Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Baboo Prem Narain Singh and others v. *Baboo Parasram Singh and Bholonath Singh, and Baboo Prem Narain Singh and others* v. *Baboo Rooder Narain Singh* (*Consolidated Appeals*), *from the High Court of Judicature at Fort William in Bengal; delivered March 24th*, 1877.

Present:

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

THIS suit was brought under the following circumstances. Theoraj Singh had three sons. One of his sons, Tej Narain, who died in 1819, left two widows, who died respectively in 1857 and 1859. The widow who died last left a daughter Sribatti, who married Omrao Singh,—a daughter who became insane during her mother's lifetime. This daughter had three sons, Rooder Narain, Parasram, and Bholonath, who are the Plaintiffs in the two suits which may be treated for all purposes as one. The Defendants are, some of them the sons, and others the grandsons of Behari and Purbhoo Narain, the other two sons of Theoraj Singh. The Plaintiffs bring their suit for the purpose of setting aside an ikranamah, executed by them on the 22nd December 1859, whereby they gave up what may be stated generally as a half of their share of the property of their grandfather Tej Narain to the Defendants, and they also claim to recover that half which they then gave up.

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The subordinate Judge decided the case in favour of the Defendants, dismissing the Plaintiffs' suit. That decision was reversed by the High Court, who set aside this ikranamah upon grounds which may be thus shortly stated,—that the ikranamah was given without consideration; that the eldest Plaintiff is just of age, and the two others under age, at the time that it was granted; that they executed it without sufficient information of their rights, or sufficient advice, and under undue influence and pressure.

It appears to their Lordships convenient in the first place to consider what were the rights of the respective parties at the date in the case which is most material, namely, the death of Indrabati, the latter surviving widow of Tej Narain, which occurred on the 7th of December 1859. At that time Sribatti, the daughter of Indrabatti, was alive and married to Omrao Singh, but a lunatic. Her three sons, who have been before mentioned, were, according to their Lordships' view, of about the ages which are ascribed to them by the High Court; but they do not think it necessary, any more than the High Court did, to state precisely what they consider to be the age of each. It will be enough to say that the eldest does not appear to have been very much over age. According to their Lordships' view, these three grandsons of Tej Narain were clearly entitled to the property of Tej Narain.

Then comes the question, what that property was? Now it appears that in 1802 a deed of family partition was executed. At that time the mouzahs belonging to the family were 50. Two may be put out of the question. One seems to have been appropriated to the support of the widow of Deoraj, a brother of Theoraj Singh; 48 remain. Of those, 40 were divided among the three brothers, Behari, Tej Narain, and

Purbhoo Narain, Tej Narain taking 14, and the other two brothers 13. It appears further that there were eight mouzahs which were held free from Government Revenue, and which were not divided either by name or by metes and bounds, but with respect to which there is this general expression at the end of the document: "Whereas we, all the shareholders, have divided "among ourselves all the villages belonging to "our ancestral inheritance." The effect of this document appears to their Lordships to be that, with respect to the 40 villages, they were actually divided, as it were, physically; and with reference to the others, that there was a division, each party having a third share. And it appears to them further that the High Court is right in saying that this division was recognised, for they come to the conclusion that upon the death of Tej Narain, his widows were permitted and did take possession, and keep possession, not only of the 14 mouzahs, but of the undivided share, as far as it could be taken possession of, of the other mouzahs; they were permitted to take possession and did retain possession until their deaths.

That being so, in their Lordships view, Rooder Narain, Parasram, and Bholonath, the Plaintiffs, were entitled clearly to the whole property in dispute; and their uncles and cousins, who were the Defendants, had no title or claim to title to any portion of them. It has been indeed said that before a certain decision, which is called the Shevagunga case, there may have been an impression that the law was different, but, on referring to that case, it does not appear to their Lordships that it bears upon the present question. It may be enough to say that in that case it was decided that "in a united Hindoo family" (and that term must be borne in mind) "where there "is ancestral property, and one of the members "of the family acquires separate estate on the

