Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of the Bengal Indigo Company, Limited, v. *Mohunt Roghubur Das, from the High Court of Judicature at Fort William, in Bengal; delivered 27th June* 1896.

Present:

LORD WATSON.
LORD HOBHOUSE.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Appellant Company are owners of the Barouli Indigo Factory, which they acquired in April 1890. The Respondent is proprietor of the entire 16 annas of Mehal Barouli, portions of which were occupied by the owners of the Factory, from the 14th September 1867, until September 1890, under a series of leases from the Respondent and his predecessors. These were, (1) a ticca pottah of 105 bighas, 1 cottah, and 8 dhoors, for five years ending in September 1872; (2) a peshgi patowa ticca, for nine years ending in September 1881, of the 105 bighas, 1 cottah, and 8 dhoors included in the preceding lease, together with additional land bringing up the total area to 240 bighas; (3) a ticca pottah, of same date with the last, of 25 bighas for ten years ending in September 1882; and (4) a zuripeshgi ticca patowa pottah, of the whole 265 bighas included in the two previous leases, for an additional term ending in October 1890.

The first and third of these documents were in the ordinary terms of a lease for cultivation.

92491. 125.—7/96.

The second and the fourth of them had this peculiarity, that at their commencement, the tenants advanced to the lessor a lump sum, in the one case of Rs. 4,500 and in the other of Rs. 5,000, for the liquidation of debts due to his creditors, the tenants being entitled to recover payment, by retaining out of the rents payable by them, a yearly instalment of the sum advanced, with interest at the rate of six annas per mensem. The lands were cultivated for the purpose of growing indigo; and the leases contained an express obligation by the tenants to quit occupation at their expiry.

On the 9th October 1890, the last of these leases having expired, the Respondent served the Appellants with a notice requiring them to remove from possession, and intimating that in the event of their failure to do so, a regular suit would be instituted. The notice having been disregarded, the present suit was brought by the Respondent in February 1891, before the District Court of Sarun (1) for a declaration that the Appellants had no right to retain possession, (2) to have exclusive possession decreed to the Respondent, and (3) for mesne profits. In their written statement, the Appellants pleaded that they and their predecessors in the Factory had acquired a permanent right as occupancy-raiyats; and, alternatively, that, as non-occupancy-raiyats, they were not liable to be ejected, except upon the terms and conditions specified in Section 25 of the Bengal Tenancy Act 1885 (Act VIII. of 1885).

The Subordinate Judge gave effect to the leading plea of the Appellants, and dismissed the suit with costs. On appeal to the High Court, his decision was reversed by Trevelyan and Ameer Ali, JJ., who held, that the second and fourth of the leases above-mentioned did not create a proper right of occupancy for

purposes of cultivation, and could not be made the foundation of a claim to raiyat-occupancy. They further held that the Appellants' defence was excluded by Section 7 of Act X. of 1859, which enacts that the provisions of the Statute "shall not be held to affect the terms of any "written contract for the cultivation of land "entered into between a landholder and a ryot, "when it contains any express stipulation "contrary thereto."

Their Lordships see no reason to differ from the views expressed by the learned Judges of the High Court, to the effect that the leases in question were not mere contracts for the cultivation of the land let; but that they were also intended to constitute, and did constitute, a real and valid security to the tenant for the principal sums which he had advanced, and interest thereon. The tenants' possession under them was, in part at least, not that of cultivators only, but that of creditors operating repayment of the debt due to them, by means of their security. Their Lordships cannot concur in the judgment of the High Court, in so far as it is founded upon Section 7 of the Act of 1859; because that clause is superseded, if not wholly repealed, by Section 178 of Act VIII. of 1885, which does not appear to have been referred to in the argument addressed to the Court.

It is unnecessary to notice further the reasoning which prevailed in either of the Courts below, because it entirely ignores the statutory definition of the word "raiyat," contained in Section 5, Sub-section (5) of the Act of 1885. It is in these terms,—"Where the area held by a tenant "exceeds one hundred standard bighas, the tenant "shall be presumed to be a tenure-holder until "the contrary is shown." That enactment is conclusive of the present case. The land held in tenancy by the owners of the Barouli Indigo

Factory, under the Respondent and his predecessors in title, has, from the first been in excess, and, since 1872, largely in excess of the statutory limit. The Appellants are, therefore, not raiyats, either "occupancy" or "non-occupancy," within the meaning of the Act of 1885; and their defence to this suit is groundless.

Their Lordships will humbly advise Her Majesty to affirm the judgment appealed from. The Appellants must pay to the Respondent his costs of this appeal.