Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Maheshar Parshad and others v. Muhammad Ewaz Ali Khan, from the Court of the Judicial Commissioner of Oudh; and of Muhammad Ewaz Ali Khan v. Maheshar Parshad and others, from the Board of Revenue for the United Provinces of Agra and Oudh and the Court of the Commissioner of the Fyzabad Division; delivered the 11th May, 1909.

Present at the Hearing;

LORD ATKINSON.
LORD COLLINS.
LORD GORELL.
SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

The matter in controversy in these two consolidated Appeals is the right of one Muhammad Ewaz Ali Khan (herein-after called "the Taluqdar") to recover possession, either in the Civil Courts or in a Revenue Court, of a village situate within the ambit of his taluq, named Gadaria, from the present holders, Maheshar Parshad Shukul and Hargopal Shukul, a minor under the guardianship of Maheshar Parshad, named in the proceedings "the "Shukuls." The two main, if not the only,

[22] P.C.J. 39.—L. & M.—29/3/09. Wt. 98

questions for their Lordships' decision are (1) the proper construction of the 13th Rule in the Schedule of Rules attached to the Oudh Sub-Settlement Act, No. XXVI of 1866, and (2) the proper construction of a certain order or decree made on the 6th of January, 1869, by L. Barrow, Financial Commissioner, in a suit or proceeding in which one Bhairon Shukul, the predecessor of the present holders, prayed as against Rani Sadha Bibi to be entitled to a pucca lease of the said village with other lands.

The case arises out of the Settlement of Oudh. There has been an immense amount of litigation between the parties, and much conflict of opinion on their respective rights. On the 2nd February, 1864, the above-mentioned Bhairon Shukul instituted a suit in the Court of the Settlement Assistant Commissioner against Rani Sadha Bibi, described as "Taluqdar Mahona," praying for an under-proprietary settlement in the said village of Gadaria and other lands. On the 15th March, 1864, judgment was pronounced in this suit by W. E. Forbes, Assistant Settlement Officer, and a "permanent lease of Mauza Gadaria "Dih with Hasanpar" decreed in favour of the Plaintiff, and he was ordered to pay *malikana* to the Defendant "at the rate of 25 per cent. "on the revised *jama*." This judgment was affirmed by the Settlement Commissioner and the Chief Commissioner. It was admitted in argument that under-proprietary right in any land in this settlement of Oudh meant the right to hold the land in perpetuity for a heritable and alienable estate, at a fixed rent, subject to a revised assessment. And though the words "permanent lease" are used in this decree, it cannot have been meant that the relation of landlord and tenant was to be created between the parties. The rights the Plaintiff claimed

were "under-proprietary rights." The Decree commences thus :—

> "After a careful consideration of all the evidence "and the facts brought to light thereby in this case, I "have come to the conclusion that the plaintiff's claim "to a *permanent lease* is a good and just one,"

so that it is evident that the Assistant Settlement Officer regarded a "permanent lease" and "under-proprietary rights," when applied to the tenure of such lands as these, as convertible terms.

The Oudh Sub-Settlement Act received the assent of the Governor-General on the 12th October, 1866. Very soon after Rani Sadha Bibi presented under this Act a Petition to L. Barrow, the new Financial Commissioner, for a review of the late Financial Commissioner's judgment.

On the 17th January, 1867, judgment was delivered and the case was ordered to be remanded to the Settlement Court for re-investigation under the new rules on the ground that it did not appear from the judgments of the Lower Courts that the Respondent's possession was "sufficiently "continuous to entitle him to Sub-Settlement," and that it was doubtful whether he even then could get Sub-Settlement, or *sir*, equal to the profits of his lease. Other proceedings were taken and ultimately, on the 6th January, 1869, the same Financial Commissioner pronounced a decree in the following terms :—

> It appears that the Mauza in suit was included in Taluqa Mahona in 1228 Fasli, having previously been incorporated in Taluqa Deokali in or about 1192 Fasli, but the Upadhias from whom the Plaintiff claims were not in proprietary possession on either of these occasions. The Settlement Officer, however, supposes that Plaintiff and his forefathers have been in sub-proprietary possession, and that Plaintiff is entitled to a decree for Sub-Settlement, and further,

Appellant's Agent expressed his willingness to come to terms.

