Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Ranee Khujooroonissa v. *Syed Ahmed Reza and Syed Ahmed Reza* v. *Ranee Khujooroonissa, from the High Court of Judicature at Fort William, in Bengal; delivered June* 17*th*, 1871.

Present:—

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

SIR LAWRENCE PEEL.

THESE are Appeals from two Judgments of the High Court of Judicature of Calcutta, in two suits which were instituted in the Zillah Court of Purneah. They may be described as a suit and a cross-suit respectively, by the owner of a joint estate against the other owner or owners of the estate. The High Court dismissed both suits as having been misconceived, their reasons being shortly stated in the Judgment before us. One suit was instituted covering a period of twelve years, and treating anything anterior to that as barred by the Statute of Limitations. The other was a suit that sought, by way of cross account, to take the account from a period long anterior to the commencement of the twelve years. The Court in its Judgment says, "The first Court was of opinion that the "Statute of Limitations did apply to a portion of "the claim of Ahmed Rezah, and that the Court "could not enter into transactions or revive ac- "counts relating to a period of more than twelve "years before the institution of the present suit, "and that as the suit was instituted in April, "1857, the accounts to be settled by the Court "would be those subsequent to 1845, and those

"only. After examining the accounts, the Judge "dismissed the claim of Mahomed Rezah, and "passed a decree in favour of Enaet Hossein, whose "whole claim was subsequent to 1845, for "Rs. 34,630. 2 a. 10½ p., with interest at 12 per "cent., and costs in proportion. From these de- "cisions two Appeals have been preferred to this "Court, and the first point to which our attention "was called was the applicability or otherwise of "the Statute of Limitations to any portion of the "claim of Rajah Ahmed Rezah. There can be no "doubt that mutual accounts, if they contain some "item, or even any one claim within twelve years, "would not be barred by the Statute of Limitations, "though the rest of the claim were beyond that "term. But this rule is strictly confined to ac- "counts between two parties which show a recipro- "city of dealings, or, in other words, to transactions "in which there is a mutual credit founded on a "subsisting debt on the other side, or an express "or an implied agreement for a set-off of mutual "debts. Is, then, the present claim of Syed Ahmed "Rezah, as against Enaet Hosein, a claim of this "nature? The parties are 8-annas proprietors of "the same estate. They have held their shares "separate. They have by tacit, if not by express, "agreement collected their yearly shares of the "rents by their separate endeavours; and, in short, "by their acts have taken up a position altogether "unconnected with and antagonistic to each other. "This mode of action, no doubt, gives the party "who has received less than half the yearly net "rents of the estate, an action against the party "who has collected more than his rightful share of "those rents; but his right to these surplus rents "arises in consequence of a wrongful act of the "other party, and at the end of each year a wrong- "ful act of this nature is a cause of action from the "commencement of the year following that in "which the surplus collection was made; it follows "that these yearly claims are in the nature of "separate and distinct demands, against which the "Statute of Limitations runs, and that they can by "no process of reasoning be brought within those "special and particular accounts, as against which "limitation will not run. Turning, then, to the "remarks which have been addressed to us by the

"learned Counsel on the part of both the Plaintiffs, "and to the accounts filed, and the case made by "each of them against the other, they appear to us "that they are founded on a mistaken view of the "case, as between the parties before us. The con-"tention before us has been, that each party, as "against the other, is entitled to one-half of the "actual collections made; but in our view this is "not the case. Considering the independent and "antagonistic position which each party has taken "up against the other, and the tacit, if not express, "agreement entered into between them as to the "mode of collection, it seems clear that neither "party has a claim against the other on account of "superior diligence exercised by him in the col-"lection of the yearly rents, but that the only "ground on which a right of action accrues to "either party is the realization by the other side of "a sum larger in extent than one-half of the yearly "rents, that is, of a sum beyond that to which he "is of right entitled. That such has been the "case—that Mahomed Rezah and Enact Hossein "have, during any of the years covered by these "suits, collected a sum beyond their legal right, "that is, one-half of the net rental of the estate, "has not been attempted to be shown to us, but "the learned Counsel have only entered into "elaborate calculations, founded upon very infirm "data, of collections actually made, and have "thereupon asserted the right of their respective "clients to one-half of the net actual collections. "Such a view of the case, as we have above "observed, is altogether inadmissible."

