by art. 61 (apparently a clerical error for 62) of schedule II of the Limitation Act, and it is argued for the plaintiff that the case is similar to *Gooroo Das Pyne* v. *Ram Narain Sahoo.*(1)

Per contra Johuri Mahton v. *Thakoor Nath Lukee* (2) and *Kundun Lal* v. *Bansi Dhar* (3) were referred to. The Calcutta case does not apply. The Allahabad case was one in which one of two heirs (each entitled to a moiety of deceased's estate) received the whole of a certain sum of money in a banker's hands. It was held that art. 62 there governed the case.

The present case is that defendants Nos. 1 and 2, who were jointly entitled with plaintiff to the whole of rent for land No. 2, are called upon to give up to plaintiff his moiety. We think art. 62 will govern the case.

Lastly, it is urged that the Subordinate Judge improperly refused to enforce the clause for forfeiture against defendants Nos. 3 and 4. It is found that plaintiff refused to accept from these defendants a moiety of the rent, which was really all he was entitled to, and in any case it would be extremely unjust to enforce such a clause under present circumstances against tenants who have been holding on a mulgaini lease since 1841. The case is similar to *Nárayana* v. *Náráyana*,(4) and we think the penalty is one which should be relieved against.

The second appeal, therefore, fails and we dismiss it with costs.

PRIVY COUNCIL.

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P.C. J.C.* 1886. July 17.

Re-hearing—Infancy of party at the time of the hearing of appeal—"Res noviter" not itself a ground for a re-hearing.

There may be exceptional circumstances which will warrant the Judicial Committee in allowing, even after an order of Her Majesty in Council has issued upon their report, a re-hearing at the instance of one of the parties. But this is an indulgence with a view mainly to doing justice when by some accident, without any blame, the party has not been heard, and an order has been made, inadvertently, as if he had been heard.

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(1) I.L.R., 11 I.A., 59. (2) I.L.R., 5 Cal., 830.
(3) I.L.R., 3 All., 170. (4) I.L.R., 6 Mad., 327.

* *Present:* Lord WATSON, Lord HOBHOUSE, Sir BARNES PEACOCK, and Sir RICHARD COUCH.

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In one of two appeals in suits relating to the same estate, judgment was given by the Judicial Committee after a hearing on the merits. In the other, judgment was given to the same effect as in the first, it being conceded between the parties that the questions in both suits were the same. After both judgments had been reported to Her Majesty, and confirmed by her orders in Council, a petition for a re-hearing was presented:

Held, that, even assuming that a case of *res noviter* had been made out (which was not, however, the fact), the orders were final, and the petition must be rejected.

PETITION for the re-hearing of two appeals in which orders of Her Majesty in Council (15th December 1879 and 3rd May 1882) had issued.

The question decided in the two suits in which the above orders were made, related to the partibility of the new zamíndárí of Nuzvid, in the Kondapalli Circar, granted by sanad on the 8th December 1802. After the death of Rájá Shobhanadri, the son of the grantee, in 1868, leaving six sons, his third son Narasimha brought the first of the two suits against the eldest son Narayya, joining the other four as defendants, for a declaration of his share in the zamíndári. In 1874, while this suit was pending, Narayya died, and the Court of Wards, on behalf of his minor son Gopala, the present petitioner, maintained the defence that the zamíndárí was, as it had been decided to be by the High Court, impartible. This was not upheld by the Judicial Committee, it being held by their Lordships, on 13th December 1879, that as the original zamíndárí of Nuzvid had been declared forfeited, and the new zamíndárí (consisting of six parganas, part of the old) had been granted without any provision for its descent otherwise than according to the prevailing law, it descended according to the ordinary rules of inheritance, and was not impartible; *Rája Venkata Rao* v. *Court of Wards.*(1) The second of the two suits was instituted in 1873 by three of the brothers for their shares in the same zamíndárí. This was pending in 1879, when the above decision was given; the defendants, one of whom was the present petitioner, no longer contested the question of partibility; and judgment went against him in this suit also on 15th March 1882; *Appa Rao* v. *The Court of Wards.*(2)

