Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mohur Singh v. Ghureeba and others, from the High Court of Judicature, North-Western Provinces, Agra; delivered December 6th, 1870.

Present:—

Sir James W. Colvile.
Lord Justice James.
Lord Justice Mellish.

Sir Lawrence Peel.

THIS case has been before three Courts in India, of which the High Court of course merely dealt with the points of law which were raised on special appeal, and have not been very strongly pressed here. There are two questions in the cause. The first is whether the Respondents, the Plaintiffs in the Court below, have succeeded in establishing that when their Puttee was confiscated and sold under one of the penal Acts passed during the time of the mutiny, it was purchased by the Appellant in the name of his son, upon the contract or understanding that upon payment of the whole purchase-money, of which the Plaintiffs had already paid part, the rest being found by the Appellant, they should be put in possession of the whole of their ancestral rights in the Puttee? That is a question of fact; and if that agreement is made out to have been the understanding and contract between the parties, the second question is, what are the equities which should be applied to it?

Mr. Leith having to contend with the Judgment of the two Courts which tried the question of fact, has very fairly brought to our notice certain grounds upon which their conclusion should be impeached, and it is impossible to deny that several of those grounds have some foundation

He has urged, first, that a considerable amount of the evidence admitted was mere hearsay evidence; secondly, that among the evidence which was improperly admitted was the conviction by the magistrate, which ought not in any point of view to have been used as evidence against the party in the civil suit, according to the strict rules of evidence, and which having been reversed by the Judge, no matter on what grounds, had ceased to be a standing conviction against the Appellant. The third ground taken was the state of feeling against the Appellant in the district; and in particular the strong animosity existing between him and the Tehseeldar and Syud Ali Shah, who were two of the witnesses; and the last ground upon which the finding of the two Courts was impeached was the strong improbability that the Appellant, who had been instrumental in bringing to justice certain persons of this village connected with the Plaintiffs, should have been the person chosen to make the purchase on their behalf.

It seems to their Lordships that giving full weight to all these objections, there is still sufficient and more than sufficient proof in the unsuspected evidence given in the cause to support the decrees against which the appeal is brought. Their Lordships, of course, do not give to a decree founded upon evidence which has been so impeached, the same weight which they would give to the finding of an Indian Court upon evidence against which no such objection can be alleged. But they are not in the position of a Court of Law in this country before which, on a motion for new trial, it is shown that evidence improper to be admitted has been admitted before the Jury. The Court in that case are not judges of fact, and are unable to say what weight the Jury may have given to the evidence that ought not to have been admitted. But it is the duty of their Lordships who are judges of the fact in such a case as this to consider whether, throwing aside the evidence which ought not to have been admitted, there still remains sufficient evidence to support the decrees? Their Lordships, nevertheless, must express their regret that the Court of First Instance in the case before them should have been as lax as it has been in the admission of evidence.

The improper reception of evidence is always to be deprecated, if only from its tendency to provoke an appeal.

Now, setting aside all the hearsay evidence, setting aside the conviction, the proceedings in reference to which seem to have been of a somewhat singular character, and even, for the sake of argument, admitting that the Tehseeldar's evidence is not to be entirely relied upon, though their Lordships are by no means prepared to say that that person is unworthy of credit, and resting solely on the evidence which was given by the bankers, and the person described as the Zemindar of Baroot,—it seems to their Lordships impossible to say that the finding of the Court below was wrong. The bankers' evidence is peculiarly valuable, because it is clear, upon the proceedings, that the whole of the village of Baroot was sold together. The bankers were the persons who were employed by persons interested in the other Puttee forming part of that village, to purchase it on their account. They admit such a contract. They speak from their own knowledge to the fact, that the Singhs bought in the same way for the benefit of the persons interested in the other Puttee, and they speak also to payment of the earnest money. The other witness is apparently a witness of greater respectability than we usually find in such a case. It is impossible for their Lordships sitting here to estimate the force of the arguments which have been brought against the testimony of these witnesses by Mr. Leith; it is impossible for them to say what may be the feelings which have possibly prompted their evidence against the Appellant. Certainly the general feeling of the district seems to be strongly against him, and the conviction that the transaction which the Plaintiffs have put forward is really a true transaction appears to be general. But can we thence infer that the Respondents' case is a false story? It is just as likely to be true, and one can conceive no story which, if true, would be more likely to create a general feeling against the Appellant. If he felt that he was not likely to have a fair trial before the local Judge with that feeling in the district against him, his proper course was to petition the European Judge to remove the case into his Court, and to

try it in the first instance. But if he has not done that—if he has taken a trial in the ordinary Court, and that Court has found against him, and the evidence properly received appears to their Lordships to be trustworthy, or at least to be such that it is impossible for them to say that it is not trustworthy,—how can their Lordships be called upon now to set aside the finding of that Judge, confirmed, as it was afterwards, on appeal by the Zillah Judge?

In the Court of First Instance, the Principal Sudder Ameen seems to their Lordships to have mistaken the effect of the contract, and to have held that the parties were entitled to recover only such a proportion of the land as the sum which they had actually paid might be taken to represent. The Zillah Judge, Mr. Sapte, seems to have put a more correct interpretation upon the contract. He treated it as a contract upon which, on payment of the balance, they would be entitled to the whole. He did not fix a period at which this redemption, if one may so call it, was to take place, but that was set right by the decree of the High Court.

It, therefore, seems to their Lordships that, on the whole, substantial justice has been done in this case, and they will advise Her Majesty to dismiss the Appeal.