Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kurallee Persaud Misr v. *Anuntoram Hajra and others, from the High Court of Judicature, at Fort William, Bengal; delivered June 28th*, 1871.

Present:—

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THE Appellant in this case brought his suit for the cancellation of a deed of sale alleged to have been fabricated, and for certain leases granted under the title acquired by means of that deed of sale, and for setting aside an Order made in an Act IV. Case.

The short outline of the case is this:—the Respondent's family were the owners of a putnee talook; that talook was sold for arrears of rent in 1850; it was then purchased in moieties, one moiety being purchased by the father of the Appellant, the other by a person of the name of Lukhikant. Whether Lukhikant purchased benamee for the dispossessed putneedars, it is immaterial here to consider, because it is clear that in December, 1858, the title of Lukhikant, whether a mere nominal title, or a beneficial ownership, was transferred to and became vested in the Respondents. Between December, 1858, and the date of this alleged transaction in March, 1859, Muddosoodun and the Respondents were the joint owners of the putnee talook; that is now an admitted fact. It is then alleged, on the part of the Respondents, that on the 15th March, 1859, they purchased Mud-

dosoodun's share from him. The deed produced and impeached bears that date. That deed was registered on the 6th April, 1859. On the 15th April, 1859, the Respondents granted the earliest of the leases impeached to certain native coal-masters, and on the 23rd April, 1859, Muddosoodun, professing to be still owner of a moiety of the talook, granted a lease to a rival coal company, known as the Bengal Coal Company. From that time the parties seem to have been *in flagrante bello*, backed on either side by their respective lessees, the rival coal workers. The active dispute is said, and appears on the face of the Magistrate's proceedings, to have begun as early as the 25th April, 1859. It led to proceedings under Act IV. of 1840,—the final proceeding in which was had before the Magistrate in July, 1859. He then made an Award declaring that the Respondents were in possession, under a Deed of Sale, of the moiety of Muddosoodun, and that Award was upon Appeal affirmed by the Judge, on the 20th December, 1859. Intermediately there took place those high-handed and lawless proceedings on the part of the Bengal Coal Company in the interest of Muddosoodun, and in their own interest as the Lessees from Muddosoodun, to which our attention has been directed by Mr. Bell. Muddosoodun died in May, 1860, and the suit was brought by the present Appellant, his son and representative, in 1861.

The Principal Sudder Ameen decided in favour of the Plaintiff, on the 9th September, 1861, and upon Appeal that Decree was reversed by the High Court, which, on an application to review its decision, pronounced a second Decree adhering to the first. Against those two Decrees the Appeal has been brought.

Now it is obvious that the one single issue, upon which the whole case depends is, was this deed forged, or not forged? If the parties claiming under the deed were trying to defeat an existing possession on the other side, and to recover by virtue of the title derived under the deed, their Lordships are not prepared to say that there are not circumstances of suspicion attaching to the transaction, which might make it doubtful whether Plaintiffs so suing had discharged the burden of

proof which lay upon them. But that is not the nature of the suit. The parties claiming under the deed are in possession. They have been found to be in lawful possession by the Magistrate's award confirmed by the Judge. These are decisions of competent Courts that the Respondents were in fact in possession, and that their possession was acquired lawfully and under colour of the deed; and it is impossible wholly to disregard that finding, though, no doubt, the propriety of it is one of the matters in issue in this suit.

That being the case, we proceed to consider, in the first place, what is the evidence on which the Appellant calls upon their Lordships to reverse the decisions under Appeal, and to declare this deed a forgery.

The greater part of the evidence adduced by the Appellant is really of the most worthless character. It is the mere rumour existing in the locality as deposed to by ryots and others, persons who do not profess for the most part to speak from their own knowledge. On the other hand, there is an absence of that kind of evidence which in such a case one would have expected to see. What the case of the Respondents as to the execution of this deed was must have been made known to the Appellant by the proceedings in the Act IV. case. That case is, that the deed was executed in the house of Muddosoodun; that the consideration money was brought there, that it was paid there, and the date of the transactions is fixed by the date of the deed. Yet not a single witness is brought from the family of Muddosoodun either to impeach his handwriting, or to prove that this story was a mere figment, and that the parties were not there at that time, and that no such transaction as deposed to took place. It may be true that this kind of evidence is very often given by witnesses who do not receive much credit; but in every case it must depend on the character of the particular witnesses whether such evidence is credible or not, and the absence of any attempt to prove such a case is a circumstance which is certainly open to much observation.

