Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Wise v. *Brojendro Coomar Roy and others, from the High Court of Judicature at Fort William in Bengal; delivered* 10*th May* 1872.

Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Appellant in this case has purchased the title of the Defendants in the suit to the land in dispute. The Respondents were the Plaintiffs in that suit, which was brought for the recovery of what may now be taken to be the 2,092 beegahs and 13 cottahs of land, comprised in Dag No. 39, as laid down in the large map of Chur Bhudrasun Talimabad, which is in evidence in the suit, and which was made in 1847 upon the Government survey of 1846. In dealing with the case it will be convenient to speak of the parties as the Plaintiffs and the Defendants.

The Plaintiffs were the owners of a zemindary called Ramnugger, and the Defendants were the owners of a zemindary known as Chur Mokoondeah. Both zemindaries have, since their settlement at the time of the perpetual settlement, suffered much from the invasion of the river; but the Chur Bhudrasun Talimabad, which was at some time before 1832 thrown up in the river, and of which the land in dispute forms part, must be taken to have been a chur formally, and regularly decreed to be the property of the Government, to no part whereof could either party have shown title against the Government as of right, as an accretion to or a re-formation upon their original property. That seems to be the effect of that decision in 1832, in the first resumption

suit which is the starting point, so to speak, of the case.

Again, the land in dispute is admitted to have been in the Defendants' possession for upwards of ten years before the commencement of the suit. A question has, however, been raised whether by the award in the Act IV. case of the 11th of July 1848, the reversal whereof is one of the objects of the suit, that possession was affirmed to be a possession then existing in point of fact; or whether the Defendants, wrongfully and under colour of that order, and shortly after its date, succeeded in obtaining possession of the disputed land. And, as something may turn upon the nature and the commencement of the Defendants' possession, their Lordships think it will be desirable to determine in the first instance what was the effect of the magistrate's proceeding of the 11th July 1848.

In order to do this it is necessary to advert to some of the earlier proceedings. It has been already stated that the whole of Chur Bhudrasun was found in the resumption suit, some time in 1832, to be the property of Government. The Government appears, however, to have dealt liberally with the neighbouring proprietors who had suffered from the ravages of the river, and it is admitted that by way of compensation, portions of this chur were re-leased to the proprietors, both of Mokoondeah and Ramnugger. It is beyond dispute that the latter, the proprietors of Ramnugger, had, previous to 1846, acquired 1,961 beegahs and 17 cottahs of land, the position of which is indicated on the map of 1847 by Dags 10, 7, and 8; at all events by dags on the north of what is marked on the map as a nullah which has elsewhere been called the "Gong:" and that the Defendants, the proprietors of Mokoondeah, had also acquired portions of land lying to the north of the same nullah, the position of which or of part of them is indicated, by the letter X upon the smaller map, which has been reduced from the larger map.

It appears that subsequently to these assignments of land, a further change in the course of the river took place. The nullah is said to have become suddenly a very large stream; to have swept away a good deal of land to the south of the original chur; to have afterwards receded towards what in 1846 was the main channel of the river further south; and in doing so to have cast up and left a considerable portion of alluvion, forming the chur or portion of a chur in which are situated the two dags which have been so much mentioned in the argument on this Appeal, viz.; Dags No. 38 and 39, and some land to the west of Dag No. 38. In 1846 this land, or at all events some portion of it, became the subject of another resumption suit before Mr. Deputy Collector Fletcher, between the Defendants, or those who then represented the Defendants, and the Government. The end of that suit was, that in conformity with a general order of the Sudder Board of Revenue, it was, on the 28th December 1846, struck off the file without prejudice to any further claim on the part of the Government, but leaving the Defendants in possession of the land which they claimed in that proceeding for the present, and subject only to such future liability to revenue as the Government by some subsequent suit might establish against them.

