Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for India in Council v. *Srimati Fahamidunissa and others from the High Court of Judicature at Fort William in Bengal; delivered 30th November* 1889.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD HERSCHELL.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Herschell.*]

Two questions arise in this case. They were stated in the reference to the Full Bench by the Divisional Bench of the High Court in the following terms:—

1st. Whether the provisions of Act IX. of 1847 are applicable to land reformed on the site of a permanently settled estate, the revenue of which estate has been paid without abatement since the permanent settlement?

2nd. Whether, if these provisions are not so applicable, a Civil Court should, in the exercise of its discretion, make a decree declaring that the proceedings of the revenue authorities in respect of such land are *ultra vires?*

In their Lordships' opinion the second question which arises should be stated somewhat differently,

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viz., Whether, if these provisions are not so applicable, a Civil Court has jurisdiction to review the decision of the Board of Revenue, and to declare that the proceedings of the Revenue authorities in assessing such land were *ultra vires?*

The distinction is not material in the present case, but it appears to their Lordships that if the Civil Court has jurisdiction at all, that jurisdiction may be invoked as a matter of right, and that it is not a case for the exercise of the Court's discretion. If the party appealing to the civil tribunal can establish that the Court has jurisdiction, and that the Board have acted *ultra vires*, he is in their Lordships' opinion entitled as of right to a decree.

Both the questions involved in this case depend upon the construction to be put upon the Act of 1847. The 1st section of that Act enacts "that "such parts of the Regulations of the Bengal "Code as establish tribunals, and prescribe rules "of procedure for investigations regarding "liability to assessment of lands gained from "the sea, or from rivers by alluvion or dere- "liction, or regarding the right of the Govern- "ment to the ownership thereof, shall from the "date of the passing of this Act cease to have "effect within the provinces of Bengal, Behar, "and Orissa, and that all such investigations "pending before the Collectors and Deputy Col- "lectors in the said provinces at the said date "shall be forthwith discontinued; and that no "measures shall hereafter be taken for the "assessment of such lands, or for the assertion "of the right of the Government to the owner- "ship thereof, except under the provisions of "this Act."

The terms of this enactment make it clear that its intention and effect were merely to alter the machinery by which lands gained from the sea or rivers by alluvion or dereliction were to be

assessed, and not to subject to assessment any lands which would not have been liable thereto under the law in force at the time the Act was passed. It is therefore essential to a right interpretation of the enactment to examine carefully the state of the law at that time, and to see what lands were then liable to assessment, and whether the prior legislation throws any light upon the meaning of the words "lands gained from the "sea or from rivers by alluvion or dereliction."

By Clause III. of Regulation 1 of 1793, by which the decennial settlement was made permanent, it was declared to the proprietors that they and their successors would be allowed to hold their estates at such assessment for ever.

Regulation 2 of 1819 defines the right of the Government to the revenue of lands not included within the limits of estates for which a settlement had been made, and provides a machinery for their assessment. Clause I. renounces all claim on the part of the Government to additional revenue from lands included within the limits of estates for which a permanent settlement had been concluded. Clause III., after declaring and enacting that lands which were not included within the limits of estates for which a settlement had been concluded were to be liable to assessment, provides that the foregoing provisions were to be deemed applicable "to all "lands gained by alluvion or dereliction since "the period of the settlement whether from an "introcession of the sea, an alteration in the "course of rivers, or the gradual accession of "soil on their banks." It then provides the mode of investigation in relation to the liability of lands to be assessed. It is not necessary for the present purpose to enter into the details of the machinery provided for, it is enough to say that the Collector is to make a judicial inquiry after full notice to the party

interested taking evidence upon oath, and examining the documents presented. After the Collector has notified his decision to the party concerned, the Board of Revenue are, upon a day to be fixed by public notice, and after hearing anything which the party may have to urge on his own behalf, to proceed to pass judgment in the case. If the Board of Revenue decide against the assessment, their decision is to be final, except on proof of fraud or collusion, but if the Board declare the lands liable to assessment, the party may institute a suit in the Civil Court to try the justness of the demand. It may be further noticed that, by Clause VII. of the Regulation, in cases where land is supposed to be liable to asssessment under the provisions of Clause III., the Collector is to institute a full and particular inquiry into the circumstances and condition of the land in question at the period of the decennial settlement, and in cases of alluvion land into the period of its formation. The XXXIst Clause appears to their Lordships to be also very important. After providing that nothing in the Regulation should be considered to affect the rights of proprietors of estates for which a permanent settlement had been concluded, to the full benefit of waste lands included within the boundaries of the estate which may have been since reduced into cultivation, it proceeds :—"The exclusive advantages resulting "from the improvement of all such lands were "guaranteed to the proprietors by the conditions "of that settlement, and it being left to the Courts "of Judicature to decide on all contested cases "whether lands assessed under the provisions of "this Regulation were included at the period of "the decennial settlement within the limits of "estates for which a settlement has been con-"cluded in perpetuity, and to reverse the de-"cision of the Revenue authorities in any case

