

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kishna Nund Misr v. the Superintendent of Encumbered Estates, Mehdowna, from the Court of the Judicial Commissioner of Oudh; delivered May 20th, 1879.

Present:

SIR JAMES COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT COLLIER.

THEIR Lordships are of opinion in this case that the decisions of the Commissioner and of the Judicial Commissioner ought to be reversed, and the decision of the Settlement Officer affirmed. It appears that the late Maharajah, Sir Maun Singh, caused a notice of ejection to be served upon the Plaintiff, and that the Plaintiff presented a petition to the Maharajah on that subject. On the 20th August 1868 the Maharajah wrote to the Plaintiff stating:—" I
" have received your petition and become acquainted with the particulars contained in it;
" but I have heard that you have filed an objection to notice of ejection. Now, I
" don't want to oust you. I wish that the case
" may be decided, and that there may be incurred no loss in consequence of the increase,
" which will be made by Government. Such a provision has been recorded in the settlement papers. You may rest assured of this, if you
" have filed an objection I will do nothing for you until you have withdrawn it. You should
" come to me, and then I will myself decide the amount you should pay, and maintain you in
" possession as heretofore." Their Lordships

are of opinion that the evidence which was adduced before the Settlement Officer was sufficient to show that the Plaintiff was entitled to a subordinate interest under the talookdar, and that the letter shows that some provision was made in the settlement papers respecting it. The Settlement Officer held that the Plaintiff Appellant was entitled to a sub-settlement for life. But upon appeal that decision was reversed by the Commissioner. In his judgment the Commissioner said, "It is with regret that I come to this conclusion, as the treatment of "Kishu Nand" — that is the Plaintiff— will be hard should he be deprived of the leases; but I cannot find a distinct promise of a lease for life which I can enforce against the Maharajah's successor, and I therefore decree this appeal." It appears to their Lordships that the words of the Maharajah were as binding on his successor as they were upon himself, and that the evidence which was adduced before the Settlement Officer was sufficient to show that there was a sub-tenure which was binding not only on the Maharajah but upon his successor. The Judicial Commissioner, as their Lordships understand his judgment, would have affirmed the decision of the Settlement Officer, if he had not considered that the Plaintiff was concluded by the judgment passed in the suit brought by his son. Their Lordships are of opinion that the decision in that suit was not *res judicata* as against the Plaintiff, and consequently that that defence to the Plaintiff's claim fails. The original documents were not produced as they ought to have been by the Plaintiff, and their Lordships are unable, in the absence of those documents, to say that the evidence was sufficient to prove that the Plaintiff had a subordinate interest extending beyond his life. Under these circumstances they think that the decision

of the Settlement Officer was correct, and that it ought to be affirmed.

Their Lordships will therefore humbly advise Her Majesty that the decisions of the Commissioner and of the Judicial Commissioner be reversed, and the decision of the Settlement Officer affirmed, with the costs of the suit in the lower Appellate Courts. The Appellant will have the costs of this Appeal.

