Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Setrucherla Ramabhadra and another v. *Rajah Setrucherla Virabhadra Suryanarayana and another, from the High Court of Judicature at Madras; delivered 4th March* 1899.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The principal question in this suit relates to the construction of a very peculiar agreement between three brothers. Their position at that time may be stated in brief outline. They belonged to the Merangi family, being a joint family of Hindoos, and the property with which they were dealing belonged to the Merangi estate. When their elder brother died in the year 1869 he was succeeded by an infant son, between whom and his uncles there arose dispute whether or no the zemindary was partible. This dispute was not settled till the year 1891. But other portions of the family property were clearly partible, and a punchayat was appointed to make partition. That body made an award in December 1873, and a revised award on the 7th October 1874. These awards appear to have effected a final settlement as between the three younger brothers on one side and their nephew on the other. But the day

before the revised award was completed the three younger brothers entered into the agreement in question.

The document bears date the 6th October 1874, and runs as follows :—

"As one of us, Sri Somasekhara Raju Bahadur Garu, has "not agreed to the award passed by the Panchayat in the "dispute in respect of *dayam* (partition) which took place "between us three and the minor Zamindar of Merangi, we "have resolved that it would be better for us three to live "jointly than to become divided by instituting civil suits "and putting ourselves to much expense and trouble, and have "arranged, among ourselves, the following conditions for "living jointly :—

"1. That the three shares belonging to us according to the "Panchayat award after excluding the share of the minor "should be kept joint :

"2. That Sri Ramabhadra Raju Garu, who is the eldest of "us, should take charge of the said three shares and manage "the same, and

"3. That we should live jointly for twelve years from this "date, and effect division thereafter after settling the profit or "loss accruing up to that date. Should in the meantime "any of us desire to become divided, without remaining joint "for twelve years as aforesaid, the member so desiring should "give up his share in the profits which may accrue up to that "date and should himself bear the loss which may have been "occasioned thereby. We have entered into this *Samakhya* "(agreement) after agreeing that it should be acted upon "accordingly and therefore we three shall bind ourselves to the "said conditions."

This arrangement was followed during the 12 years' term. About two years afterwards the youngest brother Jogi, for whom his two minor sons have been substituted and are now Respondents, filed his plaint in this suit against his two brothers who are now Appellants. He prayed for a division and delivery of his third share of the property including the income during the 12 years' term.

Ramabhadra resisted the suit, alleging that the agreement had never been acted on, and pleading limitation. Those issues were decided against him and there is no longer any question about them. The questions raised in this Appeal are first whether the Defendant Ramabhadra is

liable to account for the income of the property during the 12 years' term, and secondly whether one portion of the property sued for was comprised in the agreement.

On the first point the Defendant contends that under the agreement the three brothers remained a joint Hindoo family and that he was the manager of that family and is not accountable for the income of past years. The District Judge has stated his view of the Defendant's position in these terms :—

"I think the 1st Defendant is liable to answer to the "Plaintiff not only as the manager of a Hindu family, but "further as a trustee. He is, I find, accountable not only on "the footing of what is spent and what remains, but upon the "footing of what expenditure might have been confined to if "frugality and skill had been employed."

On this footing he took accounts and framed his decree. The Defendant appealed but the High Court dismissed his Appeal with costs.

Their Lordships cannot accept the Defendant's view of the agreement. It is not a simple agreement to postpone the partition and so to leave the family status of the brothers untouched. They are put upon a new footing. The Defendant has the management secured to him for an absolute term of 12 years, and though during that term the others would not be precluded from demanding division, they could only do so on condition of giving up profits and bearing any loss occasioned by their premature withdrawal. Moreover the division when it comes is to be effected after settling the profit and loss accruing to that date. That is hardly the language which would have been used if the parties had meant nothing except that they should divide the corpus of the estate as it stood at the end of the term, whether it had increased or decreased. The language is more appropriate to express an intention that accounts should be taken of receipts and

expenses, treating surpluses as profits and deficits as loss.

In their Lordships' view the Defendant was an agent for the three, unpaid it is true, but accouutable for his receipts and expenditure. The District Judge's description of him as a trustee, and as liable for failure in frugality or skill is open to criticism in point of expression, but it does not appear that in applying his principle he has saddled the Defendant with any larger liability than results from his agency. It is true that the Defendant by not keeping accounts has driven the Court to proceed on grounds more or less conjectural; but his Counsel admit that if he fails in maintaining his position as an ordinary joint-family manager, he has nothing to complain of in the District Judge's treatment of the case except as regards one item in the account.

