Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ranee Shurrut Soondree Dabea v. *Kooer Poreshnarain Roy, from the High Court of Judicature, at Fort William in Bengal, delivered June 23rd,* 1871.

Present:—

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

SIR LAWRENCE PEEL.

THIS suit was brought by the Respondent Poreshnarain Roy against Bhyrubnath Sandyal to impeach as a false and invalid jote the tenure of certain lands which were held by Bhyrabnath Sandyal under several leases, granting perpetual leases at a fixed jumma. The original leases are said to have been granted by one Ranee Soorjomonee. This history of the Plaintiff's family is shortly this. The Zemindary, in the year 1798, belonged to one Rajah Rajendronarain. He died without issue, leaving as his heiress his widow, Ranee Soorjomonee; but he also left an onoomotteeputtro or direction to adopt, under which, in the year 1813, she adopted a person of the name of Bhoopendronarain. Bhoopendronarain died in the year 1845, and he left three sons, of whom the Plaintiff in the action was one. The two other sons died, and their shares vested in their mothers, the widows of Bhoopendronarain. It is not necessary to consider their interests, because the final decree gave to the Plaintiff in the suit only that one-third of the property to which he would have been entitled, if a co-sharer with his two deceased brothers.

Therefore, for the purposes of this appeal, it may be considered as if the litigation were between the Plaintiff in the suit, as zemindar and the jotedar, who was represented by the Defendants.

It is admitted that this title commenced, if it commenced at all, by grants of these tenures from Ranee Soorjomonee, and that the date of the earliest of those grants was posterior to the date of the adoption. It follows, therefore, that at the time when she made that grant she was no longer heiress in the possession of the estate, whatever her rights as a Hindu female and heiress might have been previously, but that the whole interest in the estate had vested in the adopted son. Bhoopendronarain appears to have come of age some time about the year 1840. He brought a suit to recover the estate from his adopted mother, and a decree was made in his favour in July, 1844. He sought to execute that decree; and after he had sued out execution, a compromise took place between them. Disputes afterwards again arose between them, and he renewed his application for execution; and it is clear, upon that proceeding in which the rights of the Court of Wards with the widow were afterwards discussed, that, when he died, that second application for execution was then pending, and that no writ of execution had in fact issued from the Court. In the Court below, the principal issue was as to the validity of the jote, which of course involved the question whether the jote had ever been created by the leases and grants of the Ranee, and if they had been so granted, whether those leases were valid as against the Plaintiff, and if not valid as against the Plaintiff, whether they had been confirmed by his father Bhoopendronarain, in which case, of course, he would be bound by them. The Principal Sudder Ameen seems to have held that the leases were not proved, but it will be, perhaps, the simplest and most favourable way to the Appellants to assume that those leases were really granted by the Ranee. It is, however, admitted that if not afterwards confirmed by Bhoopendronarain, they would not be binding on the Plaintiff in this suit. If it were necessary for us to decide the question of the original grant of the leases, a good deal might turn on the fact of possession, because it is perfectly clear that those parties were found

in possession as ijaradars on the death of Bhoopendronarain, when the estate passed into the custody of the Court of Wards, and that they were, for a considerable number of years, in possession under it.

As the real turning-point of the case is this question of confirmation by Bhoopendronarain, it is necessary to consider what the case, made by the Appellants in that respect, is. Their title rests entirely upon two documents at page 166, and the evidence which they have given in support of those documents. Now the first of those documents has been sometimes spoken of as a dakhilla, but it seems really to be what Mr. Field described it, not a mere ordinary dakhilla, or receipt, by a collector of rent, but a statement by Bhoopendronarain that 300 rupees had been paid as rent. It is in the form of a letter to the then jotedar, importing that the writer had received that rent, and that the jotedar would receive in the ordinary way at Pootia, the ordinary dakhilla. Still it no doubt implies that this money had been paid as rent to and received by the Rajah in person, and that, not at Pootia, but at Rampoora to which he is said to have gone, and the date of the document is the 10th Assin, fifteen days before the Rajah died at Pootia. The other document is in the nature of a proclamation, addressed to the Gomashta, Munduls, Ryots, etc., of all the lands comprised in the jote, and it assumes that there was an attachment affecting that property, and directed the attachment to be removed, and that the Ryots upon those lands should be allowed to pay their rents to the jotedars. It is upon these two documents that the title of the Defendants in the action depended.

It is no doubt true that these documents which are now impeached, did exist immediately after the death of Bhoopendronarain, because they are referred to in the proceeding of the Court of Wards, which is at page 171. The proceeding is addressed to the tenants of the jote, and after stating that not only the documents which purported to be original leases from the Ranee, but those granted under the signature or seal of Bhoopendronarain Roy in the year 1252 had been brought into the office, it says "you will, until you receive a second order from "the Court of Wards, pay the rents to the said per-

"manent jotedar, and ijaradar, and will take "receipts thereof." But still, even supposing that the Court of Wards had the power, which their Lordships are not prepared to say they had, of binding the Respondent, then an infant, by a recognition of this jote, that proceeding is not more than an *ad interim* recognition of the title because it makes the direction to pay the rents subject to any second order of the Court of Wards. Therefore there seems to be no ground for contending that the Defendants were relieved by that order, or by the subsequent possession and enjoyment by the jotedars, which certainly continued so long as the Court of Wards was in possession of the estate, from giving that proof against the Plaintiff in this suit, which otherwise they would be bound to give. Their case is this, that these documents were executed by the Rajah, at Rampoora, that they were executed in pursuance of some arrangement the particulars of which are nowhere very clearly stated, which had previously taken place at Pootia, and that they were executed within fifteen days of his death. On the other side, it is said that the Rajah did not go to Rampoora, that he was incapable of going there, that he was in the last stage of consumption, that he died fifteen days after this document is said to have been executed at Pootia, and therefore that the documents are fabrications.

It is impossible to conceive a case which more completely turns on a pure issue of fact. Both the Courts below have decided that there is a failure of proof, and that the documents are not genuine; and their Lordships are bound to see not merely that there is a mere balance of testimony, but that there is so strong a preponderance of testimony against that finding, that they can confidently pronounce it to be wrong. They are unable to do so. They think that the observations of the Court as to the improbability of such a transaction taking place with the Rajah, and at the place at which it is said to have taken place, are extremely cogent. The circumstances in which the estate is said to have been at that time, in order to account for the form of the documents, which purport to take off an attachment, are not made out. So far as their Lordships can see, no attachment had thus issued by way of execution in the suit between the Rajah

and his mother. A suggestion has been made of some other possible attachment, but there is really no evidence of any such proceeding. The testimony of the last two witnesses read by Mr. Bell, points to an attachment in the nature of an execution of that Decree, which the Rajah had obtained against the Ranee.

Their Lordships, therefore, are unable to see that the Courts have in any way miscarried in coming to the conclusion to which they have come, and, adhering to their rule, they must humbly advise Her Majesty to dismiss this Appeal with costs.