Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Ameerunnessa Khanum and others v. *Mussumat Ashruffunnessa from the High Court of Judicature at Fort William in Bengal; delivered January 20th*, 1872.

Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS is an Appeal from a Judgment and Decree of a Division Bench of the High Court of Calcutta which affirmed the Decree of the Principal Sudder Ameen of Bhaugulpore, dismissing the suit of the Appellants. The suit was brought to recover possession of the Talook Nisf Ambey, which had been purchased by Velayet Hossein in his own name as long ago as the year 1848. The suit was not commenced till the 16th February 1859, which is nearly 11 years after the purchase.

The suit is brought upon the alleged ground that the moneys with which the purchase was made were not the moneys of Velayet Hossein himself, but of a lady with whom he was living as her husband, Belkissoonnissa Begum. It was admitted by Sir Roundell Palmer that it was not a benamee transaction, that Belkissoonnissa Begum had not desired that the estate should be bought in her name, and that there was no intention on her part to purchase an estate at all for herself; but Sir Roundell Palmer put the case on the ground that the money was her money, that it belonged to an Imambarah, of which

she was the owner, as a sort of lay owner, and that there was a resulting trust in favour of the Begum, in consequence of the money with which the estate was purchased having been so provided.

Now it is plain that if the money did not come from the source indicated, or if the purchase was made in the name of Velayet Hossein, with the consent of the Begum that it should be so purchased for him, there is then no resulting trust. The very principle of a resulting trust is, that the property has been purchased with money belonging to another, with an implied trust that it should belong to that other person to whom the money also belonged. But if it was the intention of the person to whom the money belonged that there should be no such trust, then, of course, no such implied trust could arise, because it is only a trust by implication, and the presumption would then be met by the facts.

The facts of the case are extremely simple. It seems that Belkissoonnissa Begum was a lady of good family and considerable fortune, and that one of the properties which she had was the Imambarah. She was, when young, betrothed to her cousin Ali Reza, but it seems either that she never cohabited with him, or that at all events she lived in his house but for a short time, and then they separated. The cause of the separation appears to have been that Ali Reza refused to pay her dower, and the mother of Belkissoonnissa then withdrew her from his house. That being her position, in the year 1842 she formed relations with Velayet Hossein, and it appears that she lived with him as her husband until her death in January 1849. It is plain that during the period of seven years which elapsed whilst they were so living together, Velayet Hossein, although he might not have been possessed of property at the time when these relations commenced, had probably during that period gifts from her, or he may

have been allowed to receive the income of her property and to appropriate a part of it to his own use. It appears that in the year 1848 the lady was in failing health, and in that year this purchase was made. It appears to have been a purchase made at a revenue sale, and the purchase was made in the name of Velayet Hossein. All the instruments of title were made out in his name, and he was registered as the owner of the estate. This happened ten months before the death of the Begum.

Now an instrument has been put in and relied on by both sides, a mooktearnamah, dated the 15th April 1848, in which Velayet Hossein appoints four persons as his mooktears to purchase and pay for this estate, and one of those persons is Mudun Gopal, who was the dewan of the Begum, with whom he was living.

It is said that there is evidence that the earnest money and the consideration money were provided by the proceeds of jewels and other valuables which belonged to the Imambarah, and their Lordships cannot fail to see that the case as originally put was, that Velayet Hossein was the Shajada of the Imambarah, and that he had used the money which he held as Shajada, in trust for the Imambarah, to make this purchase. The first two issues were framed to raise those questions, but the Principal Sudder Ameen has found, and he seems in that to have been well grounded upon the evidence, that there was no existing Imambarah in the sense of any place of worship which might be said to have its property belonging to it as distinct from the ownership of the Begum; that it was a sort of lay Imambarah, and that, although he may have called himself Shajada, as he does in this document, it really was more a title of honour which he had assumed, or a nominal appointment of Shajada, than any real status which he had or anything which put him in the position of a trustee for an Imambarah as dis-

tinguished from any property which his wife had. The property of the Imambarah belonged to the Begum, as her other property would do, and, as was admitted by the learned Counsel for the Appellant, she might have disposed of it as she thought fit.

