Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sirdar Bhagwan Singh v. *The Secretary of State for India, from the Chief Court of the Punjaub; delivered 12th November* 1874.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit brought against the Secretary of State for India to recover possession of a certain rakh or piece of grass land situated in the Punjaub. The case of the Plaintiff was, that this rakh had been granted by the Maharajah Runjeet Singh, at that time the sovereign of the territory, to his father. It was a piece of grass land held rent free for the purpose, chiefly, of supplying fodder to a contingent of cavalry which the owner was bound to supply for the service of the Government. The Plaintiff alleged that upon the death of his father, this estate devolved by inheritance upon his brother, who was killed at the battle of Ferozepore in arms against the British troops. It appeared further by the Plaintiff's case that upon the death of his elder brother, one Rajah Teja Singh, who appears to have been his uncle, took possession of it, and that a grant of it was made by the British Government after the conquest of the territory to Rajah Teja Singh for his life. The Plaintiff alleged, but did not prove, that Teja Singh was his

guardian. Whether Teja Singh was his guardian or not, it is manifest that this rakh was not granted by the Government of India to Teja Singh in the capacity of guardian of the Plaintiff; nor did Teja Singh accept it as such. On the contrary, it appears that the title of Teja Singh was adverse to the Plaintiff, and would, if it were a good one, devolve on the heir of Teja Singh, who is not the Plaintiff, the Plaintiff claiming through his elder brother. On the case coming, as it did in the first instance, before the Deputy Commissioner, the Government put in a plea of which the following is an extract:—"It "is also contended on behalf of the Government "that if the jurisdiction of the Civil Courts be "not barred on the preceding grounds, it must "be considered as barred on the ground that the "rakh was taken possession of by the British "Government as an act of state at annexation, "and that as such, on the authority of the cases "quoted in the Wagentricher and Salig Ram, "and Devi Singh cases, is not cognizable by the "Civil Courts."

It has been argued on the part of the Appellant that this case of the Government was not put forward by their pleader in the first instance, and it would appear that at all events it was not distinctly put forward. But that becomes immaterial, inasmuch as before the judgment it was distinctly stated in the plea, and an issue was raised upon this very plea. The Commissioner finds the plea of the Government to be proved. The material part of his finding is in these terms:—"This evidence appears to the Court "sufficient on examination to prove that the "Government in the person of the late Sir "Henry Lawrence, in the exercise of the rights "of conquest and as an act of state, considered "the question of the Rakh Nag about which

" this suit is brought, and proceeded to dispose " of it in the plenitude of its potency as best it " pleased." An appeal was preferred against this judgment to the Chief Court of the *Punjaub*, and there two judges confirmed the judgment of the Court below. They say:—" It is " impossible to suppose that the British Govern- " ment at the time of the annexation intended " to give a legal right of redress to anyone who " thought himself wronged by the seizure of " property at that time. Whatever seizures " were then made were acts of state and of " sovereign power; acts over which, with their " consequences, the Civil Courts have no juris- " diction. It may be that the Plaintiff has " some title which he could prove, but whether " his interests have been injuriously affected or " not are considerations into which the Civil " Courts cannot enter; if a wrong has been " done the Civil Courts of Justice do not afford " a remedy." The appeal was dismissed.

An appeal has now been preferred to their Lordships' Board on the ground that these two Courts of the Punjaub were wrong in the decision which they arrived at with reference to this plea of the Government being substantiated.

The evidence by which that plea was supported may be shortly stated. In the first place, it is a matter of history that the territory was conquered about 1849. Thereupon, a proclamation was issued by the Government, the material parts of which are these: " Wherefore " the Governor General of India has declared " and hereby proclaims that the kingdom of the " Punjab is at an end, and that all the terri- " tories of Maharaja Dulip Singh are now and " henceforth a portion of the British Empire in " India. The few chiefs who have not engaged " in hostilities against the British shall retain " their property and their rank. The jaghirs

" and all the property of Sirdars or others who " have been in arms against the British shall be " confiscated to the State."

Subsequently to this proclamation, a Board of Administration was constituted for the Punjaub, of which Sir Henry Lawrence was the President. That Board was appointed by the Governor-General on the 31st March 1849, in fact, two days after the proclamation. They were invested with very large powers, judicial and administrative, and with respect to rent-free lands and tenures, among which category it is admitted on both sides that this description of tenure falls, these special directions are given to them: "The " very first object to which the Board should " direct their attention is the determination of " all questions affecting the validity of grant to " hold lands rent free. It is obvious to remark " that the longer the investigation is delayed, " so much the more do these tenures acquire " the force of prescription, and make resumption " more unpopular, and apparently unjust. In " our older provinces, notwithstanding the fre- " quent declaratory enactments respecting the " right, and the intention of the Government, " the investigations were delayed to so late a " period as to give our proceedings a character " of injustice and severity. By our occupation " of the country, after the whole Sikh nation " had been in arms against us, we have acquired " the absolute right of conquerors, and would " be justified in declaring every acre of land " liable to Government assessment; and though " our officers should not allow their minds to " be exasperated against claimants on this ac- " count, yet it may instil into them a wise " caution against being too liberal and profuse " in their concessions, and against doing more " for the grantees than their own government " would have done. There is no reason, for