The learned counsel for the Respondents have strenuously argued that the subject of that proceeding did not include Dag No. 39, but was limited to Dag No. 38, and possibly to other lands to the westward of Dag 38. It appears, however, to their Lordships, that what was claimed is shown by the report and map of the Ameen Kristomungul Gooho, and, looking to them, their Lordships are of opinion that the claim must be taken to have comprehended the land laid down in the survey map as Dag No. 39.

The report of the Ameen is on pages 117–8 of the record. He says that he proceeded to the spot, accompanied by the witnesses, and "mapped " and measured consonantly to the identification,

" and in the presence of those witnesses, the " chur on the immediate south of the Wagoo- " jesta lands of the Defendant Kahtoon deceased, " by a line 56 yards in length, which was the " standard current in the Pergunnah." The map is lying before me, and it seems to their Lordships, comparing it with the other map, that it clearly includes the whole of that southern chur, as I may call it, as it then existed. The Ameen goes on in his report to say, "As the evidence of the " said witnesses disclosed that the said lands " were restorations of the diluviated lands of the " original mouzahs and kismuts belonging to " the Defendants, and increments to her Goojesta " lands, your humble servant has measured the " said lands ;" and the 2,277 beegahs of land on the contiguous south of the Goojesta lands under No. 3, and the 102 beegahs of land under No. 1, on the south of No. 3, and the 384 beegahs of land under No. 2, and 810 beegahs of land under No. 4, are all laid down and marked in the map as lands of which Mahommed Jokee Chowdhree was then in possession, which were treated as the subject of the pending contest between that person and the Government.

As to No. 4, the 810 beegahs, it is impossible, their Lordships think, to come to any other conclusion than that, rightly or wrongly, they were placed towards the eastern extremity of the chur, and that they formed part of that which was afterwards put down in the larger map as Dag No. 39.

Their Lordships omit, for the present, to consider the subsequent proceedings of the revenue authorities, because these relate rather to the title of the Plaintiffs; but have dwelt upon the proceedings before Mr. Fletcher because they seem to their Lordships to be in a great measure the foundation of the decision of the magistrate in July 1848; and, therefore, to be material with reference to the question now under discussion, viz., the possession then awarded to the Defendants.

The magistrate's proceeding is at page 187 of the record. The Plaintiffs or rather the petitioners in that proceeding were Mahomed Ishmael and Mohomed Israel, who claimed under a third title; but the Chowdhries who represented Mokoondeah were originally made the opposite parties, and Nund Coomar Roy, who then represented the Plaintiffs interest and the Zemindary of Ramnugger, appears to have come in as a claimant; and to have been afterward treated as one of the opposite parties. It is remarkable that this proceeding seems to have been the first in which the Plaintiffs and the Defendants, or those whom they represent, were really litigating any question concerning this land face to face, or in presence of each other.

The subject of the proceeding may be taken to have been an accretion only to the land now in question or the larger part of it; but it seems to their Lordships that if the proceeding is examined and the reasons for the magistrate's decision are looked at, it will be found that he clearly proceeded upon the finding that the Defendants and not the Plaintiffs were then in possession of the land now in question. He says at page 118, line 33, "Therefore the points "to be resolved in this case are as to how, and as "an annexation to whose estate, is the disputed "accretion formed, and in whose possession the "said accretion is:" he then says, "The evidence "oral, and the exhibits, adduced on both sides, "have been considered, and it appeared, on in- "spection of the map prepared by the Ameen "Kristomungul Gooho appointed by the Col- "lector of this place, dated the 26th December "1846, and other documents, that the sota, or "watercourse, which existed on the south in "contiguity with the Wagoojesta lands given in "release as an exchange for the diluvion of "the said Chur Makoondea, the zemindary in "possession of the Defendant, and on the north "of the settled mouzahs of that pergunnah,

