Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pakala Balakristnama Patrulu v. *Sree Naraina Mardaraz Devu, A. S. No.* 5 *of* 1861, *and of Pakala Balakristnama Patrulu* v. *Sree Naraina Mardaraz Devu, A. S. No.* 8 *of* 1861, *from the Sudder Dewanny Adawlut of Madras; delivered* 23*rd July*, 1864.

Present:

LORD KINGSDOWN.
SIR EDWARD RYAN.
MASTER OF THE ROLLS.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THESE appeals arise out of certain transactions which have taken place between the Appellant and the Respondent, in the district of Ganjam, within the Presidency of Madras.

Ganjam is situate in a remote and wild part of that Province, and is governed by an officer called the Agent of the Governor of Madras, who appears to exercise both judicial and revenue authority within the district.

The Courts of Justice are not subject to the rules prescribed by the Government Regulations for the guidance of the tribunals in more settled and civilized parts of the country; and, under such circumstances, it is not to be required or expected that the proceedings should be conducted with all the attention to technical rules which might be reasonably demanded from Courts differently constituted. It is sufficient if the proceedings have been such in point of form as to enable each party fairly to bring forward and establish his case, and

if the decision appear to be consistent with law and justice.

In the year 1855 the Appellant was the chief manager of the Agent's Court at Ganjam. His brother held the office of Moonshee to one of the Assistant Agents.

The Respondent is a Zemindar of wealth and considerable position within the district. He seems at this time to have been a very young man, and to have been acting in the management of his affairs under the advice of his uncle, Sree Ramachunder Manasing, who lived with him in his palace.

The questions in these two Appeals are, whether certain instruments executed by the Respondent in favour of the Appellant were obtained from him fairly, or were the result of fraud and intimidation practised on him by the Appellant.

The facts appear to be these:—

In the year 1854 the Respondent purchased at a public auction the Talook of Aragada. The property was put up for sale by the Government in consequence of the failure of the former Talookdar to make payment of the revenue due from him. The purchase money paid by the Respondent was 151,000 rupees.

In 1855 it was agreed between the Appellant and the Respondent that the Appellant should become the manager of this Talook on behalf of the Respondent. The Appellant alleges that the offer was made to him by the Respondent, and that he accepted it, and gave up his situation under the Government in order to take this office, but that when in the year 1856 he came to take possession of it, the Respondent refused to appoint him; and for this breach of his agreement the Appellant demanded compensation.

The Respondent alleges that the offer to become manager of the Talook came from the Appellant, who represented that he was not willing to continue in the service of the Agent; that he, the Respondent, accepted the offer, but afterwards declined to employ the Appellant upon two grounds, first, because he did not come to undertake the duties of his office until, in consequence of his delay, the Respondent had been obliged to engage another manager; and secondly, because he had discovered that the Appellant had given up his

office under Government, not for the purpose of entering upon the management of the Talook, but from apprehension that he would be turned out of his place under Government for misconduct and corruption as soon as his principal, who had been for some time absent from his office, should return to it.

In order to recover damages from the Respondent for his alleged breach of contract, the Appellant instituted a suit against him in the Civil Court of Ganjam, in the month of August 1857, to which the Defendant put in a plea denying all claim on the part of the Appellant.

Nothing further appears to have been done in this suit, which in the present Record is termed Suit No. 29 of 1857.

In a few months afterwards, in April 1858, the Appellant and his uncle were accused of having ill-used a native called Madhava Dolai, and on this charge they were both arrested and placed in custody.

On the 18th May, 1858, while they were thus in custody, the Appellant executed two instruments, the validity of which is the subject of the present dispute.

