Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sham Shivendar Sahi alias *Lal Saheb* v. *Maharani Janki Koer, from the High Court of Judicature at Fort William in Bengal; delivered the 15th December*, 1908.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from the High Court at Calcutta reversing the decree of the Subordinate Judge of Sarun.

The matter in controversy is the possession of mouza Samahuta. This mouza formed part of an impartible raj known as Betia raj. In 1868 the owner of the Betia raj was the Maharaja Rajendra Kishore Singh. In that year his daughter Ratnabati Koer was married to the Appellant, Sham Shivendar Sahi. On the occasion of the marriage the Maharaja made a verbal gift of Samahuta. The question is: To whom and on what conditions, if any, was the gift made?

In the Court of first instance the Respondent, Maharani Janki Koer, who had succeeded to the raj, maintained, as she still maintains, that the mouza was given to Ratnabati subject to a condition that, if she should happen to die without issue—as she did—it should revert to the raj. She was plaintiff in the suit. The

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Appellant, who was Defendant, asserted that Samahuta was given to him, for the benefit, of course, of his wife and himself. He also set up, argumentatively, an alternative case. In his written statement he suggested that, if it should be held that the gift was a gift to his wife—which, he averred, was not true in fact—then it ought to be held that, on the death of his wife without issue, he became the owner as her heir.

The marriage of Ratnabati took place in January 1868. The bride was then seven or eight years old, the bridegroom nine or ten. In April or May 1872 Ratnabati went to her husband's house. She stayed there only a short time, returning to her father in June or July 1872. In November 1873 or 1874 she went back to her husband, but left in November or December 1874 or 1875, declaring that she would rather die than live with him any longer. The rest of her life was spent at Betia, where she resided with the Maharaja.

From the time of the marriage until his death in 1880, Sridhar Sahi, the Defendant's father, received the rents and profits of Samahuta on behalf of his son.

In 1877, after the Registration Act VII. of 1876 came into force, the Maharaja applied that his name, which had remained on the Collectorate books, might be registered in respect of Samahuta. The necessary notifications were issued, and, after some opposition at first on the part of the Defendant, the name of the Maharaja was registered, and registered ultimately without objection in July 1879.

On the 15th of June 1883 the Maharaja executed an ekrarnama, which is the most important document in the case. After reciting that Samahuta had been given to his daughter by way of khoincha gift at the time of her

marriage, but that no deed had been drawn up, the Maharaja purported to convey Samahuta to Ratnabati by way of khoincha gift "with the same conditions as before," to hold possession and enjoy the income, but without power of alienation, subject, however, to the provision that, in the event of her dying without issue, the property should revert to him and after him to his heirs. It was also provided that Ratnabati should get her name registered in the Collectorate and pay the Government revenue and all public demands.

On this deed being executed, Ratnabati took steps to get her name registered, relying on the deed of the 15th of June 1883 for her title. No objection was raised on behalf of the Defendant.

The Maharaja Rajendra Kishore Singh died on the 28th of December 1883, and was succeeded by his son, Sir Harendra Kishore Singh.

Ratnabati's name was duly registered on the 21st of June 1884.

Shortly afterwards the Defendant brought a suit against Harendra to recover his wife, but the suit was dismissed.

Between 1884 and 1891 several pieces of land in Samahuta were acquired for the Bengal North-Western Railway. The purchase money, or compensation, was received by the Maharaja, although there seems to have been a claim at first on the part of the Defendant.

In 1887 the Defendant brought rent suits against tenants of lands in Samahuta, alleging that he was in possession and making collections in his own name. The suits were dismissed on the ground that he was not the registered proprietor, the lands being registered in Ratnabati's name. Then he applied to be registered as manager for his wife. In this application the deed of the 15th of June 1883

was again referred to, and recognized as a document of title.

The Maharaja Harendra died on the 26th of March 1893, leaving two widows, but no issue. On the death of the elder widow the present Respondent succeeded to the raj as her husband's heir. Then she claimed to be registered in the place of Harendra. But after a contest before the Deputy-Collector, the Defendant succeeded in getting mutation of names in his favour.

The ground of claim which he asserted was not inheritance from his wife, but "proprietary right, having possession."

The Respondent then brought this suit.

