Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Fakir Chunder Dutt and others v. *Ram Kumar Chatterji and others, from the High Court of Judicature at Fort William in Bengal; delivered the 3rd June* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

In November 1884 one Chintamoni Dutt (who is now dead and represented by the Appellant Fakir Chunder Dutt) purchased at a sale in execution of a rent decree the mokurruri lease of Mouzah Makarkandi. This lease had been granted in 1867 by the Zemindar, the Rani of Chatna, to a family called "the Roys," two of whom only—Lal Roy and Akhoy Roy—were the registered tenants. The rent suit was brought against them.

After his purchase Chintamoni claimed to be mokurruridar of the whole mouzah and entitled to receive rent direct from the ryots. He took proceedings under Section 66 of Act VIII. of 1869 (B.C.) with the view of avoiding all intermediate tenures. He failed because it appeared that although he was not registered as a tenant, he was himself interested to the extent of 11½ annas in the mokurruri lease to the Roys. The High Court affirming the First Appellate Court held that he was excluded from the benefit of

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Section 66 by the last clause of the Section which declares that "nothing in this Section shall be "held to apply to the purchase of a tenure by "the previous holder thereof through whose "default the tenure was brought to sale."

It was contended by the learned Counsel for the Appellants that Chintamoni was not a "previous holder" because he was not registered as tenant, that at any rate he was not "the "previous holder" because he was not interested in the entirety of the property in lease, and that he was not a defaulter or in default because he was not directly liable to the Zemindar and injured no one but himself by non-payment. It seems to their Lordships that there is no substance in any of these objections. They think that the expression which Mr. Arathoon criticized in detail must include a person beneficially interested in a tenure who is in a position to protect his interest by paying the rent into Court and yet omits to do so with the result that the tenure is brought to sale by the superior landlord. "Default" which prevents the Section from applying does not necessarily imply any moral obliquity or any breach of contractual obligation. It simply means non-payment, failure or omission to pay.

Another point was made on behalf of the Appellants. It is dealt with in the Judgment of the High Court, but not very satisfactorily explained. It was contended by Mr. Arathoon that the Appellants were at least entitled to a decree against one of the dur-mokurruridars—one Notobur Ghose, Defendant No. 10, because it was said that on being served with notice of Chintamoni's purchase he relinquished his interest in Chintamoni's favour. There is no proof of any transfer by him to Chintamoni. In fact, nothing is offered in proof of the Appellants' contention

as to Notobur's interest except a written statement by Notobur in another suit in which he says that on receipt of the notice of Chintamoni's purchase he voluntarily gave up possession to Chintamoni. On the other hand, another Defendant, Godai Pal, Defendant No. 32, alleges in his written statement in the present suit that he purchased Notobur's dur-mokurruri rights on the 7th of March 1895 by a registered deed of private sale, and that he has been holding the same since that time as the rightful owner and possessor thereof. The question, if there is a question, seems to be one between co-Defendants which cannot properly be dealt with in the present suit.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.