Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal Ram Churn Singh v. *the Ranigunge Coal Association, Limited, from the High Court of Judicature, at Fort William in Bengal; delivered 7th July* 1898.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

By a mokurruri pottah, dated the 26th February 1886, Bar Kumar Bhaia Gopal Lal Singh, the father and immediate predecessor of the Appellant, let to the Respondents, The Ranigunge Coal Association, Limited, an area of 1974 bighas, 8 cottahs, and 8 gundahs of land, situated in the Sonthal Pergunnahs, sub-division Deoghur, as delineated upon a relative plan, with all underground and surface rights pertaining thereto, at a yearly jumma of Rs. 6 per bigha, amounting in all to Rs. 11,846. 8. 6. 1. 3. It was declared that coal, limestone, and iron, were to be included in the subjects let, but that the tenants were to have "no title to work "gold or silver, or copper or lead, or any other "precious metals which may be found out." Power was given to the tenants to set up collieries, make coal pits, erect houses and bungalows for dwelling purposes, establish bazaars, make gardens, and excavate tanks; and also full power to alienate their interest in the whole or any portion

of the lands, or to make dur-mokurruri settlement, or to under-let.

The following provision, out of which the present action arose, was made in favour of the tenants :—"Further, it will be always open to "you, whenever you may like to tender *istafa* "(resignation) of the whole or any portion of "the lands settled under this pottah. If such "*istafa* be made in respect of the whole or any "portion of the land, then you shall get a "deduction in the rents at the rate of Rs. 6 per "bigha, for the extent of land that may be "found on measurement to have been so re-"linquished, and, with the exception of the "deduction in the total amount of rents to that "extent, all the other terms and conditions of "this deed shall remain in force and operative." The option thus given was qualified by the provision that the tenants should not have right to, relinquish by selection pieces of land from which the coal may have been to the very last worked out, or pieces of land from which all the trees may have been destroyed to their very roots owing to any act on their part; and also that they should pay the full amount of rent for the whole of the Bengali year, in which the *istafa* might be made by them.

On the 4th April 1892, an *istafa* or deed of relinquishment was executed on behalf of the Respondent Company by their manager, Mr. Whiffen, and was on the same day presented to the magistrate, for transmission to the Appellant. On the 8th April 1892, the Appellant granted an acknowedgment that he had received notice of the deed, and protested against the validity of the relinquishment, upon the ground that the jungle of the lands had been destroyed by the Respondents, contrary to the terms of the mokurruri pottah, and that the plan which accompanied the deed, which professed to be

a copy of the plan incorporated with the original pottah of 1886, with the lands to be relinquished delineated upon it, had not been compared or verified in his presence.

The deed in question contained an intimation to the effect that, from the year 1893, the Respondent Company would only remain in possession of the 565 bighas of land marked on the plan, and would not, from that date, hold possession of the remaining lands, "measuring "an area of 1409 bighas, 8 cottahs, and 8 "gundahs, according to the standard measure- "ment, and representing a jumma of Rs. 8,456 "8. 6. 1. 3. at the rate Rs. 6 per bigha. "The second party ghatwai is at liberty either "to settle the said lands and jumma with others, "or to retain their khas possession. The first "party Company have no claim or objection "thereto."

The plaint in this action was filed in the Court of the Subordinate Judge of Deoghur on the 12th December 1892. The Appellant having previously declined to accept payment of a quarter's rent for the 565 bighas which were not sought to be surrendered, the amount had been paid by the Respondent Company into the Court of the Subordinate Judge. In his plaint, the Appellant claimed decree for the full amount of rent stipulated in the mokurruri pottah of 1886, on the ground that the renunciation tendered was invalid. The Respondents lodged a written statement, in which they controverted all the material averments made by the Appellant.

