

Privy Council Appeal No. 65 of 1913.

(Bengal Appeal No. 96 of 1910.)

John King and Company, Limited - - *Appellants.*

v.

**The Chairman of the Municipal Commis-
sioners of Howrah and others** - - - *Respondents.*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM
IN BENGAL.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 6TH APRIL 1914.

Present at the Hearing.

LORD MOULTON.

MR. AMEER ALI.

SIR JOHN EDGE.

[Delivered by LORD MOULTON.]

This is an appeal in an action brought by John King & Co., Limited, to obtain a declaration of their title to certain lands mainly consisting of a khal, or nullah, along the Telkalghat Road, Howrah, and for ejectment of the defendants therefrom, and for damages or mesne profits.

The course of the case has been rather a singular one. The plaintiffs at the trial proved a clear title to the lands for over fifty years by a succession of duly registered conveyances, mortgages, re-conveyances, and other title deeds, and also proved that during that period they

leased portions of the land by leases that themselves were registered. Their Lordships indeed think that they might go so far as to say that, after the rather complex devolution which took place within that long period had been carefully explained by Counsel for the appellants, it became evident that it was scarcely possible to conceive of a clearer title by deeds than that which was proved by the plaintiffs. They also proved that they had not been dispossessed by the defendants until a period well within the period of limitation, and that therefore the Statute of Limitations did not apply.

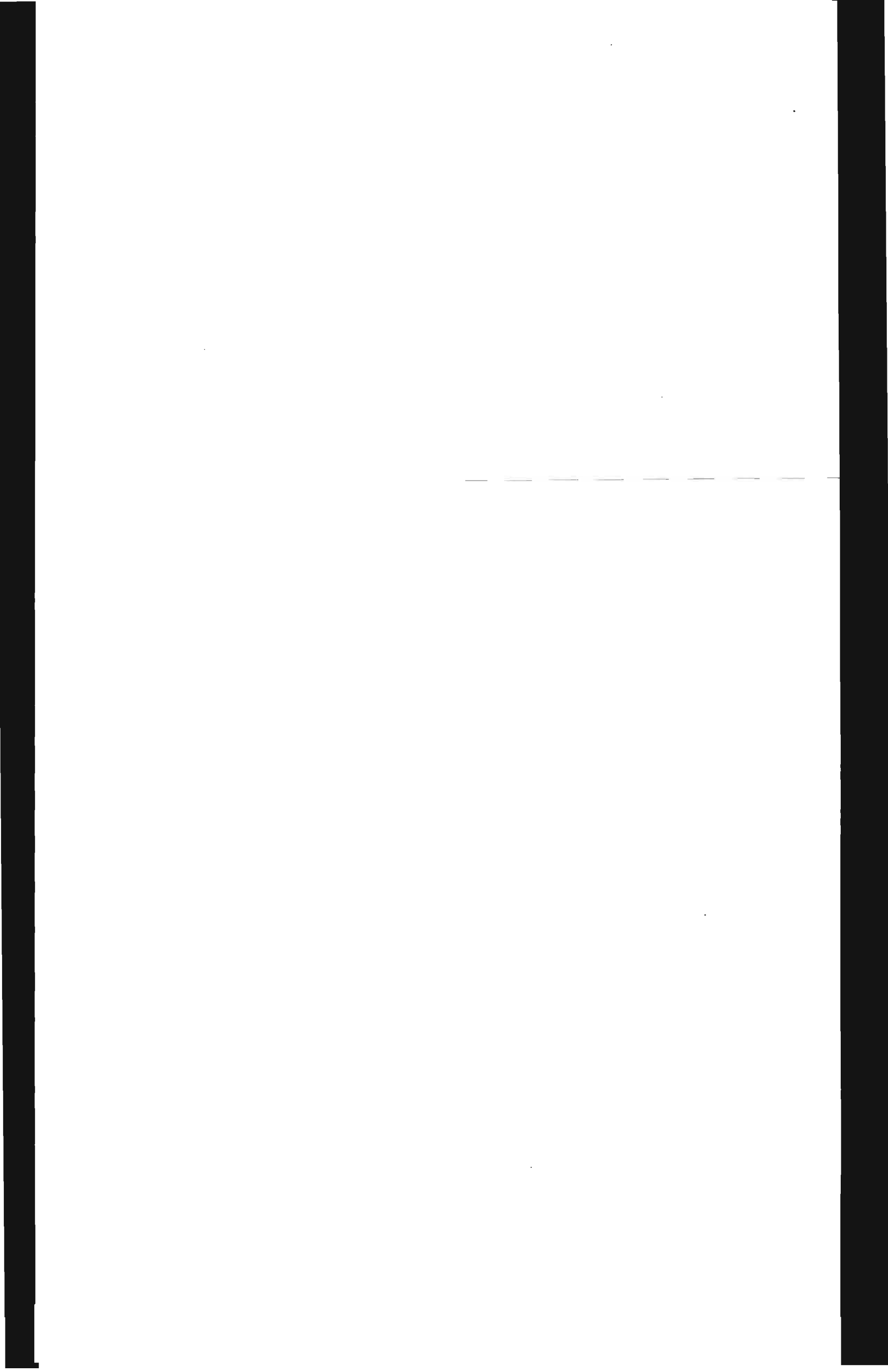
The judge at the trial, who went into the evidence with very great care, found in favour of the plaintiffs on all points. An appeal was brought to the High Court. It would seem, from the judgment of that Court, that the judges pronouncing it took a most extraordinary view of the plaintiffs' case, ignored entirely the clear title to the land which the plaintiffs had proved, and expressly held that they came into court without title deeds. They therefore treated the case as though it was one in which the Court had nothing relevant before them but the conduct of the parties to decide which of them was entitled to the land.

