

*Privy Council Appeal No. 38 of 1915.*

**Hayat Khan and Others** - - - - *Appellants*

*v.*

**Daulat Khan** - - - - *Respondent.*

FROM

**THE COURT OF THE JUDICIAL COMMISSIONER IN BALUCHISTAN.**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 22ND OCTOBER, 1918.**

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*Present at the Hearing :*

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALL.

[*Delivered by MR. AMEER ALL.*]

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This is an appeal from a judgment and decree of the Court of the Judicial Commissioner in Baluchistan pronounced on the 9th February, 1909, and arises out of an action in ejectment brought by the appellants in the Court of the Political Agent and Settlement Officer of the Nasirabad Tahsil in August 1906. The suit relates to nearly 6,000 acres or 12,000 *jaribs* of land, situated in Southern Baluchistan, the administration of which was conceded to the British Government in or about 1879. Since then a system of survey not merely for purposes of revenue assessment, has been introduced into the province, but which up to the trial of the present case appears to have been only partially carried out. The country consists of enormous tracts of waste, uncultivated (*ghairabad*) lands which, however, need only water to render them cultivable and fertile. With this object it has been the practice of the Khans of Khelat to make grants of large areas, on favourable terms, to zemindars who undertook to make canals at their own expense or were in a position to utilise the supply of water from Government canals. From the nature of the country and the absence of any survey until very recent times, the boundaries given in these grants were in the majority of instances extremely vague and the Indian officers who had later on to give them effect experienced considerable

difficulty in their work. The present case furnishes a good illustration of this difficulty.

The plaintiffs' claim relates to three plots, consisting, leaving out the fractions, of 1,611, 3,884, and 429 acres respectively, lying in three villages named Bagar, Dhanda, and Hayat Khan, named after the first and principal plaintiff. They allege that the bulk of these lands, amounting to 13,000 *jaribs* or *bighas*, lying in the villages of Dhanda and Bagar, were acquired by them under three several grants from the Khan, his agent, and Colonel Reynolds, a British political officer. They further allege that they obtained 3,000 *jaribs* under a deed of compromise of the 11th March, 1879, and 700 *jaribs*, with other lands, under a release from one Khair Mohammad, bearing date the 5th January, 1880. Both these plots are alleged to lie in Deh Hayat Khan. The release has been produced and shows that it related to 3,200 *jaribs*, consisting of three plots, the third of which contained an area of 700 *jaribs*. The plaintiffs' case is that they had been in possession of these lands since they acquired them, but had been dispossessed therefrom by the defendant. He, on the other hand, maintained that the lands in dispute are covered by the *sanads* granted to his father, Manjhi Khan, some of which date back to a period anterior to the plaintiffs' grant, and that Manjhi Khan and after him the defendant himself have been in undisturbed possession of the lands. He further alleged that the 700 *jaribs* of land, which the plaintiffs claimed as part of the lands covered by the release of Khair Mohammad, and which they stated lay in Hayat Khan's village, were still in their possession. In short, the defendant denied the title of the plaintiffs to the lands in dispute, as well as their possession and subsequent dispossession.

It should be observed that the litigation between the parties, of which the present suit is the last episode, began in 1885. In October of that year Hayat Khan appears to have put in a petition before the Political Agent, Southern Baluchistan, complaining of an encroachment on his lands by Manjhi Khan. As the Judicial Commissioner points out, this petition was referred for adjudication no less than nine times to "councils of elders" (*jirgahs*), twice to arbitrators, and twice at least to the Khan's Naibs. None of them, however, were able to arrive at a decision; and their Lordships are not surprised at the fruitlessness of these references. It is not clear what the area of the land claimed in 1885 was, though there is reason to suppose that it was nothing like the extent now in dispute.

In 1906 the plaintiffs brought in the Civil Court of the Nasirabad Tahsil a regular suit on the same allegations as the present. It was heard and decided by Mr. Smart, the Political Agent and Settlement Officer who tried the present action. He dismissed the plaintiffs' claim in respect of the bulk of the lands claimed, but gave them a decree for 429 acres odd *ghantas*, lying within certain specific survey numbers. (Evidently he

had the survey map then before him.) This decree was set aside on appeal by the Judicial Commissioner, and the plaintiffs' suit dismissed, on the ground that the proper Court fee for the institution of the proceedings, as required by law, was not paid, nor any ground for exemption was made out. The plaintiffs then launched the present action in August 1906. In this suit also Mr. Smart has held that the plaintiffs failed to prove any title or possession in respect of the lands in dispute save and except the 700 *jaribs* to which reference has been made before. On the question of possession his finding is as follows: "I therefore find on issue 2 that the plaintiffs never got possession of anything but 700 *jaribs* of land in north (*sic*) of Deh Hayat Khan adjacent to the land now in their possession, and that they never got possession of land in Dehs Bagar or Dhanda, which they claim." He accordingly awarded a decree to the plaintiffs for "700 *jaribs* of cultivable land in Deh Hayat Khan adjacent to the land now in their possession," and dismissed the rest of the claim.

