Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kooldeep Narain Singh v. *The Government of India and others, from the High Court of Judicature at Fort William in Bengal; delivered July* 18*th*, 1871.

Present:

Sir James W. Colvile.
Judge of the High Court of Admiralty.
Sir Joseph Napier.
Lord Justice James.
Lord Justice Mellish.

Sir Lawrence Peel.

THIS is a Suit brought by an auction purchaser to resume possession of certain villages held under the tenure known as the Ghatwalee tenure. It does not appear to be an ordinary suit for resumption and re-assessment; for the Plaintiff claims a right to the possession of the land from the date of the auction sale, with mesne profits from that time; but the substantial question raised in the cause is, whether the Appellant, as auction purchaser, having acquired the rights of the Zemindar, with whom the original settlement was made, is entitled to resume and put an end to the Ghatwalee tenure. It has been found as a fact by the Courts below (and their Lordships must assume that finding to be correct), that this tenure existed in its present form before the Decennial Settlement. The original Sunnud granting the Ghatwalee tenure is far more ancient. The first document produced goes back to the year 1743, and that Sunnud appears to refer to and recite a former Sunnud. There is no mention in this document of the rent reserved, but

there does appear to their Lordships to be, as there appeared to the Judges of the High Court to be, on the record proof that the rent payable in respect of these Mouzahs at the date of the Decennial Settlement was the present rent of Rs. 61. The auction purchaser, therefore, coming in by virtue of the sale, would appear to have no right to disturb this tenure in the ordinary way in which an auction purchaser can sweep away encumbrances created since the Decennial Settlement. The only advantage which he gains by the character of auction purchaser is, that he is relieved from any difficulty arising from the law of limitation, and that he is not conclusively barred by the acts or the omissions of the former Zemindar, whatever presumptions may arise from the omission to question the tenure by those who preceded him in the Zemindary. It would seem, therefore, that if he has any right at all to destroy the tenure, it must be by virtue of that clause which has been cited from Regulation VIII. of 1793, Section 41, relating to Chakeran or Service lands. That enactment does not seem to have been much discussed below, but their Lordships fail to see upon what the title of the auction purchaser can depend, if it does not depend upon that. Their Lordships further consider it to have been properly found by the Courts below that this tenure is an hereditary tenure. It is true that the Sunnud which is produced contains no words of inheritance, but it is in their Lordships' knowledge that before the acquisition of the Dewanee, before the British power became the ruling power in India, it was extremely common where a tenure was in fact hereditary, when it practically passed as hereditary from father to son, to take out a new Sunnud upon each descent. Therefore it appears to their Lordships (and they are under the impression that it has been so decided here, as it appears to have been decided in the High Court), that the omission of words of inheritance does not show conclusively that the Sunnud was not hereditary. Then there is the strongest possible evidence that these tenures have descended from father to son; that they have, in fact, been hereditary, and their Lordships are therefore, of opinion that the conclusion to which the High Court came upon that point was correct.

The question, then, is whether, upon the suggestion that these Ghatwalee services have ceased to be necessary, the Zemindar has a right to resume the lands, and to turn out the persons who have enjoyed them for such a long period of time. Now, their Lordships think that the principle which should govern this case is that which was laid down in the case of *Forbes* v. *Meer Mahomed Tuquee*, which has been referred to. They concur in the view entertained by the Chief Justice, and, in fact, by all the Judges who sat with him, that, under the circumstances of this case, the right does not accrue to the Zemindar on the mere suggestion that the services have ceased or that they are no longer necessary. They are by no means prepared to say, that if the Government, who had clearly a joint interest with the Zemindar in the continuance of the services when necessary, were not here disputing the Zemindar's right, that the Zemindar would, as between him and the Ghatwal, have any right so to resume the land; they are disposed to think that, upon the principle laid down in the case just referred to, that right would not exist. The case which has been cited in support of a right so to dispossess the Ghatwal is a case decided on the 5th July, 1866, the case of Neelanund Singh against Nusseeb Singh and other Respondents. That case was decided by two of the learned Judges who sat in the High Court in the case now under appeal, Mr. Justice Kemp and Mr. Justice Jackson, who seem to have considered that the land being held in lieu of wages and on a *quasi* contract for service, the Zemindar was at liberty to determine the tenure when the services were no longer required. In that case, however, the Ghatwals were said to hold the land, not under a Sunnud conferring an hereditary and indefeasible right, but "on the "payment of a quit rent, with enjoyment of the "profits of the land in lieu of wages, and posses- "sion, however long, would not entitle them to hold "the land at a fixed jumma, or to retain a por- "tion of the land after they have ceased to per- "form the duties for which the land was assigned "to them." It would appear, therefore, that the particular tenure there in question was very different from the present tenure. If it were of the same nature, it is clear that the two learned Judges

who decided that case have departed from their former opinion, since they have concurred in the Judgment now under appeal. Mr. Justice Jackson indeed differed from the rest of the Court as to the conclusion that the tenure was hereditary,—he did not think that the evidence was sufficient to make that out,—but in all other respects he joined with his brethren in pronouncing the Judgment now under Appeal. It seems to their Lordships, that they would be taking upon themselves a very great responsibility, if, upon a question of this kind, a question of tenure peculiar to India, and upon which the Judgment of Indian Courts is so valuable, they were to overrule the unanimous and carefully considered Judgment of a full bench of the High Court, particularly when that Judgment appears to them to be entirely consistent with the general principles of justice and equity. They must therefore humbly recommend Her Majesty to dismiss this Appeal with costs.