Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Rampal Singh v. *Balbhaddar Singh, from the Court of the Judicial Commissioner of Oudh; delivered the* 9*th July* 1902.

Present at the Hearing:
LORD DAVEY.
SIR FORD NORTH.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

In this case special leave was granted by Her late Majesty to appeal from a Decree of the Judicial Commissioner of Oudh, dated the 6th May 1899, overruling the previous Decree of the District Judge on first Appeal which confirmed the original Decree of the Subordinate Judge. A preliminary objection was made by Counsel for the Respondent that leave to appeal had been granted under a misconception and that the Appeal ought not to be heard on its merits. Their Lordships found it impossible to appreciate the weight or validity of the objection until they were in possession of the facts of the case and they accordingly allowed the Appeal to proceed reserving to the Respondent the benefit of his objection if it proved to be well founded.

The property which is the subject of this litigation is a village called indifferently Bijlipur Bangadwa and Bangarwa comprised in the Talookdari Estate of Rampur Kaithoula. Prior to and in the year 1859 Rajah Hanwant Singh was Talookdar of this estate and his name was also

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entered in Lists 1 and 2 in the Appendices to the Oudh Estates Act 1869 in respect thereof. The Rajah had two sons the elder of whom died some time before the year 1859 leaving an only son Rampal Singh who is the present Appellant. The old Rajah purported in the year 1859 to divest himself of his talook in favour of his grandson and afterwards took proceedings to resume or set aside his grant which resulted in a compromise. It is unnecessary however for their Lordships to follow the details of the complicated story of the relations between the old Rajah and his grandson. It is sufficient for the present purpose to say that on the death of his grandfather on the 29th June 1881 the Appellant became the undisputed proprietor of the Talook.

On the 9th December 1882 Sheoamber Singh who was sister's son of the old Rajah commenced proceedings in the Revenue Department for mutation of names in respect of the disputed village. In his application he claimed to be entitled as transferee from the Appellant himself of the entire village for a perpetual lease. And in his affirmation in support of his application he stated that the Appellant gave him Zemindari of the entire village in 1271 Fasli (corresponding with the Christian year 1865) under a perpetual lease on payment of a rent of Rs. 553 and that from that year or from before that time he had been in possession of the village.

It is stated that the Appellant was at that time in England but one Jamna Pershad his Mukhtar appeared for him and obtained an adjournment of the case in order to enable him to communicate with the Appellant. On a subsequent day he stated that he had received permission from the Appellant and at his suggestion an order was made that Sheoamber Singh be summoned with the lease concerned for the 14th July and Jamna Pershad was also ordered to present himself. Neither party

however attended on the day fixed and the case was ordered to be kept with other cases of perpetual leases for future decision.

On the 29th June 1891 the Appellant commenced proceedings in the Revenue Department against the present Respondent (the son of Sheoamber Singh who had died in the interval) to recover possession of the village in suit. The Respondent thereupon produced a document bearing a native date corresponding with the 23rd May 1865 and purporting to be sealed with the seals of Rajah Hanwant Singh and of the Appellant and to be signed by the old Rajah. On being shown the document the Appellant stated as follows :—

"*Answer.*—I see the lease. It bears the "signature of Raja Hanwant Singh. It bears "his and my seals as well. This lease was "executed by Raja Hanwant Singh on my "behalf, which I have now come to know. "This village was given to me by Raja Hanwant "Singh along with the estate. Subsequently "Raja Hanwant Singh, executed this deed in "favour of Sheoamber Singh, the father of "Balbhaddar Singh, to do which he (Hanwant "Singh) had no power, and he affixed my seal "also to the deed. At the time of its execution "I was a minor. This deed being produced, I "have no hope of success in a Revenue Court."

The Respondent's objection was thereupon maintained and the Appellant's claim for ejectment cancelled.

The Respondent does not now contend that the document of the 23rd May 1865 was the deed of the Appellant and it has been assumed by both sides that his seal was affixed to it by his grandfather during his minority but he relies on it as Hanwant Singh's deed which he says has been confirmed in his favour by the Appellant as part of the compromise. The construction of the document however has been the

subject of much argument. Their Lordships agree with the opinion of the Judicial Commissioner that the document created a perpetual under-proprietary right in the village and with the reasons he has given for his opinion. In the circumstances of the present case it is unnecessary for them to say more.

On the 4th June 1894 the Plaintiff commenced the present action in the Court of the Subordinate Judge of Pertabgarh. The relief sought by the plaint was (1) possession of the village; (2) mesne profits; (3) (alternatively) a declaration that the Defendant had no right in the disputed village beyond that of a lessee having no right (which sounds a little tautological) and that he was liable to be ejected by an ordinary notice of ejectment; (4) further relief. The Respondent by his written statement relied (amongst other defences) on limitation.