Proceeding upon that footing they find that neither has received more than his half, and they proceed to dismiss both suits. Now, in this view of the case, as stated by the Court, their Lordships are unable to concur. Their Lordships are not satisfied either upon the case as stated by the pleadings, or upon the facts as proved in evidence, that the position of the parties was that of parties unconnected with, and antagonistic to, each other —each collecting only that which he could by his diligence collect of the rents of the estate.

The material circumstances are these. The parties having had quarrels with one another had first of all a collector appointed by superior authority.

They then, having got rid of the official collector or manager, appointed an agent of their own; they then again were obliged to be placed under the control of the Court, who appointed an official manager. The duty of the agent and the manager was to receive all the rents and to divide them between the parties. Both parties, however, appear to have collected and received sums in the Mofussil from the local agent of the collector, and sometimes from the tenants. The whole of the circumstances, however, show to their Lordships that their receipts were not receipts which can be alleged to be receipts by a tenant in common antagonistic to his other tenant in common, but that they were all part and parcel of a common arrangement by which the whole of the rents were to be received by the agent, or by the party acting under the authority or with the tacit assent of the agent, so that the whole was to be treated as a sum received by the agent, or on his behalf, the separate collections of each party having to be dealt with as if received from the agent or collector. That being so, it seems also to their Lordships that it would be impossible to apply the Statute of Limitations to the claim, because, if the account was a continuing account—one party having received more one year, and having received less the previous year—it appears to their Lordships impossible to say, "We will cut the account short at the twelve "years, and not allow your receipts during the "twelfth year, *ante litem*, to go to pay that which "was due to you in the thirteenth year, *ante litem*." It would be absolutely necessary in taking the accounts from any date to see what the state of things was between them at that date.

That being so, their Lordships have to consider what really was the Decree which the High Court ought to have made upon the Appeal in Enaet Hossein's suit, which is the one now substantially before us, because it is stated by the other Appellant that if that Appeal is decided in his favour, so that nothing is decreed against him, he is not minded to prosecute any claim on his part further.

It resolved itself, therefore, into this, whether the decree awarding rupees 34,000 and interest to Enaet Hossein, was well founded, and whether the

Appeal ought to have been allowed. The accounts were, in the first instance, referred to Mr. De Courcy. Mr. De Courcy took those accounts. The result was complained of by both parties. Their Lordships have before them the objections which were taken by the respective parties to the accounts of Mr. De Courcy, which objections were really the matters for decision before the Court of first instance. Of course it would be impossible to ask any Court to go and retake an account, which, by reason of its complicated character, had been referred to an expert to take between the parties, and therefore it was quite right for the Court not to go through all the items of the account, but to require and obtain from either party the objections which he took to the account as so taken. Both parties thereupon do present their objections to the account. Mr. Simson, the Judge of the Court below, proceeds to deal with these objections; and it is in respect to the mode in which he has dealt with these objections that it appears to their Lordships that they are able to come to a conclusion which will dispose of the Appeals to-day. The balance found due is rupees 34,000. There is one item alone of rupees 56,000 to which an objection was taken, which would more than cover that balance, if the objection were well founded, and ought to have been allowed by Mr. Simson. That objection arises with respect to rupees 56,000, which, by the admission of both parties, was not received by Ahmed Rezah, the defendant, but was actually received by his half-brother. But that receipt by the half-brother of the rupees 56,000 was treated by Mr. Simson as a receipt by Ahmed; and it has been contended before us that that was rightly so treated, at least that we have not got the materials for saying that it was not rightly so treated, and that we ought, therefore, if we differ from, or doubted the truth of, the conclusion arrived at by Mr. Simson, to send it back again for further investigation. But it appears to their Lordships that the case with regard to the receipt by Ahmed's half-brother does appear sufficiently before them to enable them now to arrive at a conclusion without referring it back to take any further evidence, or to enter again into the account.

