

(1872) 05 PRI CK 0001

Privy Council

Case No: None

G. C. W. Forester and
Others

APPELLANT

Vs

The Secretary of State
For India In Council

RESPONDENT

Date of Decision: May 11, 1872

Citation: (1872) 1 IndApp 10

Hon'ble Judges: Hatherley, Westbury, James W. Colvile, John Stuart, Montague E. Smith, JJ.

Judgement

Hatherley, J.

1. In this suit the representatives of the late Mr. Dyce Sombre claim to recover from the Government of India possession of a valuable estate called pergunnah Badshapore Jharsa, with mesne profits since August, 1836. They do not claim merely a zemindary interest in the lands. They claim to hold them rent free: that is, free from assessment to Government revenue. And the total value of the claim is assessed in round numbers at a sum little short of a quarter of a million sterling.

2. The defence to this suit, on the part of the Government of India, is two-fold. It is alleged, first, that, on the death of the Begum Sumroo, in 1836, the estate, whatever were the nature and extent of her interest therein, was resumed by an act of Government which, having regard to the status of the Begum as an independent, or quasi-independent Sovereign, was an act of state, the propriety and validity whereof are not cognisable by any Municipal Court. And in support of this proposition they rely on the case of the Rajah of Tanjore, reported in 7th Moore, 476, and similar authorities. It is further alleged that, if the case is cognizable by the Municipal Courts, the Appellants have failed to establish by trustworthy evidence the title to this estate on a rent-free tenure (capable of passing to Mr. Dyce Sombre by the deed of gift, or subsequent will of the Begum Sumroo).

3. In order to test the sufficiency of the first defence it is necessary to come to a clear conclusion touching the status of the Begum Sumroo both before and after the acquisition

by the East India Company of the Doab and the territories on the west of the Jumna, comprised in the Treaty of Peace concluded with Dowlut Rao Scindia on the 30th of December, 1803.

4. It will be convenient to consider the question with reference to the Begum's possessions at Sirdhana and elsewhere within the Doab; because the negotiations and correspondence with her were, up to the time of the final agreement or treaty with her in 1805, confined to those possessions; no mention being made therein of Badshapore, which is on the western side of the Jumna : and because the acts and powers of the Government in the resumption of Badshapore cannot be put upon higher ground than their acts and powers in the resumption of Sirdhana.

5. The status of the Begum, in respect of her Doab possessions before 1803, is admitted to have been that of a jaghiredar, holding upon a jaidad tenure, i.e., upon a grant of a certain district together with the public revenues of it, on the condition of keeping up a body of troops, to be employed when called upon in the service of the Sovereign of whom the jaghire was held. The de facto Sovereign of the Doab at this time was Dowlut Rao Scindia. There is nothing in the record to shew what powers over the inhabitants of the district included in such a jaghire were, as incident to the tenure, vested in the jaghiredar. But it cannot be doubted that, practically, the whole administration of the territory included in her jaghire, whether civil or criminal, was vested in the Begum, who exercised a sort of delegated sovereignty therein.

6. This being the condition of the Begum in the early part of 1803, Lord Welledey, in pursuance of the policy by which he succeeded in detaching certain French adventurers from the service of Scindia, appears to have entered into negotiations with her before the actual commencement of hostilities with the Mahratta Prince. War, though previously certain, was not declared until August, 1803, and Lord Lake's force broke up from Cawnpore on the 7th of that month. But the earliest letter from Lord Wellesley to the Begum that is set forth in the Record is dated the 20th of May; that letter shews that a previous correspondence had taken place between them, having for its object the diversion of the Begum and her battalions from the service of Scindia to that of the English. The negotiation so begun was continued throughout the war. Though this negotiation may not have prevented such of the Begum's troops as were actually with Scindia under her Lieutenant-Colonel Saleur, from fighting against us at the Battle of Assaye, yet it kept her friendly to us in her own district. Nor can it be doubted that, at the time when peace was concluded, and by the Treaty of the 30th of December, 1803, the sovereignty over the Doab and the territories west of the Jumna, in which Badshapore is situate, passed from Scindia to the East India Company; the Governor-General had fully determined that the future relations of the Begum and the Company, though not as yet precisely defined, were to be friendly, and that our rights of conquest were not to be exercised to her prejudice. This appears, from Lord Wellesley's letter to Lord Lake, of the 23rd of December, 1803, which admits that the Government could not in fairness establish British authority, or introduce British law into the territory composing the

