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that does not make the liability rent. The liability is created by the earlier sections which say that, if the owner of *bustee* land makes a payment, he may recover it from the owner of the hut, and that in itself would give him the remedy of an action upon the statutory law. What section 119 provides is that he shall have, for the recovery of such sum, all such and the same remedies, powers, rights and authority as if such sum were rent payable to him. That gives a man certain powers, rights, &c., but can by no possibility turn a claim which is not rent into rent, and what is mentioned in the schedule is rent, and rent only. For these reasons we think that the answer we have given is the answer which ought to be given to this reference.

S. C. G.

PRIVY COUNCIL.

P. C.* 1896 *Feb.* 19, 20, & *March* 5.

BHAIYA ARDAWAN SINGH (DEFENDANT) *v.* UDEY PRATAB SINGH (PLAINTIFF.)

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Arbitration—Award—Construction of award of arbitrators—Presumption as to authenticity of old documents—Evidence of possession—Maintenance—Grant of villages for—Nature of grant, whether absolute or resumable.

A grant of villages was made by a *talukdar* to his younger son *for maintenance*. The elder son inherited the family *taluk*.

In the next generation, in 1869, an award was made by a body of Oudh *talukdars*, as arbitrators on the submission of the disputants, who directed that the village "given as maintenance be decreed in favour of the grantee to continue as heretofore."

The questions raised in that award were, whether the villages had been granted only for life, or were inheritable by the descendants of the grantee, and whether the *talukdar*, or the holder of the grant for the time being, was liable for the revenue on the villages.

The same questions were now raised by the third generation, who were the great-grandsons of the grantor, on the construction of the award.

There was no limitation in the original grant of the villages to the grantee personally, nor was the grant expressly declared to be to him and his lineal descendants through males. But possession had followed in that order, and the *talukdar* had always paid the revenue.

* *Present*: LORDS WATSON, HOBHOUSE and DAVEY, and SIR R. COUCH.

The award, not having been filed within six months after the passing of the Oudh Estates' Act, 1869, did not come within section 33 of that Act.

Held :—

(1) That the award was not on that account invalid. It was obligatory upon both parties to the submission and upon those whose interests they represented.

(2) That evidence of the antecedent possession of the villages, as well as of the *quasi*-judicial acts of the arbitrators, was admissible.

(3) That the terms of the award conferred upon the grantee, and his descendants, the right to possess the villages free of rent to the *talukdar*, who remained responsible for the revenue.

(4) That the villages would not revert to the *talukdar's* line, until the line of the grantee's descendants should have become extinct.

APPEAL from a decree (30th March 1891) of the Judicial Commissioner of Oudh, reversing a decree (12th November 1888) of the District Judge of Fyzabad.

In the suit out of which this appeal arose the plaintiff respondent, who was *talukdar* (within the meaning of the Oudh Estates' Act, I of 1869) of Bhinga in Bahraitch, sued, in March 1887, for the proprietary possession of two villages as part of that *talukdari*. The Bhinga Estate had come, in 1858, under the confiscation declared in Lord Canning's Proclamation of March in that year, but was restored to the plaintiff's father, Raja Kishen Dat Singh, in 1859, and to him a *sanad* was issued, which included the two disputed villages, one named Sochouli (including Basthanwa), assessed to the revenue at Rs. 754, and the other Gutwa, at Rs. 1,121, by the year.

The main question of this appeal was as to the construction of an award of arbitrators on two disputed points. First, whether, under a grant made by a former owner of Bhinga to the younger of his two sons for his maintenance, the two villages were inheritable by the descendants of that son, or reverted to the *talukdar* on the death of the holder? Secondly, by whom was the revenue to be paid: whether by the descendants of the *talukdar* who made the grant, or by those of the grantee?

