Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharanee Brojosoondery Debea v. *Ranee Luchmee Koonwaree and others, from the High Court of Judicature at Fort William, in Bengal; delivered May 8th*, 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGU E. SMITH.
SIR LAWRENCE PEEL.

THIS suit was commenced on the 11th November 1867. It was brought by Maharajah Govindnath Roy, who was the grandson and heir through adoption of Maharajah Ramnauth, *alias* Biswanath Roy.

The suit is against Ranee Luchmee Koonwaree and others. It is brought by the Plaintiff as the Shebaet of the idol Shyamsoonder Thakoor, to recover a certain zemindary in Zillah Rajshaye, which, he contends, was improperly assigned and sold by his grandmother Maharanee Kristomonee, the widow of Biswanath Roy.

The two important questions in this case are, first, whether the property was endowed for a religious purpose; and in the next place, whether the suit is barred by limitation.

With reference to the endowment, it appears that on the 17th of Joistee 1206, about the year 1799, the zemindary was sold for arrears of government revenue. It was purchased for Rs. 5,005, and the name of the purchaser was entered as Shyamsoonder Thakoor, that is the idol, "by the pen of Rughoonath Nundee." It does not appear who Rughoonath Nundee was, but he merely signed on behalf

of the idol as the purchaser. Where the Rs. 5,005 came from does not very clearly appear, but there can be no doubt from the whole of the case that the money was supplied by the Maharajah Biswanath.

On the 18th August 1802 there was a bill of sale executed by Brojokishere Shaha, said to be a purchaser of the zemindary, in favour of Rughoonath Nundee, but how Brojokishere Shaha got the property does not appear. How the idol, who had purchased at the auction, transferred his property, or by whom the property was transferred on behalf of the idol, does not appear; but it appears that Brojokishere Shaha reconveyed or conveyed the property to Rughoonath Nundee as the gomastah. Rughoonath Nundee is described (I do not know whether it is very material) merely as the gomastah of the idol, whereas the Maharajah is described as shebaet. Whether there is any material distinction between a gomastah and a shebaet, I am not aware, nor is it, I think, very important. Now the bill of sale says :—"In the "course of business by Brojokishere Shaha, son "of" &c., "in favour of Rughoonath Nundee "(gomastah of the most worshipful Shyamsoon-"der," that is, the idol. "Having failed to clear "and prepare, and pay the government revenue "of our purchased zemindary pergunnah Soo-"januggur Sirkar Bhuggo Korat, within Chakla "Bhadorea, the sudder land revenue of which "said pergunnah, as per allotment, is recorded "at Rs. 4,742 4 annas 14 gundas; and whereas "there is no possibility of our doing so next "year, we do of our own will and accord, "in full possession of our reason and senses, "in health of body, and without compulsion, "sell to you" that is, to Rughoonath Nundee, "the pergunnah aforesaid for a full con-"sideration of Rs. 5,901." Where that money came from does not appear, but there is no doubt that it was the money of the Maharajah. A certificate of that sale was put in evidence,

which does not carry the case any farther, and the deed was registered.

On the 24th of Choitro 1211, a deed was executed by Rughoonath Nundee, conveying the property to the idol and the Maharajah shebaet. He says: "This deed of agreement is executed in "the course of business. Being appointed in "the office of gomastah,"—there he calls himself again "gomastah"—"on the part of the idol, I "have purchased in the name of the god per- "gunnah Soojanuggur, from Tikhum Roy and "Brojokishore. I having myself caused the bill "of sale to be executed, my name is recorded in "the bill of sale, certificate of sale, and bill "of mutation of names as gomastah on the "part of the God. And I now present the "bill of sale, &c., under the hand of the Roy "and Shaha before you, to enable you to pre- "sent a petition to have the said pergunnah "entered as a zemindary in the name of the god "and your own name recorded as the shebaet "thereof; and I accordingly agree and write "this to the intent that you may have the names "of the Roy and Shaha struck off from the "collectorate in respect of the said pergunnah, "and have your own inserted in the office as a "zemindary in the name of the god and yourself "as the shebaet thereof." That document was also registered, and therefore anybody could have discovered that the deed had been executed.