" gradually gained strength and carried off the " original Mouzahs Bisteepore and others, and " then threw up an accretion partly in contiguity " with the south of the said Wagoojesta lands;" " that in respect of this new formation a " suit under Regulation II. of 1819 was " brought and struck off consonantly to the " letter of the Sudder Board No. 1, dated " January 2nd 1846, and that the said chur then " came into possession of the Chowdhry De- " fendant." Then he says, " It is clear that the " disputed land was formed on the immediate " east of the 810 beegahs of land indicated under " No. 4, on the east of the map prepared by the " Ameen, as in the possession of the Chowdhry " Defendant and within the land specified in the " alleged roboocarry. Further, on inspection of " the map filed by the Chowdhry Defendant, " which quite tallies with the map prepared by " the Ameen," and so on, " and from the oral " evidence of his witnesses, the disputed accretion " is proved to have been formed on the im- " mediate east of the 810 beegahs of land in- " dicated on the Ameen's map as being in a " northerly direction of the pepul tree which " stands on the kutcherry, at the main chow- " darussie, and on the immediate west of the " gong in the possession of the Defendant, and " that the Chowdhry Defendant had been in " possession of the same by cultivating it through " ryots, &c., on the allegation that it was a re- " formation of the diluviated lands and kismuts " of Bisteepore, Alumpore, and other mouzahs " and kismuts within the said Chur Mokoon- " deah," and upon these grounds he gave the land then in dispute to the Chowdhries as a further accretion to that of which they were already in possession. Reading this judgment by the light thrown upon it by the Ameen's map, and the position thereby assigned to the 810 beegahs, their Lordships think it is impossible to say that the magistrate did not find, and intend to find, that

the possession of the whole eastern part of the new chur, and therefore of the land now in dispute, was in the Defendants, or that the fact so found was not the real ground of his determination.

It may be further observed that it is admitted even by the witnesses whose depositions were read to-day by Mr. Bell that from the time of that proceeding, the Plaintiffs lost the possession of that of which they said they were previously in possession, and it seems to their Lordships that there is no independent or trustworthy evidence of any act of dispossession other than the ordinary execution of the magistrate's order. Therefore, considering this, and also the great improbability that if anything had been done inconsistent with or in excess of the magistrate's order wrongfully by the Defendants, the Plaintiffs would have slept upon that wrongful act as long as they have slept upon the order, their Lordships are fortified in the conclusion, that the effect of the proceeding of the magistrate was to treat the Defendants as in possession of the land in dispute, and to make that possession one which could be disturbed only by a regular suit.

Now, if that be so, the cases cited by Sir Roundell Palmer were hardly required to show that the long possession of the Defendants under the order of the magistrate cannot be disturbed, and ought not to be disturbed unless upon proof, by the most cogent evidence on the part of the Plaintiffs, of a superior title.

Then what is the title which the Plaintiffs have alleged and proved in this case? As their title was originally stated, it was this. After stating how they got into possession of the 1,961 beegahs and 17 cottahs, and referring to an Act IV. case, with another party Ramruttun Bose, they say, "The uncovenanted Deputy Collector proceeded "in the year 1846 to the spot, but did not release "to us the said lands, though they had before "been released in our favour. He measured "the said new reformed chur, and found it to "contain an area of beegahs 2,092·13, whereupon

" he issued notice to us requiring us to enter into " a settlement for the said chur, at a total assess- " ment of Rs. 30, and to pay Rs. 998·9½, on " account of mesne profits for the lands on the " north bank of the river which had been released " to us; upon this we appealed from the said " order of the above Deputy Collector to the " Revenue Commissioner, who, on the 17th " September 1847, passed an order based on the " finding that no original lands, except what had " before been released, remained in our possession, " remised in our favour the amount measured by " the uncovenanted collector, who, on the 17th " February 1848, carried that order into execu- ' tion, and from that time we held possession of " the said lands and the subsequent alluvials " formed contiguously to them." They after- wards go on to mention the Act IV. case of July 1848, and say that they were dispossessed under colour of the before-mentioned award.

