Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Hira Lal v. *Ganesh Parshad and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 9th February* 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS Appeal comes before their Lordships under somewhat peculiar circumstances. The case of the Plaintiff, who is the Appellant, is in substance this: that in October 1830 three persons, named Sheo Ghulam Singh, Beni Singh, and Mardan Singh, sold a taluqua to a person of the name of Ghulam Muhammad, reserving to themselves a certain portion of that taluqua, which is differently described as 1,845 bigahs, and 1,400 bigahs,—in fact, various figures are given describing it,—subject to this condition, that they were to pay no rent for this portion reserved, nor the Government revenue, but that the Government revenue was to be paid by the vendee. They say that by the conditions of the deed of sale, subsequently confirmed by an ikrarnamah of April 1831, this was expressly agreed and stipulated on the part of the vendee. The Plaintiff is a purchaser of a part of the reserved portion, deriving title from the original vendors. The Defendant is a person to whom one Dulham Begum, (who was the widow of a person named Ghulam Ahmad, for whom it is alleged that the

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original vendee purchased benamee,) sold it—it does not appear when.

The Plaintiff seeks to establish that the agreement between the original vendor and vendee is binding upon the present Defendant, and that he is bound to indemnify him, the Plaintiff, for the payment of the Government revenue in respect of the reserved property, or such portion of the reserved property as he possesses.

The Plaintiff does not put in the original deed, —that is said to have been in the possession of the original Defendants,—and he does not give, nor did he ever give, any satisfactory evidence of its contents. He does not put in the ikrarnamah, on which he principally relies as setting forth the agreement which has been referred to, and he gives no reason whatever for not producing it. He does not state whether or not it is in his possession; whether he has made any search for it; whether it is lost; nor does he attempt to give any secondary evidence of it, but he relies entirely upon a judgment which was obtained in the year 1853, by the original vendors together with another person, against Dulham Begum, who has been before spoken of; and he contends that this judgment, without any other evidence whatever, proves his case.

This judgment turns chiefly upon the construction of the ikrarnamah. Their Lordships cannot help observing, in passing, on the extraordinary course which appears to have been pursued by the Court of the Sudder Dewani Adawlat in that suit. In the Court of First Instance, the Plaintiff, although he admitted that he had the ikrarnamah in his possession, did not produce it, alleging that it had been in the possession of the Defendants, and that they might have tampered with it, or had tampered with it. But as he did not produce it, the judge, (it appears to their Lordships quite properly) held that the

secondary evidence of it could not be admitted, and dismissed the suit. When the case came on appeal to the Sudder Court at Agra, it seems that the Plaintiff did then produce this document, and offer it for the inspection of the Court. The Court refused to look at it, but admitted secondary evidence of its contents. It appears to their Lordships that the Sudder Court was wrong in that course of proceeding. If the Plaintiff had the original and did not produce it in the Court below, his case was not proved, because it rested almost entirely on the ikrarnamah, there being no evidence of the contents of the deed of sale; but to accept secondary evidence of the document which was in the Plaintiff's custody, without looking at the original, seems to their Lordships to be an extraordinary course. But, be this as it may, the Plaintiff is right in contending that this was a suit between the same parties in estate, relating in a great degree to the same subject matter, and in relying upon it as far as he can as an estoppel. It remains to ascertain what the real effect of the judgment in that suit was. The claim was "for a "declaration of right and proprietary possession, exempt from the payment of the rateable "rent (by prohibiting the Defendant from "demanding the rateable revenue)." And the point decided in the Sudder Court is thus stated at page 22 of the Record:—"The Court, for "the above reasons, reverse the decision of the "Principal Sudder Ameen, and decree in favour "of the Appellants for possession of the land, "exempt from the payment of revenue and "wasilat to the amount claimed by them."

It appears to their Lordships that this judgment is ambiguous in one or two respects. It does not appear definitely on the face of it whether it was adjudged that the claim

to be indemnified for the payment of Government revenue related to the then impending revenue settlement which the parties may perhaps be assumed to have had in contemplation when they entered into the agreement, or whether it related to the next settlement or to any subsequent settlement. The judgment might be consistent with either view. Further, it does not appear whether the effect of the judgment is simply to render the Defendant, Mussumat Dulham Begum, liable to indemnify the Plaintiffs in respect of the reserved rent, or whether the contract of indemnity is to be taken to run with the land, and to bind all persons who may be hereafter in possession of it under any title whatever. Mussumat Dulham Begum, it may be observed, as far as their Lordships are able to understand the evidence on this part of the case, which is as obscure as the rest of it, would seem to be, as has been said, the widow of Ghulam Ahmad, the real purchaser, and thus to have been a representative of the purchaser bound by his undertakings, but it would by no means follow that the land is to be bound in whosoever hands it may hereafter come by purchase or otherwise. The judgment, thus ambiguous, is applied almost wholly to the construction of the ikrarnamah, which the Court did not look at. If this ikrarnamah had been produced in the present suit, their Lordships might, by applying the judgment to the terms of it, have been able to determine the effect of that judgment; but, in the absence of the ikrarnamah, which the Plaintiff has not produced, and the nonproduction of which he has not accounted for, their Lordships are unable to construe the judgment in the sense in which the Plaintiff seeks to have it construed. The more obvious interpretation of it seems to be the more limited one.

Under these circumstances, their Lordships are

of opinion that the Plaintiff has failed to prove his case; and they will therefore humbly advise Her Majesty that the judgment appealed against be affirmed, and that the Appeal be dismissed with costs.