The Subordinate Judge gave judgment on the 14th of April 1902. He observed at the outset of his judgment that it would be a difficult task to arrive at a right conclusion in this case. He put aside, as unworthy of credit, the oral evidence adduced on the one side and on the other to prove what was said and done on the occasion of the marriage. He rejected the case put forward on behalf of the Defendant, which was that Samahuta was given to him. He thought the Defendant himself unworthy of credit. But he also rejected the case of the Plaintiff, mainly on the ground that it was impossible to believe that on so auspicious an occasion as marriage the contingency of the death of the bride without issue could have been referred to. "The story of the gift," he says, "is altogether repugnant to a Hindu "feeling. It can find no credence with me." And then he held that, as the Plaintiff failed in her case and the Defendant failed in his, it followed, inasmuch as it was common ground that there was a gift, that it must be taken that the gift was absolute in favour of Ratnabati. And so it was adjudged that the Defendant should succeed as heir to his wife.

The learned Judges of the High Court on appeal reversed the judgment of the Subordinate Judge. They agreed with him in thinking that no reliance could be placed on the oral evidence. But they thought that there was no ground for impeaching the ekrarnama of the 15th of June 1883, and, after a careful and elaborate review of all the facts and circumstances of the case, they came to the conclusion that the acts and conduct of the Defendant were inconsistent with the case which he set up as being the true case, and equally inconsistent with the case on which he was content to rely, although he protested it was not true.

The learned Judges rejected with something like scorn the excuses which the Defendant made for his conduct and his affectation of ignorance in regard to what was being done from time to time in his name and on his behalf. This part of his case depended entirely on his own testimony. His character for truth fared no better in the Court of Appeal than in the Court below. The learned Judges describe him as "a man who is utterly reckless as to "what he will say, if he thinks it will advance "his case."

On the Appeal to this Board the learned Counsel for the Appellant attacked the judgment of the High Court on the ground that the learned Judges had not addressed themselves to what was then the real issue. They had, it was said, combated with great elaboration a case which had been disposed of in the Court below. They slew the slain over again. But they gave the go-by, or at least paid scant attention, to the grounds on which the Subordinate Judge had decided in favour of the Defendant.

Their Lordships think that this criticism is not well founded. If the judgment of the High

Court is read carefully, it is quite plain that the Defendant must have relied, and relied entirely, on the case which he set up in his written statement. That was, as the learned Judges say, his "real case," although an alternative case was suggested. This is clear from the judgment, which does not even notice the main, if not the only, ground of the judgment of the Subordinate Judge. But it is made still plainer by the course which the Defendant adopted. He was not altogether satisfied with the judgment he had obtained in his favour. He filed a memorandum of cross-objection to the Plaintiff's petition of appeal. He preferred his petition, he said, "being dis-"satisfied with a portion of the decision of the "Subordinate Judge." The main ground of his cross-objection was that the Court below was

> "wrong in rejecting the case set up by the Petitioner and disbelieving the evidence adduced by him in support thereof. The said Court should have held upon the evidence on the record that Samahuta was given to him absolutely for the benefit of himself and his wife at the time of the departure of the barat as alleged by him."

Probably the Defendant was well advised in taking this course. There is not a shred of evidence in support of the view which determined the Subordinate Judge in favour of the Defendant. With all respect to the learned Judge, whether he was right or wrong in his view, it would have been out of the question to ask the Court of Appeal to rely on a statement unsupported by evidence at a time when there was no opportunity for contradiction or cross-examination. It certainly would seem that the Defendant himself did not place much reliance on the view which commended itself to the Subordinate Judge, for it was the very ground on which the Assistant Collector had decided the applica-

tion for mutation of names, and yet the advisers of the Defendant did not think it worth while to produce, or at any rate they abstained from producing, any evidence in support of it.

Without going over the grounds which the learned Judges of the High Court have so fully discussed, it is enough for their Lordships to say that they think that the order under appeal is perfectly right.

The ekrarnama of the 15th of June 1883, if not a fraudulent document, is decisive of the case. The character of the old Maharaja for honour and probity stood so high that no one ventured to suggest that there could have been any fraud on his part. It was said that probably, or possibly, he signed the document without knowing what it contained, and that the real author of the scheme to defraud the Defendant was Harendra. But there is not the slightest evidence of any fraudulent scheme at all. There was no reason for concocting a fraud. Assuming Ratnabati to have been the absolute owner, it is not disputed that it would have been competent for her to make a disposition of the property which would have defeated the expectations of her husband. Considering the state of feeling that existed between herself and her husband, it probably would not have required much persuasion to induce her to put the property beyond his reach.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellant will pay the cost of the Appeal.