The case of Rajah Mode Narain Singh *versus* Kant Lall, Sudder Dewanny Adawlut Reports for 1859, Part II., page 1573, proceeds on the assumption that the Sudder Court had in previous cases ruled that the absence of words signifying "from generation to generation" took away from a mokurruree grant absolutely any claim to hold in perpetuity. For the reasons stated above, I do not consider that any such broad rule was laid down; and if it had been, I should not be prepared to assent to the ruling.

Then, as to the meaning of the words themselves, it cannot, I imagine, be for a moment contended that the words "mokurruree istmoraree" do not in their lexicographical sense mean "something that is fixed for ever." No doubt, there is a custom which adds to these words "generation after generation," but this is by no means a universal custom, and the extra words are etymologically redundant. Moreover, if the pottah were merely for the life of the grantee, what could be easier than to say so, and what was the object of using words that could be applied in their ordinary sense only to hereditary rights? I should say that, where a grantee holds under a pottah worded in this way, he has at least made out the very strongest *primâ-facie* case, and that the *onus* of showing that by the custom of the district pottahs conferring hereditary title always contained, and were obliged to contain, the words "*ba furzundan,*" "*nuslun bayd nuslun,*" or similar phrases would be heavily upon the person seeking to set aside the lease. In this case there is no evidence given as to any particular custom, and we must fall back on the words of the pottah itself.

Some stress was laid by the special appellant's pleader on the words "*kaem mokam,*" "representative," which are found in the pottah, but these appear to me to refer solely to the Rupees 411 paid as *nuzzur* or *bonus* for the grant of the lease, and do not in any way indicate that, after Tek Narain's death, he was to be succeeded *quoad* the lease by any one, or that the plaintiff received rent from the grantee's son for any period subsequent to his father's death.

It appears to me, therefore, that, in the absence of any evidence on the part of the special respondent to show that the grant was one for life only, the words "mokurru-"ree istmoraree" are sufficient to make that grant hereditary.

I do not think that the decision of the Privy Council in the case of Dhunput Singh *versus* Gooman Singh, 9 Weekly Reporter, p. 3, applies to this case. I may remark, however, that their Lordships (page 6) seem to consider that a "mokurruree istmoraree" lease protected for ever a tenant from enhancement. They say: "If it "can be shown that the respondent's sub-"tenure is a mokurruree istmoraree, "there is an end of the matter." I refer to this case, merely because it was made use of in the argument before us.

I would reverse the decision of the Additional Judge, and restore that of the Sudder Ameen with costs of all Courts on the special respondent.

Kemp, J.—I concur in this judgment.

The 1st June 1869.

Present:

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Jurisdiction—Zerat lands.

Case No. 206 of 1869.

Special Appeal from a decision passed by the Additional Judge of Tirhoot, dated the 27th November 1868, reversing a decision of the Moonsiff of Mozuffurpore, dated the 19th February 1868.

Mr. W. S. Crowdy (Plaintiff), *Appellant,*

versus

Sree Misser and others (Defendants), *Respondents.*

Baboo Umbika Churn Banerjee for Appellant.

Baboos Mohesh Chunder Chowdhry and *Bhowanee Churn Dutt* for Respondents.

A suit for rent from a party holding lands as *zerat* in his own exclusive possession is one for rent as between landlord and tenant, and cognizable under Act X., 1859.

Kemp, J.—THE only question in this case is one of jurisdiction. The Judge has given no reasons whatever for holding that the Civil Court had no jurisdiction to try the case; but after hearing the argument on both sides, we are of opinion that his decision is right. In the grounds of special appeal, it is said that, this being a suit for rent in the shape of damages against certain co-sharers of the plaintiff for lands occupied by them personally, the Revenue Courts had no jurisdiction to interfere in the matter.

On turning to the plaint, we find that this was a suit simply for rent, and not for damages. The defendant is sued on the footing of a ryot, and the plaintiff, prior to bringing the suit, appears to have taken proceedings under Section 10 of Act VI. of 1862, which Act, under Section 21 of the said Act, is to be read with, and taken as a part of, Act X. of 1859. Section 10 of the said Act contemplates persons entitled to receive rent of an estate or tenure, and the proceedings are as between landlord and tenant. The defendant does not set up that he holds in his own right by purchase of a proprietary right. He holds certain lands as *zerat* lands in his exclusive possession, and it follows, therefore, that he can only hold these lands as a tenant liable to pay rent to the proprietors according to their quotas.

The suit, therefore, appears to us to be one for rent as between landlord and tenant, and we think that it must be tried under Act X. of 1859, and not in the Civil Court.

The decision of the Judge is affirmed, and the special appeal dismissed with costs.

The 2nd June 1869.

Present :

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Onus probandi—Rent-suit.

Case No. 538 of 1869 under Act X. of 1859.

Special Appeal from a decision passed by the Officiating Judge of Gya, dated the 17th November 1868, affirming a decision of the Deputy Collector of that District, dated the 18th June 1868.

Zimut Hossein and others (Defendants), *Appellants,*

versus

Kuneez Fatima (Plaintiff), *Respondent.*

Messrs. R. E. Twidale and *C. Gregory* for Appellants.

Baboo Kalee Mohun Doss and *Moonshee Mahomed Yusuff* for Respondent.

In a suit for rent where a deed of sale is the foundation of plaintiff's right, he is bound to prove the deed even if it is not objected to in defendant's written statement.

Kemp, J.—The only ground in special appeal which we think it necessary to notice is the first ground, namely, that the deed of sale, which is the foundation of the plaintiff's right, not being proved, the claim ought to have been dismissed, and that the failure to object to it in the written statement is no reason at all for exempting the plaintiff from proving it, more especially as Hosseinee, the plaintiff's alleged vendor, is no party to the present suit, and any decree for rent passed against the special appellant is not binding on her. Further, that this point was not tried by the Lower Appellate Court, although it was taken in the grounds of appeal, and the attention of the Court was drawn to it. We think that this contention is correct. The first issue in the Court of first instance is whether Mussamut Hosseinee and the plaintiff obtained possession of the share in question or not. The Deputy Collector did not try this question on the ground that no issue was raised. It is true that he found on the evidence that the zur-i-peshgee to Hosseinee and the kubooleuts of the sub-lessees of Hosseinee were proved; but there has been no finding as to whether the plaintiff's purchase from Hosseinee has been established or not. Hosseinee has not been made a party to this suit, and therefore the finding will not bind her, and it may be that, in a suit brought for rent by her, the defendants would have to pay twice over. We therefore remand the case to the first Court to try the issue whether the purchase by the plaintiff from Hosseinee has been established or not.

The parties to be at liberty to adduce evidence on the above point. Costs to follow the result.

The 2nd June 1869.

Present:

The Hon'ble A. G. Macpherson and E. Jackson, *Judges.*

Possession—Mesne-profits—Limitation—Right of action.

Case No. 23 of 1869.

Regular Appeal from a decision passed by the Deputy Commissioner of Gowalparah, dated the 27th November 1868.

Protap Chunder Buroorah (Plaintiff), *Appellant,*

versus

Ranee Surno Moyee (Defendant), *Respondent.*

Mr. R. T. Allan and *Baboos Onookool Chunder Mookerjee* and *Tarinee Churn Bhuttacharjee* for Appellant.