Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaja Rameshwar Singh Bahadur v. The Secretary of State for India in Council, from the High Court of Judicature at Fort William in Bengal; delivered the 12th July 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD SHAW.
LORD MERSEY.
MR. AMEER ALI.

[DELIVERED BY LORD MERSEY.]

This is an Appeal from a decree of the High Court of Judicature at Fort William in Bengal, dated the 5th February 1907, confirming a decree of the Judge of Mozufferpore, dated the 17th December 1903.

The action was commenced on the 6th February 1902, and it was brought to establish a claim on the part of the Appellant to be paid an annual sum of Rs. 482. 0. 3 by the Government of India by way of dasturat or malikana in respect of certain land known as Mouzah Sahu in the Tirhut District.

The claim is based upon an order of the Court of the Assistant Collector of Tirhut, dated the 10th May 1865, by which the Appellant alleges that the annual dasturat or malikana payable to him in respect of Mouzah Sahu was permanently fixed at Rs. 482. 0. 3.

[52.] J. 79. 10.—7/1911. E. & S.

The answer to the claim is that the dasturat or malikana payable in respect of a mahal or jaigir, known as Meherullah Khan, was settled once for all as long ago as 1780 at Rs. 796. 2. 9, and that as the Mouzah Sahu formed part of that mahal or jaigir nothing further is recoverable, and further that the order relied on does not give the right claimed. It is common ground that the Rs. 796. 2. 9 has been regularly paid year by year to the Appellant or his predecessors in title since 1780, and that it is being paid at the present time.

It appears that one of the Appellant's predecessors in title was the proprietor of a large estate in the district of Sarkar Tirhut. About the middle of the 18th century the then Emperor Alamgir carved out of this estate several jaigirs or revenue-free holdings. One of these jaigirs was granted to a certain Meherullah Khan and was known by his name. It included the village known as Mouzah Sahu. The effect of the creation of these jaigirs was to diminish the owner's income from his land, and thereupon according to custom the owner became entitled to receive an annual payment from the jaigirdars (the grantees of the jaigirs) calculated on the proceeds derived by them from the cultivation of their jaigirs. This payment is described in the Appellant's case (paragraph 5) as an allowance by way of compensation for the loss of the proprietor's rights in the land, and is said to be known as "dasturat or malikana." After the creation of these jaigirs, namely, in 1765, the East India Company became Dewan of Bengal, and a question having arisen as to the amount of the dasturat or malikana to be paid by the jaigirdars, the Company in its capacity as Dewan, after enquiry, issued a parwana or order dated the 24th February 1780, fixing the total amount

at Rs. 22,321. 12. 3. By another parwana of even date the proportion of this sum of Rs. 22,321. 12. 3 payable in respect of Jaigir Mehrullah Khan was ascertained at Rs. 796. 2. 9. It is important to observe the wording of these two parwanas. The first is addressed to the Amlas (collecting staffs) of the whole of the jaigirs. It recites a previous parwana of the 21st October 1779 which had fixed the dasturat at Rs. 23,339. 6. 3 "according to the actual proceeds for 1185 F.S." (corresponding with our year 1778) of the said jaigirs. It then states that a dispute had arisen about one item, that that item had accordingly been deducted, and that the balance Rs. 22,321. 12. 3 had been "fixed as "the amount of dasturat according to the details "given on the back." It then proceeds as follows:- "You will, according to the above, con- "tinue to pay the dasturat, &c., to the Amla of "the Raja *regularly every year from the year* "1186 *F.S.*" (1779). On the back the amount to be paid in respect of each jaigir is set out, that for Meherullah Khan appearing as Rs. 796. 2. 9. The second parwana is addressed to the Amlas of Jaigir Meherullah Khan, and after stating that the dasturat has been "ordered and fixed" on the actual gross proceeds of 1185 F.S. (1778) requires the Amlas to pay the same "as per detail on the back to "the Amlas of the Raja regularly every year "from the year 1186 F.S. (1779)." On the back the items making up the dasturat are set out. When added together they amount to Rs. 796. 2. 9. Among these items is one described as "Mal (*i.e.*, malikana) at 10 per cent. Rs. 184. 4. 6." It is contended on behalf of the Appellant that the fixing of the dasturat or malikana by these two parwanas was not a final ascertainment of the rights of the Appellant's predecessor in respect of

dasturat or malikana, but was merely a temporary fixing of the percentage by which the amount should be ascertained from time to time; and that as the proceeds of the land varied so the amount of the dasturat or malikana would vary. This view was not accepted by either of the Courts below nor is it in their Lordships'opinion the right view. The wording of the parwanas points to a fixing of an amount and not of a mere percentage. No doubt the amount is arrived at on the basis of the proceeds for the year 1778, but it is the sum of money so arrived at (Rs. 796. 2. 9), which is to to be paid year by year in the future; not a varying sum dependent on the proceeds of the land. No term is fixed; the payment is to be made regularly every year from 1779 onwards. This appears to constitute a final settlement of the owners rights in respect of dasturat or malikana; and that it was so regarded by the parties concerned seems clear from the fact that the payment was made thenceforward for a century without any suggestion that it was in any way wrong or was subject to revision.

