

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nawab Umat-uz-Zohra v. Nawab Mirza Ali Kadr and another, from the Court of the Judicial Commissioner of Oudh; delivered February 21st, 1879.

Present:

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a suit brought by the Plaintiff, who is the daughter of a gentleman in India of great fortune and position, Sir Mansin-ud-daula, originally against her half brother alone, the son of Sir Mansin-ud-daula by another wife. Subsequently Sir Mansin-ud-daula was by order of the Civil Judge added to the Record, first in the capacity of a Plaintiff, and secondly in that of a Defendant. The claim is for restitution of certain goods, elephants, horses, and plate valued at 18,000 rupees, which the lady claims under a deed executed by Sir Mansin-ud-daula on the 28th of April 1874, and which she alleges that her brother converted and carried off. The brother files an answer in which he denies her title under this deed on a variety of grounds, and Sir Mansin-ud-daula also denies the validity of the deed and the title of the Plaintiff under it.

The case was first tried by the Civil Judge, who framed a number of issues, comprising the question whether the donor was of sound mind, and whether the deed was obtained by undue influence; one of which raised the question whether the deed was intended to operate as a transfer of

the property. He decided all of these issues in favour of the Plaintiff. The case went on appeal to the Commissioner, who dismissed the suit on the ground that the deed was a mere deed of gift, and that there had been no delivery of possession. The case then came on appeal to the Judicial Commissioner, who upheld the finding of the Commissioner and dismissed the suit, but upon other grounds. As their Lordships understand, the Judicial Commissioner held that the deed, in form at all events, was what is called a Hibabil-ewaz, and that it would operate under the Mahomedan law, if operative at all, to transfer the property without delivery of possession; but he came to the conclusion from all the circumstances of the case, amongst others from the absence of any change of possession, that the deed was not intended to operate as an immediate transfer or conveyance of the property, and that therefore it was void and of no effect.

It becomes now necessary to state some facts in order to make the case intelligible. Their Lordships collect from the whole of the evidence, which is to some extent conflicting, that Sir Mansin-ud-daula was of somewhat weak intellect and impaired health. Two medical men state that in their opinion he was not capable of managing his affairs. In such a state of mind he might be easily influenced and persuaded by persons about him to execute documents or to take other steps which a person of strong and sound mind might not be induced to do. The deed which the Plaintiff relies upon is to be found at page 12 of the Record, was executed on the 28th April 1874, and states that while in possession of his senses, and so forth (according to the ordinary form), he (Sir Mansin-ud-daula) had made a gift of certain immoveable property and also of a large quantity of moveable property in lieu of a ring set with diamonds which he had received from his

daughter. It further states: "I have transferred
 " possession of all the property transferred by
 " gift above referred to and detailed below, by
 " putting the donee in possession thereof. The
 " conditions of offer and acceptance, with transfer
 " of possession, have been thoroughly completed.
 " This is a valid and lawful gift." Then follows
 a schedule comprising the greater part of his
 property, both real and personal. On the 1st of
 May, he also executed a deed of the same de-
 scription, transferring certain other property which
 is mentioned in the schedule to that deed. On
 this same 1st of May his daughter, the present
 Plaintiff, professed to give to her father's muta
 wife a certain house for her lifetime; and a
 short time afterwards leased to him a portion of
 what had been previously his own house. The
 son, the Defendant, had left his father in March
 1874 in consequence of a quarrel, carrying with
 him a large quantity of jewellery to which he laid
 claim, and the father appears to have been a good
 deal annoyed. The son came back on the 6th
 May after the documents which have been referred
 to had been executed.

Sir Mansin-ud-daula was examined as a
 witness in the case, and their Lordships think it
 as well to refer to the account which he gives of
 the transaction. He says, "I had a quarrel with
 " my son, and my servants, &c. said to me that
 " from this quarrel serious loss would accrue to
 " me (the principal adviser being Ram Parshad)"
 —a man who appears to have been in his service for
 a number of years and to have had great influence
 over him,—“and that some arrangements should
 “ be made. I consulted the people of the house,
 “ and it was recommended that a deed of gift
 “ be prepared. All the men and women of my
 “ family, and the servants, advised me to this
 “ course. All my property ‘on heaven and earth’
 “ was included in the deed.” That is certainly

a mistake. Further on he says: "I wrote the document in anger, in consequence of a quarrel, and hoped from fear to keep Defendant apart, then to come together, not that I intended to ruin him. I expected that there would be a reconciliation, and that everything would come right. I did it only to frighten him." If the account which is given by Sir Mansin-ud-daula is correct, it certainly would appear that he did not intend to part with the immediate control of his property to his daughter and make himself her pensioner; and having regard to the state of his mind, which has been referred to, their Lordships think this account which he gives not at all improbable. He may have supposed, or may have been persuaded by Ram Parshad, or other persons in the family who had influence over him, that by executing this deed he might possibly escape liabilities to which he might be subjected by his son or in consequence of his son's conduct, or that the execution of a deed of this sort would tend to frighten his son, to bring him home, and produce a reconciliation. Their Lordships are disposed to credit his statement that he had no immediate intention of denuding himself of his property.

This view is supported by the tenor of the evidence. With reference to the elephants and horses, and property of that description, it appears that no change took place; that he paid the expenses relating to them just as he had before. With reference to the real property, although he went through the form of taking a lease from his daughter of his own house, it does not appear that he ever paid any rent; and further, although receipts were given for the rent of the land comprised in the conveyance in the name of the daughter (which would be consistent either with a real or with a benamee transaction),

it is in evidence that for ten months after the execution of the deed the rents continued to be paid as usual to the father. They both lived, as they had before, in the same house, the father occupying a portion, and the daughter and her husband another.

Their Lordships have come to the conclusion that the learned Judicial Commissioner who finally disposed of the case was right in finding, as he does, that there was no intention on the part of the Nawab to make an immediate transfer of the property to his daughter, and they think that the daughter herself must have perfectly understood that the transaction was not a real one. She was not called, nor was her husband, to contradict the statement of her father, who must have best known what his intention was, or to prove the transaction to have been a real one, or the manner in which the property was enjoyed as between her and her father.

Their Lordships have, therefore, come to the conclusion that the judgment appealed against was right on the ground above stated, and do not think it necessary to express their opinion on other questions adverted to in the judgments of the Commissioner and the Judicial Commissioner. They will therefore humbly advise Her Majesty to confirm that judgment and to dismiss this Appeal with costs.

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