Such strength as there is in the case of the Appellant is to be found in the Judgment of the Principal Sudder Ameen. The following are the principal grounds on which he decided in the Ap-

pellant's favour. He relied upon the fact that the deed, therefore, instead of being executed on a paper bearing one stamp purchased immediately before the date of the deed and purchased by the persons who propounded the deed, or purchased (according to what is said to be the ordinary course) by Muddosoodun, the vendor, has been engrossed upon two stamped papers purchased by different persons, and at different dates within a month of the execution of the deed. He also relied upon the circumstances attending the registration of the deed, as to which we shall presently say a few words. Again, although there was no evidence as to the handwriting before him, he upon his own comparison of the handwriting came to the conclusion that the name of Muddosoodun, when compared with an admitted signature of that person, did not appear to be in his handwriting, and that it resembled the handwriting of the person who wrote the body of the deed. He further in some degree relied upon the witnesses upon whose testimony their Lordships have already remarked, who stated from hearsay that no sale was ever made by Muddosoodun, and upon some evidence given to show that the Respondents were persons who were not rich enough to purchase the talook; and, on the whole, he came to the conclusion that the forgery had been made out.

Their Lordships entirely concur with the Judgment of the High Court, that the stamped papers under all the circumstances of the case do not raise any strong argument against the validity of the deed.

Upon the question of handwriting they have to deal with this circumstance. There was no evidence given in the cause that the signature of Muddosoodun was not in his own handwriting; and against the opinion of the Zillah Judge, founded on a comparison of handwriting, they have to set the opinion of the two Judges of the High Court, who, in the first instance, decided the Appeal, supported as it was by the opinion of three of their brethren, to whom they submitted that point, one of whom was a native presumably as competent as the Principal Sudder Ameen, to determine a question of Bengali handwriting. The circumstances attending the registration are no

doubt those which most strongly tend to cast suspicion upon the transaction, but their Lordships are not prepared to say that in a case in which it lay upon the other party to prove the forgery, they amount to proof of a forgery. It seems to their Lordships that the mookteah, who is missing, and is not called by either party, might as well have been called by the one party as by the other, if he had been forthcoming. The mookteahnamah itself is not before them, and upon that part of the case all that can be said is, that it is left extremely bare; and that as it lay upon the Plaintiff, the Appellant, to make out his case, any mere deficiency in the proof must fall upon him, and not upon the other side. Whatever be the value of the testimony as to the inability of the Respondents, and it does not appear to their Lordships to be very great, it is obvious that any deficiency in their means of making the purchase, if it existed, would probably be supplied by the opulent persons who wished to obtain a lease from them for the purpose of working the coal.

With respect to the question of possession, which the Principal Sudder Ameen seems also to have considered was wrongly found by the Magistrate in favour of the Respondents, their Lordships are of opinion that there is nothing before them which would warrant their saying that that finding, supported as it is by the judgment of three Judges of the High Court, was erroneous; and if it were not erroneous, it tends very much to support the deed, because it is only to that deed that the possession can in any way be attributed. It was clearly a legal possession, and there was no pretence that they legally acquired the possession of Muddosoodun's share in any other manner. If that possession had been undisputed for any length of time, that would of course be an extremely strong circumstance in favour of the validity of the deed. That cannot be said to be the case here, because the dispute between the parties supervened so shortly after the execution of the deed, but still, as far as it goes, the possession of the Respondents, however short, is a circumstance which cannot be disregarded.

Therefore, notwithstanding the suspicions which may rest in their Lordships' minds in respect of

this transaction, whether by reason of the evidence of Wilson, which, however, is capable of being explained by supposing that he was mistaken as to the dates or as to what passed in conversation before him; or by reason of the non-delivery of the earlier title deeds, or by reason of the mysterious and unexplained circumstances attendant on the registration, their Lordships feel that there is not before them any grounds upon which they would be warranted in reversing the decision of three Judges of the High Court upon the merits, and that of two other Judges upon the question of possession, and in pronouncing this document to be a forgery.

They must, therefore, humbly recommend Her Majesty to dismiss this Appeal with costs.