Issues were adjusted, and the case went to proof before the Subordinate Judge. The third of these issues, the only one which, for the purposes of this Appeal, their Lordships think it necessary to notice, was in these terms,— "Did the Defendant Association actually re- "linquish the land or hold possession thereof, "or of any portion of it, after the alleged

" relinquishment, under the lease dated the 15th " Falgoon 1292, or under any other right?" Upon that issue, the Subordinate Judge held that the Respondents did not actually relinquish the whole of the area which they professed to give up. He found that, " In the first place, they have " allowed cooly huts to remain on the area they " profess to have relinquished, these huts being " occupied by coolies who are working their " mines; and, in the second place, they have " collected rents from cultivators who hold land " there." Decree was given to the Appellant for the full rent claimed by him; but it is right to explain that, in arriving at that result, the learned Judge relied not only upon the failure of the Respondent Company to quit possession of the whole lands which they professed to relinquish, which he describes as " a " fatal mistake," but also upon the fact which he found, in the absence of evidence to the contrary, that Mr. Whiffen, their manager, had not authority to execute the deed of relinquishment, on behalf of the Company.

On appeal to the High Court at Calcutta, Mr. Justice Norris, and Mr. Justice Banerjee, reversed the decision of the Subordinate Judge. By their decree, these learned Judges, in lieu of the judgment which they set aside, declared that out of the 1974 bighas, 8 cottahs, 8 gundahs of land originally leased to them, the Respondents had, from and after the date at which they had made a relinquishment, been in possession of not only the 565 bighas which they professed to retain, but of 600 bighas, and they gave decree against the Respondents for the rent of these 600 bighas at the rate of Rs. 6 per bigha, with interest at the rate stipulated in the mokurruri pottah, upon each instalment of rent from the date at which it became due and payable.

Their Lordships entertain no doubt that, although the Courts below differed as to the

extent of the Respondents' liability for rent which resulted from that conclusion, they were agreed in finding that, in point of fact, the Respondents had not surrendered possession to the Appellant of the whole area of land which they professed to relinquish. And, having regard to the evidence which was before them, and to the reasons which were assigned by the Subordinate Judge, and by the learned Judges of the High Court, their Lordships have had no difficulty in coming to the conclusion that both Courts were agreed as to the particular portions of the total area described as relinquished, of which the Respondents had failed to surrender possession. The Judges of the High Court indicated, in terms which are entirely consistent with the findings of the Subordinate Judge, that the Respondents, notwithstanding their professed relinquishment, had retained possession of 9 bighas, which were occupied by coolies employed in working their coal mines, and of 26 bighas, for which they had drawn rents from the cultivators. It was strenuously, and with some plausibility, argued by the Respondents' Counsel, that the views expressed by the learned Judges of the High Court, taken *per se*, did not amount to actual findings; but that contention became hopeless, when it appeared that their views were made the basis of the decree pronounced by the Court of Appeal, which finds the Respondents liable in rent for these 35 bighas, in addition to the rent of the 565 bighas of which alone they professed to retain possession. No adequate cause has been shown for disturbing these concurrent findings of fact, which are the basis of conflicting judgments in the Courts below; and their Lordships therefore accept them, as conclusive, in disposing of this appeal.

The Subordinate Judge held that the surrender made by the Respondents was ineffectual to qualify their mokurruri lease, or to relieve them of their obligation to pay rent for the whole 1974 bighas, 8 cottahs, and 8 gundahs, because they had retained possession of 35 bighas out of the 1409 bighas, 8 cottahs, 8 gundahs, which they had professed to surrender. On the other hand, the learned Judges of the High Court held, that the Respondents had effectually surrendered 1374 bighas, 8 cottahs, 8 gundahs, being 35 bighas less than the area described in their *istafa* of the 4th April 1892. The learned Judges arrived at that result upon the principle that the 35 bighas retained were so small an area in proportion to the 1409 bighas, 8 cottahs, 8 gundahs sought to be relinquished, that the surrender must be regarded as substantial and sufficient. The *ratio* of their decision is thus explained in the judgment of the High Court :—" But here the relinquishment " is regulated by the contract entered into between " the parties; and that contract expressly allows " the tenant at any time to relinquish the whole " or any portion of the land let out. The mere " fact of the tenant remaining in possession of " the land he professes to have relinquished, will " not, therefore, necessarily vitiate the relinquish- " ment altogether. The proper question for " consideration in this case, therefore, is, not " whether the possession by the lessees of a part " of the land professed to be relinquished makes " the relinquishment invalid as a matter of law, " but whether such possession renders the pro- " fessed relinquishment unreal in point of fact; " or in other words, whether such possession " from its nature or extent indicates that the " lessees have, notwithstanding their relinquish-