" death of that member, such separate acquired " estate does not fall into the common stock, " but descends to the male issue, if any, of the " acquirer, or, in default, to his daughters, who, " while they take their father's share in the " ancestral property, subject to all rights," and so on. Then, " Where property belonging in " common to a united Hindoo family has been " divided, the share of a deceased member of " the family goes in the general course of " descent of separate acquired property." But in this case it appears to their Lordships that at the date to which reference has been made, namely, the death of the last surviving widow, Indrabati, there was no joint property and no joint family, for not only had the property been all divided in 1802, but the family were separated in food and in lodging. It appears to their Lordships, therefore, that even if this Shevagunga case had never been decided, there could have been no rational doubt or dispute that the Plaintiffs were the heirs of their grandfather in respect to the whole of the estate now claimed.

Those being in their Lordships' view the rights of the parties, it remains to enquire what was done? There is undoubtedly a good deal of conflicting evidence, but the view which their Lordships take of it is in substance this:—The Defendants, Inder Narain, Bodh Narain, and Ram Gopal appear to have come to the family house, from which the deceased had removed shortly before her death to a place which is sometimes called Babhni. They appear to have come with a large body of retainers, undoubtedly calculated to inspire terror, and to have taken possession of the whole property of the deceased, to which they had no right whatever, thereby acquiring a very great advantage over these young men. It may be that the young men were prepared also to resist, and to

use force for the maintenance of their rights, and that they would have been assisted by their father, Omrao, and by Juggat, as he is sometimes called, or Jugroap, the father-in-law of the eldest of them. Both sides appear by their petitions to have entertained serious apprehensions of an affray. The Government thought it necessary to interfere. They sent officers for the purpose of keeping the peace, and they issued orders summoning the parties before them, and binding them to keep the peace.

It was in this state of circumstances that the proceeding took place to which great importance has been attached by the Appellants. What is called a punchayet was formed. Three persons acted as arbitrators, Hem Narain, and Dabi Singh, who appear to have been neighbouring zemindars, and Juggut Koonwar, who was the father-in-law of the eldest of the grandsons. We have but little information as to what was referred to this punchayet and what the punchayet recommended, in fact almost the only information on this subject which we have is from a deposition of Dabi Singh taken in another suit, to which suit perhaps it may be as well now to refer for the purpose of getting rid of it. It appears that soon after the execution of this ikranamah Omrao Singh, the father of the Plaintiffs, filed a suit for the purpose of obtaining possession of the property in dispute on behalf of Sribatti, his wife, whom he alleged not to have been a lunatic at the time of the death of Indrabati, and therefore to have succeeded to her inheritance. He also in that suit sought to set aside this ikranamah. That case came before this Board and was eventually decided upon the ground that it was shown that Sribatti was a lunatic and could not inherit, therefore Hooder Narain, Parasram, and Bholonath, her sons, would inherit instead of her. That was the only point decided.

Their Lordships at this Board give no decision whatever upon the question of the ikranamah. So much by way of parenthesis. This witness, Dabi Singh, who had been examined in that case, gives an account which appears to be almost the only account we have of what took place before the punchayet. He says, "No coercion, "&c. was exercised on any one. Baboo Omrao "Singh also was present at the time of the "execution of the ikrarnama, and he also con- "sented to the execution of the ikrarnama, at "the same time having appointed a punchayet "composed of Baboo Hem Narain Singh and "me the witness, and Juggut Narain Konwar "and others. He said in an entreating manner "that Rooder Narain Singh's grandmother has "said that she gave an eight annas share to her "daughter's sons, and an eight annas share to "Baboo Inder, Narain Singh, and others, the "husband's relatives. In conformity with this, "settle our dispute. We did so accordingly," and so on. With respect to this it may be observed that, on the part of the Defendants, evidence was given to the effect that the widow Indrabati had in fact treated the Defendants as entitled to the property, but had put it to them as it were *ad misericordiam* to allow her grandsons to have a half share of it. The High Court disbelieved that evidence; and it would appear that they disbelieved also this statement of this witness. If this statement is untrue, we have no reliable evidence whatever of what came before the punchayet or what was done by it. If it is true it would appear to amount to this, that the Defendants having with a high hand taken possession of an estate to which they had no right, the father of the Plaintiffs, who is sometimes described as a timid man, entreats them to give half to his sons, on the ground that Mussummat Indrabati had left it to them, or

