Judgments of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Rajah Lilanund Sing Bahadoor v. *Maharajah Luchmuwar Sing Bahadoor, Nos.* 7 *and* 8 *of* 1878, *from the High Court of Judicature at Fort William in Bengal; delivered Tuesday November* 9*th and Wednesday November* 10*th* 1880 *respectively.*

Present:

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

[Judgment in Appeal No. 7.]

THE earlier proceedings in this long litigation are stated at great length in the first judgment which was pronounced at this Board in 1865, and their Lordships' attention having been directed to the material passages in that judgment by Mr. Leith, it is not necessary in delivering their judgment to go at any length into the facts of the case. It is sufficient to say that the judgment referred to shows that both the estates, the proprietors of which have been engaged in this long litigation, were originally part of one large zemindary; that the principal portion of that estate consisted of Malguzary lands which are called throughout the proceedings the Nizamut Mehals; that five pergunnahs, of which Havelee was one, were claimed as Lakhiraj; that in 1836 a question arose between the then proprietors of the whole and the Government as to the validity of the Lakhiraj tenure upon which Havelee was alleged to be held; that the Government was ultimately successful in those proceedings;

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and that Havelee was thereupon assessed as revenue-paying land, the area of it being according to what is called Captain Ellis' map 123,000 beegahs only. A few years afterwards the zemindary became divided. The Nizamut Mehals were first sold for arrears of Government revenue, and were purchased by the father of the Appellant. In 1845 Havelee was also sold for arrears of Government revenue, and the predecessor of the Respondent became the purchaser of that estate.

The next material proceeding was the Government survey which was had in 1847. There were long complicated proceedings, and the result was that, a new map having been made by Captain Sherwill, upon the final completion of those thackbust proceedings, 175,000 beegahs in excess of the 123,000 beegahs were treated as belonging to Havelee, and the Respondent or his predecessor in title was put into possession of that land. The present suit was then brought by the Appellant to recover the whole of the 175,000 beegahs, and the case embodied in a very bulky record came over here on appeal. It was argued at great length, and the decision of the then Board, as far as it could, defined the rights of the respective owners of the two estates, and so far as relates to this question declared that the Appellant was entitled to the mouzah Goormah—which is now out of the question; and the mouzah Ghorakhore, "and the lands comprised "therein and belonging thereto and to all such "other parts, if any, of the lands in question in "the suit as are not included in the settlement "of Havelee." If the decree had stopped there it would have been an ordinary decree dealing with a known subject and directing that the Appellants should recover that subject, which for the purposes of this first Appeal may be taken to

be Ghorakhore alone. There were, however, other questions in the case which are the subject of the second appeal before their Lordships, and arise touching certain portions of Havelee described as the Bunkur and Boondee Mehals and certain ghauts. The Order in Council distinguishes between these two classes of subjects, because while it simply declares the Appellants entitled to recover and be put into possession of Ghorakhore, it proceeds to direct certain inquiries which were thought essential before coming to any final decision as to the Bunkur and Boondee Mehals. But it declared that except as to lands which should be attributable to those mehals and the ghauts the remaining portion of the land claimed should belong to the Appellant.

The first and most material question on this Appeal is what their Lordships meant by the mouzah Ghorakhore, which they finally decided belonged to the Appellant, and their Lordships think there can be very little doubt that the High Court has come to a right decision upon that point. The *ratio decidendi* of the judgment as to Ghorakhore is thus stated at page 99 of 10th Moore. "It may be convenient also here "to add, although it has no immediate reference "to the foregoing proceedings, that from the "proceedings by Mr. Beadon, officiating special "deputy collector of the 27th of August 1841, "the case of mouzah Ghorakhore appears to "have been solemnly decided in favour of the "Nizamut Mehals, and that, in our opinion, the "proceedings of the officers of survey of the "11th and 24th June 1848 are not entitled to "weight as against that decision."

There may be some little ambiguity in Mr. Beadon's judgment as to whether he was dealing with the whole or a portion of Ghorakhore, but the ground upon which this Board decided in favour of the Appellants as to Ghorak-

hore was that, whether dealing with the whole or a part, Mr. Beadon had conclusively settled that the lands with which he was dealing were not resumable, because they had been previously settled as part of the Nizamut Mehals. Their Lordships seem to have concluded that this ruling applied to the whole of mouzah Ghorakhore, and that, notwithstanding the thackbust proceedings of the 11th and 24th June 1848, his decision had finally given that mouzah to the Nizamut Mehals, and consequently that to that extent the Appellant was entitled to succeed in his suit to set aside and reform and modify the thackbust proceedings.

Now what was the Ghorakhore with which the thackbust officers were dealing? It appears from the judgment of Mr. Quintin, which was the final judgment in the thackbust proceedings, and to which the High Court have referred—though their Lordships' attention has not been very pointedly drawn to it—that he was dealing with Ghorakhore as defined and demarcated by Captain Sherwill in his map. At the bottom of page 176 of the Record he says, "Under such "circumstances, as the order of the Court is "clear on the point, and as in the map prepared "by Captain Sherwill, Ghorakhore is put down "as comprised in the disputed land omitted in "the survey measurement of Havelee Khurruck-"pore,"—that is, it formed part of the 173,000 beegahs—and the mouzah itself had been defined by the map, "it is ordered that the disputed "lands agreeably to the map drawn by Captain "Sherwill, revenue surveyor, remain as before, "in the possession of the second party, as "included in pergunnah Havelee Khurruckpore "in Altumgha Mehal, resumed by the Govern-"ment." It then directs what the officers are to do and how that declaration is to be carried out, and amongst other things the officer is

directed to exclude Ghorakhore from the survey map of pergunnah Sukhrabadee (part of the Nizamut Mehals), and to include it in the general map as part of Havelee, and in a former part of the same judgment it says, "That Ghorak-" hore, No. 145, which has been mentioned in " the Mouzaneh Register as included in " pergunnah Sukhrabadee, be excluded from " pergunnah Sukhrabadee."