Begum's Doab jaghire; and the nature of the equivalent proposed, in the event of her agreeing to exchange those possessions, is also a circumstance which has some bearing upon the present question. It appears for some time to have been in Lord Wellesley's contemplation to make the Jumna the western boundary of the purely British territory, and to form the territories conquered from Scindia on the western bank of that river into independent and protected principalities. And it being then considered desirable to remove the Begum out of the Doab, it was proposed to give her one of these principalities, reconciling her to the inconveniences of the exchange by the accession of dignity implied in treating her as a Sovereign under the protection of the British Government. This seems to be the fair construction of Lord Lake's letter of the 23rd of November, 1803, to the Governor-General, and of all that was done upon it. This negotiation was continued after the ratification of the Treaty of the 30th of December, 1803, and when the sovereignty of the East India Company in the territories ceded by that Treaty had become complete. This project, however, was ultimately abandoned by Lord Cornwallis; and the final Treaty or agreement with the Begum was made in August, 1805. The substance of that agreement is that, "Those places in the Doab which have formed the jaidads of Zeboolnissa Begum shall remain to her (as before) from the Company as long as she may live." What follows may either be the expression of conditions *qim tacite* insunt in a jaidad tenure, or conditions superadded thereto.

7. But the fair construction of the instrument and of the correspondence which led up to it seems to be that the Begum was for her life to hold her territories in the Doab from the Company as she had held them under Scindia; and that, as she was not a Sovereign Princess, but a mere jaidadar under Scindia, she was to remain such under the Company, the project of conferring upon her the new dignity of a Sovereign Princess having been only part of the larger project for an exchange of territory, and abandoned with it.

8. Up to this time there is little, if any, express mention of Badshapore. It is, however, admitted on both sides that the Begum was *de facto* in possession of it when the cession of 1803 took place, and that she continued during her life to hold it, and to exercise therein the same powers of government and administration which she exercised at Sirdhana.

9. This view of the status of the Begum is confirmed by the 9th paragraph of Lord Metcalfe's letter of the 4th of May, 1836. The authority upon such a subject of a man of his experience and character is of the highest value.

10. That being so, the present case is distinguishable from that of Kamachee Boye Saheba in the 7 Moore's Ind. App. Ca.

11. There the Rajah of Tanjore, though he may have had less substantial power than that exercised by the Begum Sumroo, retained at least the shadow of original and independent sovereignty. Lord Kingsdown thus put the question : "What was the real

character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominions and property of a neighbouring state, an act not affecting to justify itself on grounds of municipal law? or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Rajah of Tanjore in trust for those who, by law, might be entitled to it on the death of the last possessor. If it were the latter, the defence set up has no foundation."

12. The act of Government in this case was not the seizure by arbitrary power of territories which up to that time had belonged to another sovereign state; it was the resumption of lands previously held from the Government under a particular tenure, upon the alleged determination of that tenure. The possession was taken under colour of a legal title; that title being the undoubted right of the sovereign power to resume, and retain or assess to the public revenue all lands within its territories upon the determination of the tenure, under which they may have been exceptionally held rent-free. If by means of the continuance of the tenure or for other cause, a right be claimed in derogation of this title of the Government, that claim, like any other arising between the Government and its subjects, would *prima facie* be cognizable by the municipal Courts of India.

13. The particular case was, no doubt, somewhat complicated by the peculiar nature of the powers exercised by the Begum in her jaghires; and the practical exclusion of her territories during her lifetime from the operation of British law and the jurisdiction of British Courts.

14. Their Lordships think that the Regulations, which were the written law of that part of British India, and whatever else may be held to constitute British law, were not introduced into these territories by Regulation VIII of 1805, or until after the passing of Act XVII of 1836. The Begum's territories were treated as excepted from the conquered territories; and although the sovereign rights of Scindia over these territories passed under the Treaty of 1803, they passed subject to the rights of the Begum, the precise definition whereof was then the subject of the negotiations which resulted in the agreement of 1805. Accordingly, on the Begum's death, it was thought necessary to pass an Act of the Legislature in order to legalize the introduction of regulation law into these territories by order of the Governor-General. That this was done by legislation, and not by proclamation, affords perhaps, another argument against treating the annexation of these territories as an act of conquest or arbitrary power, or as the exercise of an original right of conquest which had remained in suspense during the Begum's lifetime. It is probable, however, that the abnormal condition of these territories was one reason why the resumption took place, not as it would have taken place in a province or district wherein the action of Government is fettered by the Regulations, by a resumption suit, but in what is called the political department; and thus both parties seem, for some time at least, to have considered that the act was in the nature of an act of state. For it is to be observed that Mr. Dyce Sombre himself asserted his supposed rights by memorials and appeals to one political authority after another, beginning with the Lieutenant-Governor of the North-West Provinces, and ending with the Prime Minister; and that it was not until after

his lunacy and the order of Lord Chancellor Lyndhurst in that matter, that any recourse to the municipal Courts was had, or apparently even contemplated.