The provisions of the Sub-Settlement Act have not been complied with, but as the special Appellant's Agent is willing to compromise the suit, there need be no further difficulty in disposing of the case. I will only add that as the original proprietary title has not been proved, the Plaintiffs are in no way entitled to Sub-Settlement, which actually restores them under our rules to proprietary possession, and makes the Taluqdar, who has been half a century in possession the mere recipient of *malikana*. I decree a farming lease to Plaintiff, he paying the Government demand plus 25 per cent. to the Taluqdar for a period of 30 years.

It is contended that this decree was made without jurisdiction, and is therefore a nullity, with the result that the earlier decree of the 15th March, 1864, stands, and the Shukuls are therefore entitled to remain in possession of the village by virtue of the under-proprietary rights which that decree gave them.

The answer to this question depends on the construction of the 13th of the above-mentioned Rules. It runs thus :—

> " 13.—Cases in which claims to under-proprietary " rights have been disposed of otherwise than in " accordance with these rules will be open to revision, " but this rule will not apply to cases disposed of " by arbitration or by agreement of the parties."

Rule 2 prescribes what a claimant must prove in order to obtain a sub-settlement (which is nothing more than an authoritative ascertainment and declaration of his under-proprietary rights), and enacts, amongst other things, as follows :—

> " He must show that he possesses an under- " proprietary right in the lands of which the sub-settle- " ment is claimed, and that such right has been kept " alive over the whole area claimed within the period " of limitation. He must also show that he, either " by himself or by some other person or persons from " whom he has inherited, has, by virtue of his under- " proprietary right, and not merely through privilege

"granted on account of service, or by favour of the "Taluqdar, held such lands under contract (*pucka*) "with some degree of continuousness since the village "came into the Taluqa."

Rule 3 prescribes how the words "some degree of continuousness" are to be interpreted. Claims which have been theretofore disposed of "otherwise than in accordance with these Rules" within the meaning of Rule 13, must, therefore, refer to those claims which have not been supported by the proofs prescribed by Rules 2 and 3, amongst others, for the establishment of future claims. Rule 13 would therefore be meaningless, unless it authorized an inquiry into those matters. The argument, however, is that, even if, upon this inquiry, it should be ascertained that the claimant had not proved, and could not prove, any of the matters prescribed by Rules 2 and 3, the Chief or Deputy Commissioner should simply abstain from making an order or decree for sub-settlement, and should leave the claimant in the secure possession under the old decree of the under-proprietary rights to which it had been ascertained he was entitled according to the new standard. In their Lordships' opinion, this contention cannot be sustained. Sub-settlement was not a new thing giving some extra right or privilege over and above what was secured by a decree finding that a person was possessed of under-proprietary right. And the history of the Act together with its provisions, and the rules attached to it, show that the object and purpose with which it was passed were to revise and correct what had been hastily and imperfectly, or loosely done, and to secure that no person should enjoy under-proprietary rights who could not establish his claim in the manner prescribed by those rules. Revision would be a perfunctory and useless operation on any other terms.

Their Lordships therefore think that the Financial Commissioner had jurisdiction to make the decree of the 6th January, 1869, and that it is a valid and binding decree.

