not open to their Lordships to consider whether or not a good case could have been made requiring the addition of some other representative of the widow.

Upon the whole, the case for the appellant fails, and their Lordships will humbly advise His Majesty that the decree of the Court below should be affirmed, and that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitor for the appellant: *Douglas Grant.*

Solicitors for the respondent: *Chapman, Walker* and *Shephard.*

J.V.W.

PRIVY COUNCIL.*

MAHARAJA OF JEYPORE (PLAINTIFF)

v.

RUKMINI PATTAMAHDEVI GARU (DEFENDANT).

APPEAL AND CROSS APPEAL.

1918, November, 4, 5, and 1919 January, 20.

[On appeal from the High Court of Judicature at Madras.]

dlord and tenant—Contract for payment of rent, also with conditions for rendering services when called upon—Denial of title and refusal to render services—Services, a subsidiary consideration and of a ceremonial nature—Forfeiture and resumption, right to.

The suit which gave rise to this appeal was brought in 1906 by the appellant, the Maharaja of Jeypore, against the husband of the respondent (now deceased and represented by his widow) for the possession and arrears of rent of a pargana called Bissamcuttak, on the allegation that it was part of the appellant's zamindari, and had been held by the predecessors in title of the defendant under grants or leases on conditions of payment of kattubadi or rent and of rendering services to the Maharaja. The latest was a patta, dated 1st August 1877, under which the possession of the defendant's father had been

* *Present.*—Lord PHILLIMORE, Sir JOHN EDGE and Sir LAWRENCE JENKIN.

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAHDEVI.

renewed by the then Maharaja on payment of an annual kattubadi of Rs. 15,000 and the rendering of services stated in the plaint as "just as your father used to attend at Dasara for service, so now you should also present yourself with 500 paiks for service whenever directed to do so." In 1903 when directed to render such services, the defendant had not so attended the Dasara darbar, nor had he paid the proper amount of rent for that year or for 1904, but had asserted that the pargana was not held as a service tenure, and had set up a title in himself to the pargana as an independent zamindari, and subject only to a payment of Rs. 2,200 to the Maharaja which sum he then paid as rent, but denied his liability as a tenure-holder under the appellant. He wrote a letter to the appellant, dated 26th November 1901, which was alleged to be a contumacious refusal to render services, and to amount to a denial of the appellant's title causing forfeiture of his tenant's holding which the appellant claimed to be entitled to resume.

Held that denial of title in the suit would not work a forfeiture of which advantage could be taken in that suit, because the forfeiture must have accrued before the suit was instituted, and there was no denial by matter of record previous to the institution of the suit.

Nizamuddin v. *Mamtozuddin* (1900) I.L.R., 28 Calc., 135, and *Prannatha Shaha* v. *Madhu Khatu* (1876) I.L.R., 13 Calc., 36, referred to.

Held also that here there was no such renunciation by the tenant of his character as such, as to work a forfeiture.

Held farther that in this case the rent received was the principal matter, and the rest was subsidiary, and that, under the circumstances, the refusal to render the services contracted for did not operate to create a forfeiture or give occasion for resumption.

CONSOLIDATED APPEAL No. 125 and Cross Appeal No. 126 of 1916 from a decree (18th February 1915) of the High Court at Madras, which varied a decree (21st October 1910) of the Court of the Agent to the Governor of Madras at Vizagapatam in Original Suit No. 2 of 1909.

The suit, out of which these appeals arose, was brought by the present appellant, the Maharaja of Jeypore, against Narendra, the late holder of the pargana of Bissamcuttak, for possession of that pargana, and for arrears of rent or kattubadi due thereon for three years at the rate of Rs. 15,000 per annum, for subsequent mesne profits and for other relief.