It is admitted by Counsel on both sides that having regard to the provisions of the Oudh Rent Act of 1886 the Civil Court had no jurisdiction either to decree possession of the village or to make a declaration in the form prayed by the plaint. Their Lordships think that in substance the object of the suit was to get rid of the blot or cloud on the Appellant's title occasioned by the Respondent's claim under the instrument of 23rd May 1865 either by cancellation of the instrument or by a declaration that it was not the Appellant's deed and had not by any act of his become binding upon him or his estate or by a decision that according to its true construction it had no operation beyond the life of the old Rajah or alternatively of Sheoamber Singh. And their Lordships think that the suit can only be maintained (if at all) as one for those objects notwithstanding that for obvious reasons it is in the plaint made to look as much like a suit for recovery of land as possible and an order for ejectment in the Revenue Court might be

consequential on a Decree in the Plaintiff's favour. No doubt the ultimate object of the Appellant was recovery of possession but that relief could not be given in this suit. It is different therefore from a case in which the substantial relief sought is recovery of land and the setting aside an instrument is merely ancillary or incidental to that relief. In the present case the cancellation of the instrument or a declaration of its invalidity as against the Appellant was the substantial relief sought and the only relief which the Court had jurisdiction to give.

The suit is therefore in the opinion of their Lordships one which would come within Section 39 or Section 42 of the Specific Relief Act. And the relevant article in the Schedule to the Limitation Act would be either 91 "to cancel or "set aside an instrument not otherwise provided "for" for which the period is three years only from the date when the facts became known to the Plaintiff or (as the Judicial Commissioner thought) the general Article 120 which gives six years from the date when the right to sue accrued. In the present case the right to sue accrued *primâ facie* on the death of Rajah Hanwant Singh on 29th June 1881. The Appellant however says that time did not begin to run against him until Sheoamber's or the Respondent's possession became adverse or until he knew the facts which entitled him to sue and he fixes that date at the 24th June 1891 the date of his appearance before the Revenue Officer in the proceedings of that year when (he says) he first became aware of the instrument of 23rd May 1865.

The Judicial Commissioner has however held that the Appellant had notice through his mukhtar that Sheoamber claimed a perpetual proprietary tenure in the village under an

instrument purporting to be the Appellant's deed in the proceedings for mutation of names in the year 1883. And this is the principal point on which the Appellant in his petition for special leave to appeal relied as an excess of jurisdiction by the Commissioner. The Courts of First Instance and of First Appeal both held that the Appellant came to know of the existence of the instrument of the 23rd May 1865 only on the 24th June 1891 and it is contended that such finding was one of fact which the Commissioner on second Appeal had no jurisdiction to reverse. Their Lordships however think that the learned Commissioner in holding that the Appellant had notice through his mukhtar did not reverse any finding of fact by the Courts below but merely applied a well-known and universal rule of law to the facts before him. By Section 229 of the Indian Contract Act it is enacted that any notice given to or information obtained by an agent in the course of his business transacted by him for the principal shall as between the principal and third parties have the same legal consequence as if it had been given to or obtained by the principal. And the same is repeated in Section 3 of the Transfer of Property Act 1882. It may be that these enactments are not directly applicable to the matter now in dispute but they are only declaratory of a general principle of law. That principle is in an especial sense applicable to legal proceedings which are usually conducted through an agent and it would be impossible to conduct such business and it would lead to grave inconvenience and injustice if it were required to prove afterwards that the client had personal knowledge of the contents of the pleadings or of some document in suit or of the general nature of the claim made against him. It is not a mere question of constructive notice or inference of fact but a rule of law which

imputes the knowledge of the agent to the principal or (in other words) the agency extends to receiving notice on behalf of his principal of whatever is material to be stated in the course of the proceedings. Now what did the Appellant's mukhtar know from the written statements in the proceedings? He knew that Sheoamber Singh claimed a perpetual proprietary tenure in the village under an instrument purporting to be executed by the Appellant himself in the year 1271 Fasli. It is true that the instrument itself was not produced but its production was ordered and might have been enforced by the Appellant's mukhtar if he had been so minded. He did not do so perhaps because he was too well acquainted with the contents of the document and he took no further steps in the matter. In a Court of Law the Appellant must be held to have received in 1883 all the information which the proceedings of that year conveyed and Sheoamber's possession became adverse to the Appellant from that date.

Their Lordships are therefore of opinion that the Judicial Commissioner took a correct view and that the suit is barred by limitation whether it comes under Art. 91 or Art. 120 and it is immaterial to consider whether time began to run against the Appellant from Hanwant Singh's death or from the proceedings of 1883.

The only other point on which the Appellant relied as an excess of jurisdiction in the Judicial Commissioner was an expression of opinion in his Judgment that there was no reason to doubt the genuineness of a certain letter said to have been written in 1857 by Rajah Hanwant Singh to Sheoamber Singh which had been admitted in evidence but which both Courts below had treated as a forgery. This point however turns out to be absolutely immaterial. No reliance was or could be placed on the letter by the Respondent's

Counsel and it is a matter for surprise that anybody should have thought it worth while to forge such a letter or that anybody should have conceived it to be relevant evidence on any issue in the case.

Undoubtedly if their Lordships had found that leave to appeal had been obtained by misrepresentation or concealment of material facts they would have dismissed the Appeal at once without considering the merits. But they acquit the Appellant of any intention of that kind. They must however add that if it had been possible when the leave was applied for to appreciate the points in the case as well as they are now in a position to do they doubt whether any leave to appeal would have been given.

Their Lordships will humbly advise His Majesty that the Appeal be dismissed and the Appellant will pay the costs of it.