Therefore, it is clear that the title they originally relied upon was a re-lease by an order of the Revenue Commissioner of the 17th, now admitted to be a misprint for the 27th, of September 1847, an order dealing both with the demand against them of the 998 rupees odd, for arrears in respect of revenue upon the 1,961 beegahs, and with the attempt to assess the Rs. 30 upon the land in dispute, and that they treated the order of the Deputy Col- lector, of the 17th February 1848 as merely an order which carried that order of the Com- missioner into execution. The replication relies still more strongly upon the order of the Deputy Collector; but it does not seem, nor does it appear ever to have been understood, to treat that as the foundation of the title or to give up the alleged effect of the order of the Commissioner.

The following is a short history of the proceed- ings in the suit. The Principal Sudder Ameen found upon the evidence before him in favour of the Plaintiffs; there was an appeal from that to the High Court, and that Court, apparently

understanding the pleadings in the sense in which they have been stated, and treating the order of the Commissioner as the substantial foundation of the title of the Plaintiffs, remanded the case for an inquiry upon one point. The judgment says, "The main contention between the parties is "whether the land in dispute is identical with "that released to Plaintiff by the Revenue au- "thorities on the 17th September 1847; if it "is, Plaintiffs are clearly entitled to it." It then directs a local investigation by an Ameen; and says, "The Ameen will then, in the presence "of both parties, ascertain whether any or all of "the lands in dispute are identical with any or all "of the lands released to the Plaintiffs in 1847, and "report the result of his inquiry to the Principal "Sudder Ameen. Immediately on the receipt "of his report, the Principal Sudder Ameen "should, regardless of the number on his file, "again take up the case, and give Plaintiff a "decree for so much of the land as is found to "be identical with that released to Plaintiff; "should none of the land in dispute be identical "with that released to Plaintiff, the Principal "Sudder Ameen should dismiss the suit with "costs." The Ameen made this investigation, and his report is consistent with what is now admitted to be the fact, namely, that the order of the Commissioner which had been pleaded had not dealt with the land in question, or with the assessment upon it of the Rs. 30; but was entirely confined to the claim of the Rs. 998, and to the rights of the Plaintiff in the 1,961 beegahs; and the Principal Sudder Ameen, dealing with the issue sent down to him by the Superior Court, as he understood it, and perhaps as it is literally to be taken, dismissed the suit. There was then a second appeal; and the High Court on that occasion seems to have misunderstood the nature of the admission which had been made by the Defendants. They treated it as an admission not that the land in dispute was Dag No. 39, but that

Dag No. 39 had been released to the Plaintiffs, and held that the Appellant was changing his ground when he contended that there was no sufficient evidence that those lands had been released. They no doubt found that although the lands had not been released by the Commissioner's order of the 27th February 1847, they had been released by the order of the Deputy Collector of the 17th February 1848. But acting very much on the notion that the Defendant was shifting his ground, and departing from an admission by which he was bound, they do not seem then to have given much consideration to the question, whether the order of the Deputy Collector was such an effectual release of the land as would confer a title on the Plaintiffs.

There was then an application for a review, and further documentary evidence, including the report of Mr. Latour, was filed. The review was granted, and the Court upon the hearing of the cause on review adhered to their former judgment; and in a very short judgment said, "After "hearing the Petitioner, we are satisfied that, as "a matter of fact, Dag 39, being the 2,092 "beegahs in dispute, was released to the Peti- "tioner by Mr. Deputy Collector Johnson, and "that the subsequent report, relied on by the "Petitioner, while impugning the propriety of "that proceeding, by no means shows that it "was reversed. On the contrary, the report "goes entirely to show that the Petitioner had "succeeded in obtaining release and possession "of the disputed land. We therefore reject this "application."

There was then an application for a second review, and that was refused.

The result, therefore, of the decrees, or rather of what took place upon the remand, was to reduce the case to a very narrow compass, namely, to the question whether the proceedings of Mr. Johnson did operate as such an effectual release of the land to the Plaintiffs as to con-

stitute in them a title which ought to prevail against the possession of the Defendants.

