Raja Pratap Vikram Shah vs Kr. Upendra Bahadur Shah And Ors. on 15 September, 1951

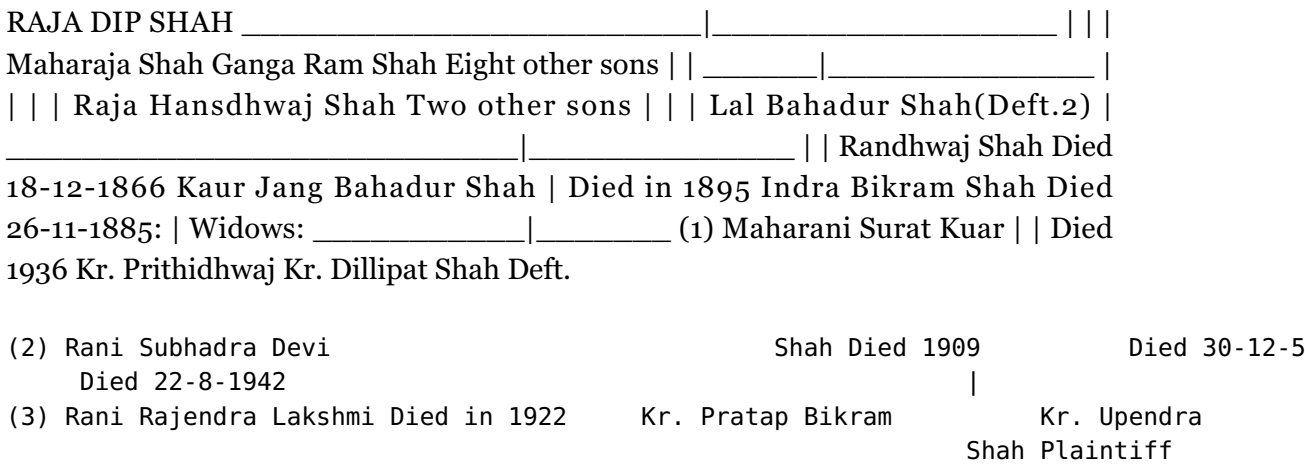
Equivalent citations: AIR1952ALL6, AIR 1952 ALLAHABAD 6

JUDGMENT

1. The controversies involved in these appeals are now confined to one point only, namely : Whether the properties specified in list A annexed to the plaint comprising twenty four villages referred to at the Bar and in this judgment for the sake of convenience as Kaffara villages and those detailed in list E of the plaint containing twenty-seven villages (hereinafter called Bardia exchange villages) constitute an 'estate' within the meaning of the Oudh Estates Acts (I [1] of 1869) and are as such governed by the rule of succession laid down in Section 22 of the Act.

2. The appeals have been laid before us on a difference of opinion between two learned Judges of this Court, Ghalam Hasan and Kaul JJ. who heard the appeals initially and have since retired.

3. The suits giving rise to these appeals related to succession to movable and immoveable properties left by Rani Subhadra Devi on her death on 22nd August 1942. The deceased Rani was the second of the three wives of Raja Indra Bikram Shah the last male holder of the Khairigarh estate popularly known as taluqa Singhai in the district of Kheri. The name of Raja Indra Bikram Shah's father, Raja Randhwaj Shah who died in 1866 was posthumously entered in lists 1 and 2 prepared under Section 8, Oudh Estates Act). Raja Indra Bikram Shah died in 1885 and was succeeded by his first wife, Sarat Kuar. She outlived her juniormost co-widow, Rani Rajendra Lakshmi and remained in possession of the disputed properties till her death in 1936. She was succeeded by Rani Sabhadra Devi who died in 1942. On the death of Rani Subhadra Devi, there were three rival claimants to the property left by her, Pratap Bikram Shah, Dillipat Shah and Lal Bahahdur Shah. Their relationship with the deceased Raja will appear from the following pedigree which is no longer in dispute :



4. The family claims descent from the Surajbansi Khattriya Kings of Ajudhia. The ancestors of Raja Dip Shah settled in Nepal. Dip Shah himself lived at Doti. He was expelled from Nepal in 1790 and on coming to Oudh, he attempted to settle in Khairigarh Pengana which was then ruled by Banjara chieftains. At first be failed to get a foothold there but eventually he succeeded in defeating the Banjaras and establish ing himself not only in that Pergana but also in parts of Bhur. In 1821 Raja Ganga Bam Shah, one of the ten sons of Raja Dip Shah conquered Kanchanpur Pergana in the Terai tract at the foot of the mountains which had been annexed by the British in 1815 after the Nepal War under the treaty of Sigauli and given to the Nawab Wazir of Oudh in 1816 in satisfaction of a debt of one million sterling. On the annexation of Oudh, Khairigarh and Kanchanpur were settled in 1856 with Raja Randhwaj Shah. The second summary settlement which took place between 1858 and 1859 after the rebellion of 1857, was also made with him. Raja received a vernacular sanad for the two ilaqas from Lord Canning, the then Governor General of India at the darbar held by him at Lucknow on 26-10-1859.

5. The two sets of villages with which we are concerned at this stage were not included in the vernacular sanad. The Kaffara property was owned by, and the second summary settlement in respect of it was made partly with, Thakar Himmat Singh taluqdar of Lakhan Tihara and the taluqdar of Dhaurara. Raja Indra Bikram Singh (not to be confused with Indra Bikram Shah of Khairigarh). Shortly after, however, the aforesaid estates, that is to say, Dhaurara and Lakhan Tihara were resumed by the Government because it was discovered that these two taluqdars had taken an active part in the rebellion of 1857. They were tried and punished and the villages constituting the Dhaurara and Lakhan Tihara about one hundred and twenty-seven in number were later given away to various persons mostly as a reward for loyalty. The Kaffara villages mentioned in list A came to Raja Randhwaj Shah by way of compensation for Kanchanpur and for several villages of Khairigarh which along with some other territory about two hundred miles in length lying on the boundary between Nepal and British India were ceded to the then Maharaja of Nepal.

6. The villages of list E came to the Khairigarh family in 1904 under a deed of exchange between Rani Surat Kuar and the Secretary of State for India, This was in lieu of the group of twenty, seven villages of Khairigarh compositely called Bardia property laying on the outskirts of the Oudh forest which was taken over by the Government for inclusion in the forest area. The Government had, it would seem, been anxious to acquire this land in 1869 and correspondence in that behalf had taken place from time to time with the late Raja. After the exchange, the villages comprised in list E remained in possession of Rani Surat Kuar and her co-widow, Rani Subhadra Devi after her, till the latter's death in 1942.

7. Soon after Rani Subhadra Devi succeeded to the estate she executed a deed of trust on 20-2-1936, for the better management of the properties and the Commissioner of Lucknow Division was made the President of the Board of Trustees. On the

termination of the life interest of the Rani, the trustees had no further right to retain the properties and since the right of succession was in doubt they instituted an interpleader suit in the Court of the Civil Judge, Kheri, on 8-9-1942, impleading two of the claimants who were the only dispatants at that time, namely, Kunwar Pratap Bikram Shah and Kunwar Dillipat Shah. They prayed that the rival claimants be restrained from taking proceedings against the trustees with respect to the properties mentioned in the schedules, that they be ordered to interplead, that meanwhile a receiver be appointed to look after the properties and that the trustees be discharged from all liabilities.

8. Apart from the properties which were covered by the trustees' interpleader suit, there were some other properties in the personal possession of the Rani, namely, cash, jewellery, cattle, foodgrains, furniture, miscellaneous house, hold effects and a house at Rishikesh. The succession to these was also in dispute and Raja Pratap Bikram Shah instituted a separate suit for determination of title in respect of them against his uncle, Dillipat Shah (Suit No. 27/15 of 1942-43).

9. The two cases were taken up by the learned Civil Judge together. The trustees were discharged on 5-12-1942, the defendants were ordered to inter-plead, Pratap Bikram Shah being placed in the position of plaintiff and Dillipat Shah as defendant l. The third claimant Lal Bahadur Shah was impleaded as second defendant at his own request. The case was thereafter transferred to the Court of the Civil Judge, Lucknow, under the orders of the late Chief Court of Oudh.

10. As stated above the name of Randhwaj Shah was entered in list 2 appended to the Oudh Estates Act. This meant that there was a statutory declaration about the existence of the custom of single heir succession in the family of the taluqdar. The claim of Pratap Bikram Shah covered both taluqdari and non-taluqdari properties. It was founded on the contention that the rule of single heir succession applied to the entire inheritance and according to his case, the rule of lineal primogeniture ought to prevail in ascertaining that heir. He founded his title to the taluqdari properties on Clause (10) of Section 22, Oudh Estates Act which lays down that if a taluqdar whose name is inserted in the second, third or fifth of the lists mentioned in Section 8, or his heir or legatee, shall die intestate as to his estate, it shall descend in default of nearer heirs specified in Clause (1) to (9) to the nearest male agnate according to the rule of lineal primogeniture. As regards the rest of the properties, his title was based on the plea that they were appurtenant to the estate of Khairigarh and as such governed by the same rule of devolution. Alternatively he contended that he was entitled to succeed to them in any event under the Hindu law of inheritance applicable to impartible estate.

11. Dillipat Shah set up a preferential right to succeed to the taluqdari as well as the non-taluqdari properties. Of such of the properties as formed an estate within the meaning of the Oudh Estates Act, he claimed title under the old Section 22 as it stood

prior to the amending Act of 1910 and of the properties other than those which could be called an estate, he claimed ownership as the nearest reversioner under the Hindu Law. It will be remembered that prior to 1910, the tenth and eleventh clauses of Section 22 conferred the estate of an intestate taluqlar in the absence of sons, brothers and widows, on the male lineal descendants not being najib-ul-tarfain and in default of such descendants the succession devolved on such persons as would have been entitled to succeed to the estate under the ordinary law. This was unlike the amended Act whereunder the estate descended in the absence of sons or their lineal descendants or brothers, widows or sons adopted by the widows of taluqdars, to the mother of the taluqdar and in default of such mother, it went under Clause (11) to the nearest male agnate according to the rule of lineal primogeniture. Dillipat Shah being one degree higher than Pratap Bikram Shah and better entitled under the Mitakshara rule, claimed that he had under the unamended Section 22, preference over his nephew, He contended further that except for thirty-nine taluqdari villages which he enumerated in the list appended to his written statement, the remaining properties, including the Kaffara villages, were non taluqdari and that the group of villages detailed in List E along with the moveable and immoveable properties covered by the second suit devolved on him as a preferential stridhan heir and in any event under a will duly executed by Rani Surat Kuar. We need scarcely encumber this judgment by setting out in detail the other contentions raised by Kunwar Dillipat Shah. The only question which we have to determine is whether the villages of Lists A and E are or are not an 'estate' within the meaning of Act I[1] of 1869. The other controversies have already been set at rest so far as this Court ia concerned by the Division Bench. We may add that these controversies have not been re agitated during the course of arguments before us.