Now, Mr. Simson has treated Meeran—and it

has been suggested before us that he has rightly treated him—as being a mere name, and a mere sham; as a person who really was receiving for Ahmed, and that his receipts were to be treated as Ahmed's receipts. But it appears that Meeran had really obtained a Decree entitling him to a certain portion of this estate, as an ancestral estate. He was a half-brother of Ahmed, and was therefore *primâ facie* entitled to share in the estate. He had obtained that Decree, and after obtaining that Decree, he did receive the amount of collections which have been brought into this account. There is nothing to satisfy their Lordships, and nothing apparently to justify the assumption of Mr. Simson, that he could treat the whole of that as a mere sham and collusion between Ahmed and his half-brother, for the purpose of preventing Ahmed being responsible for these receipts.

But it does not rest merely upon that. It is important to see in what way the plaint itself in the original suit treats Meeran's position. The plaint in the original suit does not treat Meeran as being a mere sham, as being a person who was not entitled to receive the rents, but says that Meeran was a shareholder, and was made a Defendant in the first instance, as one of the parties to account. The plaint says this: The share of Meeran in the zemindary is in the possession of Syed Ahmed Rezah, and Syed Ahmed Rezah knowingly, notwithstanding this extent of appropriation by Meeran, has granted Meeran certain mehals under Putnee Pottah, in the name of Moosah Rezah, his son, in proportion to his share in the malikanah profits, and got a deed relinquishing claim on the zemindary executed by Meeran. Hence the responsibility for this money collected by Meeran which appertained to the zemindary devolves upon Ahmed Reezah personally. Whatever Meeran received under the denomination of his own Malikanah from the Mosstajirs and Malgoozars of the Pergunnah, Ahmed Rezah, after he had the deed of relinquishment executed, not having given to Moostajirs and Malgoozars credit for such money collected and appropriated by Meeran, has realized it over again, proofs as to which are forthcoming. Meeran and Ahmed Rezah are both step-brothers, and the estate of Meeran is included in the said 8 annas in

the possession of Ahmed Rezah. Thus, whoever of the partners of that 8 annas appropriates, responsibility thereof devolves upon Ahmed Rezah, the occupant of the entire 8 annas of the zemindary. Still, it is considered expedient to make Meeran *pro formâ* Defendant. That is the case which is made there: that is to say, a charge is made as to the receipt, the only ground for it being that there was an actual receipt by Ahmed. "We charge "you with the receipt of money for our use because "Meeran received it." The ground upon which they put it is—"Meeran is your brother. You are "the joint owners of the one half which is divided "between you. There has been some deed by "which, subsequent to the receipt, Meeran has re-"linquished his share in favour of Ahmed for a "valuable consideration. Therefore, we will treat "the receipts in respect of the whole of that half "which was divided between Meeran and Ahmed "as being receipts for which they are jointly and "severally liable." That seems to their Lordships to be the foundation of the claim in respect of the receipts of Meeran. In point of law, it is to their Lordships quite clear that no such claim can be sustained; that it is not because a man who was tenant in common has received something, and has then sold it to another tenant in common, that a third tenant in common can make the purchaser answerable personally for that which was received by the person who has relinquished in his favour. That is the case made; and there is no case whatever made, and no evidence before their Lordships, to show, as has been suggested, that Meeran was merely a name and a sham, receiving everything he did receive on behalf of Ahmed.

It appears to their Lordships clear that Ahmed ought not to be made, and could not legally be made, personally responsible for the rupees 56,000 in a suit which, in their Lordships' view, was sustainable only as a suit for adjusting the account between the parties in respect of their respective receipts from the common agent, or which they had intercepted on the way to the agent. That being so, it entirely turns the balance against the Plaintiff. The Plaintiff did not, therefore, in the Court below, make out the proper proof to his right to any balance at all as due to him, and the suit in the Court

below ought to have been dismissed,—their Lordships agreeing in the result with the High Court, although compelled to dissent from their grounds of decision.

The one suit is thus disposed of, and the Plaintiff in the other suit is satisfied with things remaining as they are, and does not seek to have any further accounts, or to proceed with his Appeal. Under the circumstances of the case, and both Appeals having come on together, their Lordships do not think it right to give any costs of either Appeal.

Their Lordships therefore agree humbly to report to Her Majesty, as their opinion, that both the Decrees of the High Court should be affirmed, and that both Appeals should be dismissed, each party bearing his own costs therein.