15. These considerations, however, though they may explain much of what appears from the record to have taken place, cannot affect the determination of the question under consideration. They cannot alter the legal nature of the acts of Government, or make the resumption, under the assertion of a legal title, of lands claimed adversely by a subject, an arbitrary act of sovereign power against an independent state. And even if the state of the law in the territories in question at the time when the act of resumption took place gave - as perhaps it did - a large power of resumption to the East India Company than it possessed in the regulation provinces, that circumstance would not exclude the jurisdiction of the Courts. For these reasons their Lordships are of opinion that the first ground of defence, being that on which the Courts below have mainly proceeded, fails.

16. This being so, it is next to be considered whether the Appellants have established their title to Badshapore Jharsa as held in perpetuity by a rent-free tenure; in other words, whether they have proved a grant by the sovereign power of the rent of the lands, which rent would otherwise be payable to the State.

17. The original suit having been brought in 1848, to recover the estate from the East India Company, which had been in possession since 1836, the burden of proving a title sufficient to disturb that possession necessarily lies upon the Appellants. This, however, would not have been otherwise had the commencement of the litigation been in 1836, and by proceedings in an ordinary resumption suit. For the regulations touching such suits cast upon the person who claims to hold land *lakhiraj*, or free from assessment to Government revenue, the burden of establishing a title recognised by law as sufficient to give that exceptional immunity, and require very stringent proof in such cases.

18. Regulation II, of 1819, which the Appellants, in their original pleading, invoke as one; of those by which the claims of Mr. Dyce Sombre ought to have been determined in 1836, by its 28th section provides, that an ancient *sunnud* shall not be treated as sufficient proof of its contents on the faith of its seal, or without confirmatory evidence. And Section 3 of Regulation XIV of 1825, also shows the high degree of proof required. Nor are such provisions unreasonable, since every grant of this kind implies a perpetual alienation in favour of some individual, and his heirs, of a portion of the land revenue (the impost, if impost it is to be called, which immemorial custom has made the most natural and tolerable to the natives of India), and thus operates not only in derogation of the rights of future Governments, but to the injury of the subject, on whom the incidence of taxation for the necessary purposes of Government will be the heavier, in proportion as the public revenue is wasted by such alienations.

19. It is of the utmost importance in a case like the present to observe in what, manner and upon what proofs the case of any claimant is first advanced.

20. In the plaint filed in August, 1848, by the committee of Mr. Dyce Sombre, it was stated generally and without condescending on the name of the grantee, that the altumgha jaghire Badshapore Jharsa was originally granted by the Emperor Shah Allum, and subsequently confirmed by Madho Rao Scindia. But in the substituted plaint, which was filed in January, 1864, by the Appellants, and must be taken to be the foundation of the existing suit, the statement is more specific. It is this - "The pergunnah of Jharsa, inclusive of Badshapore, was granted as an altumgha jaghire to the Begum Sombre (or Sumroo) by his late Majesty Shah Allum, in the 30th year of the ascension, and this grant according to the sunnud, dated the 2nd Zuffer, the 37th year of the ascension, was confirmed by the Maharajah Madho Rao Scindia," and the 4th, 5th, and 6th of the issues settled in the cause upon which the parties went to trial were:

Whether the pergunnah of Badshapore Jharsa was granted by Shah Allum to the Begum Sumroo, as mentioned in the plaint?

21. Whether, if it were so granted, Shah Allum, at the time of such grant, possessed and exercised supreme power within the territory in which the lands were situated? and

22. Whether, if the same were granted, the grant was confirmed by Madho Rao Scindia, as in the plaint mentioned?

23. It will be convenient here to state the history and character of the alleged grant from Shah Allum as disclosed by the documents upon which the Appellants mainly rely, viz., the papers procured from Delhi.

24. The case which the counsel for the Appellant made on these documents is, first, that in the month of Shuwal in the 30th year of Shah Allum, the Begum presented a petition, praying that a new and complete altumgha sunnud of pergunnah Jharsa might be granted to her in substitution for one previously granted to Zuffur Yaub Khan, the son of Sombre or Sumroo; secondly, that a report was made, recapitulating the prior devolution of the estate, shewing that it had been held by certain great officers of the Court of Delhi in succession, as part of their respective jaghires, that it had for some time "continued released" as jaidad of the battalion of Sumroo Bahadoor Feringee; and on the 15th of Rujub of that year (with the exception of certain villages) had been granted in altumgha to Zuffur Yaub Khan on a representation that an altumgha sunnud under the seal of Maharajah Pultail (said in one part of the record to be a title of Scindia) had been lost; thirdly, that on this report and on the 19th of Shuwal the king issued a firman to the effect that an altumgha grant of Badshapore Jharsa, with the exception of the villages excepted from the grant to Zuffur Yaub Khan, should be made to the Begum in the terms therein expressed; fourthly, that whether the formal grant or sunnud was or was not issued to her in pursuance of that firman, she two months afterwards presented another petition, in which she made no reference to the preceding grant to Zuffur Yaub Khan, but stated that all the estate, including the excepted villages, had since the death of Sumroo been in her possession as jaidad; and that in consequence of that petition a sunnud of the whole

estate, including the villages before excepted, was granted to her in altumgha under the Khas" seal and golden togra of the Emperor on the 9th of Zilhij, in the thirtieth year of his reign.