12. Before we close the statements of the case of the parties, we may say a word about the contention of the third claimant Lal Bahadur Shah. He rested his title on the allegation that the properties comprised in the two suits were owned by the joint family of which he and the late Raja Indra Bikram Shah were members, that the succession was governed by the family custom of lineal primogeniture and the further custom to the effect that when a gaddi nashin died intestate, his widow succeeded him for her lifetime and the properties thereafter went to the nearest coparcener in the seniormost line. Alternatively he claimed as a preferential heir under Clause (10) of Section 22 on the ground that seniority ought to be reckoned not from the last taluqdar but from Raja Dip Shap. The case set up by Lal Bahadur Shah was repelled by the trial Court and the dispute so far as he is concerned is no longer alive. The decision of the case regarding the nature of the two sets of villages, whether they do or do not constitute an estate depended almost entirely on the statutory provisions of the enactment (Act I [1] of 1869).

13. The learned Civil Judge, Lucknow (Sri H.S. Chaturvedi) in a carefully written judgment analysed the entire evidence and came to the conclusion that Pratap Bikram Shah was entitled to the taluqdari property including the fifty-one villages of

Lists A and E, claimed in the interpleader suit and Dillipat Shah was entitled to the rest. As regards the non-taluqdari property including cash jewellery, cattle, household effects and other moveable and immoveable properties covered by Pratap Bikram Shah's Suit No. 27/15 of 1942-43 he upheld Dillipat Shah's claim.

14. Dissatisfied with the decision of the learned Civil Judge, Pratap Bikram Shah and Dillipat Shah came up in appeal. First civil Appeals Nos. 125 and 130 of 1943 were preferred by Pratap Bikram Shah, the former being against the decree in the interpleader suit so far as it went against him and the latter against the dismissal of his declaratory Suit No. 27/15 of 1942-43. First Civil Appeal No. 129 of 1943 was a cross appeal by Dillipat Shah. In other words, it related to that part of the interpleader suit which was decreed in favour of Pratap Bikram Shah. We may add that Dillipat Shah died during the course of arguments before the Full Bench on 30-12-1950. He is now represented by his son. Upendra Bahadur Shah. The case had unfortunately to be held up since December 1950 in order that the legal representative of the deceased defendant be brought on the record of these appeals.

15. The subsisting controversy so far as this Court is now concerned arises in First Civil Appeal No. 129 of 1943 only. The learned Judges constituting the Division Bench concurred in rejecting Pratap Bikram Shah's appeals though no formal orders for their dismissal were passed. We have stated above that no further arguments were advanced before us on the points covered by them. First Civil Appeals Nos. 125 and 130 of 1943 ought to be dismissed with costs.

16. The conflict of views between the two learned Judges relate to the Kaffara villages (detailed in List A) which were received by Raja Randhwaj Shah as compensation for Kanchanpur and for a portion of Khairigarh taluqa included in the Nepal territory and to the villages specified in List E which were received by Rani Surat Kuar in 1904 in exchange for the Bardia property. Ghulam Hasan J., his expressed the view that these fifty-one villages do not constitute an estate within the meaning of the Oudh Estates Act and Dillipat Shah is entitled under the Hindu Law to succeed to them as the nearest reversioner to the late Raja Kaul J., on the other hand, held that they must be deemed to be taluqdari properties and as such they ought to devolve on Pratap Bikram Shah under Section 22(10) of Act I [1] of 1869.

17. So far as the Kaffara group of villages is concerned, the controversy has, in view of the arguments addressed to us, to be looked at from three view points: (1) Does Section 10 of Act I [1] of 1869 which enjoins that the Court shall take judicial notice of the lists prepared under Section 8 of the Act and presume that the persons named therein are taluqdars or grantees of the kind appropriate to the list in which the entry of their names is made, avail the plaintiff for raising the irrebuttable presumption that these villages constituted an estate in the hands of Raja Randhwaj Shah? (2) Can the villages of the Kaffara group be brought within the definition of the word 'estate' given in the Act. In other words were they acquired or held by Raja Randhwaj Shah in

the manner mentioned in Section 3, and (3) Does the fact that these villages were given to Raja Randhwaj Shah in exchange for taluqdari villages fasten on them the incidents of an 'estate' ?

18. He will deal with these matters in the order mentioned above.

19. The six lists prepared under Section 8 were drawn up in accordance with the instructions issued by the Chief Commissioner in his letter No. 158 dated Lucknow 19-1-1869, and were published in due course as provided by Section 9, in the Gazette of India dated 31-7-1869 The first list comprised the names of all persons who were to be considered taluqdars within the meaning of the Act. The second enumerated those taluqdars whose estates according to the custom of the family on or before 13-2-1856 ordinarily devolved upon a single heir. The third list contained the names of talaqdars not included in the second of the lists mentioned above to whom sanads or grants were given by the British Government upto the date fixed for the closing of the lists declaring that the succession to the estates comprised in suoh sanads or grants shall thereafter be regulated by the rule of primogeniture. The fourth list consisted of taluqdars the intestate succession to whose properties or to the properties of their heirs or legatees, was regulated by the ordinary law to which members of their tribe and religion were subject. The last two lists concerned grantees, the fifth being a list of those persons to whom the rule of primogeniture applied and the sixth to grantees who were governed by their personal law. By Section 10 the Courts were called upon to regard the insertion of names in the aforesaid lists as conclusive evidence of the fact on which was based the status assigned to the persons named therein. It is clear that the status of a taluqdar was intimately linked with the taluqa whereof he was entered as a taluqdar in the lists. Otherwise regard being had to the fact that the name of a taluqdar occasionally found place in two different lists, for example, lists 2 and 5, the estate governed by the family custom of single heir succession and that governed by the custom of male lineal primogeniture, could not be distinguished. The names of the estates are thus as much part of the lists as the names of the taluqdars or grantees and the entries of both must be deemed to have been made in compliance with the provisions of Section 8. It may be noticed that by the second part of Section 10, the lists are made conclusive evidence of the fact 'that the persons named therein are such taluqdara or grantees'. The worda 'such taluqdars or grantees' it is obvious must refer back to the taluqdars or grantees mentioned in the first part, in other words 'taluqdars or grantees' within the meaning of this Act. The latter expression is to be found in Section 8 which authorises not only the making of entries of persons who were to be considered as taluqdars, but also the status enjoyed by them with reference to the estates governed by one or the other of the rules of succession to which the list or lists relate. It follows that the conclusive presumption under Section 10 must relate to three things: (a) That the person named in the lists is a taluqdar or grantee within the meaning of the Act, (b) That he holds the estates mentioned in the lists, and (c) That the rule of succession with reference to those estates is the rule appropriate to the list

in which the estate is mentioned but since the lists do not contain the names of villages or the properties comprised therein there can obviously be no presumption in respect thereof.

20. It is contended on behalf of the plaintiff that once you have a presumption about an estate, you must determine what was comprised in it by reference to what the Government considered it was made up of. On the other hand, it was urged on behalf of the defendant, and we think rightly, that the question regarding the villages which constituted the Khairigarh estate cannot be resolved by recourse to the presumption enjoined by Section 10, but by applying the tests laid down in Section 3 and if those tests were not sufficient to bring the Kaffara villages within the Act, the fact that the Government thought at one time that they were included in that particular estate was immaterial. An estate is defined under the Act as property acquired or held by a taluqdar or grantee in the manner mentioned in Section 3, Section 4 or Section 6, and a reference to those sections in cases of dispute about the properties comprised in an estate becomes imperative, the views of Government on the point notwithstanding. The entire case law on the point supports this view.

21. In Brij Indar Bahadur v. Janki Kuar, 5 I. A. 1 at p. 12 Sir Barnes Peacock who delivered the judgment of their Lordships Board observed :

"By Section 10 of the Act, list 1 is conclusive evidence that Kablas was a taluqdar within the meaning of the Act and there can be no doubt that the estate in dispute is one of the estates referred to by the Aot and that by virtue of Section 3 Kablas Kuar must be deemed to have acquired by the sanad a permanent, heritable and transferable right in the estate in dispute."

We may mention that the contents of the Pauansi estate mentioned in the list I were not in dispute in that case. The conclusive presumption raised by their Lordships related only to the fact that Kablas was a taluqdar within the meaning of the Act and no such presumption was specifically mentioned as attaching to the entry of the estate.

22. In the Deogaon case, Murtaza Hussain v. Mohammad Yasin, 43 Ind. App. 269 it was observed by Mr. Amir Ali that :

"Section 10 of the Act after declaring that no persons shall be considered taluqdars of grantees within the meaning of the Act other than persons named in such original or supplementary lists as aforesaid (supplementary lists are provided for in Section 9), provides that the Court shall take judical notice of the said lists and shall regard them as conclusive evidence that the persons named therein are such taluqdars or grantees, that is, within the meaning of the Act. This does not mean that they shall be conclusive merely as to the fact that the persons named therein are taluqdars as defined in Section 2; in their Lordships' opinion, the provision of Section 10 goes much further; it means that the Courts shall regard the insertion if the names in these

> lists as conclusive evidence of the fact on which is based the status assigned to the persons named in the different lists. For example in list 2 such taluqdars alone are included whose estates according to the custom of the family on or before 13-21-56 the date of the not annexation of Oudh) ordinarily descended on a single heir. Their title to have their names inserted in the list is based on the specific family custom set up in the section. Under Section 10 the Courts are bound by the statute to regard as a conclusive fact that there was such a pre-existing custom attaching to those estates on which their inclusion in list 2 was based.
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> The case, it would be noticed does not deal with the contents of an estate.

23. In the Auseni case, Mt. Nandrani Kunwar v. Mt. Indar Kunwar, 54 Ind. App. 5 Mt. Amir Ali paraphrased what he meant by his statement in the Deogaon case in the following passage :

> "In the case of Murtaza Husain Khan v. Mohammad Yasin Khan, 43 Ind. App. 269 their Lordships have held as to the effect of Section 10, as follows :
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> That section provides that the Court shall take judicial notice of the lists and shall regard them as conclusive evidence of the facts they record."

Similar views were expressed by the Judicial Committee in the Gandara case, Ejaz Ali v. Special Manager, Court of Wards Balrampur estate, A. I. R. (22) 1935 P. C. 53 at p. 54, and in the Bharawn case, Gaya BaKhsh Singh v. Deo Singh, 65 Ind. App. 137.

24. There is another line of cases in which the Privy Council has refused to give effect to the entry in the lists on the ground that the result of giving effect to such entry would be to deprive persons of the rights which already vested in them before the Act was passed--see the Gopamau case, Mohammad Abdus Samad v. Qurban Husain, 31 Ind. App. 30 and Raja Mohan v. Nisar Ahmad, 60 Ind. App. 103 at p. 111.

25. In the Haswar case decided by a Division Bench of the late Chief Court of Oudh, Prabhu Narain v. Jitendra Mohan, 1947 Ondh W. N. 421 at p. 432 after a consideration of the cases bearing on the point, the law was, if we may say so, correctly summarised as follows :

> "A consideration of the decision of their Lordships of the Judicial Committee lead us to the conclusion that Act 1 of 1869 is given retrospective effect unless the effect of doing so would be to divest rights that had already vested in some persons other than persons entitled to get them by virtue of Act I of 1869 and that in case the Act is applicable, a conclusive presumption arises not only that the person entered in the list is a taluqdar but that the fact upon which his entry in the list is based also exists, that is to say, in this case that Madho Prasad Singh was a taluqdar to whom a primogeniture sanad was grantel."

