

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Kali
Krishna Tagore v. Golam Ali Chowdhry, from
the High Court of Judicature, at Fort William,
in Bengal; delivered February 20th, 1884.*

Present:

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

HAVING heard the opening of this Appeal, their Lordships consider that it would be idle to continue the argument. The Subordinate Judge decided the construction of the Regulation in favour of the Appellant, and considered that the accretions ought to be assessed at the pergunnah rate. But inasmuch as the Appellant failed to prove any such rate, the Subordinate Judge found no measure of rent except what was given by the Kabuliyat, and accordingly he pronounced for that rent. The High Court agreed with the Subordinate Judge in finding that the Appellant had not proved the pergunnah rate which he claimed, and with a slight exception they affirmed the decree. But the learned Judges also expressed opinions adverse to the Appellant on the construction of the Regulation. Their Lordships now find that the Appellant cannot succeed because of the fatal defect in his evidence. All that Mr. Leith can suggest on that point is that the case should be remanded for an inquiry. But the issue was definitely raised and a great deal of evidence given on it, and the Appellant must stand or fall by that evidence. It would not be right now to give him the opportunity of

making a new case. That being so, the opinion of their Lordships on the Regulation can have no influence on the result of the Appeal, and they do not think it desirable to hear further argument on a question which under such circumstances is not a practical one. All they can do is to decide that the Appellant, having failed to prove the pergunnah rate which he alleged, cannot have any more favourable decree than that which the High Court have given him. On this ground, without expressing any opinion on the question which of the two Courts has taken the sounder view of the Regulation, their Lordships will humbly advise Her Majesty to affirm the Decree of the High Court and to dismiss this Appeal with costs.