Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nirmal Chundur Bonnerjee v. *Mahomed Siddick, from the High Court of Judicature at Calcutta; delivered 8th July* 1898.

Present:

LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This suit was instituted on the 26th January 1893. The Plaintiff prays for a declaration of his ownership, and of his right to registration. The Defendant alleges that he is owner. The property consists of several houses and parcels of land in Calcutta. Each party claims to be in possession. Each party derives his title from a lady named Said-un-nissa, who in the year 1858 was the undoubted owner. Neither party is or has ever been in actual physical possession of any part of the property, which has been let to tenants. The possession alleged on both sides consists in granting leases, obtaining kabuliats, and recovering rent. From the year 1880 onwards an irregular and indirect legal warfare has been carried on by the rival claimants, each suing a tenant of some portion of the property for rent. This suit is the first attempt to put the whole title directly in issue between the principal claimants. An objection has been taken to its form, but both Courts below have

maintained it; and it seems to their Lordships not only the most convenient, but a strictly regular, way of bringing the dispute to a close. In point of fact the pleadings and evidence and judgments relate not to the liabilities of this or that particular tenant or parcel, but to the validity of the rival claims to ownership as a whole.

The suit was tried in the High Court of Calcutta on the Original side. The Original Court decided for the Plaintiff. The Court of Appeal differed, and dismissed the suit. That decision is challenged in the present appeal. It is unfortunate that the Respondent does not appear, for the case is one of much intricacy, and though the Appellant's counsel have done their best to present it with fulness and fairness, the want of an opponent is a sensible disadvantage.

In January 1858 Said-un-nissa executed a hiba or deed of gift by which she transferred her property to her son-in-law Mozuffer under whom the Defendant claims. Between 1880 and 1890 she executed several transfers, by the last of which in April 1890 the whole of her interest together with that of her transferees became vested in the Plaintiff. The main question is whether the hiba is a substantial or a benami transaction. It is not disputed that whatever interest she passed to Mozuffer vested in his heirs, nor that whatever interest she then retained has vested in the Plaintiff. There is a subordinate question whether this suit has been brought within due time; but it will be found that the decision on the first point involves findings which will govern the second.

In order to apply the evidence it is necessary to understand the state of Said-un-nissa's family. In 1858 she was a widow, with one son named Woodor who was born about 1845, and one

daughter Raj-un-nissa who was married to Mozuffer the grantee of the hiba, and had issue by him. Mozuffer also had issue by an elder wife, a son called Nabi. By Raj-un-nissa he had four sons and two daughters. The eldest son was named Ali Akhtar born about 1856, the second named Mansur died in 1884, and the third Makdur in 1887, both without issue, at what ages is not stated, the fourth Masrur is still living. One of the daughters is dead without issue, the other is living and married. Mozuffer died either in 1876 or 1878, and his wife about two years after him.

The first observation about the hiba is that it gave away the whole of Said-un-nissa's property, not only the Calcutta houses but other valuable lands which it seems she had acquired at various times. It left her without means, and also disinherited her son, as to the amount of whose property we have no evidence, and her daughter too, in favour of her son-in-law, who might alienate the land, and whose inheritance would pass to an extent then quite unascertainable to his issue by other marriages or to other wives and their issue. It is impossible to deny the great improbability that such a transfer should be made for Rs. 100 and a copy of the Koran, which is the consideration stated in the hiba. It is to be observed here that the Court of Appeal were under the impression that the gift was made to Raj-un-nissa, which would no doubt be a less improbable action. As the matter stands, the least that can be said of it is this, that it disposes the mind to receive without difficulty evidence showing that the transfer was purely nominal.

So far as direct evidence goes, there is none at all to explain why such a gift should be made. There is some, not in itself very cogent, to show that it was a benami transaction. Of the attesting witnesses, two alone survive. Sajat

Ali was the gomashta of Said-un-nissa's husband, and afterwards of herself, and he collected her rents. He says that the hiba was executed to baffle claims for dower by the representatives of Woodor's wife, who had recently died. The other witness is Golam Abbas, who was a connection of Said-un-nissa, and held an ijara from her, and at the date of the hiba was staying in her house. He corroborates Sajat as to the motive for the hiba, and gives an account of the attending circumstances, perhaps too minute to be very trustworthy. Both those witnesses are very old men, and Macpherson J. who presided at the trial, observes that they speak with some degree of confusion; but he receives their evidence and relies on it though not strongly. Neither of them has any apparent motive to favour the Plaintiff. They leave on their Lordships the impression that they could hardly have invented the idea of a benami gift, and that probably there was something said at the time to the effect that they state, though we cannot be sure of the details. So far the evidence runs in accord with the antecedent probability.

