Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for India in Council v. *Rani Anundmoyi Debi, from the High Court of Judicature at Fort William, in Bengal; delivered 9th July* 1881.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE present appeal arises thus. The Government of India determined to relinquish the manufacture of salt in the lands the subject matter of this suit, and, in pursuance of a power which it conceived itself to possess under Regulation I. of 1824, offered, in the year 1865, to settle these lands with the Plaintiff, within the ambit of whose zemindary they were situated. The Plaintiff declined the offer, denying the right of the Government so to deal with them, whereupon they were temporarily settled with two other persons. The Plaintiff has brought the present suit for a declaration that a moiety of the lands in question, amounting to 16,665 begahs, are part of the mal lands of his permanently settled estate, viz., three pergunnahs, Dakhin Mal, Bahirimootha, and Bhaitgurh, for possession of them, and to set aside the temporary settlements.

The 1st Defendant is the Collector of the Zillah of Midnapore, who represents Her Majesty's Government. The Defendants Nos. 2 and 3 are

the grantees of the temporary settlements. The 4th, the widow of Rajah Koar Narain Roy, is described as a *pro formâ* Defendant, entitled to half of the land sued for.

The judgment of the High Court was in favour of the Plaintiff, and from that judgment the Collector has appealed.

The Government of India has always claimed, as indeed the Native Governments to which it succeeded had done, the sole right to all salt produced within its territory, and the revenue derived from salt has always been treated as quite distinct from that derived from land. Before the year 1780, the Government had been in the habit of letting the salt producing districts, which were commonly unfit for agricultural purposes, to farmers, who might or might not be the owners of the adjacent lands, and it was only in the latter part of the last century that some preferential claim to a lease of such districts was admitted on behalf of the zemindar within whose zemindary they were situated.

In the year 1780 the Government determined on assuming what is called in the Regulations a monopoly of salt, but which may be more correctly described as the exclusive right to manufacture it. They accordingly took all salt producing lands into their own hands, working them by agents commonly called salt agents. The zemindars who were thus deprived of their lands were compensated by certain remissions and allowances. To require a zemindar from whom a portion of his land had been taken to continue to pay rent for that portion would have been obviously unjust. So much rent therefore as he would probably have obtained for the land if he had kept it in his possession, and which was usually estimated on the footing of 1½ anna er head on the men who would probably be

employed in the salt manufacture, was remitted to him. The remission was thus carried into effect. He was still assessed on the whole zemindari, but the estimated rent of the "khalari," or salt land, was treated as payable by the Salt Department, and debited to them. This payment or debit was assumed to enure for the benefit of the zemindar, and he was credited with it; the effect of this arrangement being that, although he was nominally charged with the jumma due on all the land geographically within his zemindari, he was in reality charged only with so much of the jumma as appertained to that land which he retained in possession. A further allowance called mushuhara (monthly allowance) was sometimes made to him in respect of profits which he might have derived over and above rent, and sometimes a further allowance of salt itself.

In the present case we have an authenticated extract from the decennial settlement in 1801 of the three pergunnahs in suit with the ancestors of the Plaintiff.

It will be enough to take the entries relating to the first named, pergunnah Dakhin Mal. No. 220 is described as consisting of certain farms, Harripore, &c. "engaged for by the pro-" prietor in perpetuity," and a sudder jumma of Rs. 3,012. 1. 19 is assessed upon them. No. 221 is described as "khas" without any statement that it was engaged for in perpetuity, probably in conformity with Regulation 8 of 1793, s. 100, which declares that the rules for settling with proprietors do not apply to salt districts held khas by Government, which are to continue khas and be assessed from year to year. Under the head of "farms, &c., mehals," there is entered "khalari rents" and the sudder jumma is stated as Rs. 393. 11. 7, which added to the former figure makes a total jumma of Rs, 3,405. 13. 6. 1.

The manner in which the Rs. 393. 11. 7 is dealt with appears from several purwannahs to the same effect as the following, of the 14th February 1856 relating to a portion of it.

"C. B., Salt Agent.

"To Raja Gojendro Narain Roy (minor), and Baboo Koar Narain Roy, Zemindars.

"You are hereby informed, that this purwannah is given to you as a certificate of the fact that the rent of the khalari for the year 1262 B. S., as given below, has been duly debited in the office of this agency, and credited to your account under the Collectorate head of Zillah Midnapore, and that a statement of the same has been forwarded to the Collector of the said district. Dated 14th February 1856, corresponding with the 4th Falgoon 1263 Willaity.

Description.	Amount.		
"Khalari rent for kist Magh 1262, for 3 annas' share of pergunnah Dakhin Mal and others - - - -	R. 232	A. 13	P. 5

"Total two hundred and thirty-two rupees thirteen annas and five pie only.

"Jodoonath Bose, Mohurrir."

It thus appears that the zemindar, who was treated as liable for the gross jumma, was relieved from the payment of the khalari portion of it, that portion, being debited to the salt agency and credited to him. Bahirimootha is settled in exactly the same form as Dakhin Mal, but in the case of Bhaitgurh no khalari rent is mentioned.

These being the main facts, it is convenient now to refer to Regulation I. of 1824, s. 9, by the construction of which the rights of the parties are determined.

Clause 2 refers to the rules and regulations following for the government of the officers of the Salt Department.

Clause 3 of the section is in these terms:—

"The principle upon which remissions were originally made from the jumma of zemindars, on account of khalari rents, or the like, upon the assumption of the salt mehal, is hereby declared to have been to relieve those to whom they were granted from an assessment upon assets which were trans-

ferred to Government on the establishment of the system of exclusive manufacture, with the rights and interests attached to the possession of the mehal."