From this decree both parties appealed to the Court of the Judicial Commissioner, which forms the highest Court of Appeal in British Baluchistan. The learned Judicial Commissioner agreed with the Political Agent and his findings with regard to the lands which were alleged in the plaint to lie within the two villages of Dhanda and Bagar; but he differed from the finding in respect of the 700 *jaribs*. He held that the plaintiffs had failed equally with regard to these lands to establish either title or possession, and accordingly dismissed the suit in its entirety. On an application for review of judgment, the case was again fully considered by another Judge of the Appellate Court, who came to the same conclusion as his predecessor, and the application was dismissed. The plaintiffs have now appealed by special leave to His Majesty in Council.

In view of the concurrent findings of fact arrived at by both the Courts in India as to the lands claimed by the plaintiffs in Dhanda and Bagar, the arguments in this appeal have been confined in the main to the 700 *jaribs* decreed to the plaintiffs by Mr. Smart.

With reference to these lands, it is to be observed that whilst in the plaint they are alleged to lie within Deh Hayat Khan, Usman Khan, the plaintiffs' agent and the first plaintiff's son, who represented them in the Political Agent's Court, distinctly stated before that officer that the 700 *bighas* (a *bigha* is the same as a *jarib*) lay partly in Bagar and partly in Dhanda. His statement appears to have been made in the first action, but has been made part of the record in the present case. It is quite explicit, and is as follows: "Besides the 3,000 *bighas* mentioned above, also 700 *bighas* were received by him (plaintiff), and they are to the south-west corner of the 3,000 *bighas*, and are now partly in Deh Bagar and partly in Deh Dhanda." There is no suggestion that there is any other plot of 700 *jaribs* or *bighas* in dispute in this case. No

attempt was made to identify the lands on the spot as to whether they lay within the boundaries of Deh Hayat Khan or within the boundaries of the other two villages as mentioned by the plaintiff's son and agent. There are passages, in Mr. Smart's judgment, which raise a doubt as to whether he was clear in his mind regarding the exact situation of these lands; in some places he seems to imply that the lands were outside the Deh Hayat Khan; in others that they formed part of it. Evidently there is a survey map of the locality, for it was referred to in his previous judgment. When the matter was before Ghans Bakhsh, the frontier Naib, the second time, in 1902, he recorded the following order:—

“The parties produced no further proof than the evidence mentioned above, although they were given an opportunity. I will give my decision easily on the above evidence, but it should be ascertained first how many *jaribs* of land are in possession of the parties, and how much land is in possession of the plaintiffs, towards the south of the land in dispute as far as Dirgi village. I have written to the Political Agent Southern Baluchistan, that the survey maps may be sent for from Mr. Cole. When the maps are received I will give my decision.”

He considered identification possible and necessary for the purpose of a proper decision. The plaintiffs made no attempt, so far as appears from the record, to have the lands in dispute identified on the spot in conjunction with the survey map; nor was there any enquiry on the points which the Naib, who was presumably acquainted with the locality, considered essential to an adjudication of the dispute, viz., how much land was in possession of the plaintiffs towards the south of the land in dispute. An enquiry on this point would have settled the two questions, where these lands lay and whether they were or were not in fact in the plaintiffs' possession. If these lands lie in Dhanda and Bagar, as Usman Khan states, the finding of Mr. Smart would clearly make the plaintiffs' present claim untenable.

