Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Leelanund Sing v. *the Government of Bengal, from the late Sudder Dewanny Adawlut of Calcutta; delivered February* 4, 1864.

Present:

Lord Chelmsford.
Lord Justice Knight Bruce.
Sir John Taylor Coleridge.

Sir Lawrence Peel.
Sir James W. Colvile.

THE Appeal in this case is by the Zemindar of Khurruckpore, from a portion of a Decree pronounced in the year 1860 by three Judges of the Court of Sudder Dewanny Adawlut at Calcutta, acting as Special Commissioners under a regulation of 1828. The Government of Bengal, the only party besides that has (whether both or either of the other Respondents, or nominal Respondents, could or could not have) appeared here is content with the Decree, has submitted to it, and desires to support it as it stands.

The matter arose thus—some years before the year 1855 the Government of Bengal claimed a right to resume or re-assess lands of considerable extent and value within the Zemindary of Khurruckpore in the possession of various Ghatwals, who held them by Ghatwallee tenure under the Zemindar. The claim was enforced by the Government, though opposed on the part of the Zemindar, and for some time at least on the part of some, if not all, of the Ghatwals. There was a great and complicated mass of litigation upon the subject before various Tribunals, with various success; sometimes

one party gaining a decision, sometimes another. The suits were numerous. At last the Zemindar brought one of them by Appeal before Her Majesty in Council, and upon that Appeal the Judicial Committee in 1855 decided against the Bengal Government on grounds fatal in principle to its entire claim of resumption and re-assessment as to all the Ghatwallee lands. That decision was in the same year sanctioned by Her Majesty. The case, with the Judgment delivered here by Lord Kingsdown on the part of the Judicial Committee, is reported in Mr. Moore's 6th volume of "Reports of Indian Appeals," a report to which their Lordships refer, and which has during the argument on the present Appeal, been cited more than once. This decision the Bengal Government or the Special Commissioners determined very properly to consider binding as to all the Ghatwallee lands that had been resumed or re-assessed, and the invalidity of the resumption and re-assessment from the beginning may be treated as now established. But there remained a material question—the question as to the right to recover from the Bengal Government the large sums which, as rents or profits, they had wrongfully or erroneously, by means of the invalid resumption or re-assessment, obtained from the Ghatwals. The Government had latterly not disputed, nor does dispute, its liability to make good this amount with interest to some person or persons, but for some years has, in consequence of the decision of 1855, considered itself as owing the amount with interest to or holding it for some person or persons. After the Judgment of 1855 the Zemindar instituted or continued a proceeding before the Judges of the Sudder Dewanny Adawlut, as Special Commissioners, for the purpose of obtaining the benefit of that Judgment and payment of the principal and interest of the sums which in respect of the lands or part of the lands the Government had wrongfully or erroneously received. This proceeding was brought to a hearing in 1860, and upon it the Judges made the decree now under partial appeal as already stated. The material portion of it is as follows:—

The Government Pleader argues that it is nowhere contended that these lands when resumed were not in the possession of the Ghatwals, who paid, in some instances, a small quit-rent to the Zemindar, and in others nothing at all; but they were bound in

either case to render certain public services, as the conditions of holding their tenures. That, as the services of the Ghatwals were excused during the resumption of their lands, they might, with some reason, claim a refund of the past collections on the release of the lands, minus the value of the services they would have performed if no resumption had taken place; that the landlord cannot, however, under any circumstances, be entitled to this refund; that, moreover, the Ghatwals themselves have raised no claim for refund, and are not represented before the Court; and as the Zemindar has paid nothing, he has no right to demand the Wassilat.

It appears to us that, under the circumstances thus disclosed in the statements of the parties before us, the applications for a review of the several Judgments passed by this Court, as Special Commissioner at different times in the eighty-three cases now under consideration, should be granted; and, as the only point for determination is the applicability of the decision passed by the Privy Council on the 13th August, 1855, in Case No. 2,045, to the cases now before us, and that point is conceded by the Government, who has also intimated to us, through the Government Pleader, that out of deference to the decision of that High Court of Appeal, the lands have been already restored to the Ghatwals, it seems to us unnecessary to postpone judgment in these cases. On the authority, then, of the Privy Council decree, and for the reasons set forth therein, we reverse the decision passed in the several cases brought up for revision before us, and direct that the resumed lands be released from assessment.