In his defence, the defendant set up an independent proprietary and permanent hereditary freehold right to the estate of Bissamcuttak, pleading that that estate was "excluded at the permanent settlement from the assets belonging to the Jeypore zamindari in proprietary right, and only his right to the jamabandi (Rs. 2,200) was taken into account when fixing the peshkash payable to him"; and he denied that his

ancestors had rendered any services as That raj or master of the paiks since 1689, and contended that the agreements and pattas made and accepted by his father and grandfather were not binding on him, and that the Maharaja had no right to eject him and resume the estate, or to recover rent at any higher rate than Rs. 2,200. He also set up a copper-plate patta, and one of the questions in the case was whether it was genuine, and whether under it the grantee had a permanent hereditary freehold right to Bissamcuttak.

Narendra died on 10th August 1910 without male issue and his widow, the respondent in appeal No. 125 and appellant in the cross appeal No. 126, was brought on the record as his legal representative.

The facts of the case and the circumstances leading to the litigation are sufficiently stated in the judgment of the Judicial Committee.

The Court of the Agent to the Governor of Madras made a decree in favour of the plaintiff in respect of kattubadi for the three years as claimed, and subsequently at the rate of Rs. 2,200 per annum but otherwise dismissed the suit.

On appeal the High Court (SANKARAN NAIR and OLDFIELD, JJ.) varied that decree by awarding kattubadi at the rate of Rs. 15,000 per annum.

ON THIS APPEAL

Upjohn, K.C., *DeGruyther*, K.C., and *Kenworthy Brown* for the Maharaja of Jeypore, the appellant in appeal No. 125, contended that Bissamcuttak formed part of his zamindari held under the sanad of 1803. The respondent held the pargana from the Maharaja under the patta of 1877 granted to his father, and it had been rightly decided by the High Court that its terms were enforceable against him. The Court of First Instance was right in holding that, according to the terms of the patta of 1877, the respondent held subject to perform services as therein described, and his tenancy was therefore conditional on the performance of them; and consequently when he refused to pay the rents or to render the services to the appellant, and set up an independent title to the land, the appellant, on giving due notice of his intention to resume possession, was entitled to a decree for ejectment. Having held under the above pattas the respondent

MAHARAJA OF JEYPORE v. RUKMINI ATTAMAH-DEVI.

could not now dispute their validity. He was also precluded from setting up any permanent and hereditary right in his ancestors and himself to the estate by reason of the dismissal of his grandfather's suits in 1845; and also by the law of limitation from setting up his present case, and moreover as to that the High Court had rightly held that the alleged copper-plate grant of 1689 had not been established. As to the right of the appellant to resume the pargana on the respondent's refusal to perform the services the case of *Forbes* v. *Meer Mohamed Tuquee*(1) was cited; and as to the effect of his denying the appellant's title and setting up an independent title in himself reference was made to *Doe* v. *Stanion*(2), *Vivian* v. *Moat*(3), *Padmanabhaya* v. *Ranga*(4), and the Transfer of Property Act (IV of 1882), section 111 (*g*).

A. M. Dunne, K.C., and *B. Dube* for the respondent, the Rani of Bissamcuttak contended that the copper-plate patta of 1689 was proved, and the respondent's predecessors in title held the estate of Bissamcuttak in permanent hereditary right prior to the British rule. In assessing the revenue on the Jeypore zamindari the British Government took into consideration only the small quit-rent of Rs. 2,200 which the That raj of Bissamcuttak paid to the Maharaja of Jeypore, and the High Court had wrongly decided in coming to a contrary conclusion. The appellant was not entitled to recover more than that sum annually from the respondent, and all agreements to the contrary were unlawful and void. The Transfer of Property Act was not applicable, see section 2, and even if section 111 (*g*) applied there would be no forfeiture. The case was governed by the rule of justice, equity and good conscience. Reference was made to *Satayabhama Dassee* v. *Krishna Chundee Chatterjee*(5), *Debiruddi* v. *Abdur Rahim*(6), *Kally Doss Ahisi* v. *Monmohinee Dassee*(7), *Nizamuddin* v. *Mamtozuddin*(8), and *Waghela Rajsangji* v. *Masludin*(9). The general rule of English Law is that a denial of the landlord's title only effects forfeiture if made by matter of record before the suit, see Cruise's Digest Title III,

(1) (1870) 13 M.I.A., 438.
(2) (1836) 1 M. & W., 695.
(3) (1881) 16 Ch. D., 730.
(4) (1910) I.L.R., 34 Mad., 161.
(5) (1880) I.L.R., 6 Calc., 85.
(6) (1888) I.L.R., 17 Calc., 196.
(7) (1897) I.L.R., 24 Calc., 440.
(8) (1900) I.L.R., 28 Calc., 135.
(9) (1887) I.L.R., 11 Bom., 551 (558); L.R., 14 I.A., 89 (93).