The next question is, What is its meaning? It is urged that it, in effect, grants the Plaintiff a perpetual lease, that the period of 30 years mentioned in it is the period which is to elapse before revision, and that the Taluqdar is practically left in the same position as he was in under the earlier decree, save only that he has not the right to alienate; though why he should not have that right is not shown. But the whole frame of the decree shows that it never could have been intended to put the Plaintiff in such a position. He was not a Taluqdar, nor an occupier, and was found not to be a person possessed of under-proprietary rights. The decree does not put him into possession of the land, but merely entitles him to farm the rents of the occupiers. The whole thing was a compromise, and more or less of an anomaly, and though the Financial Commissioner gave him a valuable right, he could not, in the face of his own declaration that the provisions of the Sub-Settlement Act had not been complied with, and that the Plaintiff was "in no way entitled to Sub-Settlement" which would restore him, under the Rules, to proprietary possession, and make the Taluqdar "a mere recipient of a *malikana*," have intended to put him into a position almost as beneficial as if he had had all the qualifications he is stated to have lacked. Their Lordships are therefore of opinion that the lease decreed was only a lease for a term of 30 years from the date of the decree. That being so, the Taluqdar would be entitled to recover possession if he took the right steps and proceeded in the right tribunal. He served a notice of ejectment under the provisions of

sec. 52 (2) of the Oudh Rent Act, 1886. That appears to be the right course, having regard to the provisions of the 54th section. No objection has been taken in the arguments to the form of the notice or to the service of it. Section 108 of the Act prohibits all Courts other than Courts of Revenue from entertaining suits by a landlord for the ejectment of a tenant. According to the construction their Lordships have put on the decree of the 6th January, 1869, the Shukuls are now in the position of tenants whose tenancy has expired.

The Taluqdar is, therefore, entitled to a declaration, such as is asked for in the suit instituted by him on the 11th January, 1900, in the Court of the Subordinate Judge of Sultanpur, —namely, that the Shukuls are not entitled to the rights of under-proprietors, or to any rights other than those of tenants for a term of 30 years whose term has expired,—but not to any further relief. The decree, dated the 13th December, 1904, of the Court of the Judicial Commissioner of Oudh, is in their Lordships' opinion right, and should be affirmed.

The Shukuls, however, instituted a suit in the Court of the Deputy-Commissioner of Sultanpur, under Sec. 108 (8) of the Oudh Rent Act, 1886, in which they prayed that the above-mentioned notice of ejectment might be cancelled. The Deputy-Commissioner, on the 9th May, 1906, made a decree cancelling it, and holding that the Shukuls were entitled to a perpetual farming lease. Against this decree the Taluqdar appealed to the Court of the Commissioner of Fyzabad. On the 13th August, 1906, that Court made an Order dismissing his Appeal. Against this Order the Taluqdar appealed to the Board of Revenue for the United Provinces of Agra and Oudh; but by an Order of that Board, dated the

2nd January, 1907, his Appeal was dismissed. Against this Order and the Decree of the Commissioner of Fyzabad the Taluqdar has, by special leave, appealed to His Majesty in Council, and his Appeal has been consolidated with the first-named Appeal. Their Lordships are of opinion that the Orders appealed against by the Taluqdar were wrong, and should be reversed.

Their Lordships will therefore humbly advise His Majesty that the first-named Appeal should be dismissed; that the Taluqdar's Appeal should be allowed; that the Orders or Decrees of the Board of Revenue for the United Provinces of Agra and Oudh, the Court of the Commissioner of Fyzabad, and the Court of the Deputy Commissioner of Sultanpur, dated respectively the 2nd January 1907, the 13th August 1906, and the 9th May 1906, should be reversed; and that the action instituted in the last-mentioned Court should be dismissed, with costs throughout, but without prejudice to the claims made by the Shukuls in paragraph 7 (*f*) of their Plaint in the said Action under Sec. 57 of the Oudh Rent Act 1886.

The Appellants in the first-named Appeal must pay the costs of that Appeal, and the Respondents to the Taluqdar's Appeal must pay his costs of that Appeal.

LONDON: Printed for His Majesty's Stationery Office
By LOVE & MALCOMSON, LTD., Dane Street, High Holborn, W.C.
1909.