It is said, however, that subsequent events show that the Appellant's contention is right. The jaigirs which had been created by the Emperor Alamgir were in course of time resumed by the Government of India. The last of them to be resumed was the Jaigir of Meherullah Khan. It was resumed in parts at different dates between 1836 and 1840, the last part to be resumed being that which comprised Mouza Sahu. This part was resumed on the 10th January 1840. The effect of the resumption was to transfer the obligation to pay the dasturat or malikana from the jaigirdars to the Government, and to vest in the Government the right to the revenues. Accordingly from 1840 the Government has paid the whole of the Rs. 796. But it is said by the Appellant that the Government

has not only paid the Rs. 796 but has also paid other additional sums on account of malikana for Sahu, thus admitting the right of the Appellant to receive more than the Rs. 796. That such payments were in fact made is not contested. They were made between the years 1857 and 1859, and amounted in all to Rs. 6,000 or Rs. 7000. The Respondent contends that these payments were made by mistake. The Appellant adduced no evidence to show the nature of the claim put forward for these additional payments nor the circumstances under which the payments were made; and at the very time that they were being made the Rs. 796 payable by virtue of the parwana of 1780 was also being paid. The payments were made on the orders of the then Assistant Collector of Tirhut, who is described by Mr. Stevens (a member of the Board of Revenue) in his order of the 16th April 1897, set out at page 92 of the Record, as "an officer of very short experience." The Judge of the first Court below found as a fact that these payments had been made under mistake and misapprehension and their Lordships see no reason for differing from this finding. The payments, therefore, become of no significance in relation to the the present litigation.

It is further said that a permanent settlement of Mouzah Sahu together with other mouzahs was made on the 10th May 1865, and that in such settlement the dasturat or malikana was fixed at Rs. 489. 0. 3, and the point now in dispute as stated by the Appellant in paragraph 11 of his Case is whether this sum is payable to the Appellant in addition to the Rs. 796. 2. 9.

The settlement in question will be found set out at page 68 of the Record. It begins by reciting a number of previous temporary settlements, the last of which appears to have been for

20 years from May 1845 at an annual jumma of Rs. 2,617. 7. 9, inclusive of malikana. This settlement would expire in May 1865. It then proceeds, in Parts V. and VI., to deal with the question of malikana. It states that the whole of the malikana is payable to the Maharajah Lachmeshwur Singh Bahadur, one of the Appellant's predecessors in title, and in addition it finds that, since the last preceding settlement, two-thirds of the jaigirdar's rights had been acquired by the said Maharajah, and that he is in possession of them. The Maharajah thus held a double position. He was the owner entitled to receive the malikana, and also the proprietor of two-thirds of the jaigirdar's rights which involved the liability to contribute to the payment of the malikana. The settlement deals with this position. Part VI. is as follows :--

" Inasmuch as Maharajah Lachmeshwar Singh Bahadur, " who was before entitled to malikana only, is now a " possessor also, reference was made to the Collector . . . " as to whether malikana allowance should be made " separate or not ; in answer thereto a letter . . . . was " received containing instructions to the following effect :— " ' malikana right cannot be extinguished, but there " ' should be new arrangement and new rule so as " ' to avoid the roundabout way of payment of the " ' malikana by the possessor, and of the subsequent with- " ' drawal of it from the treasury. But that cannot be done " ' in the case of this mahal, because Maharajah Lach- " ' meshwar Singh, minor, is possessor of two-thirds, and " ' Kishan Ballabh Mahta is possessor of one-third . . . " ' therefore arrangement is made according to former " ' practice.' "

This is the only reference in the settlement itself to malikana, and it is obvious that it refers exclusively to the method of payment. It neither provides for any alteration of, nor for any addition to, the malikana already fixed in 1780. There is, however, an account attached to the settlement in which the gross proceeds of the " main mahal "

are stated to be Rs. 5,355. From this, Rs. 535, being 10 per cent., is deducted for malikana, and the balance is divided one-half to the possessor and the other half to the Government. In an outer column the malikana (Rs. 535), less 10 per cent. for village expenses, is added to the sum payable in respect of the main mahal, and after taking into account certain other items, the result is brought down as follows :—

	Rs.	A.	P.
Mal - - - -	2,461	11	4
Malikana - - -	489	0	3
Expenses repairing road -	27	7	0

The item 489. 0. 3 is an error. It ought to be Rs. 482. 0. 3 (Rs. 535, less 10 per cent.). The error is corrected in Part VII. which fixes for the settlement a uniform annual jumma of Rs. 2,943, inclusive of malikana, from the 1st May 1865 in perpetuity. This sum is arrived at by adding to the Rs. 2,461. 11. 4 above mentioned the correct amount, namely, Rs. 482 for the malikana. It is suggested by the Appellant that this account read in conjunction with the settlement, of which it is part, gives to the Appellant a right to claim as malikana, apart from and in addition to the malikana accorded to him in 1780, the further sum of Rs. 482. Their Lordships are of opinion that the account, whether taken alone or whether read with the clauses of the settlement, can bear no such interpretation. It is an account made up for the purposes of the settlement only, and the references in it to malikana are made merely because the malikana is an item to be taken into account in fixing the annual jumma to be paid by the persons in whose favour the settlement is made in respect of the mouzahs which are comprised in the settlement. That this is the right view to take of the settlement and of the account

annexed to it is in their Lordships' opinion confirmed by the fact that no claim was ever made by the Appellant for payment of this malikana until 1892, 27 years after the date of the permanent settlement, and that no such payment has ever been made to him.

Their Lordships are of opinion that the Appeal fails, and they will humbly advise His Majesty accordingly. The Appellant must pay the costs.

In the Privy Council.

MAHARAJA RAMESHWAR SINGH BAHADUR

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY LORD MERSEY.

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