Accepting that as the issue which ultimately became the material issue in the cause, their Lordships have now to consider what is the effect which ought to be given to those proceedings. It would seem that cotemporaneously with the proceedings before Mr. Fletcher, which ended on the 20th of December 1846, the settlement of the whole Chur Bhudrasun was proceeding under Mr. Deputy Collector Johnson, and the earliest document we have relating to that is the survey chittah which is set out at page 274, dated 2nd December 1846. The second column of that document states the names of the parties in possession of the different dags. The whole chur is divided into the dags which appear upon the larger map, and the survey paper begins by giving the holdings of Nundo Coomar Roy, and sums them up as containing 1,675 beegahs 19 cottahs.

It then goes through the other proprietors, and it gives Dag No. 38 as in the possession of Mohurrum Khatoon, that is of those whom the Defendants represent. Then comes Dag No. 39, which is described as "parcel on the east side," (that is of Dag 38) "north of the flowing river, "south of Nundo Coomar, with water." In the column of the persons in possession there is nothing but two dots; and their Lordships are of opinion that it would not be a fair construction, considering that "ditto" is put in many other places when the column goes on continuously with the same possessors, to treat those dots as implying that Mohurrum Khatoon are treated as in possession of Dag 39.

On the other hand it is clear that from those dots it would be impossible to infer that the possession of Dag 39 was then recognised as being in the Plaintiffs; and the fair conclusion which their Lordships would draw from the document is that the dag was therein treated as an accretion still belonging to Government, of

which no person was certainly in occupation, and in respect of which no settlement had been made.

Then at page 42 there are two extracts apparently from that measurement chittah to which I have just referred. No. 122, "copy of "chittah dated the 2nd December 1846," contains a description of Dag No. 39, which corresponds almost entirely with that in the larger chittah. The one at the top of the page having given 2,092 beegahs 15 cottahs as the dimensions of Dag No. 39, and treated it as unfit for cultivation; has written on its back the words "Nundo Coomar Roy." Again at page 41 we find a paper headed "Particulars and amount "of Jummabundee settlement of Khas Mahal;" and in the column containing the names of the parties in possession, Nundo Coomar Roy is put down as in possession of 1,675 beegahs 19 cottahs; and then these words follow, "Parcel 39 chur, "not fully formed, on aggregate jumma 2,022 "beegahs 15 cottahs," with a jumma or rental of Rs. 30. We have no precise account how that jummabundee, which is not dated, but which is said to be for the year 1846, was made. If genuine, it must have been prepared after the large survey chittah, in which this land was treated as not being in any person's possession or subject to any settlement, was made, and therefore between the 2nd and the 31st day of the month of December 1846.

The next document is the Sheristadar's report, which is dated 15 February 1848; and appears to have been made with reference to a proceeding before the Deputy Collector which took place upon a petition or objection of the Defendants' party. It is very difficult to see why it was brought into a proceeding, to which the Plaintiffs were not parties. But the document is in these words, "Before this, in accordance with the order "of the Commissioner, from Chur Bhudrasun "Talimabad land was released to Nundo Coomar

" Roy by raising mounds as directed in Act IV. " Order has been passed to put a stop to the " realization of rent on account of the same." That seems to refer to the land to the north of the nullah. Then it goes on, " Incarnation of " Justice, 2,092 beegahs 15 cottahs of land of the " new chur, in the possession of the aforesaid " Roy, have been measured, and a total rent of " Rs. 30 being calculated, has been included in " the jummabundee. Whether that rent is to be " struck off or demanded? What is to be done? " Incarnation of Justice is the Master. For " information I represent this."