The one related to the settlement of Suit No. 29 of 1857, and professed to be a compromise of that suit. It is termed a "razeenamah," and is in the form of a memorial presented to the Court in the suit by the Defendant, and assented to by the Plaintiff in these terms:—

"The Defendant begs to represent that as the Plaintiff in this suit had entered into an amicable settlement, I agreed to pay him, in eight days from the date hereof, rupees 5,441¾, made up of rupees 3,790, the amount claimed; of rupees 1,380, for 9 months and 6 days from the date of the plaint, &c., the 13th August, 1857, to the present date at rupees 150 a-month; and of rupees 271¾, the value of the stamp for the plaint and other costs. Further, under the conditions entered into by me, to continue paying to the Plaintiff for his life, at rupees 150 a-month, in consequence of my having effected his removal from the office of Manager of the Agent's Court, I agree to pay to the Plaintiff for his life, on or before the 19th of every consecutive month, rupees 150 per month, from the 19th instant, without regard to the service held by the Plaintiff or any business carried on by him. In the event of my not paying the same the Court is at liberty to collect the amount by enforcing this razeenamah, and pay it to the Plaintiff. Further I have undertaken to pay my own costs. I therefore request the Court will be pleased to hold diary proceedings accepting this razeenamah, and directing the

payment of rupees 5,441¾, being the plaint amount and others afore-mentioned, and of rupees 150 a-month, by me to the Plaintiff for his life.

"The Plaintiff begs to say that as I have agreed to the conditions above mentioned, I request the Court will enforce the same.

"18th May, 1858."

The other instrument is called an "instalment bond," and is in these words:—

"Instalment Bond executed by Sri Sri Sri Narayana Mardaraz Devu, Zemindar of the Taluks of Kallikota and Aragoda to Pokala Balakrishna Patrulu, on the 18th May, 1858.

"Having sold to you for (42,000) forty-two thousand rupees one-fourth share of the Taluk of Aragoda, which I have purchased in auction, and received from you the sum of rupees (23,125) twenty-three thousand one hundred and twenty-five, out of the said purchase-money, both of us now entered into the following settlement, *i. e.*, that the sale of the one fourth share in question should be cancelled. That on this condition I should pay you rupees (29,000) twenty-nine thousand, according to the instalments hereunder specified, and obtain receipts from you. And that in the event of my paying the money without failure of instalments, and taking receipts from you, neither you nor your heirs should ever and on any ground claim the portion of the taluk from me or my heirs. I shall therefore pay you the said amount accordingly and take back this document. If I fail to pay the money according to the instalments, I shall receive from you the balance of the sale amount, get the subdivision of the taluk registered, and deliver it over to you with the past produce.

"Thus I have of my free will and consent executed this instalment bond.

"Amount to be paid in eight days from the date hereof is rupees	18,000
"Ditto to be paid in six months from the date hereof is rupees	11,000
"Twenty-nine thousand rupees ..	29,000"

A third instrument was executed, which was an acknowledgment by the Respondent of the terms contained in the papers already stated, and an engagement to abide by them on his part, and was as follows:—

"Nadava Sannad (Deed of Acquittance) executed by Pakala Balakrishna Patrulu to Sri Sri Sri Narayana Mardaraz Devu, Zemindar of the Taluks of Kallikota and Aragoda, on the 18th May, 1858.

"As you have sold to me for rupees (42,000) forty-two thousand, one-fourth share of the Taluk of Aragoda, which you have purchased in auction, and received from me the sum of rupees (23,125) twenty-three thousand one hundred and twenty-

five, out of the purchase money, I have this day, as desired by you, become friend to you, and entered into the following settlement, *i. e.*, that the sale of the one-fourth share in question should be cancelled. That you should pay me rupees (29,000) twenty-nine thousand, according to the instalments hereunder specified. That on payment to me of the money according to the instalments, and obtaining receipts from me, I should forego my right to the said one-fourth share; and that with respect to my allowance, provision having been made in the razeenamah, filed in Suit No. 29 of 1857, I should have no other claim against you. Having acceded to these conditions, I have executed this deed of acquittance.

"On payment of rupees 29,000, according to the instalments fixed, I shall return to you the instalment bond you have this day executed to me, and neither myself or my heirs shall for ever, and on any ground, claim from you or your heirs for the said one-fourth share.

"Thus I have executed this deed of acquittance of my free will and consent.

