Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lala Beni Ram and Janki Parshad v. *Kundan Lal, Brij Lal, Muasa Mal, and Gopi, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered* 11*th March* 1899.

Present:

LORD WATSON.
LORD HOBHOUSE.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

In November 1858, Bhawain Das, and Dhani Ram, bankers of Hathras, and owners of the Mauza Ramanpur, let to five tenants, whose interests are now represented by the Respondents in this Appeal, six bighas of land, for the term of the current settlement, for the construction thereon of a saltpetre factory, at the annual rent of Rs. 28. The conditions of the lease appear from the kabuliat, executed by the tenants, on the 17th November 1858, which, so far as material, are as follows:—"That, until the "lease money is continued to be paid, the "mazulgars (persons who pay the revenue), "shall not be competent to dispossess me within "the foresaid term, nor shall I be competent "within it to give up the land. After the "settlement, the parties shall be bound to carry "out the order of the Government, if any, "issued by it. I have therefore executed these "presents, by way of a kabuliat, in order that "they may serve as evidence, and be of use in "time of need."

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The Appellants having acquired, by purchase, the interest of the original lessors, on the 1st August 1859, served a notice upon the Respondents, requiring them to quit possession of the lands let upon the 30th June 1890. The Respondents did not comply with the notice; and the Appellants, on the 30th August 1890, brought a suit for their ejectment in the Court of the Munsiff of Hathras. The plaint *inter alia* craves decree for removal of the material of the houses built by the ancestors of the Respondents lying on the said lands.

The Respondents, in their written statement, amongst other defences to the action, pleaded that the predecessors of the Appellants, "after "the completion of the saltpetre factory for "which the lands were taken on lease, saw that "from time to time houses were built, and "the Defendants, and the ancestors of the "Defendants, spent several thousands of rupees "on building, and they, instead of objecting, or "prohibiting, induced the Defendants and their "ancestors to build."

The Munsiff received evidence on nine issues, but in his judgment which was given on the 29th June 1886, he only dealt with the first and second of them. Upon the first, which related to an amendment obtained by the Appellants, he found in their favour. Upon the second, he found that the notice of removal given by the Appellants upon the 1st August 1889 was not according to law. With regard to the remaining issues, from three to nine inclusive, the learned Judge observed:— "There is sufficient material to dispose of all "these issues, but since issue No. 2 is decided "against the Plaintiffs, and it is held that the "suit must fail, there is no further necessity "to enter into the trial of these issues." Accordingly, in respect of his finding upon his second issue, he dismissed the suit.

An appeal was taken from the Munsiff's judgment to the First Appellate Court, being that of the Subordinate Judge of Aligarh, who, on the 21st April 1892, affirmed the decree appealed from, although on a different ground. The Subordinate Judge dealt with three issues, the first and third having reference to the validity of the notice upon which the action of ejectment was based, and the second being :—"Was the land in "dispute only let for the construction of a "saltpetre factory, and what is the effect of "the Plaintiffs or their predecessors having "acquiesced in the Defendants or their pre-"decessors having built upon the land after "the saltpetre factory had ceased to exist?"

The Subordinate Judge, differing in opinion from the learned Munsiff, held that the notice to quit possession, which the Appellants had given, was valid in law. Upon the second issue, he found the following facts, upon which the decision of this Appeal has come to depend:—"The tenancy, as I have already stated, was "originally created for the construction of a "saltpetre factory, but we have the evidence of "the Plaintiffs' own witness Khyali Ram, and "Chokey Lal, patwari of the village, to show "that saltpetre was only manufactured here for "four or five years; that since 20 years shops "have existed on the land, and that since 12 or "14 years pucca shops have been built. Inside "the enclosure, the evidence shows, are rooms (?) "erected 18 or 20 years ago, a pucca as well "as a kutcha well. It is also proved in the "most unmistakeable manner that the former "owner of the land saw the buildings and did "not prohibit their construction. The Plaintiffs' "evidence, moreover shows that, even on their "calculations the buildings cost Rs. 1,000, or "Rs. 1,500. The evidence of Gobind Parshad, "their witness, is that the buildings cost about

" Rs. 900. Jugal Kishor makes them worth " Rs. 800. Khyali Ram says nothing on the " point, while the patwari deposes that the " buildings are worth Rs. 1,000 or Rs. 1,500. " On the other hand, the Defendant Kundan " Lal and his witnesses' evidence shows that " there are 12 shops, some kutcha and some " pucca, now standing on this land; that they " have been built between Sambat 1918 and " 1935; that in addition to the shops are dalans " and Kothas, two wells, the one kutcha and the " other pucca, and a temple, all costing between " three and four thousand rupees. The evidence " also shows in the most umistakeable manner, " that not only did the original lessee not object " to the enclosing of these buildings when they " were being erected, and stood by, but that by " continuing to receive rents from the lessees, " even after the erection of the buildings, and " even though the saltpetre factory, for which " the land was let, had ceased to exist, he " sanctioned the lessees doing so. His successors " are therefore equitably stopped from now suing " for the lessee's ejectment. The case is go- " verned by what was said in *Gopi* v. *Bisheshwar* " (Weekly Notes for 1885, page 100)."

The rule or principle thus adopted by the Subordinate Judge, which is reported to have been laid down in *Gopi* v. *Bisheshwar*, is thus stated by him :—" If a man permits another to " build upon his land, and, with the knowledge " that the building is being erected, stands by " and does not prevent the other from doing so, " then, no doubt, equity comes in, and by the " rules of equity which in this respect are the " same as the rules of law, he cannot eject that " other person."