25. If these facts are true, it follows that until the month of Shawul, or that of Zilhij, in the thirtieth year of Shah Allum, whatever interest the Begum had in Badshapore was in the nature of a jaidad tenure; that Zuffur Yaub Khan never had an altumgha grant of that estate under a sunnud of the Emperor, except for a period of, at most, three months, and that, so far as appears, he was never in possession under that grant.

26. The original documents, of which the foregoing is the effect, were not produced, and the copies or alleged copies produced in evidence are admitted to have had no existence before 1847. They are said to have been then copied from old records at Delhi at the instance of the committee of Mr. Dyce Sombre, or his legal advisers, with a view to the proceedings commenced in the following year.

27. If the transactions which they represent to have taken place really took place, an original sunnud in the terms of what in the record is called "sunnud No. 3," must have been issued to the Begum Sumroo under the seal of Shah Allum. But of this original sunnud there is no trace. It is not produced; its loss is not accounted for. There is no evidence that anybody ever saw it.

28. It has been strongly argued for the Government, that the non-production of the original not being accounted for, secondary evidence of its contents is not admissible. Their Lordships are by no means prepared to say that an Indian Judge would not do right, according to the practice of the Courts of that country, in rejecting a copy if the absence of the original were not satisfactorily accounted for. There seems to be no reason for assuming that a rule requiring the best evidence producible to be produced, has no application to Courts of which the Judges may be presumed to be, for want of professional training, less capable than they are elsewhere of weighing the effect of evidence. This Committee undoubtedly enforced the rule in the case of Syud Abbas All Khan v. Yadeem Ramy Reddy 3 Moor's Ind. Ap. Ca. 156. There have, however, been other cases in which their Lordships have declined to apply to Indian cases the strict rules of evidence which obtain in this country on trials at nisi prius. And, considering that in this case the Judge of first instance has commented on the copies in question, their Lordships propose to treat them as admitted in point of fact, and to consider what credit and effect ought to be given to them. Nevertheless, in weighing the whole evidence given in support of the Appellants' title, the absence of proof that the original sunnud once existed, and was subsequently lost or destroyed, is a very grave circumstance, which cannot be excluded from consideration.

29. The case as to the copies of the sunnud put forward by the learned Counsel for the Appellants is, that they are proved to be copies taken from ancient documents at Delhi, since destroyed in the mutiny, which, whilst they existed, were public records, and of the

same value as a duplicate original of the missing sunnud.

30. But what is the evidence as to these papers? The proof of the most important of them, that called sunnud No. 3, depends on the testimony of the witness, Balmokund, given in 1865. He has deposed that in 1847 he was ordered by the then Peshkar of the King of Delhi to make the copy in question from an old paper which the latter took out of a cloth. The words of the witness are, "It was out of a dozen or so of the papers of the former times which had "escaped," and had been tied up by him in his "busta," or record cloth." He goes on to say, "There had been countless papers in the charge of his (the Peshkar's) forefathers : many of them had doubtless been destroyed by insects, or perished in other ways. By "escaped," I mean those old papers or records which had come down from his forefathers into his actual possession." In answer to the inquiry, what had become of the paper from which he made the copy, he said, "The Peshkar died in 1850, and all trace of his documents has disappeared;" and added, that the different servants of the king had each in their possession a few pounds' weight of documents, that had been handed down from father to son, besides those relating to their own time. He had previously said, when asked whether he lived in the Peshkar's house. "No; I went there for business; after the taking of Delhi by the British" (which words, as the Peshkar died in 1850, must be taken to refer to the original introduction of British authority in Delhi, rather than to the taking of the city in 1857), "the "duftur" (registry office) of the king hardly existed."

31. Hence it appears that the paper from which the copy is said to have been made was anything but a record regularly kept and preserved, which afterwards perished in the storming of Delhi, if full credit be given to the witness and to his means of knowledge. It came to the Peshkar with a few pounds' weight of other documents, was accidentally preserved when many others perished, and disappeared with him. Their Lordships cannot treat such a paper as having the validity of an authentic record, the value of which depends on its custody in an authorized registry by a responsible officer. The evidence of Chujo Singh, as to the other and less important paper (No. 4) is of the same character.

