*Privy Council Appeal No.* 90 *of* 1929.
*Bengal Appeals Nos.* 41 *and* 42 *of* 1927.

**Raja Janaki Nath Roy, and others** - - - - - - - *Appellants*

*v.*

**Dina Nath Kundu, since deceased, and others** - - - - *Respondents*

**Same** - - - - - - - - - - - - - *Appellants*

*v.*

**Same** - - - - - - - - - - - - - *Respondents*

*Consolidated Appeals*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH MAY, 1931.

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*Present at the Hearing:*
LORD RUSSELL OF KILLOWEN.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

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These consolidated appeals arise out of two ejectment suits which were brought by the appellants, who claimed that they had effectively determined the tenancies of certain premises held by the respondents under two separate leases. The premises in question consisted of a *Hat*, *Bazar*, *Bandar* and *Ghat*, and some other lands at Khankhanapur.

The Subordinate Judge decreed both suits and ordered that the plaintiffs recover *khas* possession. On appeal to the High Court both suits were dismissed.

Two points only were argued before this Board, viz.: (1) whether the tenancies were capable of being determined by notice at the will of either party, and (2) if the tenancies were

capable of being so determined, whether they had been effectively determined.

The Subordinate Judge decided both points in favour of the appellants. The High Court decided the first point in favour of the respondents, and accordingly the second point did not call for any determination.

The first question is purely one of construction of a registered *kabuliyat* executed on the 21st September, 1900, and another executed on the 4th August, 1903. These documents define the terms of the two tenancies ; but it will only be necessary to refer to the contents of the former because it was common ground that a decision upon the true construction of the earlier document would carry with it the same decision in regard to the later one.

The lessees had before the tenancy of 1900 enjoyed six previous leases of the property from Bepin Behari Roy, the predecessor in title to the appellants. These were all leases for fixed terms of years varying from three years to six years. Under four of these leases a premium had been paid. The latest of them was for a period of six years expiring with the end of the Bengali year 1307, *i.e.*, mid-April, 1901, the rent being Rs. 500 and the premium Rs. 2,000. The *kabuliyat* was dated the 2nd August, 1895, and was therein described as a " deed of temporary *ijara kabuliyat.*"

The document which now falls to be construed was in different terms. It is addressed to Bepin Behari Roy and is executed by Dinanath Kundu. It recites his possession under the temporary (*miadi*) *ijara* settlement, that he had prayed for a " *bemeyadi* settlement," and that Bepin Behari Roy, on receiving a premium of Rs. 3,500 and fixing an annual rent of Rs. 800, had granted his prayer and made with him a " *bemeyadi* settlement." It further recites that thereupon he had been in enjoyment of the profits, and that as Bepin Behari Roy had demanded a *kabuliyat* from him, he appeared before him, and, agreeing to pay a rent of Rs. 800 per annum, he executed that deed of *bemeyadi kabuliyat*, and promised that he would enjoy the profits on abiding by all the rules and terms set forth below.

There then follow 13 clauses, to some of which reference must be made ; but before doing so the word " *bemeyadi* " requires some comment.

Arguments were advanced in the Courts below based upon what each side claimed to be the true meaning of this word. Etymologically it would appear to indicate absence of a term, from which one side claimed that its presence indicated that the lease was interminable or perpetual, while the other side claimed that all that was indicated was that the lease was for no fixed term, but was determinable upon notice in the usual way.

In their Lordships' opinion the question cannot be resolved by reference only to the use and meaning of the word " *bemeyadi*," but should be determined after consideration of all the provisions of the *kabuliyat*, by which the rights of the parties are defined.

Upon a careful consideration of this document their Lordships have come to a conclusion in agreement with that which was reached by the High Court.

It must be observed that the choice lies between two alternatives only. Either the lease is a permanent lease, determinable only in the special cases therein provided, or it is a lease from year to year, which the landlord could at his will determine by a six months' notice. No intermediate position is open. Thus, at the outset their Lordships feel the pressure of what has been described as one of the surest indications of permanency, viz., the payment of the premium of Rs. 3,500. The parties were substituting a *bemeyadi* settlement for a *miadi* settlement; and it is difficult to imagine that they intended that the landlord, having received that substantial sum (in addition to a largely increased rent) should have it in his power to put a speedy end to the tenancy when the tenant had enjoyed possession for, say, a period of two years only.

Another circumstance to be noted is that the landlord was given (clause 5) a power to increase the rent in specified circumstances, the tenant binding himself in the following terms :—

> "I shall not be entitled to raise any plea or objection thereto and on no ground of objection shall I be competent to get any abatement of the fixed rent, nor shall I be able to make a surrender thereof."

This provision would appear quite inconsistent with the existence of a power in either party to determine at will the tenancy on six months' notice.

Clause 8 is also of importance. It prohibits the tenant from granting "any *bemeyadi* settlement . . . to any shopkeeper." What does the word "*bemeyadi*" denote in this connection? There would appear to be no valid reason for preventing the tenant from granting a sub-lease to a shopkeeper which would also be terminable at will on notice. But if the tenant granted a sub-lease not terminable at will on notice (*i.e.*, of a permanent character), this might interfere with the rights specifically reserved to the landlord of taking *khas* possession in the circumstances mentioned in clauses 3, 10, and 13 of the *kabuliyat*; "*bemeyadi*" as used in this clause would therefore appear to refer to a lease not determinable at will on notice; from which it would seem that the tenant's interest was such that but for the express restriction he would have been competent to grant a sublease to a shopkeeper of a permanent character.

On the other hand, restrictions upon the powers of the tenant to dig tanks and build masonry structures (clause 8) and other provisions in the document were relied upon by the appellants as indicating a tenancy not of a permanent nature. That some provisions are to be found which point in that direction cannot be denied, though some of them may be explained by the existence of the special powers to resume *khas* possession referred to above. But the question, after all, is one of construction of a document,

viz., what is the correct view to take of the rights of the parties after considering all the clauses of the *kabuliyat* and giving due weight to the several indications which point in the different directions ?

Having applied their minds to this task, their Lordships find themselves in agreement with the decision of the High Court, that the leases are not terminable on service of notice to quit.

For these reasons their Lordships are of opinion that these consolidated appeals fail and should be dismissed, and they will humbly advise His Majesty accordingly. The appellants must pay the respondents' costs of the appeals.

**In the Privy Council.**

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RAJA JANAKI NATH ROY AND OTHERS

*v.*

DINA NATH KUNDU, SINCE DECEASED, AND OTHERS.

SAME

*v.*

SAME.

(*Consolidated Appeals.*)

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DELIVERED BY LORD RUSSELL OF KILLOWEN.

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