Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramanoogra Narain v. *Mahasoondur Koonwur, from the High Court of Judicature at Fort William in Bengal, delivered on Friday, 27th June* 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE suit out of which the present Appeal arises was brought under these circumstances:

A widow lady named Mahasoondur Koonwur had two daughters, both married, and on the 28th August 1860 she executed two deeds conveying to them in equal moieties immediately and absolutely certain nine mouzahs, of which she must be assumed to have had the power of absolutely disposing.

In the year 1864, Geer, one of her daughters, died, leaving an infant son who survived her three days, whereupon her husband, the present Plaintiff, brings this suit for the purpose of recovering possession of Geer's share of one half of the nine mouzahs so conveyed by Mahasoondur. Mahasoondur's main defence, which it becomes most material to consider, is thus stated by her: "With a view of preventing disputes "in future amongst her two daughters she "executed a deed of gift in the nature of a "will, with this intention, that she should remain "in possession during her life, and after her "death her daughters would be entitled." The

Plaintiff, undoubtedly, proved a *primâ facie* case. He showed the execution of the deed conveying the half of the property to his late wife; he showed that the name of his late wife was substituted for that of Mahasoondur on Mahasoondur's own application, and that an amulnamah was shortly afterwards executed by Mahasoondur, wherein she required the tenants to pay rents to her daughter, and he gave evidence that the daughter (his wife) had remained in possession of these mouzahs during her life, although it appeared that after her death, by some means or other, Mahasoondur had resumed possession of them. This case was answered on the part of Mahasoondur in this way. She called several witnesses to prove that at the time of the execution of the deeds there was a verbal arrangement that they should operate only as a conveyance of the property after her death; and that during her life her daughters were to retain her property in trust or, as it is sometimes called, benamee for her. Evidence was given that the Plaintiff himself, Ramanoogra, the husband of the other daughter Bhowanee, and Jeetun Lall, the father of the Plaintiff, were parties to this transaction, and indeed the prime movers in it; and it may be observed that neither the Plaintiff nor Jeetun Lall, his father, was called upon the part of the Plaintiffs to contradict this. Some evidence was given on the part of Mahasoondur that she actually received the rents; and it was argued, undoubtedly with great force, that it was extremely improbable that she should without apparently any consideration denude herself absolutely for her life of the bulk of her property. Such was he nature of the issues and of the proof as between the parties in this cause.

But the case is complicated in this way: one Bishen Lall, a creditor of Mahasoondur, instituted a suit against Mahasoondur, to which the present

Plaintiff became a party by intervention, for the purpose of setting aside the deeds in question, on the ground that they were fraudulent as against creditors. Both cases were tried together and one judgment was delivered in both. The substance of the judgment is that these deeds were altogether colourable, being intended to have no operation whatever, and that they were fraudulent as against creditors. On this ground a decree was given for Bishen Lall in his suit, and for the Defendants in the present suit. There is no appeal against the decision in Bishen Lall's suit, therefore the judgment in that case cannot now be disputed. But the judgment in that case operates as no estoppel in the present wherein the parties are not the same, and in their Lordships opinion the same issue is not involved in the two suits. In Bishen Lall's suit the issue was fraud or no fraud against the creditors. In the present suit the Defendant does not set up that defence against the Plaintiff. She does not allege the deed to be altogether void or inoperative, but her case is that it was intended to be operative so far as to convey the property after her death, and that there was, at the time of its execution an agreement that for her life she was to have the beneficial interest, and her daughters were to hold benamee for her. Their Lordships, upon the facts, find that the Defendant Mahasoondur has made out this issue, and therefore they are unable to concur in the judgment of the High Court, which finds that the deed was altogether fraudulent and colourable, and not intended to have any operation. Mahasoondur does not set that up, and it would be a serious question if she did, whether she could be allowed to avoid her own deed on the ground of her own fraud. The Plaintiff does not either set up any such case as that the

deed was fraudulent, and that therefore Mahasoondur was estopped from disputing it. In their Lordships' opinion, as between the present parties to the suit, the issue does not arise as to whether the deed was fraudulent as against the creditors, nor whether it was absolutely colourable and void.

Entertaining this view, their Lordships are of opinion that the finding of the High Court was wrong in as far as it decided that the deed was altogether inoperative. They think the High Court was right in determining that the Plaintiff was not entitled to maintain this suit, as far as it related to the present possession of the property; but they are also of opinion that he is entitled to a declaration that his wife had, and that he, as the heir of his wife through his infant son, has the right to a vested remainder upon the death of Mahasoondur, and that he is entitled to have his name substituted for that of his wife upon the register.

They will, therefore, humbly advise Her Majesty that the decree of the High Court and also the decrees of the Principal Sudder Ameen be reversed; that it be declared that the Appellant, as heir at law of his infant son, is entitled to the interest of his late wife, Mussamut Geer Koonwur, under the deed of gift executed in her favour by the respondent on the 28th August 1860, and to have his name substituted for hers upon the register; that it be further declared as between the parties to this suit that by virtue of the arrangement between them Mussamut Geer Koonwur was entitled to the property comprised in the deed, but subject to the life interest of the Respondent; that it be declared accordingly that the Appellant is not entitled to the possession of the property or the receipt of the rents during the Respondents lifetime.

Their Lordships are of opinion that each party should bear his own costs in this Appeal.