The grant was made, early in the century, by Bhaiya Sheo Singh, then *talukdar*, to Amrao Singh, his second son. His elder son, Sarabjit Singh, was heir to the *talukdari*. Amrao's son, Jabraj Singh, held the villages after his father, and neither of them paid

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either rent or revenue, the *talukdar* continuing to be responsible for the latter. Jabraj died in 1881. He left a widow and three sons, one of whom was deceased when this suit was brought, he having left a son. The eldest son of Jabraj, Ardawan Singh, was the principal defendant in this suit, the others of the family being joined, and he alone preferred this appeal.

The *talukdari*, after the events of 1857-58, was settled at the summary settlement with Raja Kishen Dat Singh in 1859. He died in 1862; his son, Udey Pratab Singh, the plaintiff in this suit, succeeding him.

Jabraj in his lifetime, disputes having arisen as to the permanence of the grant, obtained an award from the British Indian Association of Oudh, also known as the Anjaman-i-Hind, consisting of a number of *talukdars*. The proceedings of the latter, relating to the questions as to the provision to be made for the cadets of the families of *talukdars*, are referred to in section 33 of the Oudh Estates' Act, 1869; that section enacts:

"Whereas bodies of *talukdars* have in several cases made awards, respecting the provision to be made for certain relatives of *talukdars*, and it is expedient to render such awards legally enforceable; it is hereby further enacted that such awards, if approved by the Financial Commissioner of Oudh, and filed in his Court, within six months from the passing of this Act, be enforceable, as if a Court of competent jurisdiction had passed judgment upon the award, and a decree had followed upon such judgment."

Before this Association, Jabraj claimed possession of the two villages granted to his father, as an hereditary right to maintenance. He claimed, besides, the under-proprietary right in a number of villages. But as to claims adverse to the *talukdari* estate, the associated *talukdars* declined to arbitrate, and confined their award to the question between the parties as to the right to the two villages under the grant. Their award, dated 6th July 1869, after stating the claim, and the question as to the two villages given as maintenance, ordered that the latter "be decreed in favour of the plaintiff to continue as heretofore."

This award was proved by the Financial Commissioner on the 16th July following, but was not filed till more than six months had elapsed from the date of the passing of the Oudh Estates Act, 1869.

The *wajib-ul-arz* of village Gutwa, dated the 23rd February 1872, signed by Jabraj Singh, contained the history of the village, which was said to have been acquired by the ancestors of Raja Kishen Dat Singh in 1763. The settlements, before and after the Mutiny, were stated to have been made with him, and there was an entry that "in the current settlement in accordance with a decision of the British Indian Association regarding the *asli* village, Bhaiya Jabraj Singh has been declared an intermediate holder without payment of rent, and by virtue thereof he holds possession.

On the 11th March 1872, Jabraj mortgaged Gutwa to the Raja, now respondent, for Rs. 3,009. On his death, his son, Ardawan Singh, with his brother, nephew, and the widow, applied for, and obtained, *dakhil-kharij* of the villages, in the year 1881. The plaint alleged that the villages had been awarded in 1869 by the Association to Jabraj, and that the award had been confirmed by the Financial Commissioner, there being no declaration in the award that the provision for the maintenance of Jabraj was inheritable by his descendants; so that the villages were resumable on the death of Jabraj, which took place on the 2nd November 1881. It was also, on the other hand, asked that the holders of the villages, should the plaintiff not obtain a decree, might be declared liable to pay the amount of the revenue and other public demands thereon.

Ardawan Singh's defence, in his written statement, was that the villages had been granted for an estate of inheritance to his grandfather, inherited by his father, and by himself, without liability for the revenue. He set up sub-settlement rights also, and rights as "intermediate holder;" and by the award rights existing since 1212 Fasli (1804) were, as he alleged, only affirmed and declared. This was generally supported by the other defendants.

The issues raised questions as to the effect of the award of 1869, of the nature of the grant to Umrao, whether it was for life, or for an estate of inheritance, and whether the pottas of 1804 and 1808 were genuine.