The next question is whether any change was made in the treatment of the property. The only contemporary evidence is that of the two old men. Sajat says that after the hiba there was no change in his duties. He continued keeping accounts as he did before. He applied his receipts for the family expenses of Said-un-nissa. "Mozuffer Hossein never asked me to "pay the money over to him or to any one else, "but asked me to go on in the same way as I "did before" (Rec., p. 119). Golam says that when staying in Said-un-nissa's house, he saw a tenant named Dhonai paying rent to her after the hiba, and that he himself paid rent to her under his ijara, which endured only for two years but overlapped the date of the hiba.

Unfortunately, both at this date and at other periods of the history there are no written accounts. The positive evidence is not strong, but so far as it goes, it shows that Said-un-nissa's position was not altered by the hiba for *some* little time, it may be two or three years afterwards. This again is in accordance with antecedent probabilities.

During the rest of Mozuffer's life the evidence is almost a blank. It is clear that he and his mother-in-law were on the most friendly terms. He resided in the Burdwan district, and used to visit her at Hosseinabad where her house was, and in the neighbourhood of which most of her land was situated. Being a Mahomedan lady of a rank which precluded her from appearing to any but relatives and intimates, she necessarily did her business through some other person, and during Mozuffer's life he acted for her to a considerable extent. As regards the Calcutta property, by himself or by an agent named Rahatalla, he collected rent; but there are no accounts or other evidence to show how much he received or how he applied it, nor whether his position and conduct after the hiba differed in any way from his prior position and conduct. Said-un-nissa however went on living at her home in Hosseinabad, and no evidence is adduced to show that she lived in any more humble or any different way than formerly. Not a suggestion is offered on the part of the Defendant to explain what she had to live on if she had parted with all her property. The inference seems almost irresistible that she must have received support out of that property; and if she did it is difficult to stop short of the conclusion that the whole of the ostensible gift was a sham by the intention of both parties.

When Mozuffer died the property would, supposing the hiba to be valid, descend to his

widow and children. None of them at that time appear to have made any claim to it, nor indeed has any claim ever been made except by Ali Akhtar and Masrur, who have transferred their interests to the Defendant. This circumstance is not explained. Of course the Defendant is not bound to explain it, as the Plaintiff can only succeed by the strength of his own title. But it is one of the phœnomena which go to create doubt whether Mozuffer was in his own family considered to be the owner of the property. Ali attempts some explanation by alleging an arrangement by which his surviving sister relinquished her interest to him. But this story of his is very confused and contradictory and the Original Court justly refused to believe it. Even if it were true it would not account for the inaction of Rajunnissa, or of her other sons, Nubi who is still alive, Makdur who lived till 1887, and Mansur who lived till 1884, and who not only did not claim against Said-un-nissa, but on an important occasion took part in an assignment of the property by her. In the face of these facts it is impossible to think that the property contained in the hiba was considered by Mozuffer's family as his own.

There is evidence that during the short time for which Woodor survived Mozuffer, he intervened in the management of the property, though the extent of this intervention is not made very certain, and again no accounts or writings are produced. Wasek Ali, a witness whose evidence will hereafter come to be carefully considered, says that Woodor employed him in doing some of the business, and a tenant named Sage says that he paid rent to Woodor so long as he was alive, and when he died did not pay. It is at any rate certain that during Woodor's life, there was peace as profound as during the life of Mozuffer.

Woodor died in January 1879, and soon afterwards we enter on a period of great confusion. Ali put forward claims to be owner of the property. This was resisted on the part of Said-un-nissa and there ensued the state of contest which has been brought to a head in this suit. There is nothing to explain why Said-un-nissa should have resisted Ali's acts of ownership if she had really made over the property to Mozuffer and he had been in enjoyment of it for twenty years. It is certainly unlikely that this old lady would of herself have disturbed the *status quo* in which she had acquiesced so long, or that anybody should have done it in her name. Whereas it is not difficult to understand that after Mozuffer's death and that of Woodor, Ali coming fresh to the business, finding the hiba and the ostensible title given by it, and knowing that his father had collected rents, should have thought that his claim was maintainable in law and have felt little scruple in preferring it.