The case was then carried, by the present Appellants, before the Second Appellate Tribunal, the High Court at Allahabad, who, on the 26th

January 1894, confirmed the decision of the Subordinate Judge of Aligarh and dismissed the Appeal, with costs. The learned Judges of the High Court, without entering into any discussion of the other issue which the Second Appellate Court had decided in favour of the present Appellants, said, "We need not go further into "the construction that should be placed upon that "lease, because we are of opinion that upon the "finding of acquiescence, which we think was a "right finding in this case, the Appeal will have "to be dismissed." They accordingly disposed of the Appeal on that ground alone.

It is to be regretted, that the loose and inadequate statement of the rule of equity, which is reported in *Gobi* v. *Bisheshwar* should have been accepted, apparently without much consideration, by the learned Judges of both Appellate Courts. The proposition, if it were carefully supplemented, might possibly be made to apply to the case where the owner of land sees another person erecting buildings upon it, and knowing that such other person is under the mistaken belief that the land is his own property, purposely abstains from interference, with the view of claiming the building when it is erected. The findings of fact pronounced by the Subordinate Judge, which were conclusive in the Second Appellate Court, and are equally binding upon this Board, show that the present is not a case of that kind. The Respondents knew that the predecessors of the Appellants were the owners of the land let, and that their own title was limited to their occupation of the land as tenants, upon the terms and for the periods provided by the original lease of 1858. In order to raise the equitable estoppel which was enforced against the Appellants by both the Appellate Courts below, it was incumbent upon the Respondents

to show that the conduct of the owner, whether consisting in abstinence from interfering, or in active intervention, was sufficient to justify the legal inference that they had, by plain implication, contracted that the right of tenancy, under which the lessees originally obtained possession of the land, should be changed into a perpetual right of occupation.

Their Lordships have had no difficulty in coming to the conclusion that the Respondents have failed to discharge themselves of that *onus*. If there be one point settled in the equity law of England, it is, that in circumstances similar to those of the present case, the mere erection by the tenant of permanent structures upon the land let to him, in the knowledge of and without interference by his lessor, will not suffice to raise the equitable right against the latter which has been affirmed by the Courts below. It must also be kept in view that, in Indian law, the maxim "*quicquid inaedificatur solo, solo cedit,*" has no application to the present case. The rule established in India is that of Section 108 of the Transfer of Property Act, which provides that "the lessee may remove, "at any time during the continuance of the "lease, all things which he has attached to the "earth; provided he leaves the property in the "state in which he received it."

The leading authority of the law of England upon the point, is, *Ramsden* v. *Dyson and Thornton* (I. E. and I. Ap. Ca. 129). In that case, the Vice-Chancellor (Sir J. Stuart) had held that Sir J. Ramsden, the owner, was estopped in equity from bringing ejectment against the Defendants, his tenants, by reason of the Defendants having been permitted, in the knowledge of their lessor, to build valuable and permanent structures upon the land demised to them. The judgment of the Vice-Chancellor

was reversed in the House of Lords, by the Lord Chancellor (Cranworth), Lord Wensleydale, and Lord Westbury, *dissentiente* Lord Kingsdown.

The Lord Chancellor (I.E. and I. Ap. Ca. 141) said:—"It follows as a corollary from these "rules, or, perhaps, it would be more accurate "to say it forms part of them, that if my tenant "builds on land which he holds under me, he "does not thereby, in the absence of special "circumstances, acquire any right to prevent "me from taking possession of the land and "buildings when the tenancy has determined. "He knew the extent of his interest, and it was "his folly to expend money upon a title which "he knew would or might soon come to an end." The noble and learned Lord, in his opinion, which is expressed at considerable length, appears to me to indicate some at least of the special circumstances which might suffice to raise an estoppel against the lessor. It was strongly urged for the Defendants, at the Bar of the House, that Sir J. Ramsden, had made representations "which might fairly be supposed to "lead his tenants at will or from year to year "to expend money in building, in the belief "that by building they acquired a title which he "could never disturb." I do not find that the noble and learned Lord indicated any opinion that, if such representations had actually been made by the lessor, they would not have been sufficient to show the terms of a contract which might be enforced in a Court of Equity. But he rejected the plea on the double ground, (1) that the alleged communications were not proved to have been sufficient for that purpose, and (2) that the representations, if they had been sufficient to raise an implied contract, were not binding upon the lessor, inasmuch as they proceeded from an estate agent, and were not

shown to have been made by him, in the knowledge, and with the authority of the lessor.

The Respondents, in their appeal case lodged before this Board, relied exclusively upon the their plea of acquiescence, which had been sustained by both the Appellate Courts below. In their argument, the learned Counsel by whom they were represented, ably urged that plea, but frequently digressed into other points raised in the case, always with the explanation that these digressions were meant to aid the plea of acquiescence. They also argued that their Lordships could not competently disturb the judgment to the effect that there had been acquiescence, inasmuch as it was a concurrent finding of the Appellate Courts. The argument was palpably erroneous. Their Lordships were bound by, and have accepted as final, the findings of the Subordinate Judge of Aligarh upon the facts from which acquiescence might or might not be inferred. But acquiescence is not a question of fact, but of legal inference from the facts so found; and upon it the judgments of the Appellate Courts are not final.

Their Lordships will therefore humbly advise Her Majesty to reverse all the judgments appealed from, and to give the Appellants decree of ejectment in terms of their plaint; to order that the costs, if any, already paid by the Appellants, under the decrees respectively of the Munsiff of Hathras, the Subordinate Judge of Aligarh, and the High Court at Allahabad, be repaid to the Appellants by the Respondents; and that there be no costs of suit in the Courts below paid to or by either of the parties. The Respondents must pay to the Appellants the costs of this Appeal.