32. An attempt was made to cast further suspicion on these copies and the transactions which they are produced to prove by the dates. It is contended on the part of the Respondents that the months of Shawul and Zilhij of the thirtieth year of Shah Allum, fall within the autumn of 1788, when he was a helpless prisoner in the hands of Gholam Khadir, the Rohilla, who put out his eyes. On the other hand, the Appellants assert that the date in question corresponds with the autumn of 1789. There is much that may be urged to support the Respondent's contention. It seems to be certain that Shah Allum's reign, notwithstanding a short interregnum, was calculated from the death of his father Alamgir II., which Mr. Elphinstone and the best historians fix in November, 1759, corresponding with Rabi II., A.M. 1173. It follows that the "Jalus" or accession of Shah Allum is correctly fixed by Mr. Prinsep in his Tables as 1 Jumadi I., A.H. 1173; and if the thirtieth year of that prince's reign is to be calculated in the ordinary way from that date, it would begin on the 1 Jumadi I., A.H., 1202, and end with the 1 Jumadi I., A.H., 1203. The

months of Shuwal and Zilhij of the thirtieth year would then fall within 1203, and correspond with the autumn months of 1788. On the other hand, the Appellants have referred to some coins and seals, from which it would appear that the 30th year of Shah Allum's reign was treated as identical with A.H. 1203; and from this and a passage in Mr. Seton's letter, afterwards referred to, they have argued that the dates in question must be taken to correspond with the autumn months of 1789. This view may perhaps be capable of being reconciled with the date of Shah Allum's accession by some peculiar mode of calculating the Jalus year; and their Lordships would be sorry to make their decision turn in any way upon a disputed point of Indian chronology. They may observe, however, that even if the dates in question are taken to fall within the year 1789, there is reason to doubt whether Shah Allum was at that time in a condition effectually to alienate any part of the revenues of the territories within which Badshapore is situated; at least, without the concurrence of Scindia; and that there is no suggestion that the alleged grant received the sanction of the Mahratta Power until 1795.

33. Their Lordships, considering the nature of the documents under consideration, and the testimony by which they are supported, have come to the conclusion that the Appellants have not given evidence which can be accepted as sufficient proof of a grant, of which the original is neither forthcoming nor accounted for, unless the presumption of its existence can be assisted by the other evidence in the cause.

34. The corroboration chiefly insisted upon was of this kind : it was argued that copies of certain sunnuds, shewing his title to Badshapore, were proved to have been sent by Mr. Dyce Sombre in 1836 to the officers of Government; that these were not shewn to have been returned by the Government, and have not been produced by them in this suit : that they must therefore be assumed to have been identical, or, at all events, not inconsistent with the documents subsequently procured from Delhi. It was further insisted that, inasmuch as Government did not question the genuineness of these sunnuds in 1836, they must be taken to have been then satisfied of their authenticity. This argument is confined to the copies of sunnuds supposed to have been sent by Mr. Dyce Sombre after the Begum's death. It is hardly pretended that the Government ever received from her any document of title except a copy of Scindia's perwannah. The sunnuds sent to Mr. Fraser, whatever they may have been, were returned by her messenger. Mr. Forsyth, on the other hand, argued strongly that Government was not shewn to have received from Mr. Dyce Sombre copies of any documents corresponding with those now relied upon; or, indeed, the copy of any document of title except Scindia's perwannah. The evidence on the point is as follows:

Mr. Dyce Sombre, writing in the beginning of March, 1836, to Mr. Hamilton, says : "I beg to say I have already forwarded to you the copies of the sunnuds, by which her late Highness held her jaidad, and the pergannah of Badshapore in altumgha, assigned to her by the former rulers of Hindostan, being antecedent to the British sway of this adjoining district." These words would be grammatically accurate, if nothing relating to Badshapore but a copy of Scindia's perwannah, previously called by the Begum, in her letter of 1832,

a sunnud, had been sent. And Mr. Hamilton, writing to Mr. Hutchinson, says - "I also annex a copy of the sunnud referring to Badshapore," having in the preceding sentence spoken of the sunnuds relating to Sirdhana. The argument that he would not have applied the word sunnud to the perwannah does not appear conclusive. Their Lordships can give no credit to the alleged copy of the letter set out at p. 29 of the record. It was hardly pressed by Sir Boundell Palmer in reply. But Mr. Hamilton's letters of the 20th of May, 1836, and of December, 1836, have been strongly relied upon by the Appellants. They were written by him as Collector of Meerut, with the object of having applied to the back rents of Sirdhana, which was within his jurisdiction, a more stringent rule than that which his superiors were disposed to apply either to Sirdhana, or to Badshapore (with which he had no official connection). He draws a distinction between the two tenures; treating Sirdhana as jaidad, and Badshapore, whether resumable or not, as the Begum's personal jaghire. That this was the nature of the Begum's claim would perhaps appear from the copy of Scindia's perwannah; but it must be admitted that these letters are, on the whole, more consistent with the Appellants than with the Respondent's theory concerning the number and nature of the documents sent by Mr. Dyce Sombre.