But the question is whether there is any evidence of an endowment properly so called. Now what is the evidence of an endowment? This was clearly not an endowment for the benefit of the public. The idol was not set up for the benefit of public worship. There are no priests appointed, no Brahmins who have any legal interest whatever in the fund. It is not like a temple endowed for the support of Brahmins, for the purpose of performing religious service for the benefit of any Hindoo who might please to go there. It is simply an idol set up by the Maharajah, apparently in his own house, and for

what purpose? Why, for his own worship. We constantly have suits claiming certain turns of worship, but here there is no turn or right of worship established. There is nothing stated in any way to show that the Maharajah intended that the idol should be kept up for the benefit of his heirs in perpetuity, and before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must be tied up in perpetuity, some clear evidence of an endowment must be given. What are the objects of the endowment? None of the essentials of an endowment are stated. The Maharajah appears to have purchased the property in the name of the idol, and that is all. Then he deals with the funds of the idol as if it were his own property. There is no evidence at all of any of the essentials of an endowment in favour of the idol.

In the case of Mahatah Chund and another, in the 5th volume of the Sudder Dewaney Adawlut Reports, 268, which was a very similar case, it was held that when an endowment is merely nominal, and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid under the Hindoo law.

It appears, therefore, to their Lordships, upon the authority of that case, and upon the principle of endowments, that this was not an endowment by the Maharajah in perpetuity for the benefit of the idol, so as to establish that the property so conveyed to the idol was to be the property of the idol for ever and that nobody could alienate it. Suppose the Maharajah had established the idol in his house, would anybody pretend that he could not sell his house? Well, then, what would become of the idol's temple in the house? He could sell the house, notwithstanding he had put an idol there; and what would become of the idol itself? Here there was no endowment, no priest, no public, no one legally interested in the worship

of this idol, except the Maharajah himself, and nothing to show that the Maharajah intended to establish it for the benefit of his sons or heirs, or anybody else, in perpetuity.

If there was not an endowment, the case appears to be very clear. The Maharajah having purchased the property in the name of the idol, mortgaged it to Komul Lochun Nundee for a sum of Rs. 32,000. Komul Lochun, not having been repaid, took steps to foreclose the estate, and the period of foreclosure was about to elapse when, the Rajah having died, and having appointed his widow, Kristomonee, the manager and owner of the property, she came in and made an arrangement with Komul Lochun to extend the period; and she afterwards borrowed from Rajahs Woodmunt Singh and Janokeram Singh, Rs. 46,400, with which Komul Lochun was paid off. The conditional sale was to pay off a debt due from her husband to Komul Lochun. Now, as a widow, she was entitled to alienate the property for the purpose of paying and discharging her husband's debts After that the period for the repayment of the money to Woodmunt Singh and Janokeram Singh having elapsed they foreclosed the estate against the widow Kristomonee, and brought a suit, and recovered possession of the land, and were put into possession 47 years before the commencement of this suit.

The Defendants claim under Rajahs Woodmunt Singh and Janokeram Singh. Rajah Janokeram Singh died, leaving Rajah Woodmunt Singh his heir; and the whole property then became established in him. He died, leaving two sons, and the sons conveyed the property to the Defendants. It is unnecessary, however, to enter into the title of the Defendants.

The question is, has the Plaintiff any right to recover this property? The widow made a valid sale of it; and, even without the Statute of Limitations, the Defendants are entitled to it.

The Courts below have both held that there was no actual endowment. The Principal Sudder Ameen (although possibly all his reasons may not be correct) says:—"It is simply this, "that the grandfather of the deceased pur- "chased the property claimed, in the name "of the idol." Then he held that there was not an endowment, and that the property was the private property of the grandfather. The High Court say: "No evidence has been "given to show that there ever was any formal "dedication of the property to the idol. It is a "mere purchase in the name of the idol. From "the time of the purchase of the property, "Rajah Biswanath Roy appears to have dealt "with it as his own."