Ch. I, section 58; Woodfall's "Landlord and Tenant," Ch. VIII, section 5 (19th ed., page 363). [Sir L. JENKINS referred to Platt on Leases, Part VII, Ch. I, section 2, and *Sheik Miadhar* v. *Rajani Kanta Roy*(1).] The principles on which *Doe* v. *Stanion*(2) and *Vivian* v. *Moat*(3) were decided do not apply to India; see *Kali Kishen Tagore* v. *Golam Ali*(4). But in the present case liability to pay rent was admitted, so there was no denial of title. The nature of the services were not such as that the non-performance of them would effect a forfeiture, they were subsidiary conditions of the tenancy and were merely formal and ceremonial; see *Forbes* v. *Meer Mohamed Tuquee*(5). The appellant had therefore no right to resume the pargana. [The arguments on the cross-appeal were only on facts.]

De Gruyther, K.C., replied.

The JUDGMENT of their Lordships was delivered by

Lord PHILLIMORE.

Lord PHILLIMORE.—This is an appeal from a decision of the High Court of Judicature at Madras which varied a decree of the Court of the Agent to the Governor of Madras.

The suit was brought by the present appellant against the husband of the present respondent for possession of the pargana of Bissamcuttak, and for arrears of rent and mesne profits.

The case made in the plaint filed on 17th September 1906 was that Bissamcuttak was in the plaintiff's zamindari, that under various grants or leases it had been held by the ancestors of the defendant paying rent and rendering services to the ancestors of the plaintiff, and that at the present time the governing instrument was a patta of the 1st August, 1877, under which the then Maharaja continued the father of the defendant in possession of the pargana on his payment of an annual kattubadi of Rs. 15,000. The further contents of the patta were stated as follows:—

"Just as your father used to attend in Dasara for service, so now you should also present yourself with 500 paiks for service whenever directed to do so. These directions are given imperatively."

The plaint proceeded to aver that the defendant had been directed in 1903 to render services by attending the ensuing Dasara darbar, at Jeypore, that he did not attend the Dasara,

(1) (1900) 14 C.W.N., 319.
(2) (1836) 1 M. & W., 695.
(3) (1881) 16 Ch.D., 730.
(4) (1886) I.L.R., 13 Calc., 3, 248.
(5) (1870) 13 M.I.A., 438.

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAHDEVI.

Lord PHILLIMORE.

or remit the kattubadi that year or in 1904, but had replied to the effect that Bissamcuttak pargana was not held on service tenure, but that it was an independent zamindari, which had only to pay to the Zamindar of Jeypore a fixed, unchanging and unchangeable kattubadi of Rs. 2,200 as per permanent settlement records, and had remitted therewith Rs. 3,300 only; that he had been warned of the consequences of his conduct and given an opportunity for withdrawing his repudiation, but that he persisted in repudiating the plaintiff's title to the pargana and in denying his liability as service holder under the plaintiff, and also in setting up a title in himself to the pargana as an independent zamindar subject only to the payment to the plaintiff of a fixed, unchanging and unchangeable kattubadi of Rs. 2,200 annually.

The plaintiff thereupon contended that the pargana was held either on service tenure by the defendant merely as a remuneration for discharging the services annexed to the said office, or on a tenure subject to the condition and burden of rendering such service to the zamindar, that in the former case it was competent to the plaintiff to dispense with such services and to resume the pargana at pleasure, and that in either case the defendant was liable to forfeit the pargana by reason of his repudiating the plaintiff's title and his (defendant's) liability to render such services and to pay the kattubadi of Rs. 15,000 and of his refusing to perform such services.