35. One great and unexplained difficulty, however, touching the copies of sunnuds supposed to have been sent by Mr. Dyce Sombre is this : - From what were these copies made? If from originals, where are the originals? If from other copies (and it was admitted at the Bar that he must be presumed to have retained copies of whatever he sent), what became of those copies? Mr. Dyce Sombre was in correspondence with the home authorities touching his claim, up to 1842. He was presumably then in possession of all the documentary proof he ever had of his title. He was found a lunatic on the 30th of July, 1843, and Mr. Larkins was appointed his committee in 1844. There was a faint suggestion at the Bar that his documents of title were lost or destroyed during his lunacy. But there is not the slightest proof of this; and the non-production of any such documents in the suit affords grounds for supposing that neither Mr. Dyce Sombre, between 1836 and 1842, nor Mr. Larkins, when he took the advice of counsel in 1847, had any copies of the alleged sunnuds from Shah Allum; and, if so, it seems difficult to fix the Government with clear notice in 1836 of the previous title now sought to be established by the copies procured from Delhi in 1847.

36. Their Lordships are of opinion that even if the Government were fixed with the notice of the claim of such title, it is not to be inferred that, because they did not then dispute, they admitted, its genuineness. It is clear from all the proceedings that they did not profess to investigate the title. Their position throughout was, that the tenure was, either in its nature or by arrangement, resumable on the Begum's death, and they resumed it when that event happened.

37. The Appellants' case, however, presents still graver difficulties. When a doubtful title is in dispute the first question that suggests itself is - when was it first asserted and has it been continuously and consistently asserted? In the present case it is clear that this particular title was never asserted by the Begum in her lifetime, but that, on the contrary,

she repeatedly asserted a different one, and acted in a manner wholly inconsistent with the presumption of its having existed. The following is the short summary of the correspondence of the Begum in her lifetime with the Government touching Badshapore.

38. The first mention of any special title to the pergunnah is to be found in the printed correspondence in Mr. Seton's letter of the 24th of February, 1808, when he complains of the attempt of the Begum on the 25th of November, 1807, to obtain from the King of Delhi a new firman, granting this pergunnah as an enarn altumgha to Mr. George Dyce (the father of Mr. Dyce Sombre) and his descendants. Mr. Scion's statement as to the property is, that it was bestowed as a jaghire (which may be a mere estate for life) by Shah A Hum in the thirtieth year of his reign, which he treats as corresponding to 1789 A.D., upon Zuffur Yaub Khan; that the Begum had obtained possession of it in that person's lifetime, and retained such possession after his death; and had now obtained a new firman bestowing pergunnah Jharsa and the town of Badsha-pore, formerly the jaghire of Zuffur Yaub Khan, as an altumgha upon Mr. George Dyce and his descendants.

39. The Government of the day objected to this proceeding; insisted that Badshapore, like the Begum's possessions in the Doab, would revert to the East India Company on her death, and was obviously determined not to recognise as valid any grants of that nature which might be made at that date by the King of Delhi; but recommended that, in deference to the King and to her, she should be induced by friendly negotiations to give up the new sunnud. The negotiations for this purpose went on till 1811, when the Begum did give up the new sunnud. But the important fact in this transaction is, that the case she then put forward (see her letter of the 16th of February, 1811), was the following : - "I had, as I still retain, a firm conviction in my own mind that the pergunnah of Badshapore, and the villages of Bhijapoor and Bhudpore, were held as altumgha to my late son, and would consequently revert to my adopted son, George Alexander David Dyce, in virtue of his marriage with my granddaughter. On this subject doubts have arisen respecting the nature of the grant, which is not now to be found in the family records. I consequently cannot urge a positive right, but" &c.

40. This letter contains most important admissions, which are utterly fatal to the title set up in the amended plaint. It shews that at that time no grant could be found; furthermore, it asserts, "the firm conviction" in the Begum's mind that Badshapore was held as altumgha to her late son, but that, in consequence of doubts respecting the nature of the grant which could not be found in the family records, she could not urge "a positive right." Now it is inconceivable that if she had obtained a grant to herself from Shah Allum, she should not, at this date (1811), have remembered it, and remembering it, should not have put it forward; and if such a grant ever had existence, and could not then be found among her family records, what reason can be suggested why she should not then have applied to the registry of the King at Delhi for a copy of it?

41. In 1825, after an interval of fourteen years, she proposed to surrender the jaghires held by her, including Badshapore, a proposal which was never carried into effect. She seems to have then made no statement of her title, but the representation of Colonel Dyce, with whom she was then on bad terms, was, that the sunnud on which the jaghire was held, whatever its effect, was in favour of Zuffur Yaub Khan. Had the Begum at that time been in possession of sunnuds in her own favour, superseding the grant to Zuffur Yaub Khan, she would hardly have failed to produce them.