Now, first of all, did the High Court come to a wrong conclusion in saying that it was not proved to their satisfaction that the money which paid for this estate was the proceeds of the property of the Begum? There is a good deal in the evidence to show that the jewels belonging to the Begum were brought to bankers and others and sold, but a great deal of the evidence is hearsay, and the Court may have come to this conclusion, "although there is some "evidence which if entirely believed would "establish that the money did come from that "source, yet, taking all the circumstances of "the case into consideration, we cannot act upon "it; we cannot say with sufficient certainty "that that evidence is true." One circumstance upon which they strongly rely is that this suit was brought after the deaths of all the parties who knew the transaction and who could have explained it. The Begum was dead; Velayet was dead; the Dewan was dead. Those three persons knew exactly what the transaction was; and, certainly, when the suit is brought to set aside a purchase which was made 11 years before, which has remained unimpeached from the time when it was made until the institution of this suit, every Court would be bound to look with very great jealousy at the evidence which is brought forward in order to support such a case.

But assuming that the High Court are not well founded in the conclusion to which they came, that no part of the money was proved to have come from the proceeds of the sale of the jewels belonging to the Begum, still their Lordships think that there was evidence to support the conclusion of fact to which

the Principal Sudder Ameen arrived, and therefore that it is unnecessary to decide the question which the High Court took upon themselves to determine. What the Principal Sudder Ameen thought of the case was this, that some of the money might have come from the Begum, but he said, in effect, "Assume that it did so come; "there is to my mind very strong evidence from "the facts of the case that that was a gift on the "part of the Begum, and that she intended to "do something for the benefit of the man who "had been living with her for seven years." Her husband, Ali Reza, had in fact been the cause of her separation from him by his refusal to pay her dower. She had formed relations with Velayet Hossein as a second husband, although it was not a marriage which was warranted by law; still he lived with her as her husband, and apparently upon very good terms. It was therefore extremely natural, if she found that she was in bad health, that she should have been desirous to make some provision for his benefit. It is also, their Lordships think, extremely probable that he had money of his own, for several of the witnesses speak to his having had money of his own at various periods after his marriage, though he may not have been a man in good circumstances before. The evidence upon which the conclusion is founded that she gave him some of the money, and that he bought this estate in his own name with her consent, is found in her acquiescence during her lifetime, and their Lordships also think it is found in the acquiescence of Ali Reza after her death. Ali Reza was certainly not sleeping upon his rights. He was living near these parties. He instituted a suit to set aside a deed of gift which was set up by Velayet Hossein, but he took no steps during his lifetime to impeach the purchase; there is the strongest inference to be drawn from his acquiescence in it. What could have been the ground of his acquiescence? The ground of his acquiescence must have been that

he knew that the purchase which was made by Velayet Hossein was not made for his wife, but was made, with her consent, for Velayet Hossein himself. One witness for the Appellant, named Enayet Hossein, gives evidence which fortifies the view taken by the Principal Sudder Ameen. He says of Velayet Hossein, "he had not means "formerly, but when he got married at Kara- "golah he became rich," and then he says, "the possession of Sha Walayet Hossein since "his purchase continued without opposition, "and after the sale the Bebee of the Sha died "at Bhaugulpore. I cannot say after how long "she died. She used to live with her husband, "and she did not claim the talook." There is thus strong evidence of her acquiescence, as well as of all the persons most interested in the transaction. The purchase was made by her own agent, who was appointed for that purpose by Velayet Hossein, and she appears to have been perfectly satisfied afterwards. It seems, also, to their Lordships that the whole history of the parties, and the probabilities of the case, strongly confirm the view originally taken by the Principal Sudder Ameen.

It was contended that this view of the case was not raised by the issues.

Their Lordships would be disposed to decide the Appeal upon the substantial merits, unless they had reason to suppose the parties had been misled by the form of the proceedings; and although it may be true that the above view is not expressly stated, they think it in effect involved in the first two issues, which were founded on the hypothesis of the misappropriation of the property of the Imambarah by Velayet Hossein, as Shajada, and the same view is open upon the general question raised in the third issue.

On these grounds, therefore, their Lordships will humbly recommend Her Majesty to affirm the decree of the High Court of Judicature, and to dismiss this Appeal with costs.