

Judgments of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Raja Muhammad Muntaz Ali Khan v. (1) Murad Bakhsh and others; (2) Ramzan and others; (3) Abdul Ghafur Khan and others; (4) Raj Bahadur and others; (5) Sheoratangir and another; and (6) Murad Bakhsh and others (Privy Council Appeals Nos. 81, 87, 92, 96, 97, and 101 of 1903); and on the Consolidated Appeals of Raja Muhammad Muntaz Ali Khan v. (1) Saiyid Muhammad Mohsin and others, and (2) Saiyid Ali Akbar and others (Privy Council Appeals Nos. 84 and 86 of 1903), from the Court of the Judicial Commissioner of Oudh; delivered the 20th June 1907.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

PRIVY COUNCIL APPEALS Nos. 81, 87, 92, 96,
97, and 101 of 1903.

In the six cases out of which these consolidated Appeals have arisen, the Plaintiff was Raja Muhammad Muntaz Ali Khan, the Talukdar of Atraula, and the Defendants were persons who, either by themselves or their predecessors in title, claimed under-proprietary rights in villages in his taluka. These rights are what are known in Oudh as *birt*, or *birt Zemindari* rights; and the question for decision is whether persons holding

under this tenure have a heritable and transferable right, as against the talukdar, in the villages in respect of which the *birt* has been created.

In Mr. Sykes' valuable Compendium of the Law specially relating to the Talukdars of Oudh (p. 173) it is stated that "there are several descriptions of *Birt* known in Oudh, but . . . the true *Birt* is that known as the *Bai Birt*, created by the Talukdar or proprietor for money paid." In the Gonda Settlement Report—and the cases now under appeal come from that district—the *Bai Birt* is spoken of as *Birt Zemindari*.

In the Circular known as the Record of Rights Circular, No. 2 of 1861, the Chief Commissioner of Oudh deals very fully with the subject of *Birt* tenures, and lays down the policy of the Government in regard to them.

"Birts," he says, "were given for whole mauzas, or patches of land in mauzas. . . . These tenures, when granted by the talukdar for money received, will be maintained as representing the proprietary rights of the Birtias who by purchase have acquired the position of intermediate holders, and as constituting the portion of the profits left them by the Talukdar. . . . Birts of entire mauzas are very common in Gonda and Gorruckpore. They originated in purchases from needy talukdars, and sometimes in clearing leases of jungle land. In the Ootrowla (Atraula) and Bubnee pergunnahs of the Gonda district, the birtias had been in many instances admitted to direct engagements with the Native Government for years previous to annexation, and, of course, were settled with them, and should have been at the late Summary Settlement, on the principle that we are not bound to restore to the talukdars what they had lost before our rule commenced."

Sykes, p. 174.

And the policy of the Government is thus declared :

"The Chief Commissioner is clearly of opinion that the birtias who were found in direct engagement with the State at annexation, or who have uninterruptedly held whole villages on the terms of their pottahs under the Talukdars, must be maintained in the full enjoyment of their rights, in subordination to the Talukdars."

It appears to their Lordships that, if the Respondents in these cases have shown them-

selves to come within the benefit of the policy announced in this Circular, they acquired, upon the annexation of Oudh by the British Government, absolute under-proprietary rights as against the Talukdar, in the villages in suit. The learned Judicial Commissioner, Mr. Blennerhassett, in a series of very able and careful judgments, has decided in their favour, and their Lordships entirely accept his conclusions, and the reasons on which they are based. They will humbly advise His Majesty that these Appeals ought to be dismissed, and the decrees of the Court of the Judicial Commissioner confirmed. The Appellant must pay to the Respondents who appeared one set of their costs of the Appeals.

PRIVY COUNCIL APPEALS NOS. 84 and 86
OF 1903.

The decision in these Appeals follows that in the six cases already disposed of. It may be noted that, in these two cases, the relation of the Birtias to the Talukdar was fixed by orders of the Settlement Court as long ago as 1872. These orders were not made by consent, but after examination of witnesses, and hearing all parties. Moreover, it would seem from the Judgment of the Judicial Commissioner that he would have had "no difficulty in finding" that the Respondents or their predecessors in title held "direct " under native rule, and after annexation," and that the Talukdar is only entitled to a malikana allowance.

Their Lordships will humbly advise His Majesty that these Appeals ought to be dismissed, and the decrees of the Court of the Judicial Commissioner confirmed. The Appellant must pay the costs of the Appeals.