"Amount to be paid in eight days from the date hereof is rupees	18,000
"Ditto to be paid in six months from the date hereof is rupees	11,000
Twenty-nine thousand rupees ..	29,000 "

It will be seen that by the instalment bond a sum of 18,000 rupees was to be paid in eight days from the date. This would be on the 26th May. On that day the Appellant and his uncle were discharged out of custody on depositing 1,000 rupees, and entering into an engagement to appear in person to answer the charges against them when required by the Government. Fourteen days afterwards the 18,000 rupees were paid by the Respondent to the Appellant. It is fit to observe that there is no direct evidence to connect the discharge of the prisoners with the execution of these instruments and the payment of this money, but the coincidence is certainly remarkable, and considering the situation which had been held by the Respondent and the situation which was still held by his brother, it is difficult to believe that the release of the prisoners was entirely unconnected with the transactions which had then taken place, or that the Appellant had not something to do with their discharge. There seems to have been no reason why, if the accused parties were entitled to be discharged on their own recognizances on the 26th May, they should not have been equally entitled to be released on bail when the charge was

first made against them, instead of being exposed to the inconvenience, and what they seem to have felt much more, the degradation and outrage on their personal dignity consequent upon their arrest and imprisonment.

These instruments were of a character in themselves to excite suspicion, particularly when executed by a person who at the time was under duress.

The suit, which was compromised by the razenamah, had not been prosecuted. If the facts alleged by the Respondent were true, he had a complete answer to the demand. He had up to this time denied all liability to the Appellant, and yet by this document he submitted to all the demands of the Appellant in this suit, and engaged to make payments and incur obligations to the Appellant far beyond anything which any Court of Justice could have awarded to him if he had established all his allegations.

When this razenamah was presented to Mr. Thornhill, the Principal Assistant Agent for Registration, he seems to have been so much struck by its extreme improvidence that he ordered the Head of the Police in Ganjam to see the Appellant, and learn from him whether it really was his spontaneous act. This was on the 19th of May, and notwithstanding a certificate from the Police Officer that he had seen the Appellant, who acknowledged that he had acted from his own free will, Mr. Thornhill required the personal attendance of the Appellant. The Appellant accordingly, after some remonstrance, attended and was examined, and after this the razenamah was allowed to be filed, and the 5441½ rupees mentioned in it were paid, but Mr. Thornhill seems still to have been far from satisfied, for the order for registration was in these terms:—

"22 June, 1858.—'The Zemindar having personally appeared before me and assured me that he agrees to these terms, this razenamah may be filed; but the settlement as to the filing of this razenamah being very dubious, it cannot burden the estate with this allowance after the death of the Zemindar."

The effect of these acts of recognition we will consider when we have dealt with the case as to the instalment bond.

With regard to the instalment bond it seems that

the Respondent refused or neglected to pay the instalment of 11,000 rupees, which, by the conditions of that instrument, were due on the 18th November, 1858. On the 13th January, 1859, the Appellant filed a plaint dated 18th November, 1858, against the Respondent joining his uncle as a Defendant, on the ground that he was aiding and abetting the Respondent. The plaint stated the effect of the instalment bond, and insisted that the Respondent had forfeited his right to repurchase the quarter share of the Talook, by reason of his neglect to pay the second instalment on the day, and he prayed to have a conveyance of the quarter share, together with mesne profits from 1855.

It is obvious that the Appellant's title to this relief depended entirely upon the truth of the facts which are recited in the bond. If there had been such a purchase of the quarter share as is therein stated, and such a payment as was therein alleged to have been made of part of the purchase money, there was nothing unreasonable in the subsequent agreement. It amounted only to this, that the Appellant consented to give up his purchase on the condition of receiving a certain premium for doing so, with a right to retain his purchase if the conditions of the bond were not performed.

His right, therefore, in this suit rested entirely on the first agreement, and not on the second. The instalment bond was, in truth, according to the Respondent's construction, at an end. The Appellant insisted that, by the failure of the Respondent to perform its conditions, he, the Appellant, was remitted to his original rights. The matter for him to prove, therefore, was the first contract.