Translated, these pottas were in the following words:—

"Potta executed by Sri Mahraj Kumar Bhaiya Sheo Singh Jeo:—That village Gutwa proper is granted as rent-free zemindari to Bhaiya Umrao

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Singh. He should, resting assured in mind, hold the village for the cultivation, and should appropriate the income of the village to his use. He should take possession from kharif of 1212.

"Dated Sudi, 1st of Jeth 1211 Fasli."

"Potta executed by Sri Maharaj Kumar Bhaiya Sheo Singh Jeo:—That the village Basthanwa Turai is hereby granted rent-free to Bhaiya Umrao Singh. Whatever revenue and income there may be from the village, he shall appropriate the same to his own use. The Government shall not interfere therewith.

"Dated Badi, 1st of Asarh 1215 Fasli.

"With effect from 1212 Fasli."

They purported to bear the seals of both Sheo Singh and his son, Sarabjit.

The District Judge, in giving his reasons, observed that it was not disputed that the defendant's branch of the family had held the land since Umrao Singh's time, some seventy or eighty years continuously: that they were in possession at the time of the award, and were still so recorded, although the plaintiff, under a mortgage of Gutwa to the *talukdar*, in 1872, was in possession, at a later period, of that village. The Judge found it proved that the villages were assigned to Umrao by Sheo Singh, as a provision for the younger son's branch. Nothing had been written for the purpose of showing whether this provision was intended to be for life only, or for more than one life. The pottas of 1204 and 1208 were to be held to be genuine in the absence of any evidence to the contrary. But whether they were presumed to be genuine or not, there was no doubt that the grant originally made to Umrao had been held for three generations undisturbed. This would imply heredity. The possessors had, during all that time, exercised powers of transfer and alienation.

The District Judge accordingly dismissed the suit for proprietary possession, and decreed that the defendants should pay to the plaintiff annually the amount of the revenue assessed on the villages.

The plaintiff appealed to the Judicial Commissioner. The defendant, under section 561, Civil Procedure Code, filed objections to that part of the decree which related to this payment of the amount of the revenue to the *talukdar*.

The Judicial Commissioner reversed the above judgment. He held that the two pottas, of 1804 and 1808, had not been proved by evidence, and were not to be presumed to have been established. Nor, even if genuine, did they purport to convey any heritable title to Umrao, the grantee. Nor could an intention that the estate should be heritable be inferred from the conduct of the parties. The award of 1869 was binding, and had been enforced by execution, a fact which appeared from the Settlement Officer's judgment of June 27th, 1872, so that its validity could not now be questioned. But its meaning he held to be that "as the parties were agreed that Jabraj held these villages '*muafi*,' for his maintenance, he was to continue to hold them '*ha dastur*," *i.e.*, on the same terms and by the same tenure." That Umrao had no estate of inheritance, was his opinion; and that just as Umrao held only as a grantee for his maintenance, so Jabraj held, and had no proprietary right.

The Judicial Commissioner referred to the Raja of Pachete's case, *Anand Lal Singh Deo* v. *Maharaja Dhiraj Gurrood Narayun Deo* (1), and *Thakur Rohan Singh* v. *Thakur Surat Singh* (2).

He decreed the plaintiff's claim to possession.

Mr. *J. H. A. Branson* for the appellant.—As to the nature and extent of the grant of the two villages awarded to Jabraj in 1869, the Judicial Commissioner has reversed the decision of the District Judge on insufficient grounds. The latter Judge has, however, been in error in deciding as to the liability for the revenue, which remained with the *talukdar*. On these points the award of the *talukdars* in 1869 was valid and binding between the parties thereto, and upon those who now represented them. To construe that award reference must be made to the relations existing between the predecessors in estate of the parties. The appellant's case was that the award, which now governed the rights in question, gave an absolute estate to Jabraj Singh, that being in fact the estate previously held by Umrao Singh, and the estate conferred by the pottas of 1804 and 1808. The order in which, since those years, the younger branch of Sheo Singh's family had held the villages indicated

(1) 5 Moore I. A., 82.

