Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Seetul Pershad v. *Mussumat Doolhin Badam Konwur, from the High Court of Judicature at Fort William, in Bengal: delivered 17th July,* 1867.

Present:

MASTER OF THE ROLLS.
SIR JAMES W. COLVILE.
SIR RICHARD T. KINDERSLEY.

SIR LAWRENCE PEEL.

THIS is an Appeal from a Decree of the High Court of Judicature at Calcutta, which reversed the decision of the Civil Court of Shahabad. The question to be decided in this case is the validity or invalidity of a mooktearnamah, appearing to have been executed by the Respondent in favour of Hazaree Lall. The case, as stated by the Appellant, is to this effect:—

Five brothers, of the name of Pershad Singh, had been owners of a talook in the Zillah of Shahabad, called Talook Rooppoor. One of them, Kalee Pershad Singh, died, leaving surviving him the Respondent Doolhin Badam Konwur, his widow.

Kishen Pershad Singh, one of the surviving brothers, was the manager.

The Rajah of Doomrao, who was connected with the family, the Respondent being his sister-in-law, obtained a Decree against the co-sharers in the talook for money borrowed from him by Kishen Pershad Singh to pay the revenue in arrear. This Decree bore date 23rd December, 1852. Before 1860 the Appellant Seetul Pershad had obtained a Decree in like manner against the co-sharers of the talook, and another creditor, named Ram Pertab

Singh, had obtained a third Decree. No steps were taken to enforce these Decrees until 1860. In the early part of that year the Rajah of Doomrao obtained an order for the sale of the talook to satisfy his Decree; but prior to the sale he purchased the two other Decrees obtained against the co-sharers of the talook.

The talook was sold on the 2nd July, 1860, and the Rajah of Doomrao was the purchaser at the sum of 64,000 rupees. Thereupon the Appellant alleges that an agreement took place between the Respondent Badam Konwur and the Rajah of Doomrao, by which she was to be put into possession of the talook in the following manner, viz.: That the Respondent Badam Konwur was to execute the mooktearnamah in question, appointing Hazaree Lall, who was a servant of hers, her mooktear, to borrow 180,000 rupees from the Appellant, to be paid to the Rajah of Doomrao; that thereupon the Rajah was to execute an utlanamah of the talook in favour of the Respondent; that then Hazaree Lal was to execute a kistbundee, or instalment bond, on the part of the Respondent, and to deliver this to Seetul Pershad, the Appellant; and, finally, that a farming pottah, on the part of the Respondent, was to be executed in favour of Mussumat Doolhin Champa Konwur, at a rent of 19,000 rupees per annum for forty-six years, of which rent 14,725 rupees were to be applied in payment of the Government revenue, and 4,000 rupees for the liquidation of the principal amount of the instalment debt. The total amount of this is 18,725 rupees, which would leave a balance of 275 rupees for the Respondent.

The Appellant further alleges that upon this arrangement being come to, and for the purpose of carrying it into execution, the three instruments were executed, viz., the gift of the talook to the Respondent, the widow; the lease to the Respondent Champa; and the kistbundee, or instalment bond, in favour of the Appellant; and that the amount of 180,000 rupees was paid to the Rajah of Doomrao, or the amount was accounted for to him by Seetul Pershad, who acted as a general banker, and was also the treasurer of the Rajah of Doomrao.

The Appellant further alleges that Champa

Konwur, the lessee, entered into possession of the talook, paid the first monthly instalment to the Appellant, but paid nothing more; thereupon the Appellant paid the Government revenue, and instituted this suit to recover against the Respondent the sum of 198,000 rupees for principal and interest on the debt due to him, and also the amount paid by him for Government revenue, with interest. Such is the account of the transaction given by the Appellant, and sought to be established by the evidence produced. The Respondent denied that she ever granted or executed any mooktearnamah to Hazaree Lall, or to any other person. Whether she had or had not executed this mooktearnamah was the first and, indeed, the only material issue settled for adjudication in this case.

In support of the Appellant's case, the instrument itself was produced, purporting to be signed by the Respondent, and to be attested by three witnesses, Bhojawun Singh, Rooghoonath Singh, and Baboo Hurrechurchurn Singh, and to be signed, sealed and registered by the Khazi of Chainpoor. The Appellant called, as a witness, the Khazi himself, from whose deposition it appears that the instrument was brought to him by Hurrechurchurn Singh, ready executed, and attested by Bhojawun Singh and Rooghoonath Singh, both of whom accompanied him on that occasion; the Khazi deposes that Hurrechurchurn Singh told him the reasons why the instrument had been executed by the Respondent; but he does not state that Hurrechurchurn Singh, or either of the two witnesses who had then attested it, represented that he had been present at the execution of it. The Khazi further deposes that he knew Hurrechurchurn Singh of old, and therefore he caused his attestation on the mooktearnamah to be made in his (the Khazi's) presence. Hurrechurchurn Singh, on whose representation the Khazi seems to have relied in registering the instrument, was not produced as a witness in the cause. The Appellant alleged that he was kept out of the way intentionally to defeat his (the Appellant's) claim, but no evidence was adduced in support of that allegation. Bhojawun Singh, one of the witnesses to the instrument, was summoned as a witness by the Appellant; and a person answering to that name appeared before the Civil Court; but he declared that he was unable to

read or write, and that he knew nothing about the mooktearnamah. This person having been confronted with the Khazi, the Khazi declared that he was not the witness who had appeared before him. The real witness Bhojawun Singh was not produced.