42. In 1831 she first expressed a desire that her jaghires should be assigned to Mr. Dyce Sombre, whom she designates as her adopted son and intended heir. In her letter to Government she speaks of Badshapore and its dependent villages as property "which the deceased Nawab, his grandfather, was possessed of on altumgha tenure."

43. The Government, then, as before, appears to have refused its assent to the alienation after her death of any of the lands held by her rent-free; treating the whole as revertible to Government after her death. Some time in 1832, as it is supposed, she made a further application to Government by the letter of which the substance is set forth in the Record. This letter is the only one which can be taken to contain the assertion of an altumgha title to Badshapore in herself. She speaks of the estate as "my altumgha"; and forwards with some other documents a copy of Scindia's perwannah. But even in this letter, when combatting the supposed objection of Government that Badshapore was included in the arrangement made with her, through Mr. Guthrie, she says : "I beg to observe that the country of the Doab only is mentioned in it (Mr. Guthrie's letter); while the pergunnah of Badshapore alias Jharsa, my altumgha, and the gardens, &c, were bestowed on Nawab Zuffur Yaub Khan, the maternal grandfather of Mr. Dyce, for his expenses." This sentence would imply that the title was that of Zuffur Yaub Khan, though the de facto possession was hers.

44. In March, 1833, she again renewed the attempt to get the Government to consent to the transmission of this estate to Mr. Dyce Sombre. The Government again refused to give its consent, treating the estate as held on a life tenure only. But on this occasion the Begum once more clearly rested her claim upon an alleged altumgha grant to Nawab Zuffur Yaub Khan; and referred to sunnuds importing such a grant as being in her possession. There was not on this occasion the slightest suggestion of a grant in her own favour.

45. The discussions, therefore, between the Government and the Begum touching Badshapore and the tenure on which it was held, cover a period from 1808 to 1833. The Government throughout that period insisted that her interest was limited to her life, and that on her death the estate would revert to the State. The Begum, on three or four several occasions, at considerable intervals of time, contended that the tenure was altumgha; sometimes appealed to the Government to continue it after her death as a matter of favour, sometimes attempted to raise a claim as of right; but on every occasion, except, perhaps, in her ambiguous letter in 1832, rested on the alleged grant to the son of

Sumroo, and never pretended that that grant had been superseded by the sunnuds in her own favour, on which the Appellants now rely. Her letters, moreover, point to a substantial grant of the estate to Zuffur Yaub Khan in altumgha, and to the possession of it by him under that tenure. They are quite inconsistent with the case made by the Delhi document, viz., that the altumgha grant to him endured only three months; and was never perfected by possession. The correspondence also concerning the pensions and the negotiations she entered into on that subject are wholly inconsistent with the theory that she held or claimed to hold Badshapore in altumgha by a valid grant to herself.

46. Sir Roundell Palmer endeavoured to meet the strong presumption which this continued course of conduct, and these repeated representations on the part of the Begum raise against the validity of the alleged sunnuds, by an ingenious theory that she may have conceived that claims founded on an alleged grant to Nawab Zuffur Yaub Khan would be more likely to find favour with Government than one founded on sunnuds in her own favour; because they might treat the latter as superseded by the agreement of 1805. This suggestion, which after all is pure speculation, does not really afford a probable explanation of her conduct. If an altumgha jaghire had been granted to Mawab Zuffur Yaub Khan, the Begum had virtually usurped his rights before the cession of the territories west of the Jumna by Scindia to the East India Company. The British Government would in no way be bound, and certainly would be little disposed, to recognise a title which had been de facto defeated before; the territories in question were ceded to them. They would be less inclined to recognise it if the title of Zuffur Yaub Khan had been of so flimsy a character and short duration, as the case now made; represents it to have been; and had been de jure superseded by a grant to the Begum in 1789. If the case of the Appellants is true these circumstances might easily have; been ascertained by inquiry through the British officers at Delhi. Again, the Begum could not make title to the estate through the son of Sumroo. In seeking to transmit the estate to Dyee Sombre, she sought to transmit it as from herself. It was, therefore, more natural, if she had a title in her by valid sunnuds from Shah Allum, that she should put forward and rely on that title, than that she should rest on the old grant to Sumroo's son which she herself had practically set aside. Nor is it easy to explain why, in 1807, she should have obtained from the Court of Delhi a sunnud, little likely to be recognised by the British Government, and founded on the alleged title of Zuffur Yaub Khan, when, if the present case be true, that title had been already superseded by a valid sunnud in her own favour.

47. If the validity of the documents on which the Appellants now rely were supported by strong and independent evidence, it might be reasonable to endeavour to account for the Begum's silence concerning them by theories, more or less plausible, of the nature of that put forward by Sir Roundell Palmer. But if, as has been shewn, the direct evidence in favour of the documents is weak and suspicious, then the presumptions arising from the acts and conduct of that astute woman should be allowed to have their full and natural weight against them.

