*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bisheshur Buttacharjee and another* v. *George Henry Lamb and others, from the High Court of Judicature at Fort William in Bengal; delivered on the 7th November* 1873.

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Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THIS is a suit brought as far back as the 1st of July 1853 to recover certain talooks or zemindaries from a person who claims under and stands in the position of a purchaser at a sale in execution of a decree against the zemindar. When the Plaintiff took measures to get into possession of the estates which he had purchased, two leases, called merasi leases, were set up against him; and it was contended that, having purchased only the rights of the zemindar, he had purchased subject to those two leases, and that he was entitled only to the rents under them. The rents amounted to about Rs. 17 more than the Government revenue; so that the Plaintiff, if the leases are upheld, instead of purchasing, as he expected, the zemindaries free from incumbrances, purchased the value of about Rs. 17 in excess of the Government revenue.

Their Lordships will take one of those documents as an example. On the face of it, it

appears to be very suspicious. Chunder Narain Ghose was the zemindar; he states in the pottah that having purchased the talook, Gooroo Dass Roy, and having fixed the annual rent at Rs. 301, "you being my granddaughter — my son's "daughter—and I having received 15 gold mo-"hurs of the value of Rs. 20 each from you, "which were received as joatook at the cere-"mony of Unnoprashon, do grant the same "talook to you by meras lease;" so that he is to be supposed by this document to have sold to his granddaughter for 15 gold mohurs, which she received at a certain religious ceremony, a merasi lease at the rent of Rs. 301, which was only 13 rupees more than the Government revenue which he had to pay. That that is the value is admitted by the Defendant in the answer. Indeed, it has not been disputed.

Now the judges have found that this document had never seen the light from the time when it was granted on the 11th of Srabun 1213 (the year 1806), up to the time when the purchaser under the execution sought to get into possession of the zemindary in 1854; and that from 1806 to 1854 no public notice, no mention, had ever been made of this lease. When an execution is put in, notice is given of the execution, and any persons claiming rights in the property seized under it have a right to set them up. No claim of that sort was made in the present case. One of the Defendants is the son of the granddaughter, and claims to be entitled to his mother's right, but he never set it up when the execution was put in.

Now in order to satisfy the Court that such a document as this was a valid document, intended to operate as a merasi tenure, it would be important to prove that possession had accompanied it. The document itself was not proved, because it was more than 30 years old, and there were no

witnesses to prove it. It was therefore necessary in order to establish its authenticity to show that possession had accompanied it. In order to corroborate the lease, another document was put in which is called a bundobust, signed by the sons of the grandfather, who were the zemindars in 1817. Now this is an unusual document, and it does not appear for what reason it was executed. If the merasi tenure was a valid one, the granddaughter had the right to the lease, at a rent of Rs. 301, payable yearly. The bundobust is signed by the representatives of the zemindar, and by it they make the rent of Rs. 301 (which in the pottah was payable yearly) payable by six-monthly instalments. What reason could there have been, if the granddaughter had got the tenure, at a rent of Rs. 301, payable yearly, for her agreeing to pay it by six-monthly instalments, or for the zemindar's granting her this document making it payable by instalments? One can hardly see what the object of this could have been, except for the purpose of making it appear that the lease was treated by the representatives of the zemindar as a genuine document, and thus giving it the appearance of authenticity.

The question then turns upon the point as to whether possession was taken under the document. The Principal Sudder Ameen has found that there was no possession taken under it. He says that the few jumma wasil bakees, chittahs, kobooleuts, and evidence of ryots and low caste servants which had been adduced by the Defendants were all unreliable, the documents being prepared, and the witnesses tutored.

The judges of the High Court agreed with the Principal Sudder Ameen as to the absence of possession. They said, "Nothing but the most com-
" plete and satisfactory evidence of good faith,
" coupled with reasons for the previous absence of

" all mention, could enable the Defendants to get " over so strong and significant a circumstance. " Not once in half a century do these merasdars " appear in Court, not once have they been sued " for rent, not once have they found occasion to as- " sert or to protect their tenure until it is brought " forward as the last of a series of measures to pre- " vent the talooks passing into the hands of the " purchasers." Then they say "In Chunder Kant's " case there is a bundobust paper of the 25th " Maugh 1224, which is said to be a confirma- " tion of his meras, but neither the authenticity " nor the occasion of this document is sufficiently " made out." Here, then, are two concurrent findings of the Lower Courts upon the question of fact, whether possession did accompany the documents; and both Courts have found distinctly that the possession was not in accordance with the documents; that the zemindars remained in possession from the time when those meras leases were alleged to have been granted, up to the time when the purchaser sought to obtain possession under the sale in execution. But then certain mouzahwaree papers were produced. The Principal Sudder Ameen made certain observations with regard to those papers. The Judges of the High Court, speaking of them, say, " They produce what are called quinquennial or " mouzah-waree papers from the Collector's office " of the Bengalee year 1217, in which the meras " tenures are specified. And in the case of " Jogul Kishore a register book is produced, in " which these papers are referred to. But the " Appellants fail to show for what reason these " mouzah-waree papers filed by the zemindar in " the collectorate, should contain a specification " of under tenures with which the Collector had " no concern; and as to the so-called register " book, we are not informed under what regula- " tion or rule of practice it was kept, nor have

" the Defendants taken the evidence of the col-
" lectorate officers to throw light on the sub-
" ject." Now it is contended that the Judges were wrong in making these remarks; but the fact of the judges making a mistake, even if they did make a mistake with reference to the mouzah-waree papers, does not affect the other part of their finding, viz., that the leases had never been made public; that they had never seen the light, and that possession had never accompanied them. Even if they did make a mistake with regard to the mouzah-waree papers, it would not be a sufficient reason for their Lordships reversing the finding upon the other question of fact. One of the Judges who gave judgment, upon a motion for review of judgment, says, "The sole ground
" taken, and ably argued at the hearing by Mr.
" Plowden was, that the Court had come to an
" erroneous conclusion with respect to the
" mouzah-waree papers, which had been relied
" on to prove the existence of the talooks. I
" am now inclined to believe that the papers in
" question though not precisely in the form
" prescribed by the regulation, were nevertheless
" prepared in accordance with the instructions
" of the Board of Revenue." Therefore he admits they were mistaken, but he says, "Even
" if this be fully conceded, the fact will not out-
" weigh the other considerations which led us to
" disbelieve the real existence at the present
" time of the tenures in dispute. And with that
" feeling of disbelief upon our minds, produced
" by a review of the whole evidence, we certainly
" could not reverse the judgment of the Court
" below, simply because it had assigned
" reasons for its judgment which did not appear
" to be extremely cogent."

The Principal Sudder Ameen's judgment is also objected to. It is said that he has given certain reasons which are not borne out by the

evidence, and it must be admitted that there are mistakes in the judgments both of the Principal Sudder Ameen and of the High Court, and that they are perhaps not so satisfactory as they might have been; but the question is, whether their Lordships are satisfied that they have come to a wrong conclusion upon the evidence.

Now, so far from that being the case, their Lordships are of opinion that if they had been reviewing the judgment of the Principal Sudder Ameen they would have arrived at the same conclusion as the High Court did, that the documents were not genuine documents intended to operate in the way in which they professed to operate.

Under those circumstances, their Lordships are of opinion that the rule by which they are usually guided in not overturning the decision, on a point of fact, of the Lower Court, when that decision has been affirmed by the High Court, must apply in the present instance.

They, therefore, will humbly advise Her Majesty that the decision of the High Court be affirmed, together with the costs of this Appeal.