"in which it shall appear that lands which "actually formed at the period in question a "component part of such an estate have been "unjustly subjected to assessment under the "provisions of this Regulation, the zamindars "and other proprietors of land will be enabled, "by an application to the Court, to obtain "immediate redress in any case in which the "Revenue authorities shall violate or encroach "on the rights secured to them by the per-"manent settlement."

The next enactment is perhaps even more important. "It is further hereby declared and "enacted that all claims by the Revenue autho-"rities on behalf of Government to additional "revenue from lands which were, at the period "of the decennial settlement, included within "the limits of estates for which a permanent "settlement has been concluded, whether on the "plea of error or fraud or any pretext whatever, "saving of course lands expressly excluded from "the operation of the settlement, shall be "considered wholly illegal and invalid."

It is only necessary to notice in addition Regulation 3 of 1828. That regulation recited that, partly from the number of revenue cases, and partly from the practice of the Courts in treating the appeals made to them as original suits, little or no progress had been made towards the settlement of the matter, and heavy arrears of such cases had accumumulated. It accordingly provided for the appointment of Special Commissioners, to whom were entrusted the powers of the Court, all appeals to the ordinary Courts being abrogated in those districts in which such Commissioners had been appointed. So far the regulation only altered the tribunal; it made no substantive change in the law. And inasmuch as no Special Commissioner now exists having authority in the district in which the

lands in question are situate, the provisions relating to these Special Commissioners may be disregarded. The regulation, however, modified in some respects the provisions of Regulation 2 of 1819. It enacted that decisions of the Boards of Revenue declaring the liability to assessment of lands should be carried into immediate execution, notwithstanding that the parties against whom the decisions had passed had sued to contest the decision in one of the established courts of justice. It further provided that all suits which might be instituted in the established courts of justice under the provisions of Regulation 2 of 1819 to contest decisions of the Board of Revenue should be heard and determined in the same manner as regular appeals, and no further pleadings should be required or received than the objections of the appellant to the decision of the Board, and the reply to these objections on the part of the Revenue authorities, and that it should not be competent to the Courts to take further evidence, oral or documentary, unless it should appear that such evidence was tendered by the party adducing it to the Collector or the Board, and was then rejected on insufficient grounds, or that such evidence was essential to the ascertainment of some fact material to the issue not fully inquired into in the course of the previous investigation. It will be observed that these modifications of the law of 1819 only affect the procedure in cases of appeal to the ordinary civil tribunals of the country. They do not touch the right of appeal to such tribunals or alter any of the rights previously assured to the owners of permanently settled lands.

This review of the legislation prior to 1847 makes it, in their Lordships' opinion, clear that, whilst it was intended to bring under assessment lands not included in a permanent settlement,

whether they were waste or gained by alluvion or dereliction, all such lands as were comprised in permanently settled estates were to be rigorously excluded from further assessment. And in addition to this, the proprietors of such estates were assured that they could protect themselves against any action of the Revenue authorities which would tend to infringe upon their rights by appeal to the Civil Court. Their Lordships think it equally clear that lands within the limits of settled estates which had become covered with water, and afterwards reformed, were not lands "gained from the river or sea by alluvion or "dereliction" within the meaning of this legislation, which is confined to lands so gained "since the period of the settlement."

Returning now to the Act of 1847, it appears to their Lordships, as has been already observed, that its purpose was merely to change the mode of assessment in the case of a class of land already liable to be assessed under existing legislation, viz., land gained by alluvion or dereliction which was not included within the limits of a permanently settled estate. The terms of the 1st Section point to this and nothing more, and the details of the legislation support the same conclusion. It is only to lands "gained" from the sea or river by alluvion or dereliction that the legislation is applicable. Their Lordships have shown from an examination of the previous legislation the construction which must be put upon these words, that they must be limited to lands gained since the period of the settlement. It is only in relation to these lands, therefore, that the previous enactments are to cease to have effect. The 3rd Section empowers the Government of Bengal in any district in which a survey has been completed and approved by the Government to direct decennially a new survey of lands on the banks of

rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the last previous survey, and to cause new maps to be made according to such new survey. Section 6 provides that "whenever, on inspection "of any such new map, it shall appear to the "local Revenue authorities that land has been "added to any estate paying revenue directly to "Government, they shall without delay duly "assess the same according to the rules in force "for assessing alluvial increments."