The remaining witness, Rooghoonath Singh, stated that he could not read or write, and denied that he had attested any mooktearnamah. Steps were taken to confront the Khazi with this witness, for the purpose of identifying him, but without success. The Appellant says that the witness had absconded to avoid identification. Neither the Appellant nor the Respondent produced or examined Hazaree Lall, the supposed mooktear. The Appellant states that he made every effort to do so, but ineffectually, and he suggests that Hazaree Lall was kept out of the way by the Respondent, whose servant he was. It is stated in the Judgment in the High Court of Judicature, that he was forthcoming after the decision of the case in the Civil Court, but no attempt was made on either side to produce him for examination when the case was heard on appeal.

In the circumstances above stated, the Judge in the Civil Court disregarded the absence of legal proof of the execution of the mooktearnamah by the Respondent, and considering that the rest of the evidence afforded the strongest presumption of its genuineness, gave a Decree in full to the Appellant. On Appeal to the High Court of Judicature this Judgment was reversed, the Court finding that the execution of the mooktearnamah was not proved, and that the absence of legal proof was not compensated by any legitimate inference arising out of, or by any facts disclosed by, the other parts of the case.

With this opinion their Lordships concur. They agree with the learned Judges of the High Court in considering the whole of the transactions relative to the sale and subsequent gift of the talook in respect of which the loan was incurred, as transactions of a very questionable character.

The claim is made for 2 lacs and 9,978 rupees; this amount includes the payments of the Government revenues, yet the property was sold by auction for 64,000 rupees. The Judge in the Civil Court considered the discrepancy in value between 64,000

rupees, the amount of sale, and the 1,80,000 rupees, the amount of the loan, as evidence that the sale was collusive; but their Lordships see no reason to assume that one sum more than the other represents the real value of the talook. The Judges of the High Court considered all this a mere paper transaction, without any real transfer of property. The following circumstances in the case may be referred to as confirming this view. The Decree of the Civil Judge in favour of Seetul Pershad includes the payment of the Government revenue, but the receipts produced are given in the name of Kishen Pershad Singh, the manager of the co-sharers. It appears that no change has been in the Collector's books, and that Kishen Pershad Singh remains now, as he has heretofore been, the person liable to pay the Government revenue, and to whom the receipts for payment are given. This circumstance affects seriously the argument on which the Appellant mainly relied, viz., the fact that the Respondent is in the possession of the estate, and that this is not disputed by her; but if this possession is merely nominal, it is consistent with the view taken by the High Court. that the whole matter is nothing more than a paper transaction, while the actual *bonâ fide* possession of the Respondent is inconsistent with the absence of any change in the books of the Collector, and with the Government revenue being still paid by Kishen Pershad Singh.

In addition to this, the Decree taken by consent in 1852, the purchase of the other Decrees, one from the Appellant, and the other from a stranger; the delay in enforcing them; the circumstance that Hazaree Lall was the mooktear of Kishen Pershad Singh, and of all the co-sharers; that the Respondent as well as Champa Konwur, the person to whom the lease of the talook is granted, are ladies secluded in the zenana, and never appearing in public; all are circumstances which cast a grave suspicion on the case, and tend to support the suggestion of the learned Counsel for the Respondent, which also seems to have been adopted by the Judges of the High Court, viz.: that the whole transaction was a scheme concocted between the Rajah of Doomrao and Kishen Pershad Singh, to whom he was allied by marriage, to make it appear that the estate had

been bought by the Rajah, and that it did not belong to the Pershad Singh family, while the real ownership and possession were to remain unaltered.

The mooktearnamah itself is taken to be registered by the Khazi and not by the English Resident at Agra, as the other deeds were. The witnesses to the instrument itself are three, two of them are unable to sign their own names, and therefore their attestation is worth next to nothing; the third, Baboo Hurreehurchurn Singh, only signed the instrument at the request of the Khazi, and does not pretend to have been present when the Respondent signed. In truth, there is no attempt whatever to prove the signature of the Respondent herself by any one present at the time of such signature.

On the review of all the circumstances of the case, their Lordships concur in the opinion expressed by the Judges of the High Court of Judicature, that there is no legal proof of the execution of the mooktearnamah, and that the absence of such proof is not compensated by any legitimate inferences to be drawn from the other facts disclosed in this case. Their Lordships will therefore humbly advise Her Majesty to dismiss the Appeal, with costs.