Both judgments having been followed in due course by orders of Her Majesty in Council, the petitioner now alleged that,

(1) I.L.R., 2 Mad., 128; L.R., 7 I.A., 38.
(2) I.L.R., 5 Mad., 237; L.R., 9 I.A., 125.

having been an infant at the hearing of the above appeals in 1879 and 1882, he attained full age on 4th December 1882. Also, that he had discovered that there were official papers at Madras, showing that the old zamíndárí of Nuzvid, never having been declared by the Government to have been forfeited, was held by it only with a view to certain re-imbursements being made out of the revenue; and, further, that previously to the sanad of the 8th December 1802 having been granted, the Government had already ordered that the zamíndárí should be restored to the family. The reports of Revenue officers in charge of Nuzvid at the time, and other documents were specified.

Mr. *H. M. Bompas, Q.C.* (with whom was Mr. *Nanda Lal Ghose*), in support of the petition relied mainly on (1) the minority of the petitioner at the time of the hearings in 1879 and 1882, and inability to defend his interests himself, coupled with (2) the discovery of fresh evidence, which had it been forthcoming would, it was contended, have altered materially the case presented. Reference was made to the English rules of equity in regard to suits against infants, they being allowed on coming of age to answer afresh as defendants, and to give fresh evidence in support, although the guardian might have appeared and answered; *Kelsall* v. *Kelsall.*(1) The Indian High Courts admitted reviews on an infant party attaining majority; *Dabee Dutt Shahoo* v. *Subodra Bibee.*(2) Again, the Civil Procedure of the Indian Courts had always allowed reviews on the discovery of fresh evidence, and the Code now in force, Act XIV of 1882, provided for this in s. 623. The petitioner, accordingly, might have obtained a review in the High Court, had the decision been against him, and had the question come up in India. The Judicial Committee, however, could re-hear the appeals. Re-hearings were within its discretion, and had been allowed even after orders in Council had confirmed the Committee's reports; see *Rajunder Narain Rae* v. *Bijai Govind Sing,*(3) the precedents cited in the argument of Sir J. D. Coleridge in *Hebbert* v. *Purchas,*(4) and *"The Singapore"*(5), in which last the authorities were all collected in the argument. Reference was also made to Macpherson's Practice of the Judicial

(1) 2 Myl. & Keen, 409. (2) 25 W.R., 449. (3) 2 M.I.A., 181.
(4) L.R., 3 P.C., 664. (5) L.R., 1 P.C., 378; see pp. 386, 387.

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Committee, p. 165, where the case of *Raja Deeda Hossein* v. *Ranee Zaharan Nissa* was stated.

The Judicial Committee having power to re-hear the appeals, the fresh evidence would affect the result, and would negative the premiss of fact on which the judgment of 1879 had proceeded. That was that the Nuzvid zamíndárí, as granted in 1802, could not be identified with any estate, or title, existing prior to the issue of the sanad of 1802, which put Nuzvid on the same footing with ordinary estates. So far from this being the fact, the fresh evidence would show that the Government had virtually restored the zamíndárí before the sanad was granted, and the order of the Government, not the sanad, constituted the actual grant of the estate This was the main point to which the fresh evidence had reference; and by it the supposed disconnection between the old and new Nuzvid would be found not to exist. This want of connection between the new and the old zamíndárís formed the main distinction which had been taken between the Nuzvid case and that of the Sivaganga zamíndárí; see the judgment in *Muttuvadaghanada Tevar* v. *Dora Singha Tevar*,(1) viz., that in the latter case the istimrár zamíndár received his estate back on no other terms than the old terms. The evidence would show this distinction to be unfounded, and it would appear that Nuzvid was impartible as Sivaganga had been held to be; the latter being, also, but a portion of the larger impartible zamíndárí of Ramnád, as the new Nuzvid was of the old.