Their Lordships cannot think that it was intended by such a provision as this to deal with the case of lands in permanent settlement which had become derelict of the sea or a river. They cannot be said to have been "added" to the estate to which they already belonged. Considering the solemn assurance given by the Government to the owners of permanently settled estates that they should not be liable to further assessment in respect thereof, their Lordships find it impossible to hold that it was ever intended by this enactment to subject them to an added assessment in respect of land for which they were already assessed because they had had the misfortune to be practically deprived of it for a time by an incursion of the sea or river. And no violence is done to the language of the enactment by rejecting a construction which leads to such a conclusion. On the contrary, it would be straining the language unnaturally to include such a case as that with which their Lordships are dealing. If, indeed, such legislation as is contained in the preceding Section V. had been in force from the outset, so that as soon as land had been washed away from a permanently settled estate there had been a proportionate reduction of the revenue payable to the Government, it would not have been unreasonable to regard the land when again free from water as land "added" to the estate, and to

assess it accordingly. And it may be that when the new map shows that land has been washed away from a settled estate since the previous survey, a proportionate abatement ought to be made under the Act of 1847. Upon this it is unnecessary to pronounce an opinion. It is clear that the Act provides no machinery for making such abatement where the land was covered with water at the time of the original survey. It is only "when on inspection of the "new map" it appears that land has been washed away that there is any legislative authority for making an abatement.

Their Lordships arrive then at the conclusion that the first question propounded by the Divisional Bench of the High Court ought to be answered, as all the Judges have answered it, in the negative.

But then it is said that the local Revenue authorities having assessed the land, and the Board of Revenue having made an order confirming their action, such order is, by the very terms of Section 6, made final, and that there is an express provision in Section 9 that no action in any court of justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act. Their Lordships cannot conceive that it was intended by these enactments to deprive the owner of a permanently settled estate of the protection assured to him by the Regulation of 1819. When once the conclusion has been reached that the provisions of the Act of 1847 are inapplicable to the case of reformed land being part of a settled estate in respect of which the full assessment has continued to be paid, it appears to follow that neither the local Revenue authorities nor the Board of Revenue can effectually render such land liable to assessment. It has been shown that

under the previous legislation the owner of such lands was expressly given an appeal to the Civil Court as a protection against any attempt of the Revenue authorities to subject him to additional assessment. The provisions contained in Clause XXXI. of the Regulation of 1819 are in no way repealed or affected by the Act of 1847. The action of the Revenue authorities was, therefore, in their Lordships' opinion, wholly illegal and invalid. Their Lordships cannot hold that the Board of Revenue can, by purporting to exercise a jurisdiction which they did not possess, make their order upon such a matter final, and exempt themselves from the control of the Civil Court. It is argued that where the acts done were within the powers conferred by the Act of 1847 the protection afforded by Section 9 would be unnecessary, and that it must be applicable to acts done in assumed exercise of the powers conferred but really in excess of them. But full effect can be given to this Section without holding that it deprives the owner of a permanently settled estate of that right of appeal which is given to him in order that he may have determined in a Civil Court "the justness of the demand" of the Revenue authorities.

The case, as it appears to their Lordships, may be shortly put thus. The Board of Revenue have, in violation of the right solemnly secured to the owner of a permanently settled estate, claimed to subject his land to an additional assessment, a claim which has been declared by legislation to be wholly illegal and invalid. Thereupon the owner exercises the right conferred upon him by the Regulation of 1819, and appeals by suit to the Court of Judicature to reverse the decision of the Revenue authorities. In bar of this suit the answer set up is, that a subsequent law empowers the Revenue authorities to assess, by new machinery, lands of a description within

which the land in question does not fall, and makes the orders of the Board of Revenue thereupon final. Their Lordships are at a loss to see how this can be any answer. If it had been intended to take away from the proprietors of estates the power, by application to the Courts, to obtain immediate redress in any case in which "the "Revenue authorities shall violate or encroach on "the rights secured to them by the permanent "settlement," it would have been done in express terms, and not by such enactments as are contained in the Act of 1847. It seems to their Lordships that it would be an erroneous interpretation of that statute to hold that it rendered the Board of Revenue supreme, and enabled them to make valid and effectual a proceeding on their part which the law had declared to be wholly illegal and invalid.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The Appellant must pay the costs of the appeal.