

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sir Durg Bijai Singh, K.C.S.I., Maharajah of Bulrampur, v. Uman Pal Singh and Ganesh Singh, from the Court of the Judicial Commissioner of Oudh; delivered Tuesday, November 19th, 1878.

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case the Settlement Officer has found that the Respondents are entitled to a sub-settlement for certain villages in respect of underproprietary rights held under the Maharajah of Bulrampur. The Commissioner of Fyzabad has confirmed that finding; and upon appeal to the Judicial Commissioner, he saw no reason to disturb it.

The question turns upon the construction of Act 26 of 1866, and the rules, which have the effect of legislative rules, scheduled in that Act.

It appears that the Raj of Bulrampur is a large and ancient estate, and that these Respondents have held the villages—a part of that large Raj—for a very considerable period of time. The documentary evidence shows that they have been in possession from at least as early as the year 1771. Mr. Cowie admits that they held as sub-tenants; that there was an under-tenure under which they legally held the villages; and the only question is whether they held so as to bring their under-tenures within the definition of sub-proprietary rights given in the rules annexed to Act 26 of 1866.

The rules are not very clearly worded, but they

seem sufficiently clear to enable a plain decision to be given in this case. Rule 2 says, "To entitle a claimant to obtain a sub-settlement he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive over the whole area claimed within the period of limitation." It is not necessary to enquire what "the period of limitation" means, for no question of limitation arises. The important part of Rule No. 2 is, "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 talookdar, held such lands under contract (pucka) with some degree of continuousness since the village came into the talooka." "Some degree of continuousness" is a vague phrase; but No. 3 supplies a definition of it. Rule No. 3 is, "The words 'with some degree of continuousness' will be interpreted as follows: "If the village was included in the talooka before the 13th February 1836"—and this village falls within that category—"the lease must have been held for not less than 12 years between that date and the annexation of the province." Undoubtedly, if there was a holding under contract in this case, the necessary degree of continuousness has been satisfied; and the only question is, whether or no there was sufficient evidence that these lands were held "under contract (pucka)."

Mr. Cowie has referred to some of the documentary evidence which appears to show that they were held under what are called leases. The Settlement Officer has found that that holding was, within the meaning of these rules, a holding under contract. Their Lordships think, supposing

the evidence supports his finding as to the lease, and being confirmed by the Commissioner, they are not disposed to look too narrowly at the facts, that in point of law the decision is correct. The terms "holding under contract" embrace any holding under arrangements from which a contract may be inferred. Then the Settlement Officer has found that the land was not granted "on account of service or by favour of the talookdar."

Their Lordships having looked at the judgments of the Settlement Officer and of the Commissioner of Fyzabad, have observed that both those officers took very considerable pains to arrive at a correct conclusion in this case; and their Lordships see no reason whatever to suppose that they have not come to a correct decision.

Their Lordships will therefore humbly advise Her Majesty to affirm the decrees appealed from, and to dismiss this Appeal.