(2) I. L. R., 11 Calc., 318; L. R., 12 I. A., 52.

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that the estate was one of inheritance. Their possession had been preserved to them both at the time of the summary settlement in 1859, and afterwards at the regular settlement. In connection with the effect of the confiscation of 1858, reference was made to *Nawab Malka Jahan Sahiba* v. *The Deputy Commissioner of Lucknow* (1) and to *Mirza Jahan* v. *Afsur Bahu* (2). The facts of successive possession by the descendants of Umrao were consistent with the genuineness of the pottas of 1804 and 1808, which had been rightly treated as good evidence by the District Judge, and the circumstances existing when the pottas were executed, as well as subsequent events, supported the opinion that he had expressed. The conduct of the parties was consistent only with the intention on the part of Sheo Singh to confer an absolute estate, and inconsistent with the retention on his part of a power of resumption. As to the presumption that the pottas were genuine, section 90 of the Indian Evidence Act (I of 1872); and in regard to their language, *Buduroodeen* v. *Haneef Mullick* (3). In such grants the absence of words of limitation on descendants did not affect the matter. In *Robert Watson* v. *Mohesh Narain Roy* (4), on a question whether an estate for life, or an estate of inheritance, passed, it was recognized that, while the terms of the instrument were to be chiefly regarded, the circumstances at the time, and the conduct of the parties since the conveyance, were to be considered. In *Gunga Deen* v. *Luchmun Pershad* (5) it was said that words of inheritance were neither necessary in a grant, nor could any inference be drawn, that it was not inheritable, from their absence. *Lekraj Roy* v. *Kunhya Singh* (6) was also cited as to this; and *Srimati Anundomohey Dossee* v. *The East India Company* (7) in regard to words of inheritance not being necessary to a grant of heritable property.

The adverse possession, which had been held by the appellant and his predecessors, threw the burden of proving his right to resume on to the respondent. As to the law of limitation in Oudh,

(1) L. R., 6 I. A., 63.
(2) I. L. R., 4 Calc., 727; L. R., 6 I. A., 76.
(3) 5 W. R., 180. (4) 24 W. R. (P. C.), 176.
(5) 1 All. H. C., 147. (6) L. R., 4 I. A., 223; I. L. R., 3 Calc., 210.
(7) 8 Moore I. A., 43.

Saligram and *Hurnarayun* v. *Mirza Azim Ali Beg* (1). The holding for three generations in succession of land granted by a zemindar to a member of his family in lieu of maintenance was held to justify the presumption in *Sri Raja Jagannadha Narayana* v. *Pedda Pakir Raju* (2) that the original grant was intended to be absolute.

Mr. *J. D. Mayne* and Mr. *C. W. Arathoon* for the respondent. —The judgment of the Judicial Commissioner should be upheld. The award did not establish that an estate had been granted to the appellant's ancestor, which would be now subsisting, and nothing as to the duration of the grant could be inferred from the words of the pottas, even if they were genuine. What had been shown to exist were possessions, not hereditary, but for life, taken in succession by holders, by arrangement or concession, on the part of the successive heads of the family, for the maintenance of the son of the younger brother, who had first obtained the grant. That began with Sheo Singh's grant to Umrao. It was the case common to both parties that Jabraj was rightly in possession; but it was submitted that he held the villages only as "intermediate holder," for maintenance, that being the term used in some of the evidence; and that he did not hold as an under-proprietor on whom a title, independent of that of the *talukdar*, had been conferred. This was, in effect, what the award declared; and this was its true construction. On the death of Umrao, the grant, which was only to him for life, was determined, and his son, Jabraj, obtained another term for his life. Had it been otherwise, the pottas, if genuine, would have thrown some light on the question now raised between the parties; but they were quite as silent as to the nature of the grant, as was the award of 1869. No length of holding, by successive sons of the younger branch, could enlarge their title, and render the holding of the present holder an estate by prescription. There had been merely a putting into possession of the younger brother, so that he might receive maintenance for his life. This was a relation between the parties which the award did not purport to alter; but it declared the continuance of that relation exactly as it stood. It recognized Jabraj as a holder for maintenance for

(1) 10 Moore I. A., 114. (2) I. L. R., 4 Mad., 371.