48. The only remaining question is, what effect is to be given to the perwannah alleged to be, Scindia's confirmation of the sunnuds? Can it be taken to supply the deficiency in proof of the sunnuds, and to establish or corroborate the title of the Begum? It is known to have existed in the Begum's lifetime, since a copy of it was sent by her to Government in 1832. There is no other proof, except the seal, of its origin. And the seal, if not fatal to it, casts the greatest suspicion on this document. It is pleaded as a confirmation by Madha Rao Scindia. But the evidence proves that, at its date, Madha Rao Scindia was dead. If, as it has been contended on behalf of the Appellants, the confirmation pleaded is to be taken as a confirmation by Dowlut Rao Seindia, the difficulty arises that the document bears the seal of his then deceased predecessor. There was no proof that this seal was adopted and used by Dowlut Rao Seindia, but it was attempted to get over the difficulty by a reference to the case of Baboo Gopall Lull Thakoor v. Teluck Chunder Rai 10 Moore's Ind. Ap. Ca. 192. In that case there was evidence that the seal of the deceased zemindar had in several instances, other than that in question, been used after his death. Here there is no proof that Dowlut Rao ever in any other instance used the seal of his predecessor; it is highly improbable that he should do so, and it would be dangerous, as well as unreasonable, to hold that, because a loose practice has been shewn in one case to have prevailed in the kutchery of a Bengal zemindar, it may be inferred in another that the same practice prevailed in the durbar of a powerful sovereign prince. Their Lordships, therefore, cannot treat the alleged confirmation of the Begum's title by the Mahratta Prince, in 1795, as established.

49. Weighing, then, the direct evidence in favour of the sunnuds, weak and suspicious as it is, against the presumptions arising from the non-production of the original sunnud, and the failure to account for it; and against the still stronger presumptions arising from the acts, representations, and conduct of the Begum in her lifetime, their Lordships have come to the conclusion that the Appellants have failed to establish the title which they have set up. To decree in favour of a title to an hereditary and transmissible lakhiraj estate, on evidence so untrustworthy, would be contrary to the long-established practice of the Courts in India; and such a decision would be a dangerous precedent.

50. The proceedings in this case undoubtedly disclose many things which, in their Lordships opinion, are to be regretted. It is particularly to be regretted that the Government did not, in some way or another, investigate the title of Mr. Dyce Sombre, in 1836, as a question of right, instead of dealing with it by an act of power. It is to be regretted that, in 1849, they did not fairly try the question of title, instead of meeting it by a plea of the Statute of Limitations. But after the fullest consideration of the case, and with every desire to give to the Appellants the benefit of any inference which may be legitimately drawn from the circumstances of this protracted litigation, their Lordships see no grounds for believing that, if the cause had been tried in 1836, as an ordinary resumption suit, under the Regulations, Mr. Dyce Sombre would not equally have failed to shew a good title to an altumgha tenure in the Begum. If it were necessary for their Lordships to express an opinion of the nature of the Begum's interest in Badshapore,

they would incline to the opinion that her persistent statement of there having been some grant to Zuffur Yaub Khan was not without foundation; that she had in some way usurped his interest when she got undisputed command of the troops; and that the British power found her in the enjoyment of the estate, and left her so during her life. Any such opinion, however, must be, more or less, matter of speculation. For the determination of this appeal it is sufficient to say, that the Appellants have, in their Lordships' judgment, wholly failed to prove the fourth and sixth of the issues settled in the cause, and, therefore, to establish the title pleaded by them; and their Lordships have come to the conclusion that the appeal in this suit ought, on this ground, to be dismissed, and the decrees of the Indian Courts affirmed; and their Lordships will advise Her Majesty accordingly.

ARMS SUIT

51. In "The Arms Suit," their Lordships are of opinion, for the reasons already given in the Badshapore suit, that the seizure of those arms and stores was not an act of state, but an act, done as under a supposed legal right on the resumption of the jaidad upon the Begum's death. They think that the evidence shews that the arms and stores were purchased by the Begum, and that there is no authority of evidence to shew that those who hold by jaidad are not entitled to things so purchased. They are entitled to all the rents on performance of a certain duty, which duty ceases on their death, and the next jaidadar would be bound to provide arms by virtue of his tenure.

52. Their Lordships think the decree in this suit should declare the Appellants entitled to recover from the Government of India the value of the arms and military stores seized, with interest on such value, from the date of seizure, at the ordinary rate of 12 per centum per annum; and that unless the parties agree to name a sum as representing such value, or agree to refer to arbitrators, in this country, the question, what, at the date of the seizure, was the value of the articles seized, the case must be remitted to India, with instructions to the Court there to ascertain such value, and give a decree accordingly. Her Majesty's order on this appeal may be suspended until the parties shall come to a conclusion as to the course to be pursued. The costs in India of each suit will follow the result; and their Lordships think that each party should bear their own costs of these appeals.