

1913  
 JHULAN  
 SAIN  
 v.  
 EMPEROR.  
 RICHARDSON  
 J.

lawfully used as a place of sepulture. So far at any rate as it was so used, it was set apart as a depository for the remains of the dead and is entitled, therefore, to the protection afforded by section 297. With these observations I agree that the Rule should be discharged.

E. H. M.

*Rule discharged.*

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**PRIVY COUNCIL.**

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P.C.<sup>s</sup>  
 1913

Feb. 11.

BALJNATH RAM GOENKA

v.

NAND KUMAR SINGH.

**[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]**

*Commissioner, power of—Revenue Commissioner, power to review order made by him annulling sale for arrears of revenue—Act XI of 1859, s. 25, as amended by Bengal Act VII of 1868, s. 2.*

*Held* (affirming the decisions of the Courts in India), that a Revenue Commissioner acting under Act XI of 1859, as amended by Bengal Act VII of 1868, had, under the circumstances, no power to review his order setting aside a sale held for arrears of revenue.

APPEAL from a decree (14th May 1907) of the High Court at Calcutta, which affirmed a decree (28th November 1905) of the Court of the Subordinate Judge of Monghyr.

The defendant was the appellant to His Majesty in Council.

This was an appeal from the decision of the High Court (RAMPINI and SHARFUDDIN JJ.) reported in

\* *Present*: LORD ATKINSON, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.

I. L. R. 34 Calc. 677 where the facts will be found sufficiently stated.

On this appeal,

*De Gruyther K. C.* and *G. A. H. Branson*, for the appellant, contended that the Commissioner had full power to review his order of 23rd March 1900 when he found it was wrong. Acts XI of 1859 and Bengal Act VII of 1868 contain no procedure relating to reviews, so that there was nothing in them to prevent him from exercising his discretion and revising it. Nor is the procedure in the Civil Procedure Code made applicable. Act XI of 1859, sections 25, 33 and 36, and Bengal Act VII of 1868, section 2, were referred to, and it was submitted that every Court had an inherent power to alter on review an erroneous order made by itself. "Final" meant that an order was not subject to appeal by any other Revenue Officer. [LORD ATKINSON: The former order, though a bad decision in law, is a good and effective order. The fact that it is wrong gave the Commissioner no power to alter it.] The case of *Lala Pryag Lal v. Jai Narayan Singh* (1), on which the High Court relied, was distinguishable inasmuch as it was a case where a Revenue Commissioner reviewed an order made by his predecessor. Reference was made to cases decided under the Dekhan Agriculturists' Relief Act (XVII of 1879) sections 73, 74, where reviews were allowed on the ground of mistake, and of an order wrongly made *ex parte*: see *Badaricharya v. Ram Chandra Gopal Savant* (2), and *Ram Chandra Narayan Kulkarni v. Draupadi* (3). The Commissioner's order (21st June, 1900) made on review was valid.

(1) (1895) I. L. R. 22 Calc. 419. (2) (1893) I. L. R. 19 Bom. 113, 115.

(3) (1895) I. L. R. 20 Bom. 281, 283.

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*B. Dube*, for the respondent, was not called upon.

The judgment of their Lordships was delivered by LORD ATKINSON. Their Lordships are clearly of opinion that the order of the 23rd of March, 1900, was final and conclusive, and that, so far as the Commissioner was concerned, he had no power to review that order in the way in which he has reviewed it. That is the only point in the case. They will humbly advise His Majesty that the appeal ought to be dismissed.

The appellant must pay the costs.

*Appeal dismissed.*

Solicitors for appellant: *Watkins & Hunter*.

Solicitors for the respondent: *Barrow, Rogers & Nevill*.

J. V. W.