Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Messrs. Jardine, Skinner, & Company v. *Rani Surut Soondari Debi from the High Court of Judicature at Fort William in Bengal; delivered 29th May* 1878.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Appellants in this case are Messrs. Jardine, Skinner, and Company. They were the Defendants in a suit brought against them by Rani Sarut Soondari Debi to recover possession of a 2 annas 15 gundas share of upwards of 20,000 bighas of chur land.

The question is whether the Plaintiff was entitled at the time, when she commenced her suit, to treat as trespassers the Defendants who had unquestionably held as Ijaradars under her. The Ijara was dated the 12th Jeyt 1272, corresponding with the year 1865, and was to continue for a term of five years. It comprised a large quantity of land besides the chur land now in dispute. As to the latter the kubulyat executed by the Defendants' agent, contained the following stipulation: "Having fixed a yearly "rent of Rs. 609 4 annas for your nij share of "20,950 bighas, describing them as per boun- "daries given in the schedule below, you have "included it in the aforesaid Ijara rent of "Rs. 4,417 9 5." I shall be in possession "of the said chur as a jote. Upon the ex- "piration of the term of the Ijara of the said

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" mehals, a pottah and kubulyut will be re-
" spectively given and taken in respect of the
" jote, regard being had to the quantity of
" land and amount of rent that shall be
" determined to belong to your nij share in
" accordance with the productive power of the
" land within the area determined by a
" measurement of the said chur. If I do not
" take a pottah and give a kubulyut within
" two months after the fixing of the rate of
" that land, you will make a settlement with
" others." In other words, the Defendants were to be entitled at the expiration of the term of five years to a renewal of the lease of the land in dispute at a rent to be fixed according to the measurement of the land to be made at that time, and to the productive powers of the land.

The Defendants at the expiration of the lease continued in possession. Nothing was done with regard to assessing the rent for the new lease for nearly three years afterwards, but the Defendants remained in posession, and continued to pay the old rent into Court, the Plaintiff having apparently refused to accept it. In Pous 1279 the Plaintiff caused a notice to be served upon the Defendants. That notice, after referring to the above-mentioned stipulation in the kubulyut, and stating that a jummabundi had been made of the said land assessing the rent at Rs. 1,448 8 2 under a measurement, the rates being fixed in accordance with the productive powers of the various sorts of land mentioned in the schedule, and the rates paid by tenants of a similar class for lands of a similar description, proceeded as follows: "Notices have been re-
" peatedly given to you requiring the exchange
" of pottah and kubulyut, but you have not-
" withstanding failed to appear and make any
" settlement. For this reason you are again

" informed by means of this notice that in " accordance with the provisions of the kubul- " yut dated 14th Jeyt 1272, B.S., given by you, " you shall appear personally or through your " manager or other authorised person within " two months from the date of the service of " this notice at Putia, the Sudder Cutcheri of " my zemindari and appertaining to Zillah " Rajshahye, and taking a pottah at the rent " mentioned in this notice, deliver a kubulyut. " If you do not do this within the said period, " after its expiration a settlement will be made " with others." There is no proof of the former notices mentioned in this document. For all that appears from the evidence, this was the first notice served upon the Defendants. Some further correspondence took place, but nothing was settled between the parties, and the Plaintiff filed her plaint in August 1874. The Defendants insisted that by reason of a long occupation of the lands they had acquired a right of occupancy, and that the Plaintiff had no right to turn them out of posession. In paragraph 2 of their written statement they say: "The lands in dispute have been held " by us in jote right for upwards of 12 years " since their formation, and the Plaintiff there- " fore included the said jote in the pottah of " 12th Jeyt 1272 and realised rent accordingly. " The rents of the years 1277, 1278, 1279, and " 1280 have been deposited by us in the Moon- " siff's Court at Jungipore. We have acquired the " right of occupancy in the Plaintiff's share of " the said lands, and possess a legal right to " hold and enjoy the same on payment of a " rental of Rs. 609 4 annas per year." They claimed, therefore, a right of occupancy acquired by virtue of the provisions of Act 8 of 1869 of the Bengal Government, or under Act 10 of 1859 of the Governor General in Council.

With reference to this claim the Judge of the Court of first instance laid down two issues, the 4th and 5th, which are: "Was there a jotedar "holding by Defendants of Plaintiff's share "antecedent to, independent of, and not merged "in the interest conferred by the Ijara lease. If "there were such a jotedar holding, has it "ripened into a right of occupancy?" In his judgment at page 97 he says: "I find that the "Defendants had a jotedary tenure antecedent "to the Ijara lease, and not merged therein; but "that this tenure has not been shown to have "been strengthened by the acquisition of a right "of occupancy in the lands included therein." As their Lordships understand the learned Judge in this part of his judgment, he held that there was a jotedary holding, but that the Defendants had not gained a right of occupancy which entitled them to hold possession as against the Plaintiff independently of the stipulation in the Ijara.