28. In none of these cases was there any controversy as to what was comprised in a particular estate mentioned in the list. This controversy was raised in two cases in the Ranimau case, Janki Prasad v. Dwarka, Prasad, 9 Ind. Cas. 83 (Oudh) which went up in appeal to their Lordships Board and was decided in Janki Prasad v. Dwarka Prasad, 40 I. a. 170 and in the Gangwal case, Hari Har Pratap v. Bisheshwar Baksh 3 Luck. 326. In the former case Sundar Lal and Piggott JJ. held that the presumption under Section 10, referred to the fact that the person who was entered in the list was a taluqdar and that his estate was governed by the rule of succession which applied to that particular list. But what was comprised in the estate must be determined with reference to Section 3 of the Act. In the latter case the question was whether the taluqa of Gangwal consisting of sixty villages was an estate within the meaning of Act I of 1869. The summary settlement was made within the dates specified in Section 3 with Sitla Bakhsh Singh in respect of fifty-nine villages and a taluqdari sanad was granted to him. At that time village Rajapur which was a forest was not settled with him. He obtained title to it under a grant but somewhat later Sitla Bakhsh Singh's name was entered in lists 1 and 2 of the Act and the question which arose for consideration amongst others was as to what villages came within the definition of 'estate' as defined in the Act. No qabuliat and no list of villages was product. At the regular settlement these fifty nine villages as also the sixtieth village Rajapur were declared to belong to Sitla Bakhsh Singh, the taluqdar and were comprised in the estate of Gangwal. Sir Louis Stuart C.J. and Mr. Justice (later Sir) Wazir Hasan J., held that :

> "According to Section 10 of the Act, the entry is conclusive evidence not only of the fact that Sitla Bakhsh Singh was a taluqdar within the meaning of the Act but also of the fact that he was a taluqdar possessed of the estate of Gangwal in the district of Bahraich. This ia the significance which must be attached to the word 'such' which precedes 'taluqdar' in the last line of Section 10. This word connotes all the legal characteristics of a taluqdar whose name finds place in list I of the lists prepared under the Act. 'Estate' is defined in the Act as a taluqa or immoveable property acquired or held by a taluqdar in the manner mentioned in Section 3 of the Act'. It follows that the estate of Gangwal possessed by Raja Sitla Bakhsh was held by him in the manner mentioned in Section 3 of the Act. It was so held by their Lordships of the Judicial Committee in the case of Brij Indar v. Janki Kuar, 5 I. A. 1 the penultimate paragraph at page 12".

> 27. The learned counsel for the plaintiff vehemently urged that this statement of the law shows that the estate mentioned in the lists must be considered to be an estate within the meaning of Section 3 and that what was comprised therein has not to be decided in the light of Section 3, but from the fact as to what the Government considered was comprised therein or what it could be proved to have consisted of. We find it difficult to accept this contention. Immediately after making the observations reproduced above, the learned Judges remanded :

> "If the above reasoning is correct, the only matter which requires to be proved is as to what immoveable property constitutes the estate of Gangwal".

Unfortunately the learned Judges first proceeded to notice the statement in the wajibularz as to the contents of the Gangwal estate which at first sight gives the impression that what one has to consider is not whether the villages referred to fulfil the requirements of Section 3 but whether there is evidence to show that the disputed villages were considered to be included in a particular estate or not. This is not what they in fact laid down, for, after discussing the entries in the wajibularz, and saying that they showed that the summary settlement within the dates mentioned in Section 3 had been made with Sitla Bakhsh Singh in respect of fifty-nine villages and that with respect to the sixtieth village, Rajapur, a grant bad been made to Sitla Bakhsh Singh and all sixty villages had been decreed at the first regular settlement, they proceeded to say that these facts proved that the property was covered by Section 3 of the Act. They also observed that the Qabuliat executed at the summary settlement and the list of villages attached thereto is primary evidence to prove what villages constituted an estate as contemplated by Act I of 1869, But when the qabuliat and the lists cannot be produced the wajibularz can be referred to aa important secondary evidence of that fact. The decision in the Gangwal case 3 Luck. 326 thus does not countenance the suggestion of the learned counsel for the plaintiff that Section 8 read with Section 10 makes it unnecessary to enter into the requirements of Section 3 for the purposes of establishing whether a particular village or a group of villages is or is not an estate within the meaning of the Act In order, therefore, to prove that the Kaffara villages fell within the definition of "estate" and the succession thereto is governed by Section 22, the plaintiff must establish that they are covered by Section 3.

27a. This leads us to the second of the three controversies mentioned above Section 3 after omitting the explanation reads as follows :

"Every taluqdar with whom a summary settlement of the Government revenue was made between 1-4-1858, and 10-10-1859, or to whom, before the passing of this Act and subsequently to 1-4-1858, a taluqdari sanad has been granted, shall be deemed to have thereby acquired a permanent heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such taluqdar when such settlement was made, or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from having been affirmed, subject to all the conditions affecting the taluqdar contained in the orders passed by the Governor-General of India on 10th and 19th days of October 1859, and republished in Schedule 1 hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held."

For a proper consideration of the points involved in the arguments relating to the aforesaid section, three questions of fact have to be settled first : (1) Were the Kaffara villages summarily settled with Randhwaj Shah between 1-4-1858, and 10-10-1859,

(2) was there a second sanad issued to the Raja and were the Kaffara villages included therein, and (3) where Kanchanpur and parts of Khairigarh taken away from Randhwaj Shah before 10-10-1859, or after that date.

27b. These questions are closely interlinked inasmuch as the loss of Kanchanpur and of the villagas of Khairigarh to Raja Randhwaj Shah marked also the acquisition by him of the Kaffara villages as compensation.

27c. At the annexation of Oudh in 1856 Raja Randhwaj Shah was in possession of two Taluqas, namely Khairigarh and Kanchanpur. The summary settlement inaugurated by Lord Dalhousie was made with him, but on the reoccupation of Oudh by the British the entire soil of the Province was confiscated by the famous proclamation of Lord Canning issued from Allahabad on 15-3-1858. The circumstances under which Lord Canning took the step are mentioned in the proclamation itself. It says ;

"The Army of His Excellency the Commander-in-Chief is in possession of Lucknow, and the city lies at the mercy of the British Government, whose authority it has for nine months rebelliously defied and resisted.

This resistance, began by a mutinous soldiery, has found support from the inhabitants of the city and of the Province of Oudh at large. Many who owed their prosperity to the British Government as well as those who believed themselves aggrieved by it have joined in this bad cause and have ranged themselves with the enemies of the State.

They have been guilty of a great crime and have subject ed themselves to a just retribution.

The capital of their country is now once more in the hands of the Brinish Troops.

From this day it will be held by force which nothing can withstand and the authority of the Government will be carried into every corner of the Province.

The time then has come at which the Right Hon'ble the Governor-General of India deems it right to make known the mode in which the British Government will deal with the Taluqdars, Chiefs, Landholders of Oude, and their followers."

It proceeded then to exempt from confiscation the estates of the Taluqdars of Balrampur, Padnaha, Sisseni, Katiari Gopal-Khera and Maurawan for their steadfast allegiance at the time when the authority of the Government was overborne and promised that a proportionate measure of reward and honour, according to their deserts, will be conferred upon others in whose favour like claims may be established aforementioned sis Taluqdars, Lord Canning confiscated to the British Government the proprietary rights in the soil of the entire province and held out a hope to the

Taluqdars, Chiefs, Landholders and their followers who may thereafter submit to the Chief Commissioner of Oudh and obey his order and surrender their arms, that their lives and honour shall be saved provided their bands were not stained with English blood murderously shed. He called upon them to throw themselves upon the justice and mercy of the British Government, and to those who may promptly come forward and offer support in the restoration of peace and order it was said that the indulgence of the Government will be large and the Governor General will be ready to view liberally the claim which they may thus acquire for the restitution of their former rights. This action of Lord Canning it is obvious, was calculated on the one hand to demoralize and dissolve the existing pockets of resistence by removing the influence of the landed magnates and by striking terror in the rebel leaders, and on the other to provide the British Governor-General with the means of placating and pacifying the country.

28. The proclamation of Sir James Outram, the then Chief Commissioner of Oudh, issued ten days later on 25-5-1859, informed the Taluqdars that if they came ready to obey his orders, their respective claims would be heard. Three months later his successor Sir Robert Montgomery addressed on 23-6-1858, a circular letter to all Taluqdars calling upon them to come to Lucknow and to receive as gifts from the Government fresh granta in respect of the Taluqas held by them before the rebellion of 1857. The change of attitude from the policy of confiscation to that of recognizing the earlier titles appeared somewhat too audden and the Taluqdars were not inclined to take the promises held oat to them as a true index of the intentions of the Government. A great majority of them nevertheless came forword and second summary settlement on the lines of Taluqdari system was made with them in 1266 Fasli. It may be mentioned that the previous mode of settlement with the actual occupier of the soil had been found to be unsatisfactory and the new and revised policy which the Government chose to adopt was to make the settlement with the large landed proprietors and Taluqdars etc., in order to ensure that their allegiance would prove in times of need a powerful bulwark against the refractory or mutinous elements of the Province. According to the Taluqdars, however, the declarations of the Government and the summary settlement of 1266 Fasli had in it an air of unreality inasmuch as their title to their lands did not extend beyond a right to possess them temporarily on payment to the Government of a fixed sum in the shape of revenue. Sensing this general distrust Sir Robert Montgomery's successor Sir Charles Wingfield wrote to the Governor. General on 4-6-1859, that in order to bring the Taluqdars completely to the side of the British Government it was necessary that they be made actual proprietors of the lands which were settled with them and the Governor. General agreeing with the proposal communicated the liberal intentions of his Government by his letter dated 10-10-1859, which later formed the Magna Charta of the Taluqdars and was incorporated in Schedule 1 of Act I of 1869. The letter declared that :

> "every taluqdar with whom a summary settlement has been made since the reoccupation of the province, has thereby acquired a permanent, hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa . . . ."

It said in the fourth paragraph of the latter that:

> "The Governor General in Council desires that you will have ready, by His Excellency's arrival at Lakhnau, a list of the taluqdars upon whom a permanent proprietary right has now been conferred; and that you will prepare sanads to be issued to these taluqdars at that time. The sanads will be given by, and will run in the name of, the Chief Commissioner, acting under the authority of the Governor-General."

29. The form of Sanad which was devised by the Chief Commissioner in pursuance of the above direction was approved by the Government of India with minor alterations in its letter dated 19-10-1859. This letter was also incorporated in Schedule 1, appended to the Oudh Estates Act of 1869. It stated inter alia that the proposed form of Sanad which was intended to be given to the Talaqdars of Oudh and which granted to them "a full and proprietary right in the Taluqa for which they have severally been permitted to engage at the summary settlement" was generally approved and a revised copy with some few alterations was returned for careful translation into the Hindustani language in which the Sanads were to be prepared.

30. The Darbar referred bo in the letter of 10-10-1859, was held at Lucknow on 26-10-1859, and was attended by 150 Taluqdars. Raja Randhwaj Shah was one of those present and he was given an approved form of Taluqdari Sanad in respect of the Taluqas of Khairigarh and Kanchanpur. The Sanad (26-10-1859) is of importance inasmuch as it shows unmistakably that the Taluqa of Kanchanpur was still in possession of the Raja of Khairigarh.

