The 1st June 1869.

Present:

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

Lease—Mokurruree istmoraree.

Case No. 3328 of 1868.

Special Appeal from a decision passed by the Additional Judge of Tirhoot, dated the 8th September 1868, reversing a decision of the Sudder Ameen of that District, dated the 31st January 1868.

Lakhoo Koer and others (Defendants), *Appellants,*

versus

Huree Kishen Roy and others (Plaintiffs), *Respondents.*

Mr. R. T. Allan and *Baboo Debendro Narain Bose* for Appellants.

Mr. C. Gregory and *Baboo Unnoda Pershad Banerjee* for Respondents.

In the absence of any evidence to show that a grant was for life only, the words "mokurruree istmoraree" are sufficient to make it hereditary.

Glover, J.—This is a suit to set aside a mokurruree pottah granted to the husband of the defendant by the then proprietrix of the estate, Mussamut Fateemoonissa, on the ground that the lease conveyed only a life-interest to the grantee, Tek Narain. The plaintiff is the purchaser of Mussamut Fateemoonissa's rights in the estate.

The Sudder Ameen, Moulvie Waheed-ooddeen, held that the pottah gave hereditary right to hold at a fixed rate of rent, and dismissed the plaintiff's suit; but the Additional Judge, on appeal, considered that, there being no proof of intention, the absence of any direct words conveying hereditary right was fatal to the defendant's claim. He relied upon a decision of the Sudder Dewanny Adawlut in the case of Mussamut Ameeroonissa Begum *versus* Maharaj Het Narain Singh, Sudder Dewanny Adawlut Reports for 1853, page 648, and gave plaintiff a decree for possession.

The only point for consideration in special appeal is the construction of the defendant's pottah. It is contended on her behalf that the Additional Judge has misconstrued it, and that there was evidence of the grantor's intention to give the lease in perpetuity which the Lower Appellate Court misunderstood.

The last portion of this objection may I think, be put aside from our consideration as it is quite clear from the receipt which was read to us that the rent received by the plaintiff from the son of the original grantee was for a period when her father was alive, so that no inference can be drawn from that circumstance favorable to the special appellant.

Then as to the meaning of the pottah —The words used are "mokurruree istmoraree," and it is urged that these words are sufficiently large to include an hereditary grant at fixed rates. The cases of Munrunjun Singh *versus* Rajah Leelanund Singh, 3 Weekly Reporter 84, and 5 Weekly Reporter 101, are quoted in support of the contention with reference to the grounds of the Additional Judge's decision.

I do not understand that a Divisional Bench of this Court is bound by a decision of the late Court of Sudder Dewanny Adawlut, or that, if we held a different opinion to that expressed in former judgments of that Court, we should be obliged to refer the question to a Full Bench. In the present case, moreover, the question is the proper construction of a document, in answering which we are not, I apprehend, bound by any decision previously recorded, whether by the Sudder Court or by this Court.

It must not be forgotten, moreover, that the case of Mussamut Ameeroonissa Begum, decided by the Judges of the Sudder Adawlut, was a very peculiar one, and proceeded to a considerable extent at least on evidence which tended to qualify the wording of the pottah, and to show that it was not intended to convey hereditary title. The learned Judges of the Sudder Court say in their judgment, page 655: "The defendant's "plea, when read in the light of this "document (a letter from the grantee com-"plaining that the terms of his pottah were "not sufficiently explicit), seems to have no "good foundation."

It appears, therefore, that the decision went, not so much on the fact that the words "mokurruree istmoraree" were not *per se* sufficient to give hereditary title, as on other attendant circumstances which showed what the grantor's intentions were at the time the lease was given, and that the grantee was all along cognizant of the weakness of his title.

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 "mokurruree 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.