Now the Respondent by his defences asserted that the recital in the instalment bond was a pure fiction, and that there had been no such sale by the Respondent, and no such payment by the Appellant, as were stated in the bond, and he insisted that if there had been any such sale a bill of sale must have been executed on stamp paper, and that the Plaintiff should prove that a proper stamp had been purchased. Likewise, that if the Plaintiff had paid 23,000 rupees he would have obtained a receipt, and the receipt should be produced. He alleged, also, that both this instrument and the razenamah had been obtained from him under circumstances of

pressure and intimidation while he and his uncle were both in custody on a false charge; that such charge had been contrived and instigated by the Appellant in order to force the Respondent to comply with his unjust demands; that he had required the Respondent not only to pay him a large sum of money, but also to give him a share of the Talook; that he had threatened, with this view, to set up false charges against both the Respondent and his uncle, and that the Respondent was induced to execute these instruments by threats and promises of the Plaintiff, in the hope of relieving himself and his uncle from this persecution.

On the 29th June the Judge of the Court gave out to the parties a statement of the points which each should endeavour to prove.

The Plaintiff was to prove the due execution of the alleged sale contract, and the payment by him of 23,000 rupees on account of the purchase money and the bill of sale, and receipts were to be produced in Court.

The Defendant was to prove his statements regarding the threats and promises used by the Plaintiff in the interview during which the bond was executed; secondly, to put in a concise statement of the grounds on which he believed the criminal charge against his uncle and that on which he was himself then under trial to have been the work of the Plaintiff; thirdly, to state briefly the nature of his connection with the Plaintiff, and the cause and date of the rupture between them.

As regards the Plaintiff he failed to give any proof whatever of the execution of any sale contract or of the payment of any sum of money whatever on account of it, or to produce any document purporting to be such bill of sale or receipt, or to show, as he had been challenged to do by the Defendant, that any stamp paper had been purchased on which the bill of sale could have been written.

On the other hand, the Defendant proved by a return from the proper officer that no sale appeared to have been made at the Stamp Office for this district of a stamp applicable to this transaction between the months of July and September 1855, the bill of sale being alleged to have been made on the 28th September, 1855.

The Plaintiff had alleged in his replication that

the bill of sale and other documents were in the possession of the Defendant, but he gave no evidence of this fact, nor did he either prove or, indeed, allege any circumstances which could reasonably account for such an unusual circumstance as the delivery to the vendor of the title-deed of the purchaser.

Destitute of all other proofs the Plaintiff relied entirely on the evidence afforded by the recital in the bond, and the circumstances under which it was executed, and afterwards recognized. Now, with respect to the circumstances under which it was executed, it appears that on the 17th of May, the Defendant being in custody on the charge already alluded to, signed a paper addressed to Mr. Thornhill, the principal Assistant Agent, in these words:—

"I have to speak to Palaka (describing the Appellant) touching the matter of the Suit No. 29 of 1857, on the file of the Agent, and therefore request you will be pleased to direct the Circar peons watching at my gate not to prevent Palaka from coming in."

It will be observed that this note makes no allusion to any dispute about the sale of any share of the Talook, but is confined to the Suit of 1857.

The Judge in the Zillah Court considers this application to have been a contrivance on the part of the Appellant to obtain access to the Respondent, and not the spontaneous act of the Respondent. But however this may be, it certainly does not indicate that at this time he was contemplating any arrangement with respect to the Talook, of which he had been for years, according to his representations to the Agent, resisting the attempts of the Appellant to obtain a share.

Yet we find that without any intermediate communication, this note having been sent on the 17th May, an interview takes places on the 18th between the parties, and the result of that interview is that the Respondent signs this bond, by which he recognizes the right of the Appellant to one fourth part of the Talook, and agrees to pay 29,000 rupees for its re-purchase.

It seems very much as if these two papers must have been taken, ready prepared, by the Appellant to the Respondent, and no evidence is given to explain under what circumstances or with what assistance the Respondent consented to sign them.

The only fact relied on by the Appellant is this—that more than once after the execution of the instruments, and after the Respondent had been been discharged out of custody, he expressly recognized them, and paid a sum of 5,441¾ rupees on account of the razenamah, and 18,000 rupees on account of the instalment bond.