The High Court put their conclusions on the above issues far more clearly. They say: "At any rate it seems an irresistible conclusion "that the occupancy of the Defendants in "these lands was connected with and arose "entirely out of their tenure as Ijaradars of "the Pergunnah. That being so, the case falls "under the repeated decisions of this Court, "that no farmer or leaseholder can, during the "term of his lease, create for himself a sub-"tenure which is to enure after the lease "expires to the prejudice of the owner whose "*locum tenens* he is during the term of his "lease. But even if that were not so it is im-"possible to see how the Defendants could "have acquired either a right of occupancy "or a jotedar right in respect of an undivided "share of an estate."

Their Lordships do not concur in the view

thus expressed by the High Court, to the effect that a right of occupancy cannot be acquired in respect of an undivided share of an estate; but they fully concur in the conclusion that the Defendants' holding as Ijardars prior to and during the lease of 1865 did not create in them a right of occupancy, and that after the expiration of the lease of 1865 they held over, subject to the terms of that lease.

They are also clearly of opinion that in point of law the agreement contained in the pottah to grant a renewal of the lease did not create or vest in the Defendants a fresh term of years. It merely gave them a right to a renewal of the lease, and to compel the Plaintiff to renew it if she should attempt to turn them out of possession at the expiration of the term. It also gave the Plaintiff a right to the land, and to let it to others if the Defendants should refuse to accept a pottah and execute a kubulyut within two months after the rent to be paid during the renewed term should have been duly ascertained and fixed. Accordingly, when after the expiration of the lease, and before the Defendants acquired a right of occupancy, the Plaintiff gave them notice that unless they renewed the lease according to the terms which she pointed out, she would settle with others, or in other words that she would turn them out of possession, the Defendants might if they had pleased have required the Plaintiff to perform her agreement, and to grant them a lease upon the terms stipulated; but even if they had done so they could not, in their Lordships' opinion, have compelled her to grant a lease for a longer period than five years. Nothing is said in the ijara as to the duration of the new lease, and a term for a longer period than the original term could not reasonably be implied. The Defendants however took no measures to obtain a renewal

of the lease, and at the present moment the period of five years from the expiration of the lease of 1865 has expired. The Judges of the High Court say: "She waited for three "years after the expiry of the ijara lease be- "fore she gave notice to the Defendants, and "allowed the Defendants to occupy at the old "rate, which was very much less than what "was now demanded. After that she waited "for two years more before she brought the "present suit; and finally about six or seven "years have now elapsed since the termination "of the ijara, and the Defendants are still "holding at the rate of Rs. 609 that which the "Plaintiff claims to be worth Rs. 4,000. Having "regard simply to this circumstance, it appears "to us that the Defendants had already had the "full benefit which they could have derived "from the stipulation in the ijara pottah. They "could not have required the Plaintiff to give "them the land for more than five years, nor "could they have expected to hold the land at "anything like so favourable a rent as that at "which they have been so long enjoying." Their Lordships are of opinion that the Plaintiff had no right to measure the lands in the absence of the Defendants, or herself to determine finally the rent at which the lease should be renewed. If the rent at which the Plaintiff offered to renew the lease were too high, the Defendants were not bound to accept it; but in that case it lay upon them to take measures to compel the Plaintiff to renew at a proper rate, having regard to the stipulations of the lease. This they did not do at any time before the commencement of the suit otherwise than by stating in the letter of the 4th of November 1873 (p. 52) their readiness to accept a renewal at a rent to be fixed in accordance with the terms stipulated. Even in their defence to the suit, though they stated that

they were ready to take a pottah upon the terms stipulated, they still, as already stated, set up a right of occupancy at the rent of 609 rupees and 4 annas a year. It appears that a great portion of the land has been diluviated, and it would be impossible now to measure the land as it existed at the time of the expiration of the lease, or to ascertain what were the productive powers of the land at that time.

Their Lordships are of opinion that the Plaintiff had a right to turn the Defendants out of possession at the expiration of the term granted by the lease of 1865, except so far as that right was qualified by the stipulation for a renewal; that the Defendants at the expiration of that lease had an equitable right to a renewal according to the stipulations in the agreement; but that it is too late for them to rely upon their title to a renewal of the lease which, if it had been granted, would now have expired. They have, therefore, no equity to resist the Plaintiff's claim to recover the possession of the land.

Under these circumstances their Lordships are of opinion that the decree of the High Court ought to be affirmed, and they will humbly advise Her Majesty to that effect. The Appellants must pay the costs of this Appeal.