In regard to whether the Judicial Committee should consider the evidence itself, or send the case back to the Indian Courts, to take the evidence, and deal with it, reference was made to *Meer Mahomed Hossein* v. *Forbes*,(2) *Muttusawmy* v. *Vencataswara*,(3) *Juveer Bhace* v. *Vuruj Bhace*.(4)

Their Lordships' judgment was delivered by

LORD WATSON.—Their Lordships are of opinion that this petition must be refused.

The petitioner asks a re-hearing of the judgment of this Board in these two appeals which was finally approved by Her Majesty in Council in the year 1883. The ground upon which he makes the application is, that he has discovered certain new matter which

(1) I.L.R., 3 Mad., 290, at pp. 304, 305; L.R., 8 I.A., 99.
(2) L.R., 2 I.A., 1. (3) 12 M.I.A., 203. (4) 3 M.I.A., 324.

would, if it had been produced in these appeals, have materially affected the judgment of the Board. After hearing a very full explanation from counsel at the bar, it appears to their Lordships to be exceedingly doubtful whether the documentary evidence, which is said to be new, could have had any bearing or any effect upon the decision of the Board. But it is hardly necessary to consider that point, because some of the documents which are alleged to be new are printed at length in the record formerly before this Board; and that which is now represented by the petitioner to be the most important of them all is a recommendation of the Special Commissioner, approved of by the Governor in Council on December 3rd, 1802. That document is fully and correctly described in the record, so that its existence was known to the parties. In short, it is certain that most of the documents were well known to the parties, and were actually produced, and that, with reasonable care and diligence, all of them might have been recovered and made evidence, by the ordinary methods of procedure.

Their Lordships are unwilling to dispose of this application on these grounds alone. They are willing to assume, for the purposes of this petition, that a relevant case of *res noviter* is set forth in it,—new matter which would, if it had been submitted to the consideration of this Board, possibly have led to a different decision from that which was formerly arrived at. But in considering the petitioner's motion for a re-hearing, the following facts must be kept in view. It is not alleged that there was any informality in the conduct of these suits from their inception to their close. Both parties appeared before the Committee; they were fully heard upon the merits of the appeals, the petitioner being at that time represented by the Court of Wards. It is not said that there was any error in framing the judgment of this Board, or that it did not fully and accurately express what the Board intended to decide. Then it was reported to Her Majesty, and was confirmed by regular orders in Council, dated the 3rd May 1882, and the 19th July 1883. No authority has been cited to their Lordships which can warrant them in granting a re-hearing under such circumstances as these. It is quite true that there may be exceptional circumstances which will warrant this Board, even after their advice has been acted upon by Her Majesty in Council, in allowing a case to be re-heard at the instance of one of the parties. The cases

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in which that may be competently done are explained by Lord Brougham in the case of *Rajunder Narain Rae* v. *Bijai Govind Sing.*(1) His Lordship properly describes this privilege, when allowed, not as a right, but as an indulgence. At page 220 of the second volume of Moore's Indian Appeals, his Lordship says: "It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of the last resort, where, by some accident, without any blame, the party has not been heard, and an order has been inadvertently made as if the party had been heard." Even before report, whilst the decision of the Board is not yet *res judicata*, great caution has been observed in permitting the re-hearing of appeals. In the last case to which we were referred, that of *Hebbert* v. *Purchas*, in Moore's Reports, volume 7, N.S., where a litigant alleged, before report and approval, that he had been disabled by want of means from appearing and maintaining his case, the Lord Chancellor said:—"Having carefully weighed the arguments, and considering the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee, their Lordships are of opinion that expediency requires that the prayer of the petitions should not be acceded to, and that they should be refused." There is a salutary maxim which ought to be observed by all Courts of last resort—*Interest reipublicæ ut sit finis litium.* Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this.

Petition rejected.

Solicitors for the petitioner—*Scott & Spalding.*

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(1) 2 M.I.A., 181.