" instance, why we should maintain in per-
" petuity an alienation of the Government
" revenues which would not have been main-
" tained by the power we have succeeded. The
" Governor-General remarks, that all grants
" were resumed by the Sikh rulers at will,
" without reference to the terms of the grant,
" whenever State exigencies, or even caprice,
" dictated. On the death of the grantor, they
" lapsed as a matter of course, and often were
" only renewed on payment of a large fine,
" equal, in some instances, to many years'
" collections. The Governor-General further
" observes, that the decision of the British
" Government on these claims will give a per-
" manency, validity, and value to the tenures
" hitherto unknown. There is not one of the
" rent-free holders who would at this moment
" dispute this position, and who would not look
" upon any concession as a matter of grace.
" The delay, even of a single year, would en-
" courage hopes which are not now entertained;
" and it is therefore particularly desired that
" the local officers will set the minds of the
" people at rest upon this most important par-
" ticular, at the earliest possible period. Every
" holder of rent-free land, who is confirmed in
" his tenure by the Government, must yield up
" every document in his possession which en-
" titled him to the exemption from revenue, and
" a grant must be given to him under the
" Board's seal and secretary's signature, declar-
" ing that the grant is a free gift of the British
" Government. The Governor-General believes
" that this will have an important effect upon
" the native minds, in disabusing them of the
" opinion that they have any inherent rights
" which attach to their tenures in virtue of long
" possession, and make them regard their new
" masters in the light of personal benefactors,

" from whom alone the indulgence with which " they are treated may be considered to " emanate."

It appears to their Lordships, that by these directions to the Board, it was contemplated by the Governor-General to make what may be called a *tabula rasa* of tenures of this kind, and to regrant them upon terms entirely at the discretion of the British Government, the Government no doubt intending to act with all fairness and consideration, especially to those who appear to have been not unfaithful to them, but at the same time in a manner which appeared right and just to themselves, and which they did not intend to be inquired into or questioned by any municipal courts.

It would appear that in pursuance of these directions, a Government Order was made on the 8th December 1849, which is not set out in the case, but which is thus described: It is said, " Under the Government Order contained in " abstract No. 38, regarding the great Jaghirdars " of the Punjab (conveyed) in No. 352, dated " the 8th December 1849, the whole jaghir re- " leased to Raja Teja Singh and Sirdar Bhagwan " Singh for their lives amounts to Rs. 152,779. " After their death, the heirs who should be " legitimate sons of Raja Teja Singh shall enjoy " a jaghir of Rs. 20,000, and those of Sirdar " Bhagwan Singh, Rs. 7,000, for perpetuity." It would appear that the Government thought fit to act in a great measure upon the powers given by section 41 of this document, that they did in this particular case choose to give a validity and value to the tenures greater than they had hitherto possessed. There tenures being according to the view of the Government only jaghirs, they grant a certain amount of land in perpetuity to the heirs of Teja Singh and Bhagwan Singh the present Plaintiff; acting

not by way of recognition of any right, but as conferring a favour and indulgence upon those persons.

We have further information as to the manner in which this particular rakh was dealt with. It would appear that two lists of rakhs were made out. We have a note of Sir Henry Lawrence, commenting on four rakhs, which are said to have been in the possession of Raja Teja Singh. The comment is in these terms, "proposing to "give Teja Singh enough for his own cattle and "for one-third of his own (not his nephew's) "horse," his nephew being the Plaintiff, "give "him his choice of two if necessary." This, of itself, would very clearly negative any notion that the Government intended to make any grant to Teja Singh in his capacity as supposed guardian of his nephew. This and another list appear to have been forwarded by the Secretary of the Board to Mr. Montgomery, Assistent Commissioner, in a letter of the 9th May 1849, in which he says, "I "am desired by the Board of Administration to for- "ward two lists of grass preserves situated in the "Bari and Richna Doabs. These were formerly "kept up to provide fodder for the cattle of the "Lahore State, or of certain Sirdars to whom "they belonged." Then he says, "Some of the "preserves will for the present remain with the "Sirdars who hold them, according to the "remarks entered in the statements. After "deducting these and the preserves placed at "the disposal of the military authorities, it is "desirable that the remainder should be brought "under cultivation and made profitable to "Government." These proceedings indicate to the mind of their Lordships that the Government, or the Board of Administration representing them, were dealing with these rakhs as their own property, over which they had absolute control.