That item is a substantial one. It is stated in Schedule D (Rec., p. 320) as profits from 1874, the date of the Punchayet, from the lease of the Merangi Estate by the Defendant. That means a lease of the zemindary, which belonged to the minor nephew's share, to the Defendant. After deducting the rent paid to the Zemindary Treasury and other expenses the District Judge brings out the sum of R. 16,483. 5. 4 as the net sum due to the Plaintiff's share (Rec., p. 290).

The lease by the Court of Wards is dated the 20th August 1874. It is made on the application of the Defendant in the previous May, and the grant is in these terms "You should "continue to enjoy the said Merangi Zemindary "at an annual cost of R. 37,000." The holding is to be from the 1st July 1874 till the Zemindar ceases to be a minor. There are several other conditions, none of which throw any light on the question between the Defendant and his brothers.

From the terms of the lease itself and from the award of the Punchayet (*see* Rec., p. 43) it would seem that the Defendant had been previously in enjoyment of the property at a favourable rent on account of rendering services to the family. The terms of that holding do not appear in the Record; and it cannot be gathered from the award what precisely was the view which the arbitrators took of the Defendant's interest. They awarded some amount of profits equally between the four branches of the family. But as between the three brothers the award became abortive, and the lease of August 1874 put the matter on a new footing.

The view taken by the District Judge is thus expressed. He is referring to a tabular statement explaining his decision:—

"Item No. 15 represents the Plaintiff's one-third share of "the profits of a lease of the Zamindari of Merangi which the "Collector on behalf of the minor Zamindar gave in the name "of the 1st Defendant. The 1st Defendant contends that "this should be treated as his self-acquired and separate "property. In Bengal the 1st Defendant as the person who "acquired this lease might, though he pledged the joint property "of his brothers (Exhibit K) as security for the fulfilment of "the terms of his lease, claim a double share of the proceeds "of the lease; for he alone worked that lease. But in this "part of India property obtained with the assistance of joint "funds is joint, and I think that this lease and consequently "its proceeds may be said to have been acquired by the aid of "the joint property pledged to secure it."

There is however no proof that the joint estate ever became security for the rent; and there is good ground for inferring that it did not.

From a letter written by the Defendant on the 8th June 1876 it appears that some demand must have been made by the Court of Wards upon him to give security for the rent. He then says it is true that he alone is the lessee. But he goes on to state the arrangement of October 1876, and he continues thus:—

"As the lands which fell to my share and to those of my "brothers are sufficient for the security of the rent, we three

" are ready to give, in writing, those properties as security. " While we three brothers are possessed of property sufficient " for the security, there appears to be no reason why others " should be asked to give security. It is all the same whether " one security bond is obtained from us three or whether " separate ones are obtained. Therefore, you are hereby " informed that, if you would write your opinion in regard to " this matter, a draft copy of the security bond will be pre- " pared and sent to you as soon as the Tahsildar puts us in " possession of the lands."

The security bond bears date the 1st November 1876 (Rec., p. 99.) It purports at the beginning to be executed by the Defendant alone. In the subsequent part language is used as if a plurality of persons were giving security, and it refers to a schedule which comprises the family lands. At the foot it is executed by the Defendant alone. And when the lands actually charged come to be specified in the schedules, the shares of his brothers are expressly excluded, though his own share which is charged is incorrectly spoken of as "our" one share. The following item is a specimen.

" Out of the land within the said boundaries the three shares " of Sri Rajah Setrucherla Jagannadham Raju Bahadur Garu, " the minor Zamindar of Merangi, of Sri Rajah Setrucherla " Somasekhara Raju Bahadur Garu and of Sri Rajah Set- " rucherla Jogi Raju Bahadur Garu being excluded, one " acre of land belonging to our one share."

When this had been pointed out by Mr. Mayne their Lordships asked Mr. Branson if he could show how the joint property or the property of the Defendant's two brothers was ever made a security for the rent, and he stated that he could not show how.

The result is that though the Defendant spoke of giving security by joinder of his brothers, and though the language of the security bond is in part drawn on that footing, it did not bind any property except that of the Defendant himself. Whether his brothers refused to join, or whether on reading his letter the Court of Wards thought his security ample without them, it is idle to

speculate. The District Judge was perhaps misled by the language of the letter and the corresponding language of the body of the security bond, excluding its commencement, its ending and its schedule. As a matter of fact, his reason for treating the lease as joint property fails; and then no other reason is shown why it should not take effect according to its tenor.

Their Lordships will humbly advise Her Majesty to vary the decree appealed from by striking out of the sums to be paid to the Plaintiffs the sum of Rs. 16,483. 5. 4 being item 15 in the tabular statement framed by the District Judge and with that exception to affirm the decree. As each party has partially succeeded and partially failed each should bear their own costs.