Then two days afterwards the Deputy Collector, Mr. Johnson, made an order on the objection of the party who then represented the Defendants, and that is the order which is now supposed to be the principal foundation, if not the sole foundation of the Plaintiffs title. The first paragraph of that (at page 253) deals with the objection of the petitioner, which seems to have included or to have related to all the lands that were the subject of the suit before Mr. Fletcher, which was struck off. If therefore, their Lordships are right in supposing, that that suit included the land in question, the objection would relate to the land in question. It would seem that the Deputy Collector did not so understand it; but, however that may be, he dealt with it in this way: he said " The above mentioned Peti- " tioner filed a petition to the effect that for " these lands which have accreted to his released " lands he had instituted a suit in my court, and " that that suit has been struck off in conse- " quence of a letter despatched by Government, " and that the lands found by Kisto Mongul " Goohoo, the Ameen appointed in that case, to " be in his possession, and who drew a map ac- " cordingly, were the released lands belonging to " his zemindary. That petition being rejected " by me" (we have not, I think, the order re- jecting it,) " the Petitioner preferred an appeal to " the Collectorate; but the learned Collector, on

" 17th November of the year 1847, recorded a " proceeding to the effect that a suit, No. 106 " under Regulation II., being instituted by " Mohurrum Khatoon, wife of Petitioner (Mo- " homed Jokee Chowdhry), in that court with " respect to the disputed land, and he did not " settle them since they were the lands of Mou- " zahs Bishnopore," &c. That order we have; and that no doubt reversed the order of the Deputy Collector. Then he says, "The order to " refund the collections reached my court on the " 1st February last." There he leaves the claim of the Defendants; the effect of his order being afterwards to release whatever he hadc laimed in respect of those lands. Then he says, "The Sher- " istadar of this court measured 2,092 beegahs 15 " cottahs of Nundo Coomar Roy's land among the " newly reformed churs in the last year; for which " a settlement was made on a total fixed revenue of " Co.'s Rs. 30, and it was included in the jum- " mabundee. A report had been sent by him " for an order, whether that revenue should be " collected or not. Whereas, it is my duty to " obey the Roobakarree and the circular made by " the Board of Revenue, on account of which the " lands were released from the claims of Regu- " lation II., and to fix the boundaries of these " lands which are held by Nundo Coomar Roy, " after releasing them from the claim of that " jumma, and it being requisite to prepare " papers for ascertaining what amount of jumma " is deducted on account of the released lands, " and how much land is left to Government: " Ordered, That in accordance with this pro- " ceeding of the Deputy Collector, lands of the " aforesaid persons be released, after striking off " Regulation II. case, and the revenue be re- " mitted."

There has been some contest as to what was the effect of that, whether it might not be a release to the Defendants rather than to the Plaintiffs; but their Lordships upon the whole, and particularly on looking to the next pro-

ceeding, have come to the conclusion that what the Deputy Collector meant to do was to release whatever might be claimed in respect of lands held by the Defendants, without determining what those lands were; and that he also intended to treat the lands in dispute as being in the possession of Nundo Coomar Roy; and (though it seems an extraordinary thing to do this by an order made upon a petition of another party,) to release the revenue assessed upon them to Nundo Coomar Roy.

This next proceeding is his general report concerning the settlement of the whole Chur Bhudrasun Talimabad. Their Lordships without going through that lengthy document, desire to state that, in their opinion, its general effect as to the matter in dispute was to carry out the intention of the order of the 17th of February by treating the Rs. 30 as revenue assessed, but to be remitted, and to be remitted to Nundo Coomar Roy; and that it is impossible to suppose that that was not Mr. Johnson's intention.

This report, however, is obviously and on the face of it a mere recommendation, for the final sentence of it is this: "That this proceeding, with "a statement praying for his approval of the "settlement, and all the papers, after a com- "parison thereof with the list, be submitted "accordingly," that is, to the Collector of the district for his approval. It accordingly then went before Mr. Latour, the Collector, and we have his order of the 16th September 1848. He therein states that the proceeding related to the settlement of Chur Bhudrasun Talimabad; and that the papers had come up to him; and then he takes objections to that proposed settlement. He says, "It is not unknown that he" (the Deputy Collector) "has "unjustly released some lands on the south "side of the said mehal to Nundo Coomar Roy "and Mohurrum Khatoon, and some lands on "the north side to Ramruttun Bose," &c. He also says, with respect to the land immediately

in question, "The 2,092 beegahs 15 cottahs of "land in the possession of Nundo Coomar Roy "ought to be reversed, and these lands ought to "be included within the settlement of the "lands decreed to Government." And his final order is, "That having included the whole "of the particulars of the said mehal in an Eng-"lish report, the papers of the settlement be "forwarded to the Revenue Commissioner for "confirmation of the settlement for three years," and notice is to be served upon a party named.