But if the account given by the Respondent be true of the influence under which he acted, that influence continued at the time when the recognition took place, and under such circumstances recognition goes for very little. His object was not merely to get out of custody, but to relieve himself from the persecution to which he and his uncle had, as he conceived, for two years been subjected by the Appellant in consequence of their refusal to comply with his demands.

With respect to the proof which the Respondent was called upon to give, he did not offer any evidence of the threats and promises alleged to have been used by the Plaintiff at the interview during which the bond was executed, but he put in the statement required by the Judge, and also various documents in support of it.

The statement contained detailed particulars of the constant intrigues which he alleged to have been carried on against him and his uncle by the Plaintiff from the time of the rupture between them in 1856, and of the reasons by which he was led to believe that the charge by Naadava Dolai had been concocted at the Plaintiff's instance.

The documents which he put in to support this statement consisted of a great number of Arzees or Memorials presented by him to the Government during the year 1856, and subsequent years, and of other Arzees presented by his uncle on the same subject. The earliest of these papers seems to have been dated on the 25th of July, 1856, and the latest in 1858, and they contain statements of alleged acts of violence and threats by the Appellant against the Respondent and his uncle, of the arrest and conviction of the uncle on a false charge, which conviction was afterwards reversed by the Agent; this and other acts being attributed to the contrivance of the Appellant, and to the abuse by the Appellant's brother of his authority as Moonshee to one of the Assistant Agents. These

Arzees, supposing them to be true, would abundantly support the charges brought forward in the pleadings and subsequent statements.

But it is urged, and with truth, that these Arzees are no proof of the facts alleged in them, and that there is no direct evidence that they were ever communicated to the Appellant. But for the purposes of this suit, the important question is what was the impression on the Respondent's mind and under which he acted, rather than whether the impression itself was or not well founded; and we think that the Arzees contain sufficient evidence that at the time when the Respondent executed the instruments in dispute he was really under the influence of the feelings by which he alleges that he was induced to grant them, viz., that he believed that it was in the power of the Appellant, through his own influence and that of his brother with the Government authorities, to injure and to ruin him, and that he had for two years been suffering under such influence, and that the only way of relieving himself would be to comply with the exactions of the Appellant.

When regard is had to the nature of these instruments, and to the relative situation of the parties when they were executed, we think that more evidence would justly have been required to support them than was produced in this case by the Appellant, even if the transactions had taken place in Europe. But here they took place in a wild part of India, where exaggerated notions are entertained by the natives of the extent of power possessed over them by the officers of the Government, and no great confidence seems to be felt in the honesty of the subordinate officers, or the vigilance with which they are controlled by their superiors.

Now, upon these important points the Judge of the Zillah Court must be far more competent to form a correct opinion than persons unacquainted with the district; and in his Judgment in both the cases he expresses himself in the strongest terms upon the subject. In one of his Judgments he uses these expressions: "It is clear from the public records that the Zemindars of Ganjam entertain the belief that the public servants possess the power of injuring and befriending them, and they have been in the habit of furnishing their local Agents with

large sums to secure their goodwill. Hence the Defendant's plea that he feared the influence of a man like the Plaintiff, conversant with all the details of public business, and enjoying the confidence of the then authorities, is consistent with the ideas and practice of his class." He then remarks (a fact which must be within his own knowledge) that the Respondent first began to dispute the validity of these instruments about the time when the Appellant had fallen under the displeasure of the Agent on account of his intrigues in other zemindaries, and when, therefore, the terror occasioned by his supposed influence with the Government authorities was removed, or at all events diminished, in the mind of the Respondent.

The Judges of the Sudder Court, who are gentlemen also well acquainted with the modes of thought and feeling amongst the natives of India, have unanimously concurred in the Judgment appealed from, and on application for a review have persisted in their opinion.

It was said that in the razenamah suit there was really no evidence. In strictness that seems to be so. But the suits were substantially suit and cross-suit, and the evidence in the one might very properly be looked at in the other. The effect of the decision in the razenamah suit is only to remit the Appellant to the prosecution of his original claim, towards satisfaction of which, if he has any just demand, he seems already, under the razenamah, to have received between 5,000 and 6,000 rupees.

Upon the whole, we must humbly advise Her Majesty to affirm both the Decrees complained of, with costs.