Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tituram Mukerji and others v. *Cohen and others; from the High Court of Judicature at Fort William in Bengal; delivered the 4th August* 1905.

Present at the Hearing:

LORD DAVEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an appeal from a judgment and decree of the High Court of Calcutta, dated the 6th May 1901, affirming a decree of the Subordinate Judge of Manbhum, which dismissed the suit with costs. The case relates to the right to the minerals under lands in Mouzah Golokdihi, pergunnah Jheriah, in the district of Manbhum, and to various questions in connection therewith. Pergunnah Jheriah forms part of the estates of the Rajah of Jheriah.

On the 22nd April 1824 the then Rajah of Jheriah executed a lease, of the kind well known in that part of India as a "jungleburi" lease, in favour of Golok Mudi, the material parts of which are as follows:—

"To Golok Mudi.—This deed . . . is executed to the "following effect. In Mouzah Tisra . . . there are "jungle lands within these boundaries . . . and the lands "within these boundaries are now settled with you at a rental "of Rs. 12. You shall cut the jungle . . . and prepare "the lands. When the lands are prepared, rents will be "assessed in the presence of five persons, and you shall pay "10 annas on every rupee thereof to the Raj, and you shall get

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"six annas for your labour. On these conditions the lands "within these boundaries with the jungle . . . are given "to you for jote and cultivation."

By 1835 or 1836 the time appears to have arrived for the further arrangement contemplated by the lease just cited, and accordingly a fresh instrument was entered into. When this was done two things had happened: first, Golok Mudi had cleared jungle and brought the land cleared into cultivation; secondly, the mouzah had become separated from Tisra and had acquired the appellation of Golokdihi after the name of Golok Mudi the tenant. The material parts of the new document are as follows:—

"To Golok Mudi of good behaviour. You have been "holding possession of Mouzah Golokdihi . . . as jungle-"buri chuck . . . You have now cleared the jungle within "these boundaries in Mouzah Golokdihi." (Then follow calculations of rent.) "Rs. 47. 15 are fixed as the rent."

As to the effect of these documents certain questions have from time to time been raised, and it may tend to simplify the treatment of this Appeal if their Lordships' conclusions upon those questions are stated once for all at the earliest possible stage. Their Lordships see no reason to question the decision of the Courts in India that the leases to Golok Mudi included the whole area of Golokdihi. They also agree in thinking that those leases related to the surface and did not carry the subjacent minerals. The result is that Golok Mudi and his successors in title became by the grant entitled to the exclusive possession and use of the whole surface of Golokdihi, while the mineral rights remained in the Rajah. Their Lordships also accept the finding of the Courts in India that the lands in dispute in the present case lie in Golokdihi. The title of Golok Mudi has become vested in the Defendants Hridoy Mudi and Gopal Mudi, and the whole group may be conveniently spoken of collectively as the Mudis.

At some date which cannot be precisely fixed, but which must have been before, and was probably shortly before, the 3rd June 1849, Rajah Udit Narayan Singh, who had then succeeded to the Jheriah estate, made a khorposh, or maintenance, grant to Nanda Kishore Singh, a near relative and a member of the Raj family, of certain villages including Golokdihi. The nature of this grant so far as it can be ascertained will be considered later.

On the 1st March 1893 Nanda Kishore executed a mourusi mokurruri pottah in favour of Purna Chunder Daw by which he purported to convey to the latter the whole of his rights to surface and subsoil in Mouzah Golokdihi.

Later in the same year, on the 11th October, the Mudis executed a mourusi mokurruri pottah in favour of the Respondent Cohen, purporting to grant to the latter the surface and underground rights in Golokdihi, and in particular the right to raise coal and other minerals. And on the 2nd April 1896 Rajah Joy Mongul, now become the Rajah of Jheriah, granted to the same Cohen a mourusi mokurruri pottah of the underground rights with the power of cutting and raising coal.

The effect of these several transactions, as affecting the right of raising coal from under Golokdihi, was that Purna Chunder Daw acquired all that Nanda Kishore had to dispose of, while Cohen acquired all that the Mudis and all that the Rajah could convey.