The effect of that order was, as far as it goes, to express the dissent of the superior officer, the Collector, from the recommendation that the 2,092 beegahs 15 cottahs should be treated as re-leased to the Plaintiffs; but no doubt it does that, not as dealing with any question of title between the Plaintiffs and the Defendants, but in assertion of what that officer considered to be the rights of the Government, and the result of his proceeding was to send the whole of the proceedings to a higher authority for further consideration.

With them Mr. Latour sent the elaborate report, which was produced for the first time before the High Court upon the review; and is at page 297. In paragraphs 16 and 17 of that paper he treats the Plaintiffs as having got a great deal more from Government than they ought to have got; and after going through other matters, he says that Nundo Coomar Roy has obtained a relinquishment of 2,092 beegahs 15 cottahs fresh formation, and in the margin refers to Mr. Johnson's order, adding the words "over-ruled, however, by me," clearly treating that as a thing that had not been finally determined. Then in the 73rd paragraph he says, "On reference to the map it "will be shown that one portion of that new "formation 2,092 beegahs 15 cottahs has formed "opposite the lands re-leased to Nundo Coomar, "and on a representation of Mr. Johnson's Sheris-"tadar, couched in the language rather of an "*advocate* for Nundo Coomar than that of a

" Government servant, these lands, on which an " aggregate jumma of Rs. 30 had been imposed, " have been re-leased to Nundo Coomar. If the " Sheristadar had any legitimate doubts, he could " have asked Mr. Johnson orally what orders were " necessary."

It is not necessary that their Lordships should express any opinion about the Sheristadar's conduct. It is not clear how the jummabundee came to show that these lands were in Nundo Coomar's possession; but if that jummabundee were regularly drawn up, it would not be unnatural for the Sheristadar to address an inquiry concerning the realization of the revenue to his superior.

The final recommendation of Mr. Latour was that the case of Nundo Coomar should be revised and considered. Therefore he clearly was so far from treating by that report the land as finally re-leased to the Plaintiffs that he considered it ought to be made matter for subsequent investigation, and that the rights of the parties in it ought to be ascertained.

Now, it is a singular thing, that the revenue officers should have been, as undoubtedly they seem to have been, ignorant of the fact that while these later proceedings were going on the Act IV. suit had been decided, and that Nundo Coomar had lost, if he ever had the possession of the land in question. That circumstance may however account for the absence of any evidence in this record that action was afterwards taken with respect to Nundo Coomar's holding pursuant to the recommendation of Mr. Latour. And this view of the case seems to their Lordships to be in a considerable degree confirmed by what afterwards took place between the Government and the Defendants in the course of the settlement proceedings of 1851 and 1856. It appears upon the face of those proceedings that they were taken in pursuance of Mr. Latour's suggestion, that further investigation of the rights of the Government as against the parties in possession was necessary.

The first of those proceedings, which is at page 192, does not mention expressly the particular Act IV. case, which treated the Defendants as in possession of these lands. It refers to another Act IV. case, which they seem to have had with a person named Hur Coomar Thacoor; but at page 193, line 29, there is this passage, "The said "fact was reported to the Commissioner by the "former Deputy Collector, Mr. Edward Latour, "in his letter, No. 269, of the 25th September "1848, in connexion with the settlement report, "whereupon a fresh investigation was ordered;" and that, it appears, was the investigation which was then taking place. The previous paragraph refers again to the land measured by Kristo Mungul Gooho, and to the resumption suit before Mr. Fletcher which was struck off.

