Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Humeeda, alias Bebee Khajoo, vs. *Mussumat Amatool Mehdee Begum from the High Court of Judicature at Fort William in Bengal; delivered 19th December* 1871.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS is an appeal from a decree of the High Court, dismissing the plaint of the Appellant. The plaint had also been dismissed in the Court below, but upon a different ground. In the Court below, the Court of the Sudder Ameen, it had been dismissed on the ground of a legal objection, as to the splitting of suits. The legal objection so taken was disposed of in favour of the Plaintiff in the High Court, but as against the Plaintiff they found the merits in favour of the Defendant.

The suit was brought by, or rather in the name of, a person who had been an infant, and who had according to the statement in his own plaint attained his majority in the year 1848. The suit was not brought until the year 1858, and was then proceeded with, not by the former minor, but by a person who had bought the right of him and who then prosecuted the suit on his own behalf.

The case of the Plaintiff was that many years before, 13 years before the suit was filed, a sale had been made by the minor's father and guardian for Rs. 17,000 without any necessity whatever, merely for the purpose of raising money for his own profligate expenditure, and that the purchasers took the property under that sale without any reasonable ground for supposing that it was made for the benefit or on behalf of the infant.

The case made by the Defendants was this: That it was not a sale for Rs. 17,000 money paid to the guardian and expended by him in a profligate manner; that if it was so expended as to any part, it was so to the extent of 2,500 rupees only, the only money which they had actually paid; but that the real transaction connected with the sale, which alone was impeached before the High Court and now before their Lordships, was that that sale was made under the pressure of a foreclosure suit actually brought for the purpose of enforcing a demand for Rs. 14,500 out of the Rs. 17,000 which were due upon a former mortgage.

That former mortgage, which was for an ancestral debt, was a mortgage at that time due from the property, was a charge upon it, and was the subject of a suit; and the guardian under the pressure of that suit gets Rs. 2,500 in fact for the equity of redemption. As the High Court says, and it appears to their Lordships rightly enough, it is not suggested in the evidence that Rs. 17,000 was at all an inadequate price for the property. The guardian had no alternative but to pay the money, which he seems to have had no means of doing, or allow it to be foreclosed for Rs. 14,500, or to have done the best he could and sold it for the Rs. 14,500 and the Rs. 2,500 which he received at that time in money as guardian for his infant son. It does not appear to their Lordships that there could be any ground for questioning the transaction.

But then it is said that the mortgage transaction, which was the origin of the suit and the origin of the sale, was itself questionable, that

is to say, that there never was any debt at all. But the Court enquired into that and found that there was really an honest mortgage transaction for a debt amounting to Rs. 10,000, the origin of which was fully explained. It is true that at the time the mortgage was made there was a further sum advanced. The debt being only Rs. 10,000, the mortgage was taken for Rs. 14,500. But that is not the case made by the Plaintiff. The case is not that the estate was parted with for Rs. 4,000 less than it ought to have been, but that it was entirely a case of fraud, a sham transaction from beginning to end, that there never was such a debt, and that there never was any real foundation for the sale which was the ultimate result of the transaction which had commenced in the ancestor's lifetime.

Their Lordships entirely agree with the High Court that after so great a lapse of time, 22 years, it would be utterly impossible to allow a Plaintiff in a suit which does not raise that point, in a suit which is based entirely on a case of gross fraud in respect to the sale itself, to go back and open the consideration for a mortgage made so long ago. The High Court were satisfied upon the evidence, and their Lordships are satisfied upon the evidence, that the Plaintiff entirely failed to make out the case so far as it was upon him to make it out, and that the Defendants did prove apparently a very honest case, exactly in accordance with their pleadings.

That being so, even if their Lordships were sitting as a Court of First Instance, they would have very little hesitation in coming to the same conclusion at which the High Court has arrived. Their Lordships desire to repeat what has been frequently said at this board, that where a question of fact has been fairly raised and tried by the Courts in India, and there are concurrent decisions by the Courts there, their Lordships will not reverse those decisions merely upon a balance of evidence, or a probability that they in the first instance might have come to another conclusion, unless they are satisfied that there has

been some miscarriage of law, or some very good reason for satisfying them that the Judges of the Courts below have come to a wrong conclusion as to the evidence. This case does not come strictly within that rule, as the decision of the High Court proceeded upon the merits and the evidence, the decision of the first Court being on a legal objection. But where as in this case the question of fact has been tried upon evidence fairly warranting the conclusion to which the High Court has come, and there has been no adverse finding of facts, their Lordships will require a strong case to be made out before they will recommend Her Majesty to reverse such a decision.

Their Lordships also desire to observe in this case that they have seen with great regret the extent to which the pleadings on the record have been swelled with a quantity of superfluous documents printed at enormous length in India, where apparently there is not the same supervision exercised with regard to the selection of papers for printing that there is in this country; many of these documents are utterly irrelevant, mere details of the copies of accounts of private expenditure of some parties in respect of collateral matters raised in the suit, and these should not have been printed at all. Their Lordships trust that some means may be taken in India to prevent such a waste of the suitors' money as is caused by swelling the record in this manner.

On the merits of the case their Lordships are of opinion that they must humbly recommend Her Majesty that this appeal should be dismissed with costs, and the decree of the High Court be affirmed.