How Ali dealt with the mofussil property their Lordships cannot ascertain; for his own statements as to his proceedings cannot be looked upon as accurate, and Mr. Justice Macpherson places no reliance on him (Rec., 356). That learned Judge deals with the matter in this way. He is speaking of the time after Mozuffer's death:—

"After that, Said-un-nissa and Ali Akhtar appear as rival "claimants, and proceed to deal with the property in a way "which leads me to regard suspiciously the claim of both. I "gather from the evidence, that Ali Akhtar first began to "sell, for he says that he has sold all the mofussil properties "comprised in the Hiba, that the first sale was in 1286 or "1879, after the death of his father, and the last about 10 years "ago, and he gives the names of several purchasers. I do "not know what the result of all these sales was; but it is "clear from the evidence of Bhola Moitro, one of the pur-"chasers, that the sale to him was disputed by a purchaser "at a sale in execution of a decree against Said-un-nissa, and

"that he failed to satisfy the Court that he was in possession, "although he sticks to the story that he got and still holds "possession."

It seems then that in the only mofussil case of which we have anything like clear evidence Ali and his transferee were unsuccessful.

Ali also alleges that he made sale of a parcel of land for Rs. 66 to Affil, a first cousin of Said-un-nissa and one of those to whom she conveyed interests in the Calcutta property. This is brought forward to discredit Affil who supports Said-un-nissa's title. Affil says that the sale was provisional and was undone and the money returned. This matter has but little bearing on the main stream of evidence and their Lordships do not pursue it.

On the 31st January 1879 Wasek Ali brought an action in the name and on behalf of Said-un-nissa against one Ostagur for rent of one of the houses and a decree was obtained (Rec. p. 186) in April 1879. A like action was brought on the 7th April 1879 against Sage for use and occupation of land of the Plaintiff. A decree was obtained and upon non-payment Sage was committed to jail on the 19th August 1880 (Rec. p. 124). Two observations are to be made on this case. One is that it is proved by the same deposition of Sage in which he states that he paid his rent to Woodor as above mentioned. The other is, that Ali speaks of Ostagur as one of the tenants from whom he collected rent, and says not only that he collected rent from Sage on several occasions but that he obtained a decree against him (Rec. p. 258); whereas the only decree forthcoming is that of Said-un-nissa. These observations have an important bearing on the evidence of Wasek Ali which exhibits in more detail the strange way in which Said-un-nissa and Ali appear as interchangeable characters with respect to the Calcutta property.

All the foregoing events are valuable only as bearing on the true position of Said-un-nissa and Mozuffer's family. As this suit was not instituted till the 26th January 1893, they do not show possession by the Plaintiff within twelve years. The next series of transactions has a bearing on both these questions. But it will be observed that at the two most critical points of the history, viz. the execution of the hiba, and the death of Mozuffer, the result of the evidence is not to show that any change took place in the management of the property, but to make it probable that Said-un-nissa's position was not changed. It is not till after the death of Woodor that conflict begins.

It commences on the 19th July 1880, when Said-un-nissa executed to one Saadut Hossein an ijara of all the Calcutta properties for a term of ten years, at a rent of Rs. 14 per month. One of the witnesses to this deed is Mansur, Ali's brother, and he wrote Said-un-nissa's name to it. On the 4th August following Ali executed to Saadut an ijara of the same property at the same rent for five years. On the 19th July a Kabuliat was prepared as from Saadut to Said-un-nissa. On the 4th or 6th August, this very document, retaining the same date, only with the name of Said-un-nissa struck out and the name of Ali substituted, was executed by Saadut and delivered to Ali. That these curiously mixed and contradictory proceedings should create great confusion of interests is easy to understand, and it is not so easy to explain either their cause or their effect. It is all the more difficult because none of the parties to the dispute has been in physical possession of the property. All has been in the hands of tenants, and possession must be determined by receipt of rent or by the nature of legal proceedings. Another element of complication

is that Said-un-nissa was at times residing in Ali's house. She was there when she died. Indeed it is alleged by Affil and Taffil, her cousins, that Ali put her under duress there and that they called in the police to deliver her from confinement. Nothing turns on this charge which Ali denies; but it shows a strange mixture of interests. That Saadut was in legal possession as lessee for nearly ten years, when he transferred to the Plaintiff is clear, but on the question whose tenant he was the Courts have differed.

