

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Doollee Chand v. Meher Chand Sahoo and
others from the High Court of Judicature
at Fort William in Bengal; delivered 20th
November 1872.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit by the Appellant against the Respondent, who held under a mokurruree lease, for the purpose of recovering arrears of rent, and for the cancellation of the lease in consequence of nonpayment, in pursuance of an agreement contained in the lease itself to that effect. The Court below decided in favour of the Plaintiff upon the first point, and decreed the arrears of rent; but on the second point decided against the Plaintiff on the ground that the suit for the cancellation of the lease was barred by the Statute of Limitations.

Upon appeal to the High Court, that Court confirmed so much of the decision of the lower Court as gave the Plaintiff his arrears of rent; but disaffirmed the decision so far as it declared that the Statute of Limitations applied to the claim of the Plaintiff to cancel the lease; the Court went on in their judgment to say that in their opinion Section 78 of Act X. applied, the latter portion of which is in these terms :—“ In
“ all cases of suits for the ejectment of a ryot or
“ the cancelment of a lease, the Decree shall
“ specify the amount of the arrear, and if such

“ amount, together with interest and costs of suit,
 “ be paid into Court within 15 days from the
 “ date of the Decree, execution shall be stayed.”
 From this latter part of the judgment the
 Plaintiff appeals on the ground that he was
 entitled to a decree declaring the lease to be
 unconditionally cancelled.

It has been contended that the words of this
 section, which *prima facie* certainly would apply
 to this case, and indeed to all cases of cancellation
 of leases, were limited in operation by previous
 clauses of the Act, more especially Clause 22
 which refers to cases where arrears of rent may
 be “ adjudged to be due from any farmer or other
 “ leaseholder not having a permanent or trans-
 “ ferable interest in the land,” and which enacts
 that “ the lease of such leaseholder shall be liable
 “ to be cancelled and the leaseholder to be
 “ ejected.” It was contended that the latter
 part of Section 78 only applied to cases where
 the statutory power was given by this Act to
 cancel leases, and not to cases where the right to
 cancellation accrued in consequence of covenants
 in the lease itself. But their Lordships are of
 opinion that that would be placing too narrow a
 construction upon an Act which may be termed
 as, upon the whole, a remedial one, and they
 see no sufficient reason for limiting what is the
prima facie and natural meaning of its terms to
 the extent contended for.

Their Lordships are, therefore, of opinion that
 the High Court was right in its determination on
 the point in question.

But it has been suggested that the Decree of
 the High Court is ambiguous in its terms.
 There can be no doubt, their Lordships appre-
 hend, as to what the intention of the High Court
 was, namely, to give effect to the terms of this
 statute, and to declare that the lease should be
 cancelled unless within 15 days the rent was paid.

The terms of the judgment are these :—“ It is
 “ ordered and decreed that this Appeal be
 “ decreed, subject to the proviso under the terms

“ of Section 78 of Act X. of 1859 in favour of
“ the Defendants, Respondents, that is to say,
“ that the said Defendants, Respondents, be
“ entitled to continue in possession of the
“ mokurruree tenure, the subject of this suit,
“ upon their paying into Court within 15 days
“ from this date, the amount decreed, namely, the
“ sum of—” and so on.

It appears to their Lordships that this decree, in effect, orders that the lease is to be cancelled upon the nonpayment of rent within the time specified.

That is the interpretation which their Lordships put upon this Decree. Should the parties think it necessary to make any application to the Court for the purpose of making the words more clear, that application can, of course, be made, and the Court will exercise their judgment as to whether it be desirable to amend the Decree or not.

Their Lordships will advise Her Majesty that this Appeal be dismissed with costs.

