Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Chundernath Roy v. *Ramjoy Mozoomdar, from the High Court of Judicature, at Fort William in Bengal; delivered December 5th*, 1870.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THIS was a suit brought by Rajah Chundernath Roy, as son and heir-at-law of the late Rajah Anundath Roy Bahadoor, to recover certain properties, six in number, from Ramjoy Mozoomdar, the nominal Defendant being the guardian of Chundernath, *alias* Ramchunder Chuckerbutty, who is an infant; and the ground on which the suit was brought was, that the Plaintiff was the heir of the Ranee Hurreepreah, who had been one of the widows of his father, of whom he was the adopted son, and to whom he had made some very liberal allowances; the properties in question having been purchased by her out of the income which she enjoyed. There is no doubt that, under these circumstances, he was her heir. But the question in dispute was, whether the properties in question had been purchased by her, as it is called, benamee, that is to say, had been purchased in the name of other persons, but so as to be her property? The Court below have decided that they were not so purchased, but were purchased with an intention that they should go after her death to the Defendant.

Now, the first objection taken by Sir Roundell Palmer was, that the defence relied on in the case

was not open on the pleadings. For that purpose it is necessary shortly to refer to what the pleadings were. Now, the plaint states generally the circumstances under which the Plaintiff says he became entitled, that Hurreepreah had purchased them in the way I have said, benamee, and accordingly as her heir they came to him. Then the Defendant in his answer no doubt sets up a case which was not maintained by the evidence at all, that they had not been purchased with the Ranee's money, but had been purchased with the proper money of the persons in whose name the purchase was made. Then the material issue which was directed to be tried by the Court, being the first issue, was, "Whether Ranee "Hurreepreah, the stepmother of the Plaintiff, "was entitled to, and in possession of, all the "contested properties by acquiring them 'Bena-"mee' of the persons alleged by the Plaintiff; "or whether they were acquired by the several "persons alleged by the Defendant, and accord-"ingly held in their possession, and have after-"wards come to the minor, Ram Chunder?" Now, it is obvious that this issue, in substance, is this—Is the Plaintiff's story stated in his plaint true, or is the Defendant's story stated in his answer, true? It is, of course, a possible thing that neither of the stories may be true, and the question then arises, which of these two alternatives of the issue is the really material one? Their Lordships think that the really material one is the first part of the issue, viz., is the Plaintiff's story true? It is not as if the Defendant's defence was, as we should say in the common law, a plea in confession and avoidance, a plea which admitted that the Plaintiff's story was true, and then avoided it. If that had been the case, and the Defendant had failed to prove his case, of course the Defendant must have failed and the Plaintiff ought to recover. But it is substantially what at common law we should call an argumentative traverse of the truth of the Plaintiff's story, for it does not admit that one word of it is true, but sets up certain things perfectly inconsistent with it. The real truth is that the second alternative of the issue ought to be rejected, and the real question is, "whether the

"Ranee Hurreepreah the step-moher of the "Plaintiff was entitled to—" which I think "must mean was entitled to *at the time of her* "*death*," because that is the material thing, "and "in possession of all the contested properties "by acquiring them 'benamee' of the persons "alleged by the Plaintiff." If the Plaintiff has failed to prove the affirmative of that issue, if it appears on his own evidence that they were not so purchased and did not so continue at the time of her death, the consequence is the Plaintiff must fail, and the Defendant may say, "It is wholly im-"material whether I prove my case or not; you "have not proved yours."

Their Lordships are therefore of opinion that it was perfectly open to the Court to decide the case on the grounds on which they do decide it. Their Lordships are also of opinion that the Court below have not at all miscarried in point of law; that if the real truth of the facts is this, that though these properties were purchased—as unquestionably on the evidence their Lordships think they were—with the money of the Ranee Hurreepreah, yet nevertheless, if she purchased them with the express intention at the time that after her death they should go as to those which were purchased first to Sheeb Soonderee, and as to those which were purchased afterwards to Ram Chunder, that would not be a purchase benamee within the meaning of the issue, that would not be a purchase on the terms that the property was to be absolutely hers, but would be a purchase with the intention of benefiting the person in whose name the purchase was made; and their Lordships are of opinion that it would make no difference in point of law whether she did or did not reserve a life interest and control over the disposition of the proceeds of the property during her life. One may observe that on the evidence it would rather appear that she, during her lifetime, did bestow very considerable benefits on both the mother Sheeb Soonderee and the boy, so that practically in all probability she gave them quite as much as the proceeds of the property.

Well then the Court below not having miscarried in point of law, so far from having miscarried in point of fact, the evidence is very strong

indeed that the purchase from the very beginning was made with the intention that the property should not go to her heir-at-law, but should go to Sheeb Soonderee, or if Sheeb Soonderee was dead should go to Ram Chunder. It is really quite sufficient to refer to a single witness at page 29. "The witness on hearing the deposition said that "his answer to the question by the Court has not "been taken down, my answer is that the Ranee "used to say that all these properties were Ram "Chunder's, and her care was that they remain as "Ram Chnnder's." It is perfectly plain that she had purchased them with the original intention of benefiting him in order that after her death they might go to him.

That being the case their Lordships are of opinion that they must advise Her Majesty that this Appeal should be dismissed.