The defendant by his written statement said that the estate of Bissamcuttak was an independent estate at first, but became subordinate to the Jeypore zamindari, that the owner of Bissamcuttak, whom he styled zamindar, did not hold his estate on condition of rendering any service to the Maharaja, and that at any rate, some time before 1689, he agreed to pay a fixed rent to the Maharaja and thereupon any duty to render service ceased. And he set up a patta supposed to be engraved on a copper-plate whereby the Maharaja acknowledged the permanent and hereditary freehold right of the Bissamcuttak Zamindar, fixing the jamabandi or rent at Rs. 2,200. He further said that the Bissamcuttak estate had no connexion with Jeypore, nor was it subordinate to it, except in the manner mentioned above. He admitted that he had repudiated the claims made by the

raja in his letters of summons as to the tenure on which his estate was held, and he denied the various allegations made in the plaint, both in respect of the nature of his tenure and of the plaintiff's right to resume. He gave reasons why even if the obligation to render services was not put an end to by the fixing of a jamabandi in lieu in 1689, the liability to render them had at any rate now ceased. And finally he submitted that, in the circumstances of the case, he had made no disclaimer, or denial in law, of the plaintiff's title such as to work a forfeiture of the estate.

The first question, therefore, to be determined was that of the tenure by which the defendant held his estate. His father had unquestionably accepted the patta of 1877; but if the defendant could establish the copper-plate of 1689, he might then be able to free himself from the effect of the patta of 1877. There would still be a good many difficulties in his way, but in their Lordships' opinion it is unnecessary to discuss them. At the root of the defendant's case lays the question of the genuineness of the copper-plate.

The Agent in the Court of First Instance accepted it as genuine; the High Court took the opposite view.

After hearing all that could be said upon the subject by counsel for the respondent, who was in this respect a cross appellant attacking the decree of the High Court, their Lordships think that the decision of that Court was right, and they concur in the reasons given by OLDFIELD, J.

The ancestors of the defendant were no doubt from time to time, as far back as it can be traced, in occupation of Bissamcuttak. They were excluded by the then Maharaja from possession about 1816 and remained out of possession till somewhere about the year 1850 or it may be 1853, when a lease was granted at the rent (said to be a reduced rent) of Rs. 1,500.

In October, 1853, occurs the first mention of the alleged copper-plate, but it was probably not produced to any one in authority. At that time and since the rent supposed to be reserved according to the copper-plate was stated to be Rs. 2,200, but in 1902 to be Rs. 2,500.

The story told on behalf of the defendant was that some representative of the then owner took it to the Government Agent in 1853 or 1854, and then instead of bringing it back to

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAHDEVI. Lord PHILLIMORE.

his master kept it, because he had a quarrel with his master; that it remained in his house for many years till there was a threat that some Government official was going to search the house in connexion with some charge of malversation, whereupon the defaulting servant took the copper-plate to the brother of the widow of the last owner, who gave it to the widow, who gave it to a Government Agent in the year 1891. The document, therefore, according to this story, was out of proper custody from 1854 to 1891.

No doubt, in 1891, the copper-plate which was produced at the trial, and which was relied upon by the defendant, was produced and handed to the Government Agent, since when its possession is accounted for.

But the whole story is a most improbable one, and against it are the unquestioned facts that in 1845 and 1846, during the time when the defendant's ancestors were out of possession, two suits were brought against the Maharaja to recover possession and discontinued; that when the defendant's ancestor was restored to possession it was on a reduced rent of Rs. 1,500, but with the condition of rendering service; that in 1854 a new lease at Rs. 2,500, and in 1864 a further lease at the increased rent of Rs. 5,000, always with the condition of service, and finally in 1877 the patta or lease already referred to were given and accepted; a state of things entirely inconsistent with the supposed existence of a permanent tenure at a fixed rent of Rs. 2,200 without any duty to render service.