In the case of Gossein v. Gossein, 6 Moore's Indian Appeals, it was held that if a Hindoo purchase property in the name of his son, the property is not vested in the son, but remains vested in the father who purchased; and so with regard to an idol. If a man merely purchases property in the name of his own idol, whom no one except himself has the power or right to worship, the property is not the property of the idol, but the property of the person who purchased it. The High Court say:—"From the time of the pur- "chase of the property, Rajah Biswanath Roy "appears to have dealt with it as his own. In "1802 it was conveyed or mortgaged to one "Bheekum Roy, and in 1812 it was mortgaged, "apparently for the Rajah's purposes. There is "no proof that either the first or the second "mortgage was executed in any way for the "purposes of the worship of the idol, or for the "performance of any trust connected with it. "For all that appears the money was raised for "the private purposes of the Rajah. No evidence "has been given to show that the revenue of "the property was expended for the purposes "of the idol, and the pleader for the Appellant, "when arguing the case before us, was not

" prepared to go into evidence upon that point. " We do not mean to rest our decision of " the case on that point. But we may observe " that we do not see any reason to doubt the " correctness of the decision of the Principal " Sudder Ameen, that there was no real endow- " ment."

Now both the Courts below have found that there was no real endowment, and their Lordships entirely concur in that finding. There was, therefore, nothing to deprive the purchaser of the power of alienation.

It is scarcely necessary to advert to the question of limitation. In this case 47 years have elapsed since those under whom the Defendants claim purchased the property *bonâ fide*, under the belief that the foreclosure in favor of Rajahs Woodmunt Singh and Janokeram Singh was a valid title in those parties, and they purchased the property for a valuable consideration. The property has been out of the possession of the Maharajah's family for upwards of 47 years, and limitation is clearly a bar to the suit.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the decision of the High Court, with the costs of this Appeal.

Their Lordships desire, in disposing of this appeal, to advert to the very large portion of the printed record which is occupied with unnecessary papers. From page 16 to page 360 the record consists of mere entries in books, the principal part of which have nothing at all to do with the case. A large expense must necessarily have been incurred in printing all that matter, not one item of which has been referred to in the argument before us. It was wholly unnecessary, and merely encumbered the case, encumbered the Court, and brought a heavy useless expense upon the parties.

A circular order was issued by the High Court in 1867, before this suit was commenced, pointing out to the Judges of the subordinate Courts their

duty in this matter. And I will read a portion of the order of the High Court, because it is essential, in their Lordships' opinion, that the subordinate Courts should act according to this rule, so that all such unnecessary expense may be saved to the parties. Speaking of the Code of Civil Procedure, the rule says:—"Section 132 " repeats the direction contained in section 39, " that if the exhibit (or document) be an entry " in any shop-book or other book, the party, on " whose behalf such book is produced, shall " produce a copy of the entry, which copy shall " be endorsed as aforesaid, and be filed as part of " the record, and the book shall be returned to " the party producing it; and the Court ought, " doubtless, in these cases, as under section 39, " to mark the document, *i.e.* the entry in the " book, for the purpose of identification, before " returning it. It will be observed, that the " words as to the return of the book are " imperative, and that the party has not the " option (as under section 39) of delivering the " book to be filed instead of the copy of the " entry. From inattention to this rule it has " been matter of frequent occurrence for great " numbers of account and other books to be " received and actually filed in the subordinate " Courts, and to be afterwards sent up to the " appellate Courts, to the serious inconvenience " of the Courts themselves, and probably of the " parties, except in those cases where the books " have been prepared *pro re natâ*, a thing which " occasionally happens. But the inconvenience " reaches a climax when the importance of the " suit and the determination of the parties bring " about an appeal to England. It then becomes " *primâ facie* necessary to translate and to print " the whole of the contents of these voluminous " books and other papers, and the resulting costs " are frequently enormous. This Court is oc- " casionally at very great trouble to itself and " to the pleaders engaged able to apply some " check to the evil; but in many cases the

" check has not been applied, and in con-
" sequence the Lords of the Judicial Committee
" of the Privy Council have in several instances
" made complaints and observations upon the
" nature of the evidence sent home from this
" country. The answer of this Court on these
" occasions has been, that the evil is one with
" which the appellate Courts can but imperfectly
" cope, and that the effectual remedy must be
" applied in the courts of first instance. And it
" is very much with a view to obviate these
" particular complaints, and to remove this just
" reproach from the procedure of the Courts in
" India, that the present instructions are issued."

Those instructions were sent to all the subordinate Courts before this suit was commenced. Their Lordships think it will be highly beneficial if the High Court will take care that this circular order is enforced, and that similar unnecessary proceedings shall not continue to form part of the records transmitted to Her Majesty in Council.