31. It is a matter of history that most of these Sanads had to be exchanged at a later date for the new parchment Sanads in pursuance of the policy which was conceived by Sir Charles Wing field for inducing the Taluqdars to entail their estates and to declare in favour of the adoption of the rule of primogeniture.

32. In order to understand the process by which the Kaffara villages came to be given to Raja Randhwaj Shah, we have to go back to the time of the 'Mutiny' when the British found themselves overwhelmed by the superior forces of the insurgents in Oudh. In order to meet the situation created by that emergency the British had to obtain outside help from the Maharaja of Nepal. After the supression of the rebellion the Governor-General with the previous sanction of the Secretary of State for India informed the Prime Minister of Nepal at an audience granted to him on 8-4-1858, that in recognition of the great and generous aid rendered by the Gurkha troops to his Government it was intended to restore to the Nepal Darbar a portion of the territory which bad come to the British by the treaty of Sigauli of 1815. The 200 miles long tract of land proposed to be returned was almost the

whole of the Gurkha possessions below the hills extending from the river Gopa on the west to the British territory of Gorakhpur on the east and bounded on the south by Khairigarh and the district of Bahraich Lord Canning's letter to the Maharaja despatched on 17-5-1858, said:

> "I now desire to offer to your Highness the cordial thanks of the Government of India for the assistance thus given by the troops of Nepal, Within a few days of this time those troops will have recrossed the British fronteir, and I wish that their return to your Highness's dominions should be marked not only by this written expression of thanks but by a public and substantial token of the estimation in which the British Government held your Highness's friendly conduct.
>
> ...To this end I have determined on the part of the British Government, to restore to the Nepal State the whole of the former Gurkha possession below the hills extending from . . .
>
> Measures will hereafter be taken after a favourable season of the years to mark out the exact boundaries as by means of Commissioner to be appointed on the part of the British Government and the State of Nepal... I trust that the return of this territory to Your Highness's rule will be acceptable to your Highness and to the Nepalese Darbar." (Ex. A. 251.)

33. The proposal to cede the territory was in due course announced at a public Darbar and the treaty between the two Governments was made at Kathmandu on 1-11-1860 and ratified by the Governor-General fourteen days later. Paragraph 3 of this treaty declared that the boundary lines surveyed by the British Commissioner appointed for the purpose extended eastwards from the rivers Kali and Sardah to the foot of the hills north of Bagaura Tal and marked by pillars' "shall henceforth be the boundary between the British Province of Oudh and the territories of the Maharaja of Nepal".

34. The area comprised in the territory made over to Nepal included the whole of Kanchanpur and some of the villages of the Taluqa of Kairigarh. When the negotiations between the two Governments were well under way it was felt that the Rajas' consent for the cession to Nepal of 52 villages comprising Kanchanpur and 11 whole and some odd portions of Khairigarh Taluqa should be secured and he should be adequately compensated for his loss by giving him lands out of the adjoining confiscated estates of Dhaurara and Lakhan-Tihara. We will advert to this matter again at a somewhat later stage.

35. We have already stated thafc the cession of Kanchanpur and the acquisition of Kaffara villages took place simultaneously. The parties are at issue about the time when this occurred. According to the defendant the event took place before the Governor-General issued his famous letter of 10-10-1859. The plaintiff on the other hand was somewhat uncertain of the date when he filed his Claim in the Court of the Civil Judge Kheri. He mentioned there in that Kanchanpur was ceded in 1859. In the course of oral pleadings, however, his counsel stated that he could not definitely tell whether the Taluqa went out of the hands of the Raja before or after the date of the aforesaid letter. His case on this point became definite during the course of the trial and as finally developed it was

that the cession of Kanchanpur etc. and its transfer to the Maharaja of Nepal occurred in 1860. We may say at once that notwithstanding the plaintiff's vacillation the evidence on the record establishes that the date of cession finally given on the side of the plaintiff is more in consonance with facts.

36. We have already referred to the fact that the Sanad in respect of Taluka Kanchanpur was issued to Raja Randhwaj Shah on 26-10-1859, a fact which militates against the defendant's contention. The proposal for exchange of Kaffara was made to the Raja for the first time on 7-1-1860, as the memo written by the Deputy Commissioner, Lakhimpur, to the Raja (EX. D. 1. W. 1/1) will show. The document contained a list of 21 villages out of the two confiscated Ilaqas thafc the Deputy Commissioner proposed to retain in accordance with the orders of the Commissioner for being given to Randhwaj Shah by way of exchange bearing a Government Jama of Rs. 8020. The proposal gave rise to two controversies between the Government and the Raja on account of the latter's desire that the proprietary groves and houses should be regarded as part of the Taluqa and should go with it, and for the further desire that he should be compensated for the 4 Nankar villages of the Taluqa of Kanchanpur which were not assessed to Government revenue. The Raja's claims in respect of these matters and documents connected show that the controversy lasted from 23-1-1860 till 21-4-1860, when the Chief Commissioner passed the formal order granting further villages of the annual revenue of Rs. 1000 out of the confiscated Ilaqa of Dhaurara (See in this connection Exs. 60, 485, A. 121, 571, 632 and 604). Thus the question regarding the villages which would be given to the Raja as compensation for Kanchanpur was still under consideration till 21-4-1860. The Raja could scarcely have been deprived of Kanchanpur till then. The first indication of the fact that the Raja had been put in possession of 30 Kaffara villages of the land revenue of Rs. 9,025 is in the letter of the Commissioner be the Chief Commissioner (Ex. 605) dated 26-5-1860. The report of the Chief Commissioner Ex. 122 to the Government of India and the sanction given to fche arrangement by the Governor General contained in Ex. A60 on 12-6-1860, marked the final stage in the transferance of the Kaffara property.

37. The papers relating to the demarcation of the villages to be ceded to Nepal lead to the same result. It will be remembered that the territory which was to go to the Maharaja included 11 whole villages and portion of some others out of the Taluqa of Khairigarh. For the loss of these villages the Raja put forward a claim with the Government and asked for relief from taxation and for compensation in respect of the deserted villages which he was deprived during the demarcation proceedings. These deserted villages, we understand from the learned counsel, were temporarily cultivated by Nomad tribes for a few years and were pro tanto assessed to revenue. The cultivation was given up thereafter for more fertile vacant lands at the foot of the mountains which in turn were left after a few years for fresh fields. Some of these deserted villages, it would seem, were included in the terribory which under the arrangements with the Maharaja was to go to him out of British India. Khairigarh had at the time 136 villages 11 of which fell in it leaving only 125 villages, The Raja's claim for compensation for the area is referred to in the report of the Naib Tahsildar dated 1-2-1861, made to the Deputy Commissioner (EX. 633). The document refers to the "last year's boundary marks (Tuda bandi)" and implies that the demarcation proceedings had taken place sometime in 1860.

38. In Ex. 607, dated 5-11-1861, the appeal filed by the Raja to the Commissioner against the decision of the Deputy Commissioner, the demarcation proceedings are said to have started in April 1860, and in Ex. A252, dated 30-7-1860, the Chief Commissioner's annual administration report for the period May, 1859 to April, 1860, which was then the financial year, it was stated that.

> "The work of laying down the boundaries of the former Gurkha possessions below the hills, now about to be restored to Nepal has been accomplished during the cold season by the Commissioners of the two States and a full report of the proceedings has been submitted."

The reference to the cold season in this document appears to us to relate to the cold season of 1859-1860. The report was for the period 1859-60 and Kanchanpur had not been ceded to Nepal till the date of its completion. The demarcation proceedings had been accomplished during the cold season of 1859-60, and when the report said that:

> "From 1st May Revenue ceased to be collected in the tract in question and those Taluqdara whose states lay partially within its limits have formally resigned all proprietary rights in it, on being compensated with grants of confiscated land in other parts of Oudh."

the reference was to 1-5-1660 and not to 1-5-1859, as argued on behalf of the defendant. A reference to para. 151 of the same report dealing with the revenue survey of the Province would make it clear. It stated :

> "The revenue survey of the Province has been commenced during the past year. The survey party under it. Anderson after completing their work in the Punjab arrived at Partabgarh on 18-12-1859. The Officer deputed to demarcate the village boundaries, in anticipation of the arrival of the survey party made over all the necessary papers on 6-1-1860, when main circuits were laid out, field parties organised and work started. Owing to the deputation of Lt. Anderson with a portion of his establishment as one of the Commissioners for defining the Nepal boundary the work did not progress so rapidly as it would have done under personal superintendence of that officer with the aid of his whole establishment.

39. Reference may also be invited to the following passage in para. 147 of the same report which deals with forests:

> "Until the limits of the territory about to be ceded to Nepal had been defined and the quality and extent of the forests left with this Province had been ascertained, no permanent scheme of forest management could be decided upon and the interim system commenced in 1857 and renewed in 1859 has, therefore, been continued throughout the past year."

40. The following points are thus abundantly clear, (a) The territory to be ceded to Nepal had not in fact been ceded till June 1860, (b) Raja Randhwaj Shah did not surrender possession of Kanchanpur etc. till April or May 1860 and his liability to pay land revenue in respect thereof did not stop till then, and (c) The sovereignty of the British in the territory at the foot of the hills which was later ceded to Nepal under the treaty of Kathmandu dated 1-11-1860 did not cease till that date. We may in this connection mention an argument advanced on behalf of the defendant that the agreement in 1858 arrived at between India and Nepal regarding the transference of 200 miles long territory to the Maharaja resulted forthwith in the cessation of British sovereignty therein. According to the argument the fact that the formal treaty took place in 1860 and the demarcation of boundaries was made in that year did not make any material difference. If this argument were to be accepted the date of cession would have to be placed in May 1858 when the Governor General offered to give up that area to Nepal, in other words, before any proprietary rights therein could arise by virtue of the letter of 10-10-1859. There are two reasons for overruling this contention. In the first place, a mere agreement to transfer is not the same thing as the actual cession Reference may in this connection be made to Schwarzenberger's International Law (vol. I) wherein the following passage occurs at page 129:

> "Unless anything to the contrary is expressly agreed, the cession becomes effective only with the actual transfer of sovereignty. The Permanent Court of International Justice emphasised this point in its judgment on German Interests in Polish Upper Silesia (1926) and on the Lighthouses in Crete and Samos (1937). Until the date of the "entire disappearance of any political link" with the ceding State, the sovereignty over the ceded territory remains with the ceding State, even if the treaty providing for the cession has prior to this date come into force."
>
> In the second place, the correspondence that passed between the Governor General and the Maharaja of Nepal does not indicate that there was any intention to cede the territory eo instanti inasmuch as it was clearly stated in the proposal made to the Nepal Maharaja that the demarcation proceedings will be taken in hand at a later date and the territory would be given up thereafter. "We may add that by the third article of the treaty of Kathmandu the relevant portion of which we have reproduced almost verbatim in an earlier part of this judgment, declared unequivocally that the boundary lines surveyed by the British Commissioner "shall henceforth be the boundary between the British Province of Oudh and the territory of the Maharaja of Nepal."