His first agreement was with Said-un-nissa. He says that Ali came to him and showed him the hiba. He did not previously know Ali. He thought there was a hitch, and so got an ijara from Ali and attorned to him by the Kabuliat. He remained in possession for nearly ten years, certainly claiming for the last five years under Said-un-nissa's ijara; and towards the end of that time he assigned the remainder of that ijara to the Plaintiff, together with the rents then in arrear, which were recovered by the Plaintiff in a series of law suits.

The view taken by the Original Court is that Saadut in the first instance took the lease from Said-un-nissa; that it is by no means clear that he did not get possession before his arrangement with Ali; that foreseeing disputes he chose to have two strings to his bow; and that he cannot be held to have ousted the possession of Said-un-nissa because he chose to attorn to Ali for five years. Their Lordships are disposed to think that this is a just view; but they add to it, that Said-un-nissa is also shown to have had some substantial enjoyment, if not the whole enjoyment, of the property even during the five years covered by Ali's ijara.

Saadut himself says in general terms that he paid rent to Said-un-nissa during that time. His agent Wasek Ali enters into details. After

showing receipt of rents from tenants during several years, he produces accounts ranging from Srabun 1287 to Choitro 1292 (say 1880 to 1885), when they end abruptly by reference to a document not in the record. These accounts show Saadut's payment of the rent which would fall due under either of the ijaras. Wasek decribes them thus,—

"*A*. Yes; I kept an account of the payments of rent by "him as ijaradar. Those entries were regularly made by me "in the books. I got receipts for the rent paid by Saadat "Hossein.

"(Shewn a bundle of documents.)

"These documents came into my possession. When we "paid the rent we got these receipts. The money used to be "sent through me. Yes: I paid the money, sometimes to the "grandson of Said-un-nissa, Ali Akhtar Mea or Abdul Mansur, "sometimes to a maid servant named Metah, sometimes to "Tassadduck Hossein or to Tafiil-ud-din; sometimes I went "to Hosseinabad myself and paid it. These persons whom I "have named used to come to our house, I mean No. 40, Mott's "Lane, and sometimes I went over to Tassadduck Hossein, and "there paid him the rent.

"This continued for three or four years."

The receipts produced in Court are not in the Record, and their Lordships are not informed who signed them. Wasek's accounts bear out his general statement. The Court of Appeal treated them as of no value, but the only reason assigned is, that the first payment of rent is entered for Srabun 1287, when Saadut could have received no rent and was attorning to Ali. Now Wasek was not asked about this matter which may perhaps easily be explained. It is anyhow a very slight reason for rejecting accounts ranging over five years, having all the appearance of regularly kept accounts, sworn to as such, and supported by receipts to which their Lordships cannot find that any objection is taken. What is the alternative to saying that the accounts are honest and genuine? They must be forged, and supported by perjury; and to say nothing of the gravity of making such an imputation

without evidence, and of the entire absence of apparent motive for Wasek to commit crimes for the sake of the Plaintiff, it seems to their Lordships that to forge such detailed accounts as these would be a very difficult task to accomplish, and one very easy to expose. Moreover Ali gave his evidence after Wasek's accounts were put in, and he does not address himself to them, nor does he produce any accounts of his own. He merely states in general terms that he collected rents from Saadut.

It is true that the accounts disclose a very abnormal state of things; but on any supposition the state of things was very abnormal. They are stated as between Said-un-nissa creditor, and Saadut debtor. The credit side shows the monthly instalments of rent due, and the debit side shows the payments by which the rent was discharged. Among them are a number of payments "to the Bibi herself," some direct, some said to be through Sajad Ali (whether the old gomashta or not does not appear), or through her cousins and supporters, Affil, Taffil and Tasadduck; and some through Ali himself and Mansur. It seemed to the Judges below impossible that Ali making the claims that he did should in any way have acted as an intermediary between Saadut and Said-un-nissa. But considering all the relations between the parties, the fact that Said-un-nissa must have had something to live on, and that no other source of support is shown, and considering the curious incident that Ali claimed as his own the decree against Sage, which turns out to be Said-un-nissa's decree, the state of things alleged by Saadut and Wasek though strange is by no means incredible. It is best to adhere to the positive evidence of Wasek that he made payments to or on account of Said-un-nissa. But

if we are to guess, it may have suited Ali's views to tide over the presumably short time of his grandmother's life by letting her receive the rents, while placing himself in a favourable position to claim the property on her death. That is at least more likely than that Wasek should have perpetrated very elaborate forgeries which have escaped detection or even challenge.

