Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rahim-ud-din and Others v. *Rewal (since deceased) and Others, from the Chief Court of the Punjab; delivered the 25th March* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal *ex parte* against a Decree of the Chief Court of the Punjab pronounced in favour of the Respondents who were Plaintiffs in the suit.

The Respondents are occupancy tenants in the village of Manda Khera, a zemindari village owned by a single proprietor. On the death of the owner in 1892 the village was sold under the authority of a declaration of trust and sold to a stranger. Thereupon the Respondents taking their stand on Act XII. of 1878, an Act passed for the purpose of amending the Punjab Laws Act, 1872, claimed pre-emption of the whole village. There was no preferential claim.

It was not disputed at their Lordships' Bar that there would be no answer to the claim of the Respondents if the provisions of the Act of 1878 apply to the case. It was however contended on behalf of the purchaser, who was a Defendant in the suit and is now represented by the Appellants, that the Respondents cannot claim the

benefit of the Act because, although Manda Khera is a village, no village community is to be found in it.

The argument was mainly founded on Section 10 of the Act of 1878. The provisions with regard to pre-emption begin with Section 9. Section 9 declares that "the right of pre-emption is a right "of the persons herein-after mentioned or re- "ferred to to acquire in the cases herein-after "specified immoveable property in preference to "all other persons." The Section goes on to explain that the right arises in respect of sales and foreclosures. Section 12 declares that "if "the property to be sold * * * is situate "within * * * a village the right to buy * * * "belongs, in the absence of a custom to the "contrary," to certain classes of persons therein described in succession one after the other. Among them in the sixth place come "the "tenants (if any) with rights of occupancy in "the property," and seventhly "the tenants (if "any) with rights of occupancy in the village."

Those two sections—Sections 9 and 12—taken together seem to be complete in themselves and plain enough. But between them are Sections 10 and 11. It is Section 10 which creates or is supposed to create the difficulty. It declares that "unless the existence of any custom or "contract to the contrary is proved, such right" that is the right of pre-emption "shall, whether "recorded in the settlement-record or not, be "presumed—

"(*a*) To exist in all village-communities how-ever constituted."

Section 11 declares that the right "shall not "be presumed to exist in any town or city or "any sub-division thereof but may be shown to "exist therein."

The argument, as their Lordships understood it, was to this effect. Before the benefit of the

provisions of Section 12 can be invoked, the existence of a right of pre-emption must be either presumed or proved. In villages the right is presumed to exist if there be a village community, but if that condition is wanting there must be proof of custom. In the present case there is no evidence of custom at all. There can be no village community because the whole village was in the hands of a single proprietor. Two persons at least are required to make a community, and they must be land owners. The result of this argument would be that the rights of occupancy tenants would be made to depend on the question whether the village belonged to one or more than one landowner, a matter which does not of itself seem to affect or concern the position of the tenant in relation to strangers whose exclusion is aimed at by the law of pre-emption. There is certainly ground for contending that the generality of Sections 9 and 12 is not cut down by Sections 10 and 11. These Sections apply a different rule in the case of villages from that which is applicable in the case of towns and cities. And it may well be that they were not intended to do more, though no doubt the introduction of the expression "village "communities" where the expression "villages" would suffice does introduce an element of obscurity. It is not however necessary to pursue this subject further or to determine the point, because their Lordships agree with the Chief Court in thinking that the expression "village "communities" in the Act of 1878 is not used to denote a village community of the typical sort consisting of members of one family or one clan holding the village lands in common and dividing between them the agricultural lands according to the custom of the village. It seems rather to be used in a popular sense to denote a body of persons bound together by the tie of residence in

one and the same village, amenable to the village customs and subject to the administrative control of the village officers. There seems to be no reason why a village community should be confined to the land owners in the village. In their Lordships' opinion occupancy tenants are members of a village community within the meaning of the Act, and so are all persons in an inferior position who belong to the village though they may be unconnected with the land and not entitled to any right of pre-emption under the Act of 1878. That was the view of the learned Judges in the Chief Court, and their Lordships see no reason to differ from them.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.