41. Before we close this part of the case we ought to add that our attention was drawn to a statement in the Gazetteer of Kheri to the effect that Kanchanpur was ceded to Nepal in 1859. In view of the other and more reliable evidence on the record, however, we have refused to attach much importance to the date mentioned there.

42. We now come to the other questions of fact, namely, whether the Kaffara villages were summarily settled with Raja Randhwaj Shah between the 1-4-1858 and 10-10-1859, or later and whether the second Sanad issued to the Raja included those villages. It has already been stated that

initially the second settlement of the Kaffara villages was made with Th. Himmat Singh of Lakhan Tihara and Raja Inder Bikram Singh of Dhaurara. The letter of the Commissioner to the Deputy Commissioner of Mohamdi (Ex. D. 1 W. 1/3) dated 15-8-1859, would show that these Taluqas were attached from Kharif of that year and they were held under Qurq Tahsil. Subsequently the Commissioner ordered on 5-10-1859, that the personal and real property of the aforenamed persons who were then in prison should be confiscated in accordance with the minutes of the Judicial Commissioner dated 20-9-1859. It further directed that the landed estates of both of them which were held under attachment should be maintained under Kham management pending the Chief Commissioner's orders as to their disposal. The action taken against the two prisoners was approved by the Governor General on 10-11-1859 (Ex. A120). The Chief Commissioner in his turn communicated the approval to the Commissioner of Lucknow Division by his letter Ex. 119 dated 22.12.1859. Finally the estates of the two rebel Taluqdars were confiscated and the settlement was resumed. Twentyone villages out of the Taluqa of Dhaurara were thereafter given to Capt. Hearsey as a reward for his services during the upheaval of 1857 (see the Form No. 668 whereunder summary settlement of these villages was made with Capt. Hearesey on 30-1-1860). The Kaffara villages were carved out for Raja Randhwaj Shah. On 7-1-1860, the Deputy Commissioner of Mohamdi prepared a list of villages out of the confiscated Taluqas for being given to the Raja. We have also said that on his representation the Chief Commissioner agreed on 21-4-1860 to give him further villages of the land revenue of Rs. 1000 as compensation for the Nankar lands. The Commissioner of Khairabad thereafter submitted to the Chief Commissioner for his approval to quote his own words, "B" Settlement Form A and a list of the lands proposed to be given to the Raja carrying a net Jama of Rs. 9023 and informed him that the Raja had already been put in possession of the property (vide Ex. 605). This was in May, 1860. He requested the Governor General in Council to sanction the arrangement made and on the approval of the Governor General being obtained, the Chief Commissioner returned the form to the Commissioner on 25-6-1860. The letter does not make any reference to any list of villages or to any statement B. We believe that when the Deputy Commissioner mentioned in his letter that he was submitting "Settlement Form A with a list of the lands to be given to the Raja carrying a net Jama of Rs. 9025", all that he meant was that Form A which was being sent contained in it the names of the Kaffara villages and their respective Jamas. We say this because if a separate list had been forwarded to the Chief Commissioner the latter would not have kept it with himself and returned to the Deputy Commissioner only one of the two documents, It is somewhat unfortunate that the aforesaid Form A is no longer available and we are left to speculate regarding its contents.

43. From what has been said above there appears to be no warrant for the argument advanced on behalf of the defendant that no summary settlement in respect of Kaffara villages was made with Raja Randhwaj Shah The settlement was in fact made by the Chief Commissioner with the sanction of the Governor General and there can be no doubt regarding its validity. The. subsequent history of the Kaffara villages would show that the area thereof was demarcated into 24 villages and incorporated in the Taluqa of Khairigarh. As is well known primogeniture Sanads were issued to the Taluqdars who adopted the rule of primogeniture in pursuance of the policy of the British Government to make the Taluqas descendible to single heirs. Raja Randhwaj Shah on inquiry made from him by the Deputy Commissioner indicated that he would like his Darbar Form of Sanad to be exchanged for the new Form (vide Ex. 363, dated 10-6-1861). By this time the Ilaqa of Kaffara had

come into his possession and the Deputy Commissioner of Mohamdi in submitting a list of Taluqdars of his district stated against Raja Randhwaj Shah that he had already received a Sanad, but it included Kanchanpur which has since been given to Nepal and he should, therefore, have another Sanad granted "for the amount now stated" (vide Ex. P. W. 3/15, dated 26th July 1860). In fact the list did not mention the revenue and the column in respect of it was left blank. The subsequent correspondence relating to the grant of a new Sanad, however, shows that the revenue of Kaffara villages were included in the revenues of Khairigarh. Ex. P. W. 3/11 was a letter sent by the Commissioner to the Deputy Commissioner Mohamdi calling for information as to the names of the estates and the particulars of the Government Jama thereof for the purpose of making an entry in the parchment Sanads. The reply sent by the Deputy Commissioner on 4th October, 1861 (Ex. P. W. 8/4) showed against the name of Randhwaj Shah a land revenue of RS. 30,112. On receipt of the above information, the Commissioner returned the 12 parchment Sanads to the Chief Commissioner with a covering letter Ex. 621 on 11th November, 1861, and recommended that a parchment Sanad be issued to Raja Randhwaj Shah in respect of Khairigarh with a land revenue as stated above. The revised Sanad was thereafter prepared on 27th November, 1861, (vide Ex. A. 248) and it was handed over to Raja Randhwaj Shah on 18th December, 1861 (EX. A-31). 44. We know that the land revenue of the original Khairigarh and Kanchanpur estates totalled Rs. 23,966, the Jama of the Ilaqa of Kanchanpur ceded to Nepal being Rs. 4,179 and the Jama of old Khairigarh, Rs. 19787. In fact the revenue of the two Taluqas was shown in EX. A116 as Rs. 23,947. We also know the Kaffara villages given in compensation bore a land revenue of Rs. 9,025, thus bringing the total Jama of old Khairigarh plus the Kaffara villages to Rs. 28,812. A sum of Rs. 1,300 was added to this figure as the land revenue of the deserted villages (vide Ex. 478) thus making the total of Rs. 30,112, which is the revenue of the enlarged Khairigarh estates mentioned in the new Sanad. The conclusion is irresistible that the enlarged Khairigarh included in it the adjoining villages of Ilaqr Kaffara.

45. The parchment Sanad granted to Raja Randhwaj Shah referred to a Qabuliat. This Qabuliat must, we think, have been the one which was executed by the Raja for Rs. 30,112. It is true that neither the original Qabuliat nor the list are now forthcoming but the evidence consisting of orders passed in suits filed by certain persons in the course of regular Settlement proceedings, and the wajibularaiz and Robkars prepared in those proceedings establish without a possibility of reasonable doubt that the summary Settlement of Kaffara villages was made with the Raja and they were included in the second Sanad granted to him subsequently.

46. During the course of proceedings for the first regular Settlement one Dharni Dhar, a descendant of the Banjara Chieftains of Kanchanpur, brought suits for recovery of Kaffara villages on the allegation that the estate of Kanchanpur in exchange for which they were given belonged to him and not to Raja Randhwaj Shah. Dharni Dhar's claims were dismissed by the Settlement Officer on the finding that Kaffara villages had been summarily settled with the Raja and were included in his Sanad. As an example we might mention the plaint of village Dulhi EX. 309 and the judgment of the Settlement Officer dated 5th May 1869 Ex. 310 saying :

> "This claim is not maintainable as Kanohanpur estate is beyond the jurisdiction of this Court and Ilaqa Kaffara, which includes the above village also, being the property of Raja of Dhaurara, a rebel, was confiscated and granted to the Taluqdar of

Khairigarh and having been included in his Sanad, a Settlement was made with him . . . . "

Similar orders with respect to other villages are on the record (vide for example, Exs. 846, 318, 828 and 342). In some of these orders though the Sanad is mentioned the fact that there was a settlement is not 'mentioned (vide, for example Exs. 535 and 390) These were besides some other documents taken from another suit instituted by a mortgagee of Dharni Dhar or his ancestor to the same effect (vide Exts. 339 and 340). We have another set of claims by one Sheorani. This was in respect of Khairigarh, In the proceedings Raja Inder Bikram Shah was called upon to produce his Sanad and he filed the document in Court on 17th September, 1868. The Settlement Officer was thereupon satisfied that Kaffara was exchanged in lieu of Kanchanpur, though he was not clear how the land revenue mentioned therein came to be Rs. 30,112 instead of Rs. 28,812. He made a comparative list of villages and enquired how the sum mentioned in the Sanad was arrived at. The answer submitted by the Record Keeper was to the effect that the land revenue of Rs. 1,300 related to certain deserted villages. We have already referred to this report in another connection and all that we need say here is that the proceedings of Sheorani's case also show that the Kaffara was included in the Sanad of Khairigarh.

47. The proceedings relating to the first regular settlement of Khairigarh villages are also important in this connection. The entire estate of Raja Inder Bikram Shah consisting of 107 villages was then divided into 4 Ilaqas, 20 villages being put in Ilaqa Kaffara, 8 in Ilaqa Jamania Dubela, 14 in Majhra and 70 in Ilaqa Khairigarh. We may mention that the original 125 villages of Khairigarh were reduced to 83 in this Settlement and 24 villages of Kaffara which were added to them made the total number of villages comprising in the large Khairigarh Ilaqa as 107. The Wajibularaiz and Robkars prepared in the regular Settlement proceeding in respect of the various Kaffara villages are also on the record. In some of these documents it was mentioned that the villages were settled with Raja Randhwaj Shah in 1267. In others the year was by some mistake mentioned as 1266. This discrepancy in our opinion may be ignored. What is significant in these Wajibularaiz is that all of them show: (a) that a settlement of the village in question was made with Raja Randhwaj Shah, (b) that it was included in the Sanad, and (c) that it was a Taluqdari village. In a few wajib-ul-araiz the name of Raja Randhwaj Shah's son was mentioned instead of the name of Raja Randhwaj Shah himself, but this again was clearly a mistake.

48. As against this overwhelming mass of documentary evidence the defendant relies on four sets of documents. The first being a will of Raja Randhwaj Shah dated 7th October 1861 (EX. 358) describing himself as the owner of the two estates, namely, Khairigarh and some villages of the Ilaqa Dhaurara. It is argued on the strength of this document that Randhwaj Shah himself did not include Kaffara village in Khairigarh and this must lead to the inference that these villages were not incorporated in that Taluqa. The will, it will be noticed, was executed before the grant of Sanad to the Raja and it was impossible for him to anticipate at the time that that Kaffara villages would subsequently be merged and became part of Khairigarh Taluqa.

49. The second document is the Wajib-ul-arz of Khairigarh Ex. 134 prepared in the year 1873. This document does not mention the merger of Kaffara with the estate of Khairigarh and it is, therefore,

argued that no merger ever took place. We have already mentioned that during the first regular Settlement the whole of the Khairigarh estate had been sub-divided into four Ilaqas including Khairigarh, which was made up of 70 villages and Kaffara, which contained 20. It is significant that the Wajibularz of Kaffara mentions the exchange of the Kaffara group of villages with Kanchanpur and the inclusion of the former in the Raja's Sanad.