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his life, the reference to the past involving nothing more in the way of an estate or interest. The pottas of 1804 and 1808 had given no intimation of any higher estate. In the judgment in *Sri Raja Jagannadha Narayana* v. *Pedda Pakir Raju* (1) the general rule was referred to as being that a grant for maintenance was to be presumed to be personal to the grantee, and resumable on his death; but, in that case, the length of time during which a branch of a family had held was taken into account, with the result that the contrary presumption in favour of the permanence of the grant prevailed. Reference was also made to the judgment in *Raja Woodoyaditto Deb* v. *Mukoond Narain Aditto* (2), in which resumption was dismissed.

Mr. *J. H. A. Branson* in reply.

On the 5th March, their Lordships' judgment was delivered by LORD WATSON.—The parties to this appeal are lineal descendants, through males, of Raja Sheo Singh, who, at the beginning of this century, possessed the *taluka* of Bhinga; the respondent being the descendant of Sarabjit Singh, his eldest, and the appellant of Umrao Singh, his second son. At the time of the Mutiny, the *taluk* was confiscated; but it was subsequently restored to the family, and was settled in 1856-57, and again in 1858-59, upon Raja Kishen Dat, the son of Sarabjit. Raja Kishen Dat died in 1862, and was succeeded by the respondent.

Jabraj Singh, father of the appellant, who was the son of Umrao Singh, died in 1881; and, in March 1887, the present suit was brought by the respondent, in which he claims proprietary possession of two villages within the *taluka*, Gutwa and Basthanwa, which are also known by the common name of Sochouli, and, in the alternative, that the appellant is bound to relieve him of the revenue payable to Government in respect of these two villages.

The only ground of action disclosed in the plaint is, that the title upon which Jabraj held possession of the villages was a grant for maintenance, resumable by the *talukdar* upon his decease.

It is not disputed that, in point of fact, the villages in question were successively possessed by Umrao and his son Jabraj, from a

(1) I. L. R., 4 Mad., 371. (2) 22 W. R., 225.

period long antecedent to the date of the Mutiny; and that, during the possession, revenue duty was invariably paid by the Raja. On the re-settlement of the *taluka* after the Mutiny, various disputes arose between the Raja Kishen Dat, on the one hand, and Jabraj, on the other, with regard to the nature and extent of the interest which the latter had in the *taluka*. These disputes were submitted by Jabraj to a body of Oudh *talukdars*, with the late Maharaja Sir Maun Singh at their head, known as the British Indian Association, who had undertaken the amicable decision of claims preferred by cadets of a family against their *talukdar*. Raja Kishen Dat became a party to the submission; and the proceedings which followed upon it are of material importance in considering the merits of the present case.

Jabraj insisted, before the arbiters, in a claim for no less than thirty-two villages, including the two now in suit, and a third which was alleged to have been granted to him by the Raja "as a reward by reason of his accidentally killing a tiger." The arbiters adjudicated upon his claim for these three villages, but declined to entertain his claim for the remaining twenty-eight, holding that it did not relate to any right by cadetship, constituting an incumbrance upon the *taluka* belonging to the head of the family, but asserted an absolute proprietary title adverse to him, and therefore ought to be enforced by an action at law. They rejected the claim of Jabraj for the village said to have been granted to him by way of reward; and, in regard to the subjects now in controversy, they found "that the two villages, Gatwa, and Basthanwa, given as maintenance, be decreed in favour of plaintiff (to continue) as heretofore." That deliverance was confirmed by Maharaja Sir Maun Singh on the 6th July 1869.