Their Lordships feel no doubt that what this Board, in the former Appeal, intended to do was to reverse the decision of Mr. Quintin as to the mouzah Ghorakhore with which he was dealing, and to direct that it should be restored to the Nizamut Mehals in accordance with the former decision of Mr. Beadon, and that the Ghorakhore which was in their contemplation, and the Ghorakhore dealt with by Mr. Quintin, was that defined and demarcated by Captain Sherwill; but even if their Lordships had greater doubt upon that point than they entertain, they would think that the Appellant has failed to give any sufficient grounds for reversing or qualifying the judgment of the High Court, since the evidence of his boundaries appears to be of the vaguest and most untrustworthy description, and in a measure inconsistent with the allegation in his plaint as to the quantity which he originally claimed as Ghorakhore.

They also think that it lay upon him to show in what particulars and to what extent as regards Ghorakhore the thackbust proceedings were wrong. Their Lordships can find in the former judgment nothing which impugns the correctness of Captain Sherwill's map (on which the General Survey map seems to have been framed) as a delimitation of a particular mouzah, though it may have held that it erroneously included the mouzah so defined in Havelee instead of in the Nizamut Mehals. *See* 10 *Moore, I. A., p.* 110.

Their Lordships, therefore, consider that there is no ground for this Appeal against the decision of the High Court, and they cannot but express their regret that they should have before them so melancholy an instance of the persistency with which the proprietors of these large estates will litigate such a point as this. It is now 15 years since the rights of the parties were defined, as has been stated before, by the Order in Council of 1865. It is almost admitted that their Lordships could not make a final decree on this record in favour of the Appellant, but they are asked to send back for further litigation a question of this kind. Their Lordships would be very loth to disturb the decision of the Courts in India on such a question, because it is obviously one that is far better dealt with and decided there.

[Judgment in Appeal No. 8.]

BEFORE deciding this Appeal their Lordships desire to express their approbation of the course taken by the High Court in this case; viz., that of marking on a map the precise area which has been decreed to the Plaintiff. It is a practice which it is desirable for the Courts in India to follow in all cases of boundary, so far as it is possible to do so, since disputes sometimes arise here as to what the Indian Courts meant to decree, If that practice had been adopted by Mr. Justice Norman and Mr. Justice Elphinstone Jackson when they made their decree all this subsequent litigation would have been saved.

The question raised by the Appeal lies in an extremely narrow compass. On the second Appeal to Her Majesty in Council this Board decided to reverse the decree of the High Court except as to one portion of it, and their Lordships cannot read the whole of the judgment

delivered on that occasion without coming to the conclusion that what it intended was to reverse the decree of the High Court, so far as it gave the Plaintiff anything more than what both Mr. Justice Norman and Mr. Justice Elphinstone Jackson concurred in giving him. Their Lordships then said: "On the whole, then, though not without doubt, their Lordships "have come to the conclusion that Ghaut "Amjhur, with whatever land it covers, has "not been shown to have been included "in the settlement of Havelee, and that "under the terms of the Order in Council "the Plaintiff is entitled to recover the land "north and east of the road running through "that ghaut." The order which they advised Her Majesty to make was a little more particular, and declared the Plaintiff entitled to recover "so much of the land in dispute as "lies to the north and east of the road which "runs through the Amjhur Ghaut"; and then follow these words: "which road is referred "to in the judgment of the High Court at "page 658, line 7, of the printed record." But the portion of the judgment of the Court below that is thus referred to does not materially differ from what their Lordships had said in their judgment. It says: "As regards the land "to the north and east of the road through "the Amjhur Ghaut the Plaintiff is, in my "opinion, clearly entitled to a decree." Unfortunately a question was raised when the case went back to India, and this Order in Council came to be executed, as to what was meant by that road, and both the Indian Courts, dealing with that which is after all a question of fact, have agreed that the road delineated in red ink by Mr. Justice Markby is the road which must be accepted as that which is intended to be the

boundary of the land decreed to the Plaintiff. Their Lordships would be very unwilling to disturb the finding of both Courts upon that point, particularly when it is considered that the Judge of the Lower Court was the Judge of the district and probably had some local knowledge of the wild jungles with which he was dealing. But their Lordships, after hearing the arguments of the learned counsel for the Appellant, who have said all they can in support of their case, have no doubt that that judgment is correct; that taking as the principle of the judgment here that all that was to be given to the Plaintiff was that which both the Judges of the High Court in India had decreed to him, and reading the judgment of Mr. Elphinstone Jackson as well as that of Mr. Justice Norman, it must be taken that the boundary line was to be north of Totia Ghaut, and that, therefore, the road meant and intended by the Order in Council must be that which, after passing through the ghaut, turns off to Paharpore, and not the continuation of that road which leads due south either to Khurruckpore or to the waterfall. In fact, to adopt the latter road as the boundary would be inconsistent with the expression of north and east, since it runs for the most part due north and south rather than, as the road marked on the map does, north in one direction and east in the other.

On the whole, therefore, their Lordships are of opinion that there is no ground for questioning the decree of the High Court; and they must, therefore, humbly advise Her Majesty, on the consolidated Appeals, to affirm both the decrees of the High Court, and to dismiss both Appeals, with costs.

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