50. The third set of document relates to the Sanad granted to one Ashraf Ali. It is urged on their strength that these documents indicate that though no change was made in the constitution of the Ilaqa of Ashraf Ali, yet a fresh Sanad was granted to him. From this fact it is argued that fresh Sanad was granted to Taluqdars irrespective of the question whether or not the issue thereof was necessitated by a change in the constitution of their estates. Unfortunately, we are not in possession of the full information relating to the circumstances in which a fresh Sanad was granted to Ashraf Ali. From the document which is on the record it appears that there was some change between his Sanad of 1859 and the Sanad of 1861, the earlier showing a jama of Rs. 12585 and the latter Rs. 12,675 as the new land revenue.

51. Finally the defendant places reliance on the admission of the counsel of Raja Inder Bikram Shah made in the earlier litigation in 1880. The suit was for possession in respect of some villages appertaining to Ilaqa Khairigarh, which had been included in the forest area by the Government to the had basti proceedings. The claim was ultimately rejected, but during the course of the inquiry the Raja was required to produce the Qabuliat executed by his father at the time of the settlement and as the Qabuliat was not forthcoming, statements A and B made at the summary Settlement 1266 before the cession of Kanchanpur were produced. It is not urged that if any Qabuliat had been executed by Raja Randhwaj Shah and a Settlement had been made with him in respect of the Kaffara villages, the qabuliat would have been produced at that time. The conclusion drawn is that no other Settlement was made with Raja Randhwaj Shah in respect of Kaffara villages. The inference, we think, is not justified for two reasons : (1) The admission was for the purposes of a suit which related to the villages of the original Ilaqa of Khairiagarb. It was not concerned with the Ilaqa of Kaffara, and (2) The second qabuliat in respect of Kaffara lands was wholly immaterial in that litigation. We are clear that no inference adverse to the plaintiff's case can be drawn by reason of the above admission.

52. The case set up by the plaintiff regarding settlement of the Kaffara villages with Raja Randbwaj Shah is attacked on two further grounds. It is pointed out in the first place that the land revenue which had already been assessed on the various Kaffara villages at the second summary settlement made with the previous holders remained unchanged and it is said that if there was another settlement fresh assessments would have been made. The second ground of attack proceeds on the assumption that the Chief Commissioner had no authority to order another settlement after completion of the second summary settlement in October 1859. In support of the first ground of attack, our attention was drawn to the fact that though a portion of Dhaurara and Lakhan Tihara estates was given to Captain Hearsey on the payment of the land revenue already assessed, no fresh settlement was made with him and in respect of the second ground the defendant maintains that the settlement could in those days be made by the settlement officer alone subject only to the authority of the Financial Commissioner. In our judgment where once assessment of revenue had been made

at the second summary settlement for a period of three years and the estate or a part thereof was granted to another loyal taluqdar after its resumption or confiscation, two things could have been done, either the estate could have been granted at the old land revenue or a fresh assessment could have been made. In the present case the Kaffara villages were given to Randwaj Shah at the jama settled with Himmat Singh and Indra Bikram Singh and since the resumption took place on 5th October 1859, that is to say before the issue of the letter of 10th October 1859, which conferred proprietary rights on the settlement holders, the Government never lost title thereto. The re-settlement with Randhwaj Shah was made after the date of the letter and obviously his title to the village was incomplete without a grant. That perhaps was the reason why a fresh sanad was issued to him. But to come back to the point under discussion, the resumption of the estate from Indra Bikram Singh and Himmat Singh involved the cancellation of the summary settlement made with them. Thus the position at the time was that no one could be said to have been engaged for payment of revenue of the Kaffara villages and it must have been felt necessary to make a settlement with Randhwaj Shah on the latter's acceptance of the old assessment. A new qabuliat was in this view essential constituting as it did his engagement with the Government for payment of the land revenue. Our view in this regard is supported by the second sanad and we presume, therefore, that such a qabuliat must have been executed by the Raja. The mere fact that the document is not available ay this date, does not negative its execution.

53. The second ground of attack is equally futile. It has already been mentioned that the Governor-General had authorised the Chief Commissioner to make the arrangement proposed by him for giving the Kaffara villages in lieu of the Kanchanpur Ilaqa which was to be taken away from Randhwaj Shah. Implied in this approval it seems to as was the authority to settle the estate with the Raja on the proposed jama. That such settlements used to be made by the Chief Commissioner in those days is borne out by the settlement which was made with Captain Hearsey in respect of twenty-one villages of Dhaurara and Lakhan Tihara estates which were granted to him by the order of the Chief Commissioner dated 8th December 1859. It was contended on behalf of the defendant that Randhwaj Shah must have been granted the Kaffara villages in the same form in which the grant was made to Captain Hearsey. Assuming that this was so, it does not militate against the conclusion that the settlement of land revenue was made with the Raja. It is significant that in Ex. 668 which is an extract of form A, while Indra Bikram Singh's name is shown as 'malguzar' of the settlement of 1264F, the name of the malguzir of the 'present three years summary settlement' is shown as Captain John B. Hearsey. The document, therefore, shows that although these twentyone villages were given to this gentleman at the same jama as was settled with India Bikram Singh and Himmat Singh a three years summary settlement was nevertheless made with him after the cancellation of the engagements into which the previous settlement holders had entered.

54. We may at this stage also dispose of an argument advanced on behalf of the defeadant to the effect that if the settlement with Randhwaj Shah was in the form in which it was made with Captain Hearsey then it was not a taluqdari settlement because Captain Hearsey's name was mentioned only in the grantees' list. It is pointed out that the name of Randhwaj Shah did not find place in list 5 and it was urged, therefore, that so far as the Raja was concerned, no settlement was made with him and Kaffara villages could not have been included in the second sanad. We, however, find it difficult in the absence of the form of settlement to say that the Raja's settlement was similar to the settlement

made with Captain Hearsey. Assuming, however, for the sake of argument that the two forms were the same, the inference regarding the inclusion of the Kaffara villages in Randhwaj Shah's second sanad could scarcely be affected thereby.

55. A taluqdari settlement differed from a zamindari settlement only in this that in the former one qabuliat was taken from the taluqdar for the payment of the entire land revenue of the ilaqa. Circular No. 4 dated 8th May 1858, drawn up by Major Barrow, Special Commissioner of Revenue, may be referred to in this connection. Defining the process of settlement with the taluqdars, Major Barrow therein explained :

> "In settling with the taluqdar, we take one qabuliat from him for all the villages settled with him, but we furnish him with a separate list of the villages comprising his ilaqa in which the jama of each village or mahal is separately defined, and we take from him a special engagement in general terms not to deal harshly with his under tenants, but care must be taken not to interfere too particularly in his actual village collections."

This shows that the villages comprising the taluqa were settled with the taluqdar and one qabuliat was taken from him in respect of all the villages. The expression 'taluqdar' was used in a somewhat loose sense. Its primary meaning was the one given to it by the Chief Commissioner in his circular dated 1st December 1859. No. 15/2715 quoted at p. 89 of Chhail Behari's book :

> "Whenever there are two interests in an estate, a superior and an inferior, the possessor of the former is the taluqdar and he is entitled to receive a sanad and it there be but no interest in the estate, that of the zamindar and his title is found clear and unquestioned, he will also receive a sanad."

The meaning thus attached to the term 'taluqdar' was later relaxed and persons holding such ilaqas though merely zamindars and without there being any superior or inferior interests in the estate, were also spoken of as taluqdars and one qabuliat was taken from them. Randhwaj Shah's own case may be taken as an example, for there were no inferior proprietary rights in his estate and though he was according to the Chief Commissioner's definition of a taluqdar, only a zamindar, yet a taluqdari sanad was admittedly granted to him after the completion of the second summary settlement. The conclusion is irresistible that a zamindari settlement could be converted into a taluqdari settlement by taking one qabuliat from the settlee in respect of the villages comprised in the estate. As stated above we hold that the summary settlement was made with respect to the Kaffara villages with Randhwaj Shah in the year 1860 and that a taluqdari sanad was granted to him for the estate of Khairigarh in which the Kaffara villages were included.

56. Having found the true facts of the case, we now proceed to examine the question whether the Kaffara villages fulfil the requirements of Section 3, Oudh Estates Act. The section has already been reproduced in an earlier part of this judgment. It contains five paragraphs. The first paragraph describes the persons on whom rights and liabilities were conferred, the second and third paragraphs define those rights and the property to which they attach, such property being called

'estate'. The fourth paragraph mentions the liabilities and the fifth consists of the explanation which was incorporated in the section by the Amending Act III of 1910. The words 'other than those relating to succession' in the fourth paragraph were also added by that Act. Nothing, however, turns on this condition. The first paragraph describes two classes of such persons: (a) taluqdars with whom a summary settlement of the Government revenue was made between 1-4-1858 and 10-10-1859, or (b) to whom before the passing of the Act and subsequently to 1-4-1858, a taluqdari sanad had been granted.

57. The pronoun 'whom' in the second clause of the first paragraph, of Section 3, must on its grammatical construction refer to the expression 'taluqdar' in the first clause. The meaning of the first paragraph, therefore, is that in order that the rights and liabilities referred to in Section 3, may attach to a person he must fulfil one of the two conditions mentioned in that paragraph: (i) He must either be a taluqdar with whom a summary settlement was made within the specified dates, or (ii) he must be a taluqdar to whom a taluqdari sanad was granted within the dates mentioned in the second clause. The section says that these two classes of persons 'shall be deemed to have thereby acquired a permanent, heritable and transferable right'. It next proceeds to give particulars of the property in which such right is conferred and it specified two kinds, one mentioned in paragraph 2 and the other in paragraph 3. Those in paragraph 2 are :

> "The estates comprising the villages and lands named in the list attached to the agreement or qabuliat executed by such taluqdar when such settlement was made."

'Such settlement' in para. 2, can only have reference to the settlement mentioned in para 1, that is to say, the summary settlement made between 1-4-1859 and 10-10-1859. Obviously the word 'such' cannot refer to any otter settlement but the one mentioned in the foregoing paragraph. The contention urged on behalf of the plaintiff that it refers to summary settlement without the limitation of dates given in that paragraph appears to us to be untenable. The words "between the 1st day of April 1858 and the 10th day of October, 1859' are obviously intended to describe the settlement mentioned in that clause and they cannot be torn away from the words 'with whom a summary settlement of the Government revenue was made'. The other kind of property to which the rights and liabilities conferred by the section attach, is mentioned in para 3, the property, namely, 'which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh".

58. Section 3 has been interpreted by Sir (then Mr.) Sunder Lal A. J. C. and Piggot A. J. C. in the Ranimau case, Janki Prasad v. Dwarka Prasad, 9 Ind. Cas. 83 (oudh) but the interpretation which those two learned Judges have placed on the first two paragraphs of the section if we may say so with respect is rather strained. The view of Sir Sunder Lal was that "The conditions necessary to bring the case within the four corners of Section 3 of the Act, therefore, are :

> (a) that such person must be a taluqdar with whom
>
> (b) a summary settlement of the Government revenue must have been made

(c) between the 1st April, 1858 and 10-10-1869,

(d) or a person to whom a taluqdari sanad was granted before the passing of the Act, such person shall be deemed to have acquired a permanent, heritable and transferable right in the estate comprising villages etc., named in the list attached to the Qabuliat executed by such taluqdar when such summary settlement was made. The combination of facts (a), (b) and (c) or (a), (b) and (d) produced the effect of conferring full proprietary rights in villages mentioned in such list."

