Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tekaetnee Goura Coomaree v. *Mussumat Paroo Coomaree and others, from the High Court of Judicature at Fort William in Bengal; delivered 28th February* 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS was a suit instituted by the Plaintiff as the guardian of a minor, in respect of her right as zemindar of Pergunnah Khurukdeah, to recover possession of certain lands in that pergunnah from the Defendants, and to set aside an alleged mokurruree grant. The Plaintiff's case was, that the Defendants had held under a ticca lease from 1851 to 1860, and that consequently after the expiration of the lease they had wrongfully held on. The Defendants set up an old mokurruree grant under which they claimed to hold in perpetuity upon the payment of a fixed rent of Rs. 13 per annum.

The substance of the evidence on both sides may be very shortly stated. The Plaintiff endeavoured to prove that the Defendants had held possession from 1827 downwards under certain leases for short terms at small but variable rents, and four kubooleuts were put in—the earliest in 1827—the latest, which has been before mentioned, in 1851, four in all, under which the land was held respectively at rents of Rs. 21, Rs. 16, Rs. 17, and Rs. 22 per annum, but the Plaintiff gave no evidence of payment of rent under those kubooleuts. The Plaintiff also gave some evi-

dence, which will be subsequently referred to, of supposed admissions on the part of the Defendants. The Defendants put in an ancient sunnud or grant in the year 1793, purporting to grant to them these lands on a mokurruree tenure, at a rent of Rs. 13 per annum, payable from generation to generation. They showed that in the next year after this alleged grant, a return had been made of the gross profits of this mouzah at Rs. 13 per annum, which they contended to be some confirmation of their case. They further put in receipts for rent, (and on that subject the evidence was not of a very satisfactory character,) in 1799, at the rate of Rs. 13 per annum, and another receipt in 1831 of Rs. 13 per annum for five years. They further gave evidence that they and their ancestors were related to the Plaintiff and to her ancestors, that consequently it was not unlikely that grants of this kind might have been made to them for maintenance; and they further showed that grants of a similar character had been made to other members of the family.

It now becomes necessary to refer to two previous suits which had been instituted by the Plaintiff. A suit was instituted in 1859 for rent under the last lease, and, pending that suit, another was instituted on a bond given for alleged arrears of rent. That rent suit came on for hearing in the first instance before the Moonsiff, who found for the Defendants, upon this ground: It appeared that one Bhugwunt Sahoy, a money lender, had intervened in that suit, alleging that the Plaintiff had assigned to him, for a term of five years, fifteen out of the twenty two rupees of rent, and he put in two documents, one purporting to be the assignment to which the Defendants were parties, and another a bond executed by the Defendants. The Defendants alleged that although true it was that they had been parties to an assignment of rent to Bhugwunt, it was an assignment of the Rs. 13, which was payable by them. They declared these deeds put in to be forgeries, and

that Bhugwunt was in fact acting in collusion with the Plaintiff. The Moonsiff decreed in favour of the Defendants upon the ground, as far as it is ascertainable, that taking the rent which was due to Bhugwunt under the assignment, and taking also that for which the Plaintiffs gave credit, the Defendants had paid the whole, and therefore the Plaintiffs failed in their suit. Upon this the Defendants appealed, although the decision was in their favour, on the ground that the decision was adverse to their mokurruree title, and the case came on before the Chief Assistant Commissioner. The Chief Assistant Commissioner found that the case of the Plaintiffs was altogether false and fraudulent, that all the kubooleuts, four in number, which they put in, were forgeries, and he appears to have taken the view of the Defendants with respect to the transaction with Bhugwunt Sahoi, that one of the deeds at all events was spurious, It should be stated that they alleged that those deeds were got up for the purpose of fixing them with an admission of being mere ordinary lessees instead of mokurrureedars. The Assistant Commissioner also found that the case of the Defendants was proved, that they had proved their grant and possession, and he gave judgment in favour of the Defendants. The same was the issue of the suit on the bond for rent. That was also decreed in favour of the Defendants, and the bond was pronounced to be spurious. The decision in the rent suit was in the year 1861, and it should be stated that before that date, namely, in the year 1854, the Defendants had granted to a certain coal company their rights in this mouzah, purporting to make them a mokurruree grant; and the coal company had worked the coals, had erected buildings, and carried on considerable mining operations in an open and notorious manner (which must, of course, have been perfectly well known to the Plaintiffs) from the year 1854 down to the time

of the commencement of this suit, which was in the year 1858. The Plaintiffs laid by from the time of the decision in the rent suit, which was in 1861, till 1868, being aware of all these works going on, without bringing any suit, and they have given no explanation of that delay.

It is under these circumstances that the present case came on for hearing. The judge in the first instance in the present suit, in which the evidence was substantially the same as in the rent suit, acting in a great measure upon the decision of the Assistant Commissioner in the rent suit, came to the conclusion that these kubooleuts on the part of the Plaintiffs were false. He also expressed a good deal of doubt as to the genuineness of the mokurreree grant put in by the Defendants, chiefly, not entirely, on the ground of certain expressions contained in that grant which appeared to him of a suspicious character