Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nabakumari Debi v. *Behari Lal Sen and others, representatives of Gopal Das Sen, deceased, from the High Court of Judicature at Fort William in Bengal; delivered the 5th June* 1907.

Present at the Hearing:

LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The suit out of which this Appeal arises was brought by a landlord against his tenant to eject the tenant, on the ground that the latter was a mere tenant at will. The defence was that the tenant held a tenure of a permanent character and was not liable to be evicted at will. The sole question on this Appeal is which of these views is correct.

The Subordinate Judge, Second Court, of the Twenty-four Pergunnahs, who tried the case, gave a decree in favour of the Plaintiff, who is now represented by the Respondents; and the High Court supported that decision. Hence the present Appeal.

There is no question that the tenure or holding, whatever may be its nature, had been in existence for about 80 years, and probably much more, when the suit was instituted. The rent was an almost nominal one, and had never been enhanced, though the value of the holding, as measured by its sale price, had greatly

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increased. It had been sold again and again by kobalas purporting to convey an absolute interest; it had passed by will. And the rent had been accepted from the new tenants after such devolutions.

From these facts only one inference seems possible, namely, that the tenant hold a permanent tenure. But the Courts in India held that that inference was excluded, on two grounds. The first may be conveniently stated in the words of the learned Judges of the High Court :—

"It appears to us that there are documents which are inconsistent with the hypothesis that the tenancy of the Defendant is of a permanent nature. These documents are the two *kobalas* filed in this case, executed by tenants in possession of the land in favour of their successors. Now, in both these *kobalas* the transferer conveys the land to the transferee, but expressly recites that the transferee, on paying the expenses, &c., of the Maharaja Bahadur and on causing the expunction of the transferer's name, shall take a *pottah* in his own name. If the tenancy was of a permanent nature there would be no necessity for such a clause in either of the deeds, and the insertion of this clause in both deeds is against the presumption that the land in dispute is the subject of a permanent grant."

The view there expressed as to the effect of taking a new pottah is inconsistent with the decisions of this Board in *Upendra Krishna Mandal* v. *Ismail Khan Mahomed* (31 I. A. 144) and *Nilratan Mandal* v. *Ismail Khan Mahomed* (31 I. A. 149), which decisions again were in accordance with the law laid down in the earlier case of *Ramchunder Dutt* v. *Jugheschunder Dutt* (12 Beng. L.R. 229, on p. 235.)

The second ground upon which it was said that the tenure was not a permanent one was that the landlord had not been proved to have assented to the several transfers of the holding.

The assent relied upon was the receipt of the rent of the holding from the transferees in their own names. The reason given by the High Court for holding this to be insufficient is

that they think the dakhilas acknowledging such receipts, when critically examined, do not expressly describe the transferee as tenant of the holding. That observation may be assumed to be correct. But the dakhilas do describe the rent paid as the rent of the holding, and the person paying as occupier of the holding, and as paying on her own account. Their Lordships think that is quite a sufficient recognition of the transferee as tenant.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, the decrees of both Courts in India discharged, and the suit dismissed with costs in all Courts. The Respondents will pay the costs of this Appeal.