Questions (b) and (c) as stated by Sir Sundar Lal cannot, in our judgment, be separated on the language of the section and they must be treated as one condition and not two. Condition (c) is not an independent qualification of the person. It is really a qualification of and an integral part of condition (b). We may add that the observations of the learned Judge on this part of the case were not necessary for its decision because no taluqdari sanad had been granted in the case which they were considering and therefore it was immaterial whether (b) and (c) were taken together or separately. This is perhaps the reason why the Privy Council did not advert to the opinion expressed on this point in the judgment of the Judicial Commissioners of Oudh when the case went up in appeal before their Lordships' Board : vide 40 I. A. 170.

59. It was contended on behalf of the defendant that taluqdari sanads mentioned in the second clause could only be granted to persons with whom a summary settlement had been made within the dates mentioned in the first clause, and it was urged that since Kaffara villages were not summarily settled with Randhwaj Shah within those dates, a taluqdari sanad could not have been granted to him in respect of them. In support of this proposition our attention was drawn to the Governor General's letters of 10-10-1859 and 19-10-1859, which are mentioned in para 4 of Section 3 and embodied in the schedule attached to the Act. It is true that the taluqdari sanads were primarily intended to be granted to persons with whom a summary settlement was made within the aforementioned dates but we find it difficult to assume that no taluqdari sanads were granted to others. It is significant that the second clause does not make any independent reference to a settlement. It merely speaks of the grant of a taluqdari sanad. All that we need, therefore, see for the purposes of the second clause is whether a taluqdari form of sanad of the approved type was in fact granted or not. We may concede that so far as the letters of the 10th and 19-10-1859 went, taluqdari sanads were directed to be issued to persons with whom a summary settlement had already been made. It is, however, not possible to hold on this basis that taluqdari sanada were not subsequently granted to persons with whom a summary settlement had not been made before 10-10-1859. We know it for a fact that fairly extensive lands belonging to the confiscated taluqas were subsequently given to and settled with loyal taluqdars.

60. It was also urged on behalf of the defendant that wherever a confiscated or resumed estate was given to a taluqdar, the sanad took the form of a grantee sanad and not that of a taluqdari sanad. The material before us is wholly inadequate to warrant any such generalization. In the present case we find that a sanad of the approved talaqdari kind was issued to Raja Randhwaj Shah and we have already held that it is immaterial whether a settlement was made with him before 10-10-1859 or later. We may add that in our view the words 'taluqdari sanad' in Clause 2 do not necessarily mean a

sanad granted to a tatuqdar because that would also include a grantee sanad as mentioned in Section 5 of the Act. The words refer to the sanad in the well-known approved forms of sanads printed in Chhail Behari's Taluqdari Law of Oudh, 3rd Edn. at pp. 612 and 619. In Clause 9 of Para. 1 of Section 3, they were not limited to taluqdari sanada granted to persons with whom a summary settlement had been made between the dates mentioned in Clause 1. Otherwise Clause 2 would be rendered wholly redundant and the force of the word 'or' which is used as indicating an alternative case to the one contained in el. 1 would be wholly lost.

61. It was suggested on behalf of the defendant that Clause 2 was added in order to cover a case of non-taluqdars with whom a summary settlement was made before 10-10-1859 and who were mentioned in Para. 5 of the Governor General's letter of 10-10-1859 that is persons on whom heritable and transferable proprietary rights were not conferred in the first instance but to whom later taluqdari sanads were granted. This explanation does not advance matters any further. The word "taluqdari" as used in Clause 1 is, we are clear, not confined to taluqdars mentioned in the Governor-General's letter of 10-10-1859. It has been used in a special sense in the Act that is to say in respect of persons enumerated in list I prepared under Section 8. This list being of only 276 persons must have excluded many persons who were included in the list of 690 taluqdars prepared in pursuance of the letter of 10-10-1859 and it is quite possible that some of these who were not considered to be taluqdars within the meaning of that letter and who fell under Clause (5) were included in the lists prepared under Section 8 of the Act. Further more the summary settlement in Clause 1 of Section 8 is not necessarily what was spoken of on behalf of the plaintiff in the course of the arguments as 'taluqdari settlement.' The section does not speak of the latter kind of settlement. Whether, it was zemindari settlement or taluqdari settlement was immaterial. As held in the Rammau case, Janki Prasad v. Dwarka Prasad, 9 Ind. Cas. 83 (Oudh), all that mattered was that the settlement was made with a person mentioned in List 1 of the lists prepared under Section 8. It follows that Clause 2 is not necessarily confined to tahiqdars with whom a summary settlement was made before 10-10-1859. The Legislature intended to provide for two classes of cases by inserting Clause 2 as an alternative, namely (1) taluqdars to whom the altered sanad was granted, and (2) persons to whom resumed estates were given and with whom the summary settlement was made after 10-10-1859. The effect of the altered sanad was considered by their Lordships of the Privy Council in the two Mahewa cases, Sheo Singh v. Raghubans Kuar, 32 Ind. App. 203 and Rajendra Bahadur v. Raghubans Kuar, 45 Ind App. 134. They held in those cases that the grant of the altered sanad implied surrender of the estate previously conferred and a re-grant of the same estate by the second sanad. It seems to us quite possible that in order to avoid any doubt as to the title to the property covered by the altered or second sanad, the Legislature thought it advisable to add a second clause in Para. 1 of Section 3. If it be permissible to refer to the report of the Chief Commissioner who suggested inclusion of the second clause when the bill which was eventually passed as Act I [1] of 1869 was being considered and if it be further possible to refer to the speech of Mr. Strachey who moved for the adoption of the Bill in the Governor-General's Council the reasons which we have stated would be made amply clear. We are conscious of the rule which lays down that such reports and speeches cannot be taken into consideration in interpreting the statute--see In re Viscountess Rhonddas Claim, (1922) 2 A. C. 339 and Administrator-General of Bengal v. Prem Lal, 22 Cal. 788. Where, however, the subject-matter with which the Legislature was dealing and the facts existing at the time with respect to which the Legislature was legislating requires clarification, it is, as pointed

out by Lord Halsbury in Sir Robert Herron v. Rathmines and Rathgar Improvement Commissioners, (1892) A.C. 498 at p. 502 permissible to take them into consideration because these facts are 'legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act they did.' (See also Eastman Photographic Materials Co. v. Comptroller General of Patents and Designs, (1898) A. C. 571 at p. 573 and Gapalan v. State of Madras, A.I.R. (37) 1950 S.C. 27. Para. 17.

62. Act I [1] of 1869 was, as is well known, an agreed measure and embodies in it the result of consultations between the Government and the taluqdars. After the introduction of the bill on 27-7-1867, it was resolved to circulate it to the taluqdars and the Chief Commissioner. As originally drafted the bill did not contain Clause 2 of Para. 1 and Clauses 3 and 4 as they then stood, were differently worded. The report of the Chief Commissioner dated 31-12-1869, stated that :

> "Under Section 3, there are two additions and one alteration. The first addition (referring to Clause 2) is made by the Chief Commissioner to provide for cases in which sanads have been subsequently altered and against claims being set up the estates which wore settled in the first instance with one party and for some reason subsequently resumed. A case of this kind has be in recently before the Court and has been decided in favour of the Government. But there is sufficient doubt attending it to make the provision in Mr. Dasies' opinion desirable. The second addition is at the instance of taluqdars who desire that decrees should give them full proprietary title. The change in the later part of the second is owing to the fact that all sanads are not in the form described in the draft bill."

The speech of Mr. Strachey so far as it related to Clause 2 of Para. 1 was:

> "In Section 3 which was one of the most important sections of the bill some additions have been made. The first addition was proposed by the Chief Commissioner. It provides for cases in which subsequently to their issue, it was found necessary to make alterations in the sanads and to provide against claims being set up to estates which had originally been settled with one party but which were subsequently resumed and made over to another person. For example, in one case a taluqa was settled in the name of a man who was afterwards discovered to have been a notorious rebel and who was killed in a fight against our Government; the estate was subsequently given to a loyal taluqdar; but as the summary settlement was not made with him, he would not, as the bill was originally drawn, have been entitled to the privileges of a taluqdar. The addition made to the section at the suggestion of the Chief Commissioner has provided for this difficulty."

The contention urged on behalf of the plaintiff is to the effect that the wordd 'such settlement' in Para. 2 has reference not only to the settlement referred to in para. 1 but also to any other summary settlement. In fact he desires to read the words 'when such settlement was made' as 'whenever such settlement was made'. In our opinion this construction urged on behalf of Pratap Bikram Shah has no warrant whatever. 'Such settlement' as already explained can have reference only to the

settlement already mentioned in the foregoing paragraph, namely, the summary settlement of the Government revenue made between the first day of April 1858 and 10-10-1859. In cases in which a taluqdari sanad was granted on the basis of a settlement made after 10-10-1859, heritable and transferable rights were conferred in the properties which were decreed to him under the regular settlement. The words 'to him' in para. 3 must not be interpreted too strictly so as to confine their import to taluqdars and to exclude heirs and legatees of a taluqdar. The beirs and legatees have the same rights as a tatuqdar and they must be deemed to be included in the term 'to him'. There appears to be no compelling reason for limiting the decrees of the first regular settlement whether passed before the Act or after it to the original taluqdar alone by excluding the Sheirs and legatees from the benefit thereof. The case of a taluqdar who had claimed certain property at the regular settlement but who died before the decree was passed in his favour and was replaced by his heir or legatee can be easily conceived. Could the Legislature have intended that for the purposes of Section 3 the benefit of the decree passed in favour of such heir or legatee should not be made available to him ? There appears to us to be no justifiable reason for doing so. We are aware that in Prabhu Narain v. Jitendra Mohan, 1947 Oudh W. N. 421, a Division Bench of the late Chief Court of Oudh placed a more restricted and technical construction on the aforesaid words. With all due respect, however, we are unable to agree. It would be remembered that the decrees passed in favour of the taluqdar at the first regular settlement were passed in claims instituted against him by Dharni Dhar and others. Fastening upon this aspect of the decree it was urged on behalf of the defendant that these decrees do not fulfil the requirements of Para 3 of Section 3. The suggestion is that the decree referred to in that paragraph must have been passed in a suit in which he was a claimant and not one where he was impleaded as a mere defendant. The contention is unsound, for when the title of a parson is disputed by a claimant and his suit is dismissed and the decree is in favour of the defendant, the property must be deemed to have been "decreed to him by the Court of an officer engaged in making the first settlement of the province of Oudh'. The decrees referred to in para. 3, it would seem, therefore, included decrees passed in cases in which the taluqdar figured as a defendant in the proceedings before the settlement officer. We hold that a taluqdari sanad having been granted to Randhwaj Shah in respect of the Kaffara villages and decrees also having been passed in favour of Raja Indra Bikram Shah at the first regular settlement, those villages constitute an estate within the meaning of Section 3.