In their Lordships' opinion the genuineness of the copper-plate of 1689 was not proved, and there is no reason for saying that the patta of 1877 was invalid; and the relations between the parties must be held to be governed by the terms of this patta.

The cross appeal of the respondent, therefore, fails.

Their Lordships have now to deal with the principal appeal.

The High Court, while reversing the decision of the Agent and making a decree in favour of the appellant, has granted him relief to a limited extent only. It ordered and decreed that the respondent, who had by that time succeeded to the estate of the deceased defendant, should pay with interest the arrears of rent at the rate prescribed by the patta, but it did not give to the

appellant possession of the property, holding that no forfeiture had been established.

In their Lordships' opinion it is a consequence of the decision of the High Court that the respondent holds a tenure derived from the zamindari of the Maharaja, and there is an obligation upon the tenant for the time being to pay the rent, and, so far as modern conditions of society and law permit, to render the service prescribed by the patta.

So far they accede to the contentions of the appellant. They have now to inquire whether in these circumstances the acts and omissions of the deceased defendant were such as to create a forfeiture of his estate.

The case for the appellant is put in paragraph 31 of his plaint:—

"Whether the pargana was held on service tenure by the defendant merely as remuneration for discharging the service annexed to the said office or on a tenure subject to the condition and burden of rendering such service to the zamindar, it is competent to the plaintiff in the former case to dispense with such services and to resume the pargana at pleasure, and in either case the defendant is liable to forfeit the pargana by repudiating the plaintiff's title and his (defendant's) liability to render such services and to pay the kattubadi of Rs. 15,000 and by refusing to perform such services, and it is competent to the plaintiff to enforce such forfeiture as he has done by his notice, dated 24th April 1906, and resume the possession and management of the pargana."

He thus raises two grounds of forfeiture; the second, which their Lordships propose to take first, being that the tenant has repudiated his landlord's title; and it must be accepted that it is the law of India that there are circumstances in which such a repudiation will work a forfeiture. This law is not ancient Indian law, but has been adopted by the Courts from the law of England, and is now embodied in a statute.

By the Transfer of Property Act, 1882—

"Section 111 (*a*), lease of immovable property, determines—

* * * *

"(*g*) By forfeiture, that is to say (I) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAHDEVI. Lord PHILLIMORE.

lessor or his transferee does some act showing his intention to determine the lease."

This statutory provision not being retrospective (see section 2) does not govern the present case. But it is in substance the placing in a statutory form of the rule of law which had been already adopted by the Courts in India; see *Kally Dass Ahisi* v. *Monmohinee Dassee*(1).

They are directed by the several charters to proceed where the law is silent, in accordance with justice, equity, and good conscience, and the rules of English law as to forfeiture of tenancy may be held and have been held to be consonant with these principles and to be applicable to India; see *Nizamuddin* v. *Mamtozuddin*(2).

Now the rule of English Law is that a tenant will forfeit his holding if he denies his landlord's title in clear, unmistakable terms, whether by matter of record, or by certain matters *in pais*.

The qualification that the denial must be in clear and unmistakable terms has not unfrequently been applied by the Courts in India, which have held that where a tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not, though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeiture; see *Vithu* v. *Dhondi*(3), *Venkaji Khrishna Nadkarn* v. *Lakshman Devji Kandar*(4), *Unhamma Devi* v. *Vaikunta Hedge*(5), *Chinna Narayudu* v. *Harischendana Deo*(6).

Counsel for the respondent contended that she was entitled to the benefit of these rulings, and that in this case there was no such clear and unmistakable denial.

Whether this be so or not, their Lordships do not find it necessary to decide for the following reasons:—

(1) There is here no denial by matter of record before the present suit was instituted. Denial in the suit will not work a forfeiture of which advantage can be taken in that suit, because the forfeiture must have accrued before the suit was instituted;

(1) (1897) I.L.R., 24 Calc., 440.
(2) (1900) I.L.R., 28 Calc., 135.
(3) (1890) I.L.R., 15 Bom., 407.
(4) (1895) I.L.R., 20 Bom., 356.
(5) (1893) I.L.R., 17 Mad., 218.
(6) (1903) I.L.R., 27 Mad., 22.

see *Nizamuddin* v. *Mamtozuddin*(1), already referred to, and the previous case of *Prannath Shaha* v. *Madhu Khulu*(2) there cited.