As to the Wassilat, which has been taken by the Government from the parties in possession, if the contest before us was confined to the simple question whether the Government was liable or not to the Zemindar for the amount, we should have no hesitation in declaring, that as the Government officers are held to have had no valid ground for the proceedings under which they resumed and assessed the lands, dispensing with the services previously rendered by the Ghatwals, and not showing that any expenditure was made for the employment of others in their place and vocation, so they cannot be allowed to appropriate these collections for the benefit of the State, on the grounds and assignments set up by the Government Pleader in this case. But the contest is not confined to this question, but involves the rights of the Applicant and others, the Ghatwals, not now before the Court, whose rights are altogether denied by the Zemindar to receive the refund. Now, *primâ facie*, the right to receive the sums collected, with deductions for quit-rent due to the Zemindar, is with the Ghatwals, and not with the Applicant before us. But, be that as it may, it is not within the competency of this Court, acting as Special Commissioners, under Regulation III of 1828, summarily to determine a question of disputed private right of this nature, the more especially when one of the parties interested has not appeared before us, and is probably ignorant that such a question would be mooted in these proceedings. Such question must be left to be decided by the regular Civil Courts of the country. It is only necessary to add, that as the resumption proceedings have been determined to be contrary to law, we award to the Zemindar the entire costs of

these proceedings in the Resumption Courts, with interest thereon, from the date on which he filed his application for review of their Judgment.

Copy of this Order to be filed in the other eighty-two cases, to which it equally applies.

The Zemindar complains here of the omission to decide as to the right to the fund, which, as has already been mentioned, the Government did not then and does not now claim to retain for its own use, and contends that it ought to have been wholly adjudged to him. The Bengal Government, on the contrary, supports the title or alleged title of the Ghatwals, or their representatives, to receive back the money which was unduly, or in an improper manner, taken from them. To this appeal one Ghatwal and a purchaser from him have been added, at least nominally, as parties Respondents. Neither of them, however, has appeared here, nor are their Lordships convinced that without the consent of the Zemindar, either of them would have been allowed to appear as a Respondent on this Appeal.

Part of the fund claimed was during a period of temporary success on the Zemindar's part against the Government, paid to the Zemindar under an express liability to pay it back if there should be a subsequent decision against him, as there was, and he paid it back, and with regard to this portion of the fund claimed it has been, in an especial manner, strongly urged for him that it ought clearly to be now restored to him, whatever may be done as to the rest. Their Lordships, however, considering the circumstances in which the amount received by him came to his hands and left them again, are of opinion that both portions of the fund ought to be dealt with on one and the same principle. Their Lordships are also of opinion that the Judges who pronounced the decision now under appeal, though acting as Special Commissioners, had, from the nature of the subject, jurisdiction to direct payment of the whole money in dispute, with interest, to the person or persons entitled; that jurisdiction their admitted power of deciding as to the correctness or incorrectness of the resumption appears to us to have included. The Judges, therefore, who made the Decree of 1860, should, in their Lordships' view of the matter, have not been silent as to the title to the money, but have declared and

acted on it, if able, from the materials and parties before them to do so, or if not so able, have directed an inquiry to ascertain the person or persons entitled. Now, the Ghatwals were not represented, or were imperfectly represented, before the Court, when the Decree of 1860 was made, and their Lordships from the materials before them are not satisfied that a portion at least of the fund does not belong to the Ghatwals from whom it was received, or their representatives. In using these expressions their Lordships treat the controversy as extending to all the sums received by the Government, under the resumption or re-assessment, though their conclusion would be substantially the same if it were treated as confined to the fund strictly subject specifically to the particular proceeding in which the Order of 1855 or the Decree of 1860 was made. That a portion of the fund belongs to the Zemindar their Lordships think highly probable, if on account only of his quit-rent or quit-rents fallen into arrear, but possibly also he may have a just claim on more than this portion, or even the whole fund, in respect of services which the Ghatwals were, or had been, under an obligation to perform and have, from any cause whatever, not performed. Subject to that deduction or those deductions, as the case may be, in favour of the Zemindar, there appears to their Lordships a title fit to be considered to the whole fund in the Ghatwals who were in the actual enjoyment of the lands, or their representatives. But their Lordships are of opinion that they have not, and that in 1860 the Judges of the Sudder Dewanny Adawlut (the Special Commissioners) had not before them, sufficient materials to enable them to direct safely, or without hazard to justice, the payment, apportionment, or distribution of the fund or any part of it, and that accordingly the Decree of 1860 should be added to, and that it should be declared that the Special Commissioners, the Judges of the Court of Sudder Dewanny Adawlut, had and have jurisdiction to decide upon the true title to the funds in question upon this Appeal, and to direct the payment and disposition of those funds, with interest, accordingly; but that at the hearing on which the Decree under Appeal was made, it did not sufficiently appear who was or were the person or persons justly entitled to the money,

and that an inquiry ought to have been directed by the Court on that subject; and that with this declaration the cause should be remitted to India, in order to be further dealt with by the Special Commissioners on that footing. We conceive that the Government ought to pay the costs of this Appeal. Their Lordships will humbly advise Her Majesty accordingly.