Then some letters are produced written by Wasek as Saadut's agent to Ali during the period covered by the accounts. They are said to be absolutely inconsistent with the supposition that Ali received anything on Said-un-nissa's behalf. Their Lordships cannot see that. She had now no single agent as in the time of Mozuffer and of Woodor. Several persons intervened in her affairs. Once accept the idea that Ali was one, and the inconsistency disappears. The letters show that Wasek treated Ali as having a right to intervene and enforce the payment of rent, but by what title he did that and how he applied the payments when got is another question.

Indirectly one of the letters confirms Wasek's position. On the 4th Srabun 1290 he writes, "ten or twelve days ago Rs. 12 were paid to "you." Turning to the account for that year, we find that in the preceding month of Asser Rs. 12 are entered as paid through Tasadduck. Thus it appears that a payment made to Tasadduck, who acted throughout in Said-un-nissa's interest, is represented to Ali as a payment on account of his own demand, and there is no trace of any objection by Ali. If the money was really paid to Ali why should it not be so entered in the account? This is a material step towards the position taken by Wasek that the payments made by him were made to various persons on the same account, and that the account of Said-un-nissa.

Their Lordships hold it to be proved that during the year 1891 and afterwards Said-un-nissa received as of right at least a substantial part of the income. That is a legal possession sufficient to relieve the case from the bar of time. They turn now to the litigation in the Small Cause Courts.

Their Lordships have carefully examined the Records of these suits, upwards of 20 in number, which have been much referred to in the Courts below and at the Bar here. The only cases in which the rival titles were represented by Plaintiff and Defendant respectively are the suits brought by Ali against Saadut (Rec., 144). On the 27th March 1885, Ali sued Saadut for arrears of rent under Ali's ijara. Saadut pleaded that he had paid no rent to Ali as tenant to him, and that he had executed a lease in favour of Ali under misconception. After many meetings and adjournments the suit was dismissed on 21st April 1887, for want of jurisdiction. On the 15th June 1887, Ali sued again for other instalments of rent. Saadut pleaded "Res judicata" and the suit was dismissed. The Court of Appeal cannot understand the ground of these judgments. Neither can their Lordships. But the fact remains that when Ali tried to enforce his claims under his ijara he failed, and there is no evidence that he ever recovered any rent after Saadut's first refusal to pay him. On the other hand it appears by a note in Wasek's accounts (Rec., 203) that on the 25th November 1887, a decree was made in a suit by Affil and Taffil (then transferees from Said-un-nissa) against Saadut for rent due in Pous 1291, either in 1884 or 1885. Their Lordships do not find the particulars of that suit in the Record.

The other suits are against tenants in occupation; five by Ali or his transferee Siddick,

and the rest by Saadut or his transferee Nirmul. These litigations have so little influence on the result that they need not be reviewed in detail; but it is a just observation by the Original Court that in the suits on Siddick's side no substantial defence appears. In some of those on Nirmul's side the title of Ali was set up as a defence. Let us take as a specimen the suits against Saran Chunder Dey a tenant who by misfortune or misconduct was more frequently the object of litigation than anyone else.

On the 20th August 1885 he was sued by Ali (Rec., 266). No defence is stated, and a decree was passed at once *ex parte*.

On the 16th January 1890 he was sued by Siddick, who had then taken his transfer from Ali, on the ground of a lease alleged to have been made by Ali to Dey in 1292 (1885) (Rec., 356). No defence is stated. There were several adjournments, and on the 22nd March 1889 Siddick put in the hiba and Ali's conveyance to himself; and he obtained judgment.

On the 29th March 1889, the same tenant was sued by Saadut for use and occupation of the same piece of land (Rec., 161). In this suit he defends himself; denying any tenancy from Saadut, and alleging a tenancy under Siddick. There were several meetings and adjournments. On two occasions Siddick appeared and gave evidence. On the 27th November 1889 a decree was given to Saadut.

In December 1889 Dey moved for a new trial on the following grounds (Rec., 164) :—

"1. That plaintiff's ijarah of the land in No. 33 Mott's "Lane for 10 years from Said-un-nissa Bibi is not proved.

"2. That the Court should have held that Ali Aktar had "resumed *khas* possession of the land in 1292, and had "ultimately sold the same to Mahomed Siddik by a bill of "sale dated the 1st August 1887.

"3. That the Court should have held that Mahomed Siddik "was Defendant's landlord by virtue of the bill of sale.

"4. That Defendant has discovered the original lease "showing the ijarah given to Plaintiff by Ali Aktar for 5 "years."

On the 5th July 1890 that application was dismissed.