(2) As to forfeiture by matter *in pais*, this, according to English Law, occurred when the tenant purported to make a tortious conveyance such as a feoffment with livery of seisin, the result of which was to purport to give to the feoffee a greater estate than he himself had in the land; in such case the estate thus given, though forfeitable immediately to the person claiming by a prior title, was good against everyone else. The feoffment was then said to operate by tort.

When by the Real Property Act (8 & 9 Vict., c. 106, s. 4), it was provided that no feoffment should have in future any tortious operation, the reason for imposing a forfeiture ceased.

It never was applicable in India, and their Lordships can find no authority for saying that an 'innocent conveyance' ever operated in England as a cause of forfeiture, or that it has ever been held so to operate in India.

The English Law on this subject is conveniently to be found in Bacon's Abridgment, 'Leases,' T2, and Platt on Leases, Part 7, ch. I, section 2.

Some confusion has arisen from a misunderstanding of the reason why a tenant from year to year may, when he has denied his landlord's title, be ejected without notice—*Doe* v. *Stanion*(3) and *Vivian* v. *Moat*(4).

The reason is explained in *Doe d. Graves* v. *Wells*(5) and in Platt on Leases.

It is not because the denial or disclaimer works a forfeiture. Platt expresses it thus:—

"The holding being from year to year subject to the mutual will of landlord and tenant to determine it on giving the usual 6 months' notice, evidence of a disclaimer . . . is evidence of an election to put an end to the tenancy and supersede the necessity for such notice . . . Hence verbal or written denials of a tenancy have rendered a notice to quit unnecessary, but it does not appear that they have effected a forfeiture of the term."

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(1) (1900) I.L.R., 28 Calc., 135.
(2) (1886) I.L.R., 13 Calc., 96.
(3) (1836) 1 M. & W., 695.
(4) (1881) 16 Ch.D., 730.
(5) (1839) 10 A. & E., 427.

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAH-DEVI.

Lord PHILLIMORE.

That a tenant who disputes his character as tenant does not thereby forfeit a lease for a term certain is shown by *Doe d. Graves* v. *Wells*(1).

The doctrine of *Vivian* v. *Moat*(2) does not apply to Indian tenures such as the present; see *Kali Kishen Tagore* v. *Golam Ali*(3) and *Vithu* v. *Dhondi*(4) already cited.

This being so there was in the present case no such renunciation by the tenant of his character as such as to work a forfeiture.

Their Lordships have gone at some length into this point, because it was argued with much learning and insistence at their Lordships' Bar, but it is difficult to find any trace in the judgment of the High Court of its having been made a serious matter of discussion there.

It was no doubt raised slightly but sufficiently in paragraphs 62, 63, 64 and 73 of the Memorandum of Appeal to the High Court; but the written judgment of the learned Judges seems to deal with the other ground of forfeiture only.

This their Lordships must now approach. It has been described at their Lordships' Bar as the contumacious refusal of the defendant to render the services prescribed by the patta.

After two or more formal demands requiring the defendant's attendance at the darbar and his payment of the rent due, the agent and mukhtiar of the defendant wrote to the Maharaja on the 26th November, 1904, the following letter:—

"MAHARAJAH,—

"I am in due receipt of your so-called hukums Nos. 818 and 683 of the 4th October 1904, calling on me to attend your Dasara darbar of this year with 500 paiks and Rs. 15,000 (fifteen thousand) on account of what you call Talapu Dewani Kattubadi of fasli 1313 and Rs. 7,500 (seven thousand five hundred) for the first half-year of fasli 1314.

"2. The Bissamcuttak estate is not held on service tenure as you seem to imply. It is an independent zamindari which has only to pay the Jeypore zamindari a fixed, unchanging and unchangeable kattubadi of Rs. 2,200 (two thousand two hundred) as per Permanent Settlement Records.