The award was thereafter approved by the Financial Commissioner, and was filed in Court upon the 6th July 1869, which was more than six months after the passing of the Oudh Estates' Act, No. I of 1869; and it therefore did not come within the provisions of section 33 of the Act, which, if the award, with the Commissioner's approval, had been filed ten days earlier, would have made it "enforceable as if a Court of competent jurisdiction had passed judgment according to the award and a decree had followed upon such judgment." But the award was not on that account invalid. It did not constitute *res judicata* in the proper

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sense of that term ; yet it was obligatory upon both parties to the submission and upon those whose interests they represented. Raja Kishen Dat at that time represented the *taluka*, and had power to submit the dispute to the Association, so as to bind his successors ; and the award, if it gives the appellant a right to possess these two villages, is available to him in any question with the present respondent. The real controversy in this appeal turns upon the construction of the deliverance issued by the British Indian Association. It conclusively determines that the villages were "given as maintenance ;" and the parties mainly differ as to the true import of the expression "(to continue) as heretofore." According to the appellant's argument, it signifies that he was to take by succession the same right of possession which had been previously enjoyed by his father and grandfather. The respondent maintains that it merely gave Jabraj a right of possession for his lifetime, determinable on his death by the *talukdar* for the time being.

The appellant has in this suit produced two pottas, or deeds of grant, which were also produced by Jabraj in the submission, as his title to the villages, dated respectively in 1804 and 1808, and bearing to be executed by the Raja Sheo Singh in favour of his son Umrao Singh. The first contains a grant of the village Gutwa, and the second of the village Basthanwa, both grants being "rent-free."

The District Judge of Fyzabad held that the award, though *per se* invalid, was binding upon the parties, because they had accepted and acted upon it ; but he came to the conclusion that, although the appellant was entitled to retain possession of the villages, the respondent was no longer bound to pay the Government duty, seeing that the award was silent upon that point. He accordingly dismissed the respondent's suit in so far as it prayed for proprietary possession, and decreed that the appellant should pay to him annually the amount of revenue assessed upon the villages. On appeal, the Additional Judicial Commissioner of Oudh reversed that decision, and gave the respondent decree for proprietary possession, in terms of the first alternative of his plaint. He was of opinion that the interest of Jabraj Singh in these villages before the Mutiny was nothing more than a right of

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maintenance during his lifetime ; and that the award had merely the effect of keeping alive the personal right of Jabraj, and conferred no interest whatever upon the appellant.

The District Judge held that the two pottas of 1804 and 1808 were receivable in evidence, as ancient documents coming from the proper custody. On the other hand, the Additional Judicial Commissioner found that these documents "have not been proved either by evidence or by presumption of law." In that finding their Lordships cannot concur. Legal presumption appears to them to be in favour of the authenticity of the pottas, and, so far as the terms of the grant which they contain are expressed, they are entirely consistent with the facts of the case which are *aliunde* admitted or proved. They expressly state that the grants to Umrao Singh were of the two villages in question, and that under them the possession of these villages was to be rent-free ; and it is either proved or admitted that since the date of the grants, the villages were successively possessed by Umrao, and the next male descendant of his body, the revenue duty being paid by the *talukdar*.

It is no doubt true that the grants made by these pottas are, in some respects, as indefinite as the award of 1861. They do not state that the grant was confined to a right for maintenance ; and they do not specify whether such grants, if given for maintenance only, were to Umrao Singh personally, or were to be inherited by his descendants. They are conceived in general terms, which are quite capable of being construed in either of these ways, and according to the nature of the possession which was had under them with the assent of the *talukdar*. In the present case, their Lordships are of opinion that the state of possession which followed upon the grants, in the absence of any clear words of limitation, support the contention of the appellant.