63. The next question which falls to be considered is whether the fact that the Kaffara villages were given to Randhwaj Shah in exchange for the villages which were comprised in Kanchanpur and partly in Khairiagarh fasten on them the incidents of an estate. We know that Kanchanpur and the villages of Khairigarh which later went out of the possession of Randhwaj Shah were initially settled with him at the summary settlement of 1266F. So far as the Government was concerned, its intention was that the Kaffara property should form part of the ilaqa of Khairigarh. In other words it was intended that these villages should follow the same rule of descent as applied to the remaining part of the taluqa of Khairigarh. We find it difficult to read in the Oudh Estates Act an intention to dismember the Khairigarh estate and it seems to us reasonable to hold that the substituted properties were for all practical purposes deemed to be properties with the same incidents for the purposes of the taluqdari law as were possessed by the villages lying inside Kanohanpur and the other villages of Khairigarh which fell within the area ceded to Nepal. This means that the Kaffara villages fell within the category both of the first and second clauses of para 1 of Section 3 by

application of the doctrine cf substitution. The principle has been applied to cases of trust and mortgages. It has also been applied to cases of talaqdari estates which were not governed by the Act. The principle in our judgment is of wider application and it equally governs the present case.

64. It can scarcely be denied chat the Government had the power in 1861 to make a grant of fresh villages to any taluqdar. The Kaffara villages vested in the Government after confiscation and it could grant them to Randhwaj Shah in exchange for the property taken from him. We have already stated that the Kaffara villages were made part and parcel of the Khairigarh estate. The legal effect of a fresh sanad was described by their Lordships of the Judicial Committee as a surrender of property under the old sanad and a re-grant to the taluqdar of the property covered by the new sanad--see the Mahewa cases already cited, Sheo Singh v. Rani Raghubans Kunwar, 32 Ind App. 203 and Rajendra Bahadur v. Raghubans Runwar, 45 Ind App, 184. The observations of their Lordships related to three villages which were initially non-taluqdari villages and not included in the taluqdari sanad of 1861. They were subsequently transferred to Balbhaddar Singh in exchange for three sanadi villages and the question which arose was whether the legal incidents of the old villages should attach to the villages which were subsequently acquired. The following passage from the judgment of the Board in the later case will make this clear :

> "..... in ascertaining what was the land claimed by Rani Raghubans Kunwar in respect of which her suit was not dismissed in 1905, it must be ascertained what were the lands of which Balbhaddar Singh died possessed which were acquired by him and did not form part of the taluqa of Mahewa as it was constituted at the date of the sanad of 1861 and were not lands acquired by him from the Government in exchange for lands which included in that sanad. The Government had power to give to Balbhaddar Singh in exchange for sanad lands other lands which had not been granted to Girwar Singh in 1861 and the lands so acquired by him in exchange would be subject to the rule of descent prescribed in the sanad of 1861."

Applying the principle enunciated in the aforesaid case, the Kaffara villages must be held to have formed part of the Khairigarh estate before the passing of the Oudh Estates Act in 1869. They were covered by the second sanad of 1861 and were governed by the rule of descent applicable to the estate of Khairigarh even if they did not otherwise fulfil the requirements of Section 3 of the Act.

65. In the Deotaha case, Jagdeo Singh v. Deputy Commissioner of Partabgarh, 2 Luck. 507, where some property was taken and other property was given on the same terms, the late Chief Court of Oudh held on the authority of Beer Partab v. Rajendra Partab, 12 Moo. Ind App. 1 and Ram Nundun Singh v. Janki Koer, 39 Ind. App. 178 that the primogeniture rule applicable to estates of List 5 which applied to properties taken away from a grantee would apply to the substituted property and it would be held on the same terms and conditions.

66. It is admitted that Section 22 applied to the taluqa of Khairigarh as it stood before its dismemberment. For the reasons stated above we hold that it applied to the enlarged Khairigarh estate also.

67. The only question which now remains for consideration concerns the Bardia exchange villages detailed in list E. We have already mentioned that the twenty seven Bardia villages which formed part of the taluqa of Khairigarh were contiguous to the Government forest lands. On 26th October 1869, the Chief Commissioner made a proposal for the exchange of these villages belonging to the Raja of Khairigarh for other villages (EX. 580). A communication was, therefore, addressed to the Raja but it appears that the villages which he desired to be given to him did not correspond in value to the Bardia villages (EXS. 581 and 582). Negotiations continued during 1870 and 1871 (Exs. 583 and 664), and the subject was dropped on 8th June 1871 (EX. 665). The Raja died in 1885. He was succeeded by Rani Surat Kuar and the estate was taken under the superintendence of the Court of Wards. The question of exchange was again raised in 1894 (EX. P W. 11) and an agreement was reached between the Court of Wards and the Government in respect of the mutual transference of the villages. The estate was released on 2nd July 1904. A list of villages which were to be given to the Rani was prepared and finally on 20th September 1904, a deed of exchange between the Secretary of State and Rani Surat Kuar was executed (EX. 404) In the transfer deed Rani Surat was described as the proprietor of Khairigarh estate. The result of the transaction was that the Rani of Khairigarh obtained blocks of forest lands aggregating 28697.67 acres which were assessed in her name 'together with rights, easements, appurtenances, thereto belonging to hold the said premises unto and to the use of the Rani of Khairigarh and her (heirs and?) assigns for ever.' It is contended on behalf of the defendant that what the Rani obtained by exchange under the deed became her personal property descendable to her personal heirs and assigns for ever and that she could transfer them to any one she liked. It is conceded that the Rani could not transfer the whole or a part of the taluqa of Khairigarh to Government but relying upon the words of the deed 'her heirs and assigns for ever' it was urged that that would not impress the property which she acquired with the incidents of taluqdari property. There is also a further alternative contention namely, that the villages of list E not being summarily settled between the dates mentioned in Section 3 or decreed to Randhwaj Shah in the first regular settlement, they cannot partake of the nature of an estate within the meaning of Section 3, and Section 22 of the Act cannot, therefore, be applied to them. The answer to these contentions is to be found in the fact that the Rani was not the personal owner of the estate of Khairigarh. She was in possession as a widow under Clause (8) of Section 22 and as such she had no right of transfer. She, however, held herself out as the holder of the estate of Khairigarh and engaged in the transaction as such and not in her personal capacity. It follows that what she acquired she acquired for the estate and not for her personal benefit. In this view the words 'her heirs and assigns' in the deed of exchange must be understood as referring not to her personal heirs and assigns but to the persons who would be the heirs and assigns of the holder of the estate, that is to say, to those who were to succeed her under Section 22 after her death.

68. The Privy Council had to deal with a similar situation in Rabutty Dossee v. Sibchunder, 6 Moo. Ind. App. 1. In that case one Zoahra Jeebun Dossee the widow of Dwarka Nath Sain was one of the four parties entitled in a representative character as widow and heiress to her husband to certain portion of the property of one Bheem Churn Sain and to which Bheem Churn Sain was jointly entitled with his brother Bishambhar Sain. Bishambhar Sain agreed to separation of the joint property but the separation was not carried into effect till the time when a certain deed was made. This deed was executed to settle the amount of the share to which each of the four heirs was entitled out of the estate of Bheem Churn. Zoahra Jeebun Dossee who was described as the sole widow and

heiress and representative of Dwarka Nath Sain was given Rs. 59,000 in lieu of her share in the rights of her deceased husband as the sole and exclusive property of the said Sreemutty Zoahra Dossee 'for her own absolute and separate use.' It was contended that the money was given to her in her own personal right and not in a representative capacity. Repelling this argument their Lordships of the Privy Council held that the words 'for her own absolute and a separate use' must have referred to her representative character and they observed :

> 'The situation of the parties must be looked at and the deed must be construed with reference to the situation of the parties and their rights at the time the deed was executed."

69. A similar view was taken in Mahammad Umar v. Mt. Man Kuar, 21 Cal. W. N. 906. In that case one Har Lal Bhagat had died leaving him surviving his daughter, Mt. Jago and two widows of his pre-deceased sons. The property was divided between the three ladies under a deed of agreement it being stated that the three ladies had divided the property according to the decision of the panches. The deed provided that one party should not have anything to do with or against the property allotted to the other or 'her heirs and successors.' It was held for the purposes of construing a document the Court had to look at it as a whole and consider all its terms together in order to ascertain the intention of the parties and that the Court is also entitled to look at the position of affairs at the time the document was entered into and to the position of the parties who executed the document. Holding that the property was given to the three ladies in their right of maintenance, Sir Lancelot Sanderson C. J. observed :

> "I think the word 'heirs' in this agreement having regard to the other provisions of it was not used in the strict legal sense but rather as a word implying a person interested in the estate."

69a. The matter can be looked at from another angle. In making the exchange with Government, Rani Suraj Kuar was avowedly acting as the holder of the estate. The Government in transferring to her the villages in exchange which are now the subject of dispute was also dealing with her in that capacity. Looked at in this context the estate given to the lady must enure for the benefit of the successors to the estate after her death and not for her personal heirs. It is to be noticed that Rani Suraj Kuar heraelf treated the Bardia exchange villages as part of the taluqa and not as property which belonged to her personally. Similarly Rani Subhadra Devi executed a trust deed for the management of the entire taluqa and included in that document villages of list E as part and parcel thereof. Again in the two wills which she executed, she disposed of her personal property but not the Bardia exchange villagers, a fact which shows that she did not consider them as properties over which she had any personal right.

70. In Keech v. Sandford, (1726) 2 W. & T. 7th Edn. 693, the rule laid down was that when the trustee of leasehold property renews the lease in his own name, he holds the renewed lease for the benefit of the trust. This rule has been extended to cases of purchase of the reversion of an estate by a tenant for life and is based upon the duty which lies upon a limited owner to act in a matter of this kind for the benefit of the parent interest. The principle is embodied in Section 90, Indian Trusts Act

which describes that where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such gains an advantage in derogation of the rights of the other person interested in the property or where any such owner as representing all persons interested in such property gains any advantage, he must hold for the benefit of all persons so interested the advantage so gained but subject to repayment by such persons of their due share of the expenses properly incurred and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage : vide Kashi Prasad v. Inda Kunwar, 30 ALL. 490 at p. 495. A similar view was taken in Ram Shankar v. Lal Bahdur, 1 Luck. 98. The suit was instituted by the Ajudhia estate for resumption of a marwat grant made to a woman who was then in possession of her husband's estate. Certain persons were joined in the suit as defendants at their own request and with the consent of the widow on the allegation that their father had been adopted as a son by the grantee. The suit was comproraised and the decree declared in favour of the title of the widow and of the added defendants to hold the lands as under-proprietors on a specified rent. It was held by the late Chief Court of Oudh that she obtained a fuller estate of under-proprietor under the compromise decree by reason of her title as a Hindu widow and the title, therefore, was a creation of her estate as widow and it must be deemed that she acquired under-proprietary rights for the benefits of the reversioners of her husband.

71. On the principles mentioned above, the Bardia exchange villages must be held to be part of Khairigarh estate. The further question whether they fulfil the requirements of Section 3 must on this finding also be answered in the affirmative. On the same grounds on which the Kaffara villages, which were exchanged for the property which had been summarily settled within the dates mentioned in Section 3, have been held to be an 'estate' impressed with the game characteristics as applied to the former property in lieu of which they were acquired it follows that the villages comprised in list E must go to the heir who has preference under Section 22 of Act I of 1869, namely, Raja Pratap Bikram Shah.

72. We uphold the decision of the Court below and dismiss all the appeals with costs.