Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Huro Pershad Roy Chowdhry v. *Gopal Dass Dutt and others, No.* 46 *of* 1878, *from the High Court of Judicature, at Fort William, in Bengal; delivered April* 20*th*, 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

IN this case, the sole question is as to the application of the Law of Limitations. The claim is for rent from April 1865 to June 1872. The terms of the 29th section of Act 8 of 1869 of the Bengal Council are these:—"Suits for the "recovery of arrears of rent shall be instituted "within three years from the last day of the "Bengal year, or from the last day of the month "of Jeyt of the Fuslee of Willayuttee year in "which the arrear claimed shall have become "due." It is admitted that in this case the suit was not instituted within three years from the end of the year when the last rent became due, and therefore *primâ facie* it is barred by the Law of Limitation. This *primâ facie* case is endeavoured to be answered in this way: The Plaintiff says that in 1874, that is to say, two years after the last instalment of the rent sued for had accrued due, the Statute ceased to operate, because he instituted a litigation which had the effect of preventing it from running, and that therefore a portion at least of his claim is not barred. That litigation was this: He brought three suits in the year 1874 against the tenants

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with respect to whose arrears of rent the present action is brought, for the purpose of ejecting them from their holdings, which were called Chuckdari holdings, in a certain zemindari of which he was possessed. These suits were dismissed by the First Court, and on the 25th July 1876 by the Appeal Court, on the ground of limitation. On the 7th September 1876 the Appellant commenced the present suit, concurrently with which he prosecuted an appeal to Her Majesty in Council from the decree of the 25th July 1876. His appeal was dismissed on the 26th May 1881.

The Appellant contends that the Statute did not run against his claim for rent after the year 1874, when he commenced these suits; and for that proposition he relies solely on the authority of the case of Ranee Surnomoyee *v.* Shoshee Mookhee Birmonea, reported in 12 Moore's Indian Appeals, page 244. Both Courts in India have decided against the Appellant upon the ground that the Statute applies, and that his case does not come within the exception to the operation of the Statute established in the case of Ranee Surnomoyee—an exception rather apparent than real.

The effect of that case may be very shortly stated. The zemindar brought a certain Putni talook to sale and sold it to a purchaser who was put in possession of it, and out of the purchase money the arrears of rent were paid. Subsequently this sale was set aside for irregularity; the zemindar had to refund the purchase money received by her, and the Putnidar who succeeded in setting it aside obtained also the mesne profits for the time during which he was ousted. Under those circumstances this Committee, whose judgment was delivered by Sir James Colvile, observe:—"It is "clear that until the sale had been finally set "aside, she"—that is, the Plaintiff—"was in the "position of a person whose claim had been

"satisfied, and that her suit might have been "successfully met by a plea to that effect." In other words, the effect of the judgment of this Board is, that under the peculiar circumstances, the Putnidar having recovered possession together with mesne profits, it was equitable that he should pay the amount of rent which was in arrear; but that amount of rent did not accrue until the sale of the Putni had been set aside, and therefore until that time the Statute could not run. This examination of that case shows it altogether to differ from the present. Here there was no period of time in which the rent could not have been recovered. There was no period of time in which, therefore, the Statute might not have run.

This case therefore being inapplicable, and no other case being relied upon, their Lordships have only humbly to advise Her Majesty that the judgment appealed against be affirmed, and that this Appeal be dismissed.