" ment, been enjoying a substantial portion of " the benefits resulting from their occupation of " the land relinquished, and that the relinquish- " ment is made only with a view to avoid the " burden of paying rent."

Their Lordships do not find it necessary to discuss the question, whether, if the terms of the mokurruri pottah had admitted of approximate equivalents for the total area professed to be relinquished, the decision of the learned Judges would have been correct. In their opinion, no such equivalents are admissible. The right of relinquishment is a privilege given to the tenants, by means of which they may restrict the lease, and establish their tenure upon a new basis, or may extinguish the lease altogether; and the tenants cannot avail themselves of that privilege to any extent, unless they strictly observe the conditions which are either expressed or are plainly implied in the lease itself. In so far as it concerns the power of relinquishment, the scheme of the contract embodied in the lease is exceedingly simple. The *istafa*, or in other words the resignation made by the tenants, which, by the plainest implication, must contain a precise statement of the area to be relinquished, is to form the basis of future relations between the contracting parties; and, in order to fix, for the future, the rent which the tenants are liable to pay, and the lessor is bound to accept, the lease contemplates that no step shall be necessary, beyond measurement of the area surrendered, and deduction of an amount calculated at the rate of Rs. 6 per bigha for such area, from the original rent. Their Lordships may observe that, in their *istafa*, or deed of surrender, the Respondents complied with the requirements of the lease, and distinctly intimated that, as soon

as the surrender took effect, the Appellant would be in a position either to let the relinquished area to tenants, or to assume khas possession of it. To adopt the construction put upon the lease by the High Court would, in their Lordships' opinion, defeat the plain intention of the contracting parties. It is equivalent to holding that the *istafa* tendered may be qualified or restricted, not by the tenants making a new surrender, which would be within their competency, but by their simply continuing to hold possession of part of the area which they had surrendered. In that case, the future rent could not possibly be ascertained by measurement of the area described in the deed of relinquishment. Its ascertainment would, in that case, involve an investigation, and probably a litigation also, as to the precise extent of the land of which the tenant had retained possession, an enquiry which is not contemplated by the lease, before the amount of future rent could be settled.

Their Lordships think it right to notice that the Respondents endeavoured to justify their retaining possession, not of the nine bighas occupied by mining coolies, but of the 26 bighas which they let and drew rents for, upon the ground that they held these 26 bighas, not as tenants under the original pottah of February 1886, but in virtue of their right as mostajirs, holding of the Appellant by a separate title. The pottah, which expressly lets to the Respondents all "underground and surface rights" in the 1974 bighas, 8 cottahs and 8 gundahs demised, makes mention of these mostajiri rights as having previously existed, and describes them as having been made over to the Appellant's predecessor in title. There are deeds in process which prove that the transfers were made to him by the mostajirs; but there is not a tittle of

evidence to show that the rights exercised by the mostajirs ever became vested in the Respondents, or that the Respondents had any title to possess these bighas which they claim the right to retain, other than that which they derived from the mokurruri pottah.

Being of opinion that the *istafa*, or surrender, upon which the Respondents' defence to this action rests, was invalid in law, their Lordships will humbly advise Her Majesty to reverse the judgment of the High Court, to restore the decree of the Subordinate Judge, and to order that the Respondents shall pay to the Appellant the costs incurred by him before the High Court. The Respondents must pay to the Appellant his costs of this appeal.