In construing the final award of the British Indian Association, which determines that the right to maintenance then held by Jabraj Singh shall thenceforth continue as it had previously existed, their Lordships are of opinion that it is legitimate to refer, not only to evidence of antecedent possession bearing upon that point which is independent of the proceedings in the submission, but to those quasi-judicial acts of the arbitrators upon which their ultimate award

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was based. All the evidence derivable from either of these sources leads, in their opinion, to the inference that the original grants to Umrao Singh, although intended for maintenance only, were not limited to him personally, but were in reality grants to him and his direct lineal descendants through males in the order of primogeniture : and, consequently, that the villages will not revert to the *talukdar*, until that line of descendants has become extinct.

The respondent argued that it ought to be presumed as matter of fact that, on the death of Umrao, the right which he had obtained from Raja Sheo Singh ceased to be operative, and that his son Jabraj then received a new grant for his lifetime from the *talukdar*. There is no evidence, oral or documentary, tending to suggest that such a transaction ever took place. The possession of the appellant's predecessors has been persistently ascribed, both in the pleadings in this suit and in the submission proceedings, to the pottas of 1804 and 1808. Yet, neither the respondent, in this case, nor his predecessor, in the proceedings before the British Indian Association, ventured to meet that statement by the assertion that Jabraj's right to possess the villages was derived from a grant of later date, made to him after the death of Umrao. The arbiters have recorded the fact, that before them, Beni Singh, the Raja's agent, objected to the pottas, when produced, as his title of possession by Jabraj, not that there was another and later grant to which his possession was attributable, but that the pottas had probably been forged by him, as he had at one time the seal of the Raja under his control. The arbiters subsequently recorded their own opinion upon Jabraj's claim, holding that he was entitled to the two villages, Gutwa and Basthanwa, "by right of primogeniture," or, in other words, because he was the eldest son of Umrao. That finding was obviously the basis of their final award, which was merely delayed until they inquired how far the claims of Jabraj were "adverse" to the Raja when they decided that they were of that character and beyond their jurisdiction, in so far as relating to the twenty-eight villages.

In that state of the facts their Lordships have had little difficulty in coming to the conclusion that Jabraj possessed the two villages in succession to Umrao, and under the same grant. To that extent, they concur in the result arrived at by the District

Judge. But they are unable to assent to his view that the terms of the award are insufficient to confer upon the appellant a right to possess the villages rent-free. The award expressly declares that the right of possession, whatever its quality might be, was to continue as before, which plainly imports that, so long as it may be held to exist, the extent and incidents of possession under it are to be precisely the same as they were before the Mutiny. It is beyond dispute that one of the incidents of possession under the right before that time was, that the burden of paying revenue for the two villages fell upon the *talukdar*.

Their Lordships will, for these reasons, humbly advise Her Majesty to reverse the judgment appealed from, and to dismiss the respondent's suit with costs in both Courts below. The respondent must pay to the appellant his costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Barrow & Rogers*.

Solicitor for the respondent: Mr. *J. F. Watkins*.

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Rampini.

PRAMATHA NATH SANDAL AND OTHERS (PETITIONERS) *v.* DWARKA NATH DEY (OPPOSITE PARTY).*

1896 *May* 12.

Hatchitta—Insufficiently stamped document—Whether a suit maintainable if brought upon an insufficiently stamped document, where the defendant admitted the loan.

In a suit brought in the Court of Small Causes on a *hatchitta* bearing a stamp of one anna, the defendant admitted the loan, but pleaded payment. The Judge coming to the conclusion that the document sued upon was a promissory note, and should have been stamped with a two-anna stamp, refused to admit it in evidence.

He also came to the conclusion that the plaintiff had no cause of action independently of the document, and dismissed the suit.

Held, that the plaintiff had a cause of action independently of the document.

* Civil Rule No. 520 of 1896