Cohen proceeded to raise coal under Golokdihi, and Purna Chunder Daw (who is now represented by the Appellants as his executors) instituted the present suit in the Court of the Subordinate Judge of Manbhum. He sued as Defendants the Mudis and Cohen, and joined his own lessor Nanda Kishore as *pro formâ* Defendant. The Great Eastern Coal Company as assignees of Cohen were afterwards added as

Defendants, and later still, for the purposes of this Appeal, the liquidators of the last-mentioned Company were made parties. The plaint alleged that Nanda Kishore had been absolute owner and in possession of the land in dispute, including the minerals, under his khorposh grant. It was also alleged that Nanda Kishore had acquired a like title by long adverse possession. And the Plaintiff claimed to stand in Nanda Kishore's place by virtue of the pottah of the 1st March 1893. He asked for a declaration of his absolute proprietary right to the land and the minerals, for possession, for damages in respect of the value of the coal removed, for an order to restore the land to its original state or the cost of doing so, for a permanent injunction against cutting, raising, and appropriating coal, and for relief generally. The *pro formâ* Defendant Nanda Kishore, in his written statement, supported his tenant the Plaintiff. The other Defendants denied the title of Nanda Kishore to the possession of the land and to the minerals, and maintained the title on the other side derived from the Mudis and from the Rajah. The suit was dismissed by the first Court, and the High Court affirmed that decision.

At the trial the inquiry was naturally directed mainly to the nature of Nanda Kishore's rights. The Plaintiff relied primarily upon a document put forward as being the deed which created the khorposh grant in favour of Nanda Kishore, and which it was said conveyed to him absolutely and permanently the whole of the Rajah's rights in Golokdihi. Both Courts in India, however, have found that the genuineness of that document is not established. And their Lordships see no sufficient ground for dissenting from that finding. The case based upon adverse possession failed altogether. Reliance was then placed upon an alleged custom, family or territorial, making khorposh grants absolute and perpetual, but this

case is now abandoned. It remained only to say what could be presumed as to the nature of a khorposh grant, the existence of which is not disputed, but of the terms of which there is no direct evidence. Both the Courts in India held that the most that could be assumed as to the duration of such a grant was that it was for the life of the grantee. They further held that such a grant, regarding it as one for the life of the grantee, could not be presumed to be more than a grant of rents and profits, and could not be presumed to carry with it a right to open mines and remove minerals, which are a portion of the soil. In these conclusions their Lordships concur, and they consider, as did the Courts in India, that these conclusions are sufficient to dispose of the case so far as it turns upon any title of Nanda Kishore to the minerals. The claim of Nanda Kishore, or of the Plaintiff through him, to possession of the surface is precluded by the exclusive right of possession granted to the Mudis by the jungleburi leases and by them to Cohen.

But on the argument before their Lordships the case for the Appellants was placed upon another alternative ground. It was contended that assuming Nanda Kishore as khorposhdar to have had, and the Appellants now to have, no proprietary interest in the minerals and no right to work them, still the latter have a sufficient interest in the soil of Golokdihi to entitle them to object to the working of minerals therein or thereunder by any person without their consent. And the question so raised has to be considered.

What is asked for is an injunction restraining the raising of coal. In order to determine the validity of this claim it is necessary to realise clearly the position of the Appellants claiming under Nanda Kishore. They have no right in the minerals, which belong to the Rajah or those

who derive title from him. They have no present right to the surface; that belongs to the Mudis or those entitled under them. The Plaintiff, and therefore the Appellants, might conceivably have been entitled to damages. If so, the damages would have been measured by the injury inflicted upon their interest in the property by what has been done. But that interest endures only during the life of Nanda Kishore under a grant to the latter of a date not later than 1849. And the right is limited to the receipt of the rents reserved under the lease to the Mudis and such other rights, if any, as may be incident to such a reversion as that which has been acquired. The Plaintiff asked for damages based upon the view that he was the owner of the minerals, and he asked for damages based upon the view that he was entitled to possession of the surface, both of which claims failed. He never asked for damages upon the only ground legally tenable. And this is natural, for there is no evidence of any injury to his reversion, or that his security for the rent, which is all he is entitled to, will be in the least degree impaired.

The right to an injunction depends in India upon statute and is governed by the provisions of the Specific Relief Act (I. of 1877). Section 52 of that Act places the grant of an injunction in the discretion of the Court, a discretion to be exercised of course as the discretion of Courts always is. Now in the present case there is no evidence that the Respondents have done, or threaten to do, anything which will interfere with the enjoyment of any right vested in the Appellants, and the invasion of their right (if any) is of a theoretical and trivial character which would at most give them a claim to nominal damages. Any injunction which could be granted would inflict far more injury on the

Respondents than any advantage which the Appellants could derive from it. Their Lordships are of opinion that in the exercise of a sound discretion no injunction should be granted.

Thir Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellants will pay the costs.