Two maps have been produced in the case; one marked Exhibit XXVI is, however, only a rough sketch, apparently prepared by Ghans Bakhsh, and is headed thus: “Map showing the land in dispute between Wadera Daulat Khan and Hayat Khan Khosas.” On this sketch the disputed lands are shown within yellow boundaries. The other, Exhibit XXIX, is a copy of the survey map. It was with reference to this map that Mr. Smart made his decree in the first suit, as he specifically mentions the survey number and the area 429 acres odd. There is no reference to any survey number in the present decree, nor is the area decreed the same. Again, the relative positions of the lands held by the different neighbouring zemindars shown in these two documents do not seem to tally. It is, however, clear upon both that the village of Dhanda lies to the north of Bagar. The Dhanda Canal, which belongs to the defendant, appears to irrigate these two villages. The Government have recently constructed a new canal called the Rajwar Canal, which, going south-west, intersects Bagar and what is shown on the

survey map as Deh Hayat Khan. This canal appears to have greatly altered the natural landmarks. On Exhibit XXVI to the north of the 700 *bighas* of the released land is shown an old disused canal (*lar*) of Hayat Khan. Beyond that lie the lands of the defendant; on the west lie the lands "measuring 3,200 *bighas*"; on the south is shown the canal of Suhrab Khan and Ahmad Khan; to the east the canal and lands of Hayat Khan. In the release the boundaries of the third plot of 700 *bighas* or *jaribs* are thus given: "East, the land of the Khosas named above," possibly meaning the grantors; "west, Ahmad Khan's land; north, waste land; south, our lands, leased for seven years, and Hayat Khan's *lar*." The words "our lands" here clearly refer to the lands owned by the grantors; there is no reference to the lands shown on Exhibit XXVI as in the possession of Hayat Khan. In view of these discrepancies it is impossible to say that the plaintiffs have satisfactorily established that the 700 *bighas* of land now sued for are the identical plot of 700 *bighas* conveyed to them under the release.

As regards possession the evidence is extremely vague and indefinite. The document called *farigh khati* or release related to three plots, one consisting of 2,000 *bighas* of what are called *haft sali* lands, *i.e.*, lands let out at a fixed revenue assessment for seven years; the second consisting of 500 *bighas* of *yek sali* or *one year* land; and the third of 700 *bighas* of *haft sali* land. So far as their Lordships can see there is nothing to show that the plaintiffs ever applied for the entry of their names in the Revenue Register in respect of the two plots of 500 *bighas* and 700 *bighas* respectively, although in 1884 Hayat Khan's name was undoubtedly entered as zemindar in respect of the plot of 2,000 *bighas*. The documents relating thereto throw considerable light on the question of possession. In July 1884, the present plaintiffs, Hayat Khan, Salim Khan, and Bostan Khan applied to Colonel Reynolds the Political Agent, in these terms:—

"Be it well known to you that we possess about 2,000 *bighas* of the *Haft Sali* land of Rais Gola. We pray that the said land be leased to us as a *Haft Sali*. We will pay the Government revenue. Separate lease may be given from the year 1883-84."

On that application the order is as follows: "Ordered that 2,000 *bighas* of land, referred to herein, should be entered in Zemindar Hayat Khan's name." And the report of the local revenue officer thereon, bearing date the 3rd October, 1884, is in these terms:—

"In accordance with your order No. 827 of the 26th August, 1884, 2,000 *jaribs* of *Haft Sali* land of Rais Gola have been entered in the name of Hayat Khan Khosa, with effect from the year 1878-79 in the statement of revenue assessment for the year 1883-84. Necessary entry has also been made in the *Jamabandi* of the current year, and this report is submitted."

These 2,000 *bighas* were unquestionably part of the Haft Sali lands of Rais Gola (Khair Mohammad) to which the release related. There is no explanation with regard to the 700 *bighas*. The oral testimony on behalf of the plaintiffs comes to this, that after the release Hayat Khan took possession of the plot of 700 *jaribs*, but after a short time as the canal with which he attempted to cultivate the plot became silted up, he abandoned it. Before Ghaus Bakhsh, the plaintiffs distinctly alleged that the other two plots which they obtained from Khair Mohammad were in their possession, only the plot of 700 *bighas* was taken possession of by Manjhi Khan. Even on the assumption that the plot of 700 *bighas* now sued for is the identical third plot of the release, there is nothing to show that the plaintiffs have ever had possession of it since its abandonment. On the contrary, the proceedings of 1884, referred to above, clearly indicate that the plaintiffs were in possession only of 2,000 *bighas*, and applied for the entry of their names in the Revenue Register on that basis.

From some of the earliest documents it would seem that Hayat Khan was a difficult person to satisfy. In a letter of 1879, the Khan writes to him as follows:—

“From Naib Pir Jan’s letter I have come to know that wherever the said Naib gives you land you refuse to take it and make lame excuses, and that you wish to have land which has been sanctioned in favour of other persons. You know that this matter was discussed at great length.”

