Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Muhammad Yusuf v. *Muhammad Husain from the High Court of the Judicial Commissioner of Oudh, Lucknow; delivered April 26th,* 1888.

Present:

LORD WATSON.
LORD HOBHOUSE.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

IN this case the suit is founded on two agreements, which are dated respectively 2nd May and 1st September 1870. The two agreements are exactly similar in character. The first, which is called No. 24 in the suit, relates to three villages, and the effect of it is this: that whereas the Plaintiff and the Defendant both had claims against the talookdar for an under proprietary right in these three villages, the claims should be prosecuted in the name of the Defendant, the Plaintiff paying half the costs and receiving half the profits when the right was established. The second agreement, which was No. 25, was to exactly the same effect with respect to a small portion of a village called Olehipur, which seems to have been of very little value.

Now though the suit is founded entirely on these agreements, and not on any previous claims, it is not unimportant to consider what was the position of the parties antecedently to the agreements. As the genuineness of the agreements is disputed, it is a material consideration to see whether they contain anything that was at all

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of an extravagant or monstrous nature. The Plaintiff and the Defendant are near relatives, and at one time were indisputably co-sharers in some interest in the three villages, which were ancestral property. That is made manifest by the record of proceedings in the Settlement Court in the year 1858, when we find a petition presented by the Plaintiff and Defendant and two other applicants, stating that settlement had been made with those four, and praying that a fresh settlement should be made to the four, and it is mentioned that three others joined as Shikmis. The order, which was made on the 5th May 1858, was that the settlement be made with the petitioners, and that leases be granted, and so forth. Therefore, there being on record this evidence of joint title in the Plaintiff and the Defendant, there is no improbability in the Plaintiff's account that he intended to sue for his right in the villages, but that the arrangement was made that the Defendant should sue, and that the costs should be paid, and the profits shared, in the way he states. What is certain is that the suit was instituted by the Defendant against Arjan Singh, who was the talookdar against whom the sub-proprietary right was claimed. That suit failed before the Settlement Officer, but on appeal with regard to the village of Olehipur, the Commissioner gave the Plaintiff a decree. That decree was made on the 4th July 1870, and it gives an under proprietary right in Mouzah Olehipur to Muhammad Husain the Defendant, Imdad Ashraf who claimed for another branch of the family, and other co-sharers if any there be. After that decree was made for Olehipur, the Settlement Officer made a fresh decree for the three villages, following the Commissioner's judgement in the case of Olehipur. His decree bears date the 22nd December 1870, and is in favour of Muhammad Husain and all

entitled to share the sub-settlement of the three villages.

Now under that decree the Defendant obtained possession, and it seems that he got his name entered in the Khewat to which Mr. Arathoon has just been drawing their Lordships' attention, and he holds possession up to this moment. The Plaintiff being undoubtedly a co-sharer in 1858, is entitled to say that whoever gets possession under that decree holds partly for him.

That being the position of the parties, the only point on which the agreement gives to the Plaintiff any further right than he might claim independently of the agreement, is this: that the agreement admits, as between himself and the Defendant, that the Plaintiff is the only party entitled to share in the benefit of the decree. How it was that the other parties named in the decree of 1858 have fallen out their Lordships do not know, but no defence was raised on that ground or on any *jus tertii*. The Defendant claims that he is solely entitled, and that no agreement whatever was made with respect to the profits of the estate governed by the decree.

The main question is whether these agreements are proved. The District Judge has held that they are. The Judicial Commissioner thinks that they are not. Taking No. 24, the agreement purports to be witnessed by nine persons. No doubt some of the names were written by others on the speculation that the witnesses would ratify what was done, and other witnesses affixed their names after the agreement was executed and not at the time. That proceeding is very irregular, very improper; and if any attempt had been made in this suit to represent that persons named as witnesses were there who really were not there, it would be fraudulent. But no such attempt

