

1888 for the costs of this suit in the Subordinate Court not being now awarded to the plaintiff, but he ought to have his costs of the appeals to the High Court, Nos. 25 and 26 of 1884, in which, according to their Lordships' opinion, the judgment should have been given in his favour. Their Lordships will humbly advise Her Majesty to make an order accordingly. The costs of this appeal will be paid by the Secretary of State.

KALI
KRISHNA
TAGORE
v.
THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

Appeal allowed.

Solicitors for the appellant: Messrs. *T. R. Wilson & Co.*

Solicitors for the respondent the }
Secretary of State for India in } *The Solicitor, India Office,*
Council. } *Mr. R. T. Treasure.*

C. B.

P. C.
1888
July 21.

Haidar Ali and another (Appellants) v. Tassadduk Rasul
and others (Respondents).
Ex-PARTE HAIDAR ALI.*

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

*Privy Council, Practice of—Practice relating to substitution of parties on
revivor—Representative character to be ascertained by Lower Court.*

On the death of a party on the record of an appeal pending before Her Majesty in Council, proof must be given in the Court from which the appeal has been preferred, of the representative character of the person or persons by or against whom revivor is sought. There ought to be some finding of the Court below; which, also, should give its own opinion as to who are the parties proper to be substituted upon the record. A certificate or statement on which their Lordships can act should be made by the Court below.

PETITION to revive an appeal from a decree of the Judicial Commissioner of Oudh, that Court having made an order (17th March 1888) rejecting a petition to bring on to the record certain persons alleged to represent parties deceased.

This petition related to an appeal to Her Majesty in Council, preferred by Haidar Ali and Fazl Ali, from a decree of the Judicial Commissioner. After the admission of that appeal, the present petitioner, on 1st December 1887, applied in the Judicial

* *Present: LORD HOUSFELD, LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUGH.*

Commissioner's Court stating that two of the defendant-respondents, *viz.*, Ali Khan and Ikram Khan, had died, and asking that certain persons, whom he named, might be substituted for the deceased on the record; also that a guardian *ad litem* might be appointed for such of them as were minors. On notice being given of this petition, it was opposed by the defendants-respondents as barred by time. A relation of one of the minor heirs applied to be appointed his guardian *ad litem*; and also the Agent of the Court of Wards represented that the estate of one of the respondents, a minor, had come under his charge, under ss. 161 and 162 of Act XVII of 1876.

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 HAJDAR ALI
 v.
 TASSADDUK
 HASUL.

The Judicial Commissioner rejected the petition. He was of opinion that, after the admission of the appeal to Her Majesty, he had no longer any authority in the suit, his Court being, in his view of the matter, no longer competent for any judicial act relating to it.

On this petition, which stated the above facts, Mr. R. V. Doyns appeared. The application was to revive the suit against the persons named. The Court below could ascertain the facts as to their real relationship to the deceased parties.

Their Lordships' judgment was delivered by Lord HOBHOUSE :—

Their Lordships think it is quite impossible for them to make an order upon these materials for altering the record. They have not got the facts before them, and it is very inconvenient that those facts should be tried here. There ought to be some finding of the Court below. The usual course is as laid down in Mr. Macpherson's book. He says (page 241):—
 "Of course in such cases the proper evidence must be given of the representative character of the persons by or against whom the revivor is sought. The title is more generally established upon petition to the Court below, which thereupon makes any inquiries which it may deem necessary, and orders the petition and proofs to be transmitted to England for such order as the Judicial Committee of the Privy Council may think fit to make."

The Court gives its own opinion as to who are the parties proper to be substituted upon the record. It has been the practice, so far as their Lordships can recollect, for a great

1888 number of years; and they now must request the Judicial
 HAI DAR ALI Commissioner to follow that which is the ordinary practice
 v. and to make a certificate or statement on which their Lordships
 TASSUDEUK can act.
 BASUL.

Solicitors for the petitioner:—Messrs. *Barrow & Rogers*.

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Tottenham.

1888
 March 2.

SYAMA SUNDERI DASSYA AND ANOTHER (PLAINTIFFS) v. JOGOBUNDHU SOOTAR (DEFENDANT).

Evidence—Thak-maps—Boundary—Title, question of.

The sole question for determination being a question of the boundary of two taluqs, the Judge hearing the case refused to give effect to a certain thak-map which had been prepared in 1859, and upon the face of which appeared what were admitted by the parties then owning the taluqs to be the boundary lines of the taluqs at the time; no evidence was given showing that these boundary lines had ever been altered.

Held, that the map was clearly evidence of what the boundaries of the properties were at the time of the permanent settlement, and also as to what they admittedly were in 1859.

SUIT for the recovery of possession of certain land. Plaintiff No. 1 alleged that he had purchased taluq No. 703 at an auction sale held under Act XI of 1859, and that he had been formally put into possession thereof by the Collector; he further alleged that he had sold an eight-anna share in this taluq to plaintiff No. 2; that he and his co-plaintiff had endeavoured to occupy these lands, but were prevented from so doing by the defendant who alleged that the land claimed did not belong to taluq No. 703, but to taluq No. 600; and that he was a howlatdai under the proprietors of this latter taluq.

The Moonsiff held that as the dispute was not one between two rival taluqdars, and as the defendant had failed to establish

* Special Appeal No. 2357 of 1886, against the decision of Baboo Ban Madhub Mitter, First Subordinate Judge of Dacca, dated the 18th August, 1886, reversing the decision of Baboo Nil Money Nag, Second Moonsiff of Munshigunge, dated 31st January, 1886.