desired that it should be left. If this be so, so far from showing that the Plaintiffs were acquainted with their rights, it tends to show that they were not acquainted with them; and that they had some notion that Indrabati had a power of disposing of the estate, which she had not. But the compromise, as it has been called, entered into in reference to this punchayet is altogether silent as to what is recommended to be done by the arbitrators. It is to this effect: "Whereas in consequence of the death of Indra-" bati," and so on, "who was our maternal " grandmother and my (Baboo Omrao Singh's) " mother-in-law, a dispute about her estate " existed between us," and so on; "and " whereas by the arbitration of a punchayet " composed of" so and so, "besides respectable " neighbours, the dispute between us, which " might have resulted in a serious affray, was " settled amicably between us by the arbitrators " to day, and now there is no cause of dispute " which might result in an affray between us; " therefore we have executed this acknowledg-" ment, undertaking to abstain from any affray. " We do declare that if we again raise any " cause for an affray we shall personally, with-" out demur, pay a fine" of so and so. This document is altogether silent as to any division of the property or anything to be done by the parties, except to abstain from an affray; and it may be here observed that it would appear conclusively from this document, what indeed might be inferred from other evidence, that there was very serious apprehension of an affray, and that a breach of the peace was, to say the least, imminent, a state of things altogether inconsistent with the account of the Defendant's witnesses (the one subject on which they all agree) that there was not only no affray, but absolutely no apprehension on the part of anybody of the possibility of

an affray, but that everything was perfectly peaceful and orderly. Seven days after the date of this document the ikranamah in question was executed. It may be here observed that this ikranamah contains no reference whatever to the punchayet or to the document which had been executed seven days before. It speaks of Indrabatti having taken possession of all the shares and how she sent in her lifetime for Juder Narain and Bodh Narain, and so on, "and gave us the declarants out of "the whole of her share an eight annas of the "immovable property." It states, therefore, a gift by this lady of half the property when manifestly she had no power to dispose of any of it. It may perhaps be here observed, with reference to the doubt expressed by the High Court, as to whether it is true that this lady did dispose or affect to dispose of the property in the manner alleged, that she asserted at the time she took possession of the property and subsequently in a petition of 1852 that she had the sole right to the property, and that the Plaintiffs were her sole heirs. This document, which need not be further referred to, contains an agreement to divide the property between the Plaintiffs and Defendants. On the 28th January following there was a proceeding which has been a good deal relied upon on the part of the Defendants. It appears that both these young men went before the Criminal Court, and they there made depositions which have been referred to,—depositions very like each other,—in which they state that they have been charged with an unlawful assembly, but deny that they had taken part in an unlawful assembly, and state the substance of this ikranamah as a compromise, which they had entered into for the purpose of showing that they ought not to be convicted of any such offence, and they are bound over in their recognizances not to commit an offence. The young men seem to

have been brought before the Court, and put under recognizances some considerable time before, in pursuance of an order of the Court. These depositions appear to their Lordships substantially a part of the same transaction, and it may be that at this time the Plaintiffs were under the impression that the ikranamah they had executed was binding upon them. But, undoubtedly, not long afterwards, in the action which is brought by their father, they seek to repudiate, as far as they can repudiate, the transaction.

Looking at the whole case, the main features of it appear to be these: These young men execute a deed, whereby they part with a half of their property. It is, in their Lordships' view, executed without any consideration whatever. It is executed very shortly after they had come to their property, and when it may be considered as, at all events, doubtful whether they were fully acquainted with their rights; indeed the evidence in the case tends to show that they were not fully acquainted with their rights. At the time of the execution of a most important document they do not appear to have had any professional advice; and further, the appearance of their uncles with a large force, the possession which was taken of their property, the criminal proceedings, and the other circumstances which have been referred to, constituted a state of things likely to overawe them, and materially to affect the free exercise of their will.

It appears to their Lordships, therefore, that it would not be equitable that this ikranamah should be upheld. Under these circumstances, they are of opinion that the judgment of the High Court was correct, and they will humbly advise Her Majesty that that judgment should be affirmed, and this Appeal dismissed with costs.