Their Lordships are entirely unable to understand the grounds on which the High Court rejected the title of the plaintiffs on their title deeds, nor can they understand what the learned judges meant by saying that the plaintiffs have no title deeds. The consequence of this error on the part of the judges of the High Court is that they never considered the real questions in the case, and their judgment gives to their Lordships no assistance.

The title deeds of the plaintiffs (none of which are impugned), which are all duly registered, show that the plaintiffs or their predecessors in title have been, ever since 1855, the owners of a parcel of land bounded on the south by the Telkalghat Road. Now it may very well be that the Telkalghat Road was not at that date the broad metalled road that it is now, but it is certain that it lay to the south of a khal, or nullah, the bed of which, with its banks, is the principal subject in dispute in the present action.

Their Lordships have been asked to interpret this boundary of the property as meaning that the property of the plaintiffs' predecessors in title only went up to the central line of the nullah, which lies to the north of the Telkalghat Road itself. To do that would be to reject the description of the parcels which is to be found consistently in the deeds, and to make these deeds convey land marked out by different metes and bounds from that which there appears. Their Lordships decline so to do. They think that it is possible that by allowing certain portions from time to time to be added to the Telkalghat Road for the purpose of improving that road, the plaintiffs and their predecessors in title may have parted with the property, or at all events with the right of possession of those strips of land; but none of those form part of that which is claimed in this action. So far as that which is claimed in this action is concerned, they have title and they have had possession. They have been dispossessed from this, but they brought this action in due time, and their action of ejectment must succeed, and this appeal must be allowed. Their Lordships are quite satisfied both with the reasons and the

conclusions of the judge at the trial, and they will humbly advise His Majesty that the decree of the High Court which is appealed against should be set aside, and that the decree of the Subordinate Judge should be restored and affirmed. The respondents must pay the costs of the appeal to the High Court and to this Board.



In the Privy Council.

JOHN KING AND COMPANY, LIMITED

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THE CHAIRMAN OF THE MUNICIPAL
COMMISSIONERS OF HOWRAH,
AND OTHERS.

DELIVERED BY LORD MOULTON.

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