was joint. The Subordinate Judge has found that they were not joint; but in the view which their Lordships take of the case it is not necessary to decide this question.

It has been further contended by Mr. Mayne that the burden is thrown upon the Defendant to

prove that there were no savings or accumulations other than out of the proceeds of the talook. or before 1858. But it appears to their Lordships also unnecessary to determine this question. They observe, however, this is not the case of an ordinary undivided Hindoo family, if it be assumed that the family was for some purposes undivided, and that the presumptions must here depend upon somewhat special circumstances.

Their Lordships are of opinion that there is a ground, and a very distinct one, upon which the cause must be decided. It has been distinctly found by the District Judge,—(and that finding has been adopted, though not in express terms, by the Judicial Commissioner of Oudh, who has affirmed the Judgement, though without giving any lengthened reasons for his decision,)—" With " respect to all the rest of the property other " than the Muafi villages, I am of opinion that " it is not only not proved that Plaintiff's branch " had joint possession, but that the exclusive " possession by Abhram Bali and Defendant on " their own behalf alone is established." If this finding is right, the Limitation Act of 1857, chapter 127, Schedule C., applies, the term of twelve years, according to that Act, running from the time when the exclusion of the Plaintiff was known to him. It appears to their Lordships that this finding of the Judge is altogether supported by the evidence, and that the Plaintiff's exclusion must have been known to him at latest in 1858 or 1860. It has indeed been contended that there was some joint possession on behalf of the Plaintiff, on the grounds, 1st, that he lived in the family house, though not in the same apartments with his cousin; 2ndly, that he obtained an allowance of some Rs. 90 either per mensem or per annum,—it does not clearly appear which. The first of these grounds does not appear to their Lordships to establish joint

possession ; the second goes some way to negative it.

The Plaintiff has been excluded from his share, if he had one, of the family property, for more than twelve years, and he must have known of this exclusion. If so, the Statute of Limitations has run against him.

Their Lordships will humbly advise Her Majesty that the Appeal should be dismissed, and the Appellant must pay the costs.