It would appear that some difference of opinion subsequently arose among members of the Board as to what should be done with this particular rakh, the subject of this suit, and this is sufficiently explained by a letter of the 5th April 1852, which was written by the Secretary of the Board of Administrators to the Governor General, and is in these terms: "I am directed to request the "orders of the most noble the Governor General "in Council regarding certain grass preserves "(rakhs), which have been held hitherto by "Raja Teja Singh. The Commissioner of Labore, "in his letter, No. 410, of the 17th July, refers "the question whether four rakhs which he "names should be resumed or not, resumption "being in accordance with the spirit of orders "which the Board issued in December, 1850, to "the effect 'that as a general rule all rakhs "'(grass preserves) included in the area of a "'village which has been released must be "'considered as a part of that village, though "'not separately specified, while those situated "'in villages resumed by Government are not "'to be released unless specially directed to be "'maintained.' The rakh of Nar, which is one "of the four claimed, is in the resumed village "of Nar. The senior member considers that, as "that village was given up by Raja Teja Singh "as part of the revenue from which his con-"tingent was paid, it should not now be released. "The majority of the Board are of opinion that "the Raja is entitled to the release of the Rakh "Nar as he was ignorant of the Board's order of "December, 1850, otherwise he would assuredly "not have given up a village to which is attached "a valuable grass preserve, said to have young "timber on it worth Rs. 25,000, and of which he "has held possession for 30 years. There is no "difference of opinion about the other three "rakhs, which the Board are unanimous in

" releasing. With reference, then, to his " position in the late Government, to his long " possession, and to the spirit of Sir Henry " Elliot's promise of upholding the Jaghirs of " the Councillors, the majority of the Board " would release all four in his favour." Then the Secretary to the Government of India (Foreign Department) writes this letter,—" I am " directed to acknowledge the receipt of your " secretary's letter, No. 322, dated the 5th " instant, regarding certain grass preserves which " have been held hitherto by Raja Teja Singh, " and, in reply, to state that under the circum- " stances the Governor General in Council " releases all the four preserves in question in " favour of Teja Singh for his life."

We have, then, the whole transaction, and the circumstances under which this grant was made to Raja Teja Singh for his life, and their Lordships are of opinion that that grant was made in pursuance of the right of conquest, which is referred to in the proclamation, that it was an act of State, and not questionable by any municipal Court. Rajah Teja Singh held under this grant until 1863, when he died, whereupon the property was resumed by the Government, and now the Plaintiff, who in fact does not pretend even to be the heir of Rajah Teja Singh, brings his suit for the purpose of recovering it.

The question what acts are to be deemed acts of State was considered in the case of the Secretary of State in Council for India v. Kamachee Boye Sahaba, commonly known as the case of the Rajah of Tanjore, reported in the 7th Volume of Moore's Indian Appeals. This is stated in the judgment:—" The next question is, " what is the real character of the act done in " this case? Was it a seizure by arbitrary " power on behalf of the Crown of Great Britain

" of the dominions and property of a neighbour-
" ing state, an act not affecting to justify itself
" on grounds of municipal law?" Their Lordships are of opinion that this was a seizure on behalf of the Crown by its right of conquest, and that these acts of the Board and of the Governor-General were not acts affecting to justify themselves on grounds of municipal law, but were acts done in the exercise of sovereign authority, doubtless with the intention of effecting that which was equitable and just, but not intended to be subjected to the control or the supervision of municipal courts. Then again, in the case cited, this question is further put as a test:—" Or was it in whole or in part a
" possession taken by the Crown under colour
" of legal title of the property of the late
" Rajah of Tanjore in trust for those who,
" by law, might be entitled to it on the death
" of the last possessor?" In their Lordships' opinion there is no pretence for saying that this estate was taken possession of by the Government by virtue of any legal title or under colour of any legal title whatever. Further on in the judgment, there is this passage:—" With respect to the property of the
" Rajah whether public or private, it is clear
" that the Government intended to seize the
" whole, for the purposes which they had in
" view required the application of the whole.
" They declared their intention to make provision
" for the payment of his debts, for the proper
" maintenance of his widows, his daughters, his
" relations and dependants, but they intended to
" do this according to their own notions of what
" was just and reasonable, and not according to
" any rules of law to be enforced against them
" by their own Courts." So, adopting the words here used, in their Lordships' opinion the act of the Government, which is the subject of their

plea, was done in accordance with the notions of the Government of what was just and reasonable, and not according to any rules of law to be enforced against them by their own Courts.

For these reasons their Lordships are of opinion that the judgments of both Courts in the Punjaub were correct, and they will humbly advise Her Majesty that this appeal should be dismissed, with costs.