" made a petition to be put into possession " on the 26th May 1865. Therefore the delay " which had to be accounted for was only a " delay of a few months, and that is a circum- " stance quite insufficient of itself to get rid of " the rights of the Plaintiff under his purchase. " That being so, and the onus on that part of " the case being entirely on the Defendants, and " the Defendants not having discharged them- " selves of it, as far as that plea goes, the " judgment must be in favour of the Plaintiff."

The substance of that decision is simply this, that the mere delay in taking possession on the part of Fakiruddin, or of Anund Lochun Nundi, was not of itself a sufficient badge of fraud to induce the Court to come to the conclusion that the purchase by Fakiruddin was benamee for the benefit of the judgment-debtor. They say, " That being so, and the onus on that part of " the case being entirely on the Defendants, and " the Defendants not having discharged them- " selves of it, as far as that plea goes, the " judgment must be in favour of the Plaintiff."

But there was evidence in the cause beyond that which was adduced as to the delay. There was the evidence of several witnesses. First, that of a tenant, at page 185 of the Record, to which Mr. Cowie has called their Lord- ships' attention, the evidence of Loknath Banerjee. He says, "I am a tenant of the " disputed mahal and hold lands therein. For- " merly I used to pay rents to Mahomed Joki " Chowdhry " (that is the judgment debtor); " at " present I pay rents to the Defendant," meaning the Defendant No. 1. He does not say that possession was ever given, as far as his portion of the property was concerned, to Fakiruddin. He paid originally to the judgment-debtor, and subsequently to the Defendant No. 1, who was the purchaser under the second execution.

Then again, at page 190 of the Record,

there is some very strong evidence, that of the Defendant's witnesses, to which the High Court did not allude at all. It is true it was not alluded to by the first Court. The Judge of that Court thought the delay sufficient of itself. But when the High Court thought that the delay was not sufficient, they ought, as it appears to their Lordships, to have referred to the evidence to see whether they believed or disbelieved the witnesses on the part of the Defendant to prove that the sale was a fictitious one. Bharut Chunder Dey, the Defendant's witness No. 1, at page 190, says: "In the "month of Jeyt of 1270 B.E. the disputed "property was sold by auction at Faridpore on "account of the debt of Gorib Hossein. Anund "Lochun Nundi purchased it. Gorib Hossein "paid the consideration money. I and Daguram "Dutt, and three Sirders, went to Faridpore with "the money. In the auction sale a bid of "Rs. 500 was made, and the bargain having "been struck in our name, we made over "Rs. 500 to Anund. Anund made the said "auction purchase for Gorib Hossein. Ajim "Chowdhry,"—that is the alias of Fakiruddin, "in a letter to Anund Nundi, requested him to "make the auction purchase on behalf of Gorib "Hossein. We took with us Rs. 3,003 for the "auction purchase,"—that was sufficient to cover the amount of the debt for which the sale was about to take place,—"and we paid Rs. 500. "Gorib Hossein's superintendent gave us the "said money. Knowing that the disputed pro-"perty might be worth Rs. 10,000 or Rs. 12,000, "we went to purchase it."

There was other evidence corroborating this witness's testimony, to which it is not necessary to refer further. There was no witness to contradict the evidence of those witnesses. Anund Lochun Nundi was not called. Fakiruddin was not called. If the evidence of the witnesses who stated that

the money with which the estate was purchased in the name of Anund Lochun Nundi was sent by the judgment-debtor was not true, why did not Fakiruddin or Anund Lochun Chunder, or both of them, come forward and state that the evidence was false, and that Anund Lochun Nundi purchased the estate for Fakiruddin with money which Fakiruddin had supplied. But no evidence of the kind was given. The witnesses for the Defendant No. 1 were uncontradicted, and there is nothing on the face of the proceedings to lead their Lordships to believe that the evidence of those witnesses was untrustworthy and ought to be rejected as the evidence of witnesses who had perjured themselves.

But, beyond this, when the estate was sold to the Defendant No. 1, and when the Defendant No. 1 was put into possession of it, one would suppose that Fakiruddin, though he was only in ostensible possession of the property, would have made an application to the Court, under section 246 of the Code of Civil Procedure, stating, "You have attached and are about to sell under "an execution property which I have already "purchased under a previous execution; do not "sell this property, it is mine, and not that of "the judgment-debtor," and then the Judge in a summary way would have decided whether or not the property had been purchased by Fakiruddin or not. But no such application was made.

It was suggested that probably Fakiruddin and Anund Lochun Nundi did not know that the property was attached and about to be sold under the second execution. Assume for the present purpose that they did not, one would suppose that as soon as they did know it, that is to say as soon as the Defendant No. 1 was put into actual possession of the property, and had got the ryots to attorn to him, Fakiruddin, if his case had been a genuine one, would have brought an action at once to turn

him out and to contest his right to the property by virtue of the sale under the second execution. But he lay by, and no action was brought by Fakiruddin or by Anund Lochun Nundi for nearly nine years after the Defendant had been put into actual possession of the property under his purchase, and then Fakiruddin commenced a suit in the Moonsiff's Court. The Moonsiff had not jurisdiction to try cases to the extent of the value of the property; an objection was taken to his jurisdiction, and then Fakiruddin sold the property to the Plaintiff after the Defendant No. 1 had been in possession for nine years, and when there was a dispute and an action pending respecting the title.

That suit was afterwards dismissed, and the Plaintiff brought the present action in 1874.

Under these circumstances there is sufficient evidence to satisfy their Lordships that the purchase by Fakiruddin, if indeed he did purchase in the name of Anund Lochun Nundi, was a purchase benamee for the original judgment-debtor who furnished and supplied the money for that purpose.

Under these circumstances their Lordships think that the Plaintiff is not entitled to recover. It is not necessary therefore to decide whether the Principal Sudder Ameen had jurisdiction to issue the execution under which the Plaintiff's vendor purchased the estate, but their Lordships wish it to be distinctly understood that they throw no doubt whatever upon the decision of the High Court by which it was held that the Principal Sudder Ameen had jurisdiction to issue the execution.

Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court be reversed, the decree of the first Court affirmed, and the suit of the Plaintiff dismissed with costs in both the Lower Courts. The Appellant must ~~pay~~ have the costs of this Appeal.