The 4th is as follows :—

" All zemindars and others, where claims to remission were allowed in the first instance, that is, on account of rents collected by them previously to the year 1188 B. S., shall be considered to fall within the class of land renters who received an abatement of what they then ceased to collect, upon the principle above laid down ; consequently, it is hereby declared that the sums remitted to them will be allowed in perpetuity."

Clause 7 :—

" The remission allowed on account of rents collected previously to 1188 will still be retained in the revenue books, and will be carried to the debit of the Salt Department."

But the further levy of such rents is discontinued.

The 11th clause, on which the Government mainly relies, is in these terms :—

" Salt works worked by the Salt Department from the time of the assumption of the monopoly to the present day, or otherwise assumed and held before and since the perpetual settlement (although originally belonging to an estate for which a permanent settlement has been formed), shall be considered to be held by the officers of the Salt Department, free of rent, under a perpetual title of occupancy, and shall be considered to be, and to have been, liable to assessment by the revenue authorities, when relinquished by the officers of the Salt Department in the same manner as if they had been farmed by an individual from Government, and had been open to resettlement on the expiration of his lease."

Clause 12 runs thus :—

" Salt lands, upon which salt works have been established, whether before or after the perpetual settlement, shall, provided they have been worked for 12 years without claim on the part of any one to receive rent or compensation for the use of the same, be deemed to be the absolute property of the Government.

The short history of the litigation is as follows.

The case first came before Mr. Lance, the Judge of Midnapore, who dismissed the Plaintiff's suit, on the ground that Regulation 1 of 1824, Section 9, Clause 11, gave to the Government the power which they claimed.

On appeal to the High Court the case was remanded in order that it might be tried whether

or not some portion of the land claimed was "julpai," that is to say, land on which the right of the Government was to collect fuel, not to manufacture salt, and which consequently was not affected by Clause 11.

Mr. Justice Ainslie, the Senior Judge, seems then not to have dissented from the view of the regulation taken by Mr. Lance, and to have remanded the case only on this ground. Mr. Justice Mitter, indeed, took a different view of the clause, appearing to think that the words in parenthesis, "although originally belonging to "an estate for which a permanent settlement "had been formed," narrowed the meaning of the previous words, limiting it to such an estate only, and that the estate in question was not such an estate.

Their Lordships are of opinion that the words have no restricting effect, but are intended to prevent restriction, and mean that whether the salt lands worked did or did not belong to a permanently settled estate, the same consequences would follow.

The case on being remanded came before Mr. Tottenham, who had succeeded Mr. Lance, and instead of confining himself to the comparatively simple question on which the case had been remanded, he retried it from the beginning on a number of issues, which, in their Lordships' judgment, tended rather to obscure than to elucidate it.

He gave judgment for the Plaintiff with respect to the two first mentioned pergunnahs, mainly on the ground, as their Lordships understand, that the khalari payment was, properly speaking, rent paid to the Plaintiff for the land, a subject on which there had been much controversy. He gave judgment for the Defendant with respect to the third, Bhaitgurh, mainly on the ground that the Government had not paid rent for that.

On cross appeals the High Court affirmed the judgment so far as it was in favour of the Plaintiff, and reversed it so far as it was against him.

In their Lordships' opinion the case is resolved by giving to the words of the Regulation their plain meaning. Clause 3 clearly applies to this case, and was probably drawn with the intention of its being applicable to such cases. A salt mehal was assumed by the Government, a remission was made from the jumma of the zemindar on account of khalari rent, in order to relieve him from assessment on an asset which was transferred to the Government. Clause 7 points to the course which the settlement paper and the perwannahs show to have been followed. The applicability of Clause 11 depends wholly on whether or not the lands in question came within the first words of it, "Salt lands worked "by the Salt Department from the time of the "assumption of the monopoly to the present "day," the alternative which follows need not be considered, nor the parenthetical words.

Their Lordships understand the Courts to have found in substance that the lands in suit (including Bhaitgurh) have been so worked, and they adopt this finding. This being so, the Legislature declares that they shall be considered to be held by the officers of the Salt Department, free of rent, under a perpetual title of occupancy. Their Lordships agree with Mr. Lance that, these being the words of the Regulation, it is quite immaterial whether the khalari payments are called payments, or rents, or remissions. As has been before intimated, they seem, properly speaking, remissions within the meaning of Clause 3, but their being called or treated as "rents" would not affect the force of the Regulation, which enacts that the lands shall, in contemplation of law, be held by the Salt Department rent free, and when relinquished by

that Department shall be liable to assessment just as they would have been if held under a lease which had expired. The effect of the decisions of the Courts is to import limitations into the Regulation which are not to be found in it, and to fritter away its plain words. It may be further observed that, if there had been no "khalari rent" or compensation, the Government would, under Clause 12, have acquired a title in 12 years. Clause 11, as distinguished from Clause 12, seems to contemplate some such rent, or payment, or remission, and it is not improbable that the words "shall be considered free "of rent" were inserted with the intention of rendering impossible the contention which has been raised.

For these reasons, their Lordships are of opinion that the Government have the right which they claim to resettle these lands. They think it right, however, to refer to the concluding words of the 4th clause,—"It is hereby declared "that the sums remitted to them (the zemindars) "will be allowed in perpetuity." Their Lordships assume that the khalari allowance will be continued to the Plaintiff, or, what is the same thing, that if the relinquished salt lands be settled with others he will be assessed only for so much of the talook as was settled with his ancestors as proprietor in perpetuity in 1801, and which he retains; to assess him for land which he can no longer occupy would be clearly unjust.

For these reasons, their Lordships will humbly advise Her Majesty that the decree of the High Court be reversed, and the suit dismissed, each party to pay its own costs in the Court below. Any payment which may have been made in respect of costs to be refunded.