

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Faez Buksh Chowdry v. Fokerooldeen Mahomed Ahassun Chowdry, from the High Court of Judicature at Fort William in Bengal; delivered 18th July, 1871.

Present:—

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

IN the Judgment delivered in the case to which their Lordships have been referred, viz. *Sreenan-chunder Dey v. Gopaulchunder Chuckerbutty* (reported in 11 Moore), there is this passage—“Un-
“doubtedly there are in the evidence circum-
“stances which may create suspicion, and doubt
“may be entertained with regard to the truth of
“the case made by the Appellant; but in matters
“of this description it is essential to take care
“that the decision of the Court rests not upon
“suspicion, but upon legal grounds, established by
“legal testimony.” That principle is sufficient to dispose of this case, which differs from the case referred to in this respect, that in the case now to be decided, there is not, in their Lordships’ opinion, any legal evidence to create suspicion, or any doubt to be entertained with regard to the substantial honesty of the transaction.

It appears quite clear that the father, whose judgment creditor obtained this property, was in insolvent circumstances, that he had not a farthing of money with which to purchase the property in question; that the property was then in the hands

of a mortgagee, who had foreclosed, and had become the absolute owner of the property, so that it was his to deal with as he thought fit.

Having probably, as was suggested by the High Court, kind considerations for the father and the family, he was minded not to insist on retaining the whole value of the property so acquired, but to allow it to go back to the family on being satisfied or secured in some way or other the real amount of the debt for which he had seized the property.

In that state of things the way in which the transaction was completed was this,—the son gets a man to lend him part of the money in consideration of a putnee and a bond. The son gives a mortgage to the original mortgagee for parting with the interest which he had obtained under the foreclosure; he gives his bond and then the conveyance is made to the son.

Their Lordships think, in accordance with the Judgment of the High Court, that this was done for the benefit of the family. The whole circumstances show that it was open to the mortgagee and to the family to do it, not by a conveyance to the insolvent father, or in trust to the insolvent father, which would give it to the creditors, who had no right, equitable or moral, with regard to this property, but to give it in such a way as best to effect their object, that is, to give it to the son, who seems to have been the proper man to carry out the arrangement for himself and for his family.

Under those circumstances, their Lordships think that the Judgment of the Principal Sudder Ameen was right; and they will therefore humbly recommend to Her Majesty that the Judgment of the High Court ought to be reversed, and that in lieu thereof there should be an order dismissing the Appeal from the Sudder Ameen, with costs.

The Appellant is to have the costs of this Appeal.