On this first proceeding Mr. Reid, the Deputy Collector, seems to have thought that the Government might be entitled to revenue; but he says at line 65, "as he" (the Chowdhry) "has "been in possession of the said lands under the "orders contained in the decision in the suit "struck off," (that is, the suit before Mr. Fletcher,) "and in the Act IV. case, the said lands cannot "be at once resumed or settled; therefore I "maintain it necessary to draw up a report in "English on the matter as directed by the Com-"missioner in his letter, No. 41, of 6th March "1849." Then he orders, "That for the time "being the Petitioner be retained in possession of "all the new formations in the manner he has been "holding them; that all particulars connected "with the matter at issue be embodied in an "English letter, and sent to the Commissioner "for the proper orders," and so forth.

It is clear upon the admitted facts of the case that at that time, in 1851, the Defendants were in possession of the land in question, and therefore it seems clear that what Mr. Reid intended his order to operate upon was the whole of that new chur including the Dag No. 39, and that that was the subject of the investigation.

This is made even more clear by the final and longer proceeding at page 200, where there is a distinct reference to the Act IV. case, in which Ismail was one of the Plaintiffs; and the nature of the investigation is clearly stated at page 202, line 10. "By the papers it appears that this "case, having been instituted in accordance with "the tenour of the letter, No. 120½, of the "Revenue Commissioner, dated the 2nd July "1851, has been in abeyance up to this time on "account of the investigations, &c., not having "been completed;" and the final order is, "That "the objections of the claimants being rejected, "the quantity of 27,459 15 1½ dhoors of land, "measured by Gooroodass Sen, Amlah, as new "accretions adjoining the petitioners Wagoo-"justee be released to the petitioner, free from "the Government claim, and that the record be "kept among the decided cases." It is to be remarked that though other claimants had come in to dispute the Defendants' right to a settlement, the Plaintiffs had failed to do so.

Reviewing the whole of these proceedings, their Lordships have come to the conclusion that Mr. Johnson's proceedings gave only what may be called at most an inchoate title to the Plaintiffs; that that title was never confirmed; on the contrary, that the propriety of giving that title was disputed at the earliest opportunity by Mr. Latour; that in the meantime the parties themselves came into conflict; that the possession of the lands was awarded to the Defendants; that Mr. Johnson's proceedings were never followed up by any further investigation as regarded the Plaintiffs, because in fact they had ceased to be (if they ever were) in possession; and that, although the Government officers still asserted for a time a right to assess revenue on this land, they ultimately determined that it should be held free from assessment, and made a final settlement to that effect with the Defendants.

If their Lordships had been sitting as a court of first instance, they would have deemed it im-

possible upon such proof of title as the Plaintiffs have given to disturb an admitted possession of upwards of ten years, and though they feel the force of the objections urged by Mr. Bell, and the difficulty of setting their judgment against that of Indian judges, who have had so much more experience of these revenue proceedings, they are unable to find in the judgments of the High Court any grounds upon which they think that the decree in favour of the Plaintiffs can be supported.

It seems to their Lordships, that the learned judges having originally treated the title of the Plaintiffs as depending upon a release by the Commissioner, and finding that that release was not made out, fell back upon the proceedings of the Deputy Collector, Mr. Johnson; and that they have not given sufficient consideration to the nature of the proceedings of that subordinate officer, and the manner in which they were dealt with by his official superiors. Upon the whole case therefore their Lordships have come to the conclusion that the Plaintiffs have failed to prove either title or possession which can entitle them to disturb the long possession of the Defendants; and that this Appeal ought to be allowed. The recommendation, therefore, to Her Majesty will be that the Appeal be allowed; that the two last decisions of the High Court be reversed; and that the Appeal to the High Court against the second decision of the Principal Sudder Ameen be dismissed, and his decree dismissing the suit be affirmed.

The Defendants, of course, will be entitled to their costs in the Indian Courts, and the Appellant to his costs in this Court as against the Respondents.