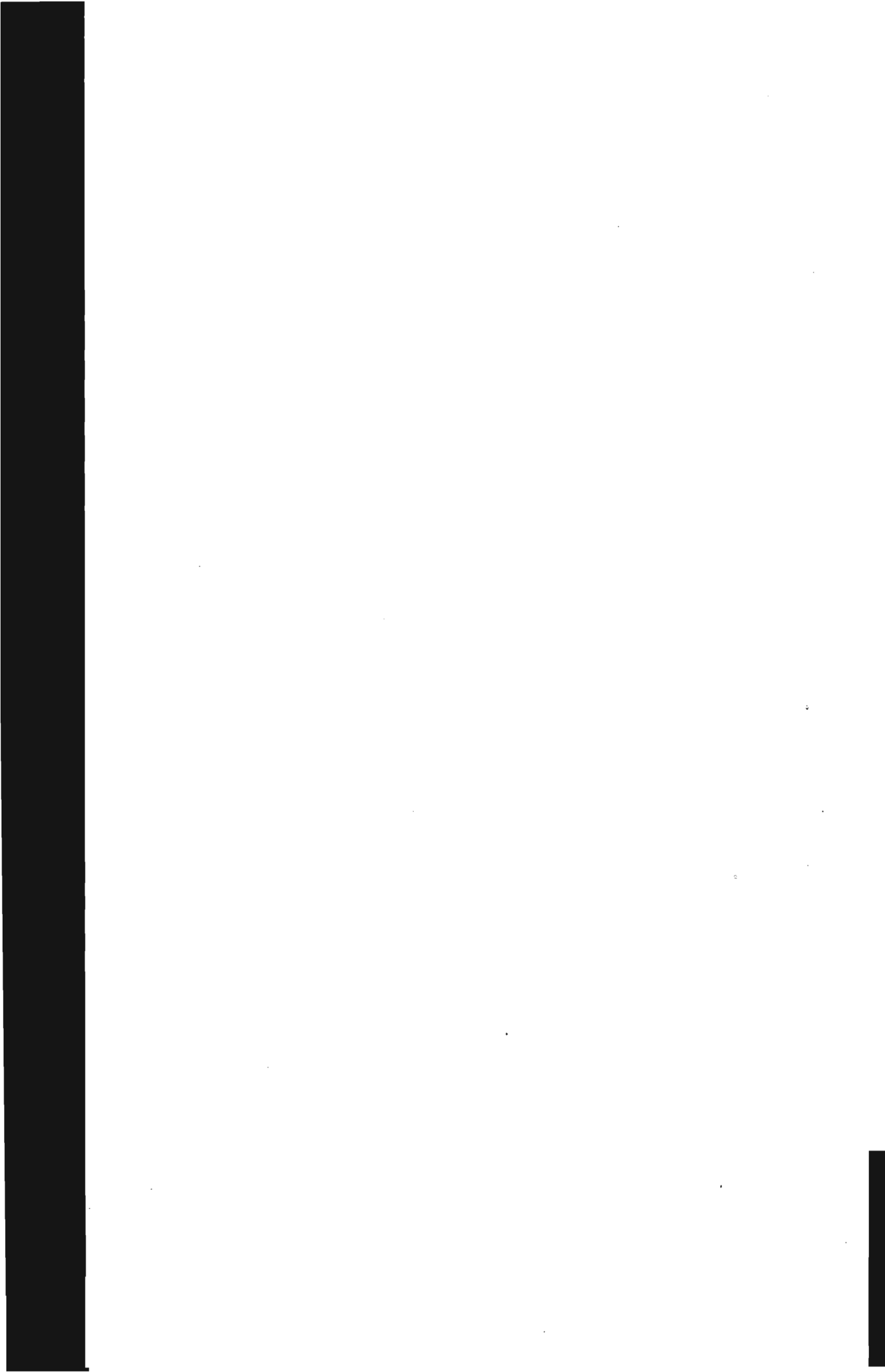
About the same time Colonel Reynolds had to administer him a similar rebuke:—

“I have been receiving petitions and applications from you and from Ahmad Khan Khosa and Khair Muhammad Gola for a long time. They show clearly that you want to take the lands to which the other zemindars are entitled, and that you have no mind to take Government lands.”

Their Lordships cannot help thinking, upon the materials on the record, that as the lands towards the north of his village and in the possession of the defendant, have become more fertile and prosperous, Hayat Khan and his comrades are seeking to get hold of a part.

On the whole their Lordships concur with the very clear and able judgment of the Judicial Commissioner, and think that this appeal should be dismissed with costs. And they will humbly advise His Majesty accordingly.

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In the Privy Council.

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HAYAT KHAN AND OTHERS

*v.*

DAULAT KHAN.

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DELIVERED BY MR. AMEER ALI.

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