has been made. Four witnesses have been called and they all honestly say where they were at the time. It turns out that only one was present at the time, but no attempt has been made to conceal the fact, neither is there any contradiction of what they say upon that point. What do they say? Nawab Ali, who seems to be a perfectly independent man, says:—"I signed No. 24 as "witness; I cannot say where it was written. I "signed in the Commissioner's cutchery." It was not written at the Commissioner's cutchery, or executed there, and he says honestly that was so; but the document was brought to him by Muhammad Husain, and he was told to witness it and he did so. It is irregular, but it is not untruthful. Then Imdad Ashraf says: "I signed "No. 24. It is in Muhammad Husain's hand-"writing; both brought to me to sign at my "house fifteen or sixteen days after it was "written in Chadikapurwa." That of course is an irregular thing, but it is perfectly honest, and it shows the admission of the agreement by the parties to it. The Plaintiff himself positively swears to its having been written from a previously prepared draft by the Defendant in his presence, and Beni Parshad, who seems again to be perfectly independent—he is a ryot holding lands under both parties—says the same thing. He was present, and the only witness who was present. In cross-examination none of these witnesses are shaken in the least. No counter evidence is produced. No facts are shown inconsistent with the story told by any one of the four witnesses who swore to the execution, or to their subsequent signature at the request of the Defendant. They were believed by the District Judge, who says they were trustworthy witnesses, and their Lordships cannot hold that there is any contradiction of their testimony merely because other persons are named as witnesses who were

shown not to have witnessed the document at all, either at the time or otherwise, or because there was one who did sign the document whom the Plaintiff did not think fit to call.

But then another objection is made. It is said that the document was not registered. Non-registration is no bar to the validity of the document, but it is said that the Plaintiff gives as a reason for non-registration that he was committing a fraud upon the court. The reason no doubt is very absurd. He says this: the evidence of his father Riasat Ali was of importance in the suit against Arjan Singh, and he and the Defendant believed that if the Plaintiff's interest was made manifest by the registration of the document, Riasat Ali's evidence would go for nothing in the suit against Arjan Singh. It is a childish mistake to make. It shows a disposition to be a little tricky. But it is not suggested that any false evidence was given in the suit against Arjan Singh; it is not suggested that by these means Riasat Ali was rendered a competent witness, whereas otherwise he would have been an incompetent witness. Nothing was done by way of fraud upon any human being. All it shows is a disposition to conceal something which happened in order that the parties might reap a benefit in the suit which was pending, and their Lordships think that quite sufficient importance has been given to the matter by the District Judge, who, on account of this little stratagem, has deprived the Plaintiff of his costs in the suit.

Now, so far there is nothing in the circumstances to induce their Lordships to entertain any reasonable doubt that the parties who swore to the execution of these documents have sworn to the truth, and if the case rested there they would decide in favour of the genuineness of the documents. But the case does not rest there. There

are in the record detailed accounts of the three villages which the Plaintiff swears were rendered by the Defendant to him, and they are also sworn by the Plaintiff and others to be in the writing of one Hublal, a putwari of the villages, and to have been sent by the Defendant to the Plaintiff. One witness goes so far as to say he saw Hublal write the accounts. Possibly he may be wrong there. There is no need to decide whether he is right or wrong. Hublal denies writing or signing the accounts. But he does not deny their correctness. He does not deny that they were made out or sent, or that the payments were made upon this footing. And what is still more extraordinary is that the Defendant does not come forward to say one single word about these accounts. He produces witnesses to say they are not in Hublal's handwriting, but he himself does not say one word about them. Now, if the accounts were forged, it would be a forgery of the most portentous kind, consisting as they do of a quantity of items purporting to be holographed by Hublal, and setting forth the various payments and expenses for these villages. Nothing would be more easy to expose than such a forgery as that. It is quite certain that a person forging these accounts would fall into a number of mistakes, and on the mistakes being shown the forgery would be made manifest. No evidence of the kind is given. The District Judge on that evidence believed that the accounts were made out and rendered by the Defendant to the Plaintiff. What the Judicial Commissioner held on the point is not so easy to say. He says they are valueless, and are of no weight, and he mentions that Hublal has denied having written them; but whether he held they were really forgeries, or whether he held that, being genuine, and being signed, they were of no value as evidence, cannot be learned

from his judgement. It is clear that they are of the greatest value as evidence, because they could not have been sent by the Defendant to the Plaintiff except on the footing that the Plaintiff was entitled to an interest in the villages.

There is one thing more. A series of letters from the Defendant to the Plaintiff is produced, and the same observations, or very nearly the same observations, occur upon the letters that have been made upon the accounts, and they need not be repeated. The letters are inexplicable, excepting as referring to these agreements, and as admitting an interest on the part of the Plaintiff in the three villages.

The result is that their Lordships think that the District Judge was right in giving the Plaintiff a decree, and that the Judicial Commissioner was in error in disturbing that decree. He should have dismissed the Defendant's appeal with costs, and their Lordships will now humbly advise Her Majesty to make a decree to that effect. The Respondent must pay the costs of this appeal.