"3. I have, therefore, remitted Rs. 2,200 (two thousand two hundred) on account of kattubadi for fasli 1313 and Rs. 1,100 (one

(1) (1839) 10 A. & E., 427.
(2) (1881) 16 Ch.D., 730.
(3) (1886) I.L.R., 13 Calc., 3, 248.
(4) (1890) I.L.R., 15 Bom., 407.

thousand one hundred) for the first and second instalments of the present fasli 1314, which, I request, you will be pleased to accept and formally acknowledge."

Thereafter, though warned of the consequences of his refusal, the defendant persisted in his non-compliance.

The Judges of the High Court came to the conclusion that the second condition of attendance, when on Sirkar business, was so indefinite as to be unenforceable, and that the first condition, now that there was no longer any question of military service, was merely one of an attendance on ceremonial occasions, which was not service but complimentary only, or a mark of respect which every person, even an official, is expected to pay to his superiors. And they said that there was no authority for holding that failure in this respect would lead to forfeiture, or to a liability to resumption.

At their Lordships' Bar the point was made that there was no proviso for re-entry upon breach contained in the patta, and reliance was placed upon *Forbes* v. *Meer Mohamed Tuquee*(1). This case, however, was not one of contumacious refusal to render a possible service; it was a case where, owing to altered conditions of society, the prescribed services could no longer be rendered, and where the superior landlord sought thereupon to resume the tenancy, and in the opinion of their Lordships failed.

There are, however, expressions in their Lordships' judgment in that case which are of some assistance to the respondent, and no authority of weight was produced for rendering the breach of such a ceremonial observance a cause of forfeiture or resumption, at any rate where the superior landlord was a subject, and not the Government.

It may be said that in this case the rent reserved is the principal matter, and that the rest is only subsidiary.

It may also be observed that under modern conditions it is doubtful whether a strict compliance *modo et forma*, with the provisions of the patta, would not be of public inconvenience and perhaps forbidden by superior authority. Modern conditions also make the service suggested highly burdensome and without any corresponding benefit to the superior.

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(1) (1870) 13 M.I.A., 438.

MAHARAJA OF JEYPORE v. RUKMINI PATTAMAHDEVI.

Lord PHILLIMORE.

Having all these considerations in mind their Lordships agree with the judgment of the High Court that the refusal to render these services did not operate to create a forfeiture or give occasion for resumption.

At the same time their Lordships must not be held to approve of the total failure to render ceremonial respect to the Maharaja, still less of the language in which the refusal was couched, and they must not be taken as deciding that there is no method by which an absolute and blank refusal might not incur some appropriate penalty, and they hope that those observations will lead the parties to make some sensible arrangement in future.

When both landlord and tenant were minors, a sum of money appears to have been publicly paid at the darbar in lieu of service. Whether this course should be taken, or the attendance of the tenant with a small retinue at the darbar should be deemed appropriate and sufficient, must be left for the present to the good sense of the parties.

Their Lordships, however, think that the appellant is entitled to have his position as superior put in a clearer light than it was put in the formal decree of the High Court, and that the order and decree that the respondent should pay should be prefaced by the words:

"This Court being of opinion that the defendant held, and the respondent holds, a tenure under the appellant."

Subject to this variation the appeal fails. But seeing that there has been this slight success, and that the cross appeal has failed, their Lordships think that justice will be met by leaving the decision of the High Court as to costs as it stands, and by giving no costs of this appeal.

Their Lordships will, therefore, humbly recommend to His Majesty that the decree of the High Court be subject to the variation above mentioned, affirmed; and that the cross appeal be dismissed, and that the parties should respectively pay their own costs of the appeals to His Majesty in Council.

Decree varied and otherwise affirmed.

Solicitors for the Maharaja of Jeypore: *T. L. Wilson & Co.*

Solicitor for Sri Rukhmini Pattamahdevi Garu: *Douglas Grant.*

J.V.W.