The same result attended two other rent suits instituted by Nirmul in the year 1891, in which Siddick appeared as a witness to support his own title and to defeat that of the Plaintiff (Rec., 39 and 45). These decisions in the Small Cause Courts are not decisive of the present controversy, but they exhibit the struggle that was continually going on for legal possession of the property; and the cause of Ali and his transferee does not gain anything by examination of them.

Many points have been much discussed in the Courts below and here which have been barely or not at all noticed by their Lordships. There is a story of a re-conveyance by Mozuffer to Said-un-nissa; a story of Ali relinquishing his ijara and Kabuliat; a story of conversations with him in which he admitted Said-un-nissa's title; and there are disputes about his alleged coercion of his grandmother, his sale to Affil, and his adjustments of property with his sister. These matters are left either wholly unproved, or in obscurity; and they are not of importance enough to justify further investigation. Their Lordships have tried in this very complicated case to follow the most definite outlines they can find, and they will now try briefly to sum up the views they have already expressed more at large.

The alleged gift to Mozuffer is highly improbable, and one for which no explanation whatever is given. There is some little contemporary evidence to show that he was intended to be a Benamidar. Though he intervened in managing the property and collected rents, there is nothing

to show whether or no he had been acting for his mother-in-law previous to that event. There is nothing to show on what Said-un-nissa could have lived unless she lived on her former property. There is evidence to show that at all events for some time after the hiba there was no alteration in her mode of living. The perfect peace and friendship which subsisted during the twenty years of Mozuffer's life shows at least that she was satisfied. When Mozuffer died, his family made no claim. None of them except Ali and perhaps Masrur has ever made any claim. Mansur assisted when Said-un-nissa executed the ijara to Saadut. It is thus shown that Mozuffer's family did not look upon this property as part of his inheritance. Woodor survived Mozuffer for a short time; it may be a year or it may be more. It was he, and not Mozuffer's representatives, who collected rents; and it is certain that during his life no dissension broke out. Soon after his death in January 1879, difficulty arose; first with Sage and Ostagur. Sage could not or would not pay; he was at once sued not by Mozuffer's representatives but by Said-un-nissa; apparently as a matter of course, and without any doubt thrown upon her right. And so it was with Ostagur. And yet the ostensible or paper title was then in Mozuffer.

That brings us to April 1879; and pausing there, and supposing that the question had then arisen whether the property belonged to Said-un-nissa or to Mozuffer, and that the evidence given was such as is found in this record, their Lordships think it would warrant a confident conclusion that Mozuffer took only as Benamidar. Some of the streams of evidence are slight, but they all flow in the same direction. Is there anything in the later time when Ali appears upon the scene to reverse that conclusion?

So far as Said-un-nissa's dealings go the conclusion is strengthened; for she now enters on a course of dealing with the property which is not justifiable except on the supposition that she believed herself to be its true owner. She is the only person who after Mozuffer's death could know at first hand the exact truth of the case. She is dead and cannot now be cross-examined on the evidence afforded by her conduct. But is it conceivable that she should have given away her property, have gone on for more than 20 years treating it as belonging to somebody else, and then suddenly have treated it as her own without any apparent alteration of circumstances moving her to do so? Though she was old and a Purda lady, nobody suggests that her acts were not spontaneous or that she did not understand her own business. It is shown by the evidence of Saadut and Wasek that she did take part in business; and indeed Ali himself says that he took her to task about the ijara and that she was ashamed of herself, not that she pleaded weakness or ignorance or disclaimed responsibility. On this record no explanation of her conduct can be found except that she really believed herself to be the true owner.

It must be admitted that the story of the rival ijaras presents some obscure problems. Ali had some success with Saadut. The relations between him and Said-un-nissa, and the various relatives who acted with or for her are very puzzling. But these things do not touch the essence of the case. It does not appear that Ali attempted to eject Saadut after the termination of his five years ijara, though according to his contention he was owner of the reversion. For some reason or other he failed to make good his claims against Saadut even under the ijara and for aught that appears he abandoned them. And neither he nor his transferee has succeeded in

recovering rents from tenants either under the ijara or by his reversionary title in any case in which the two rival titles have been brought by evidence into opposition with one another.

Those are the main reasons, which induce their Lordships to hold that the view taken by the Original Court was the correct view. They think that the decree appealed from should be discharged with costs to be paid by the Defendant, and that the decree of Mr. Justice Macpherson should be restored. They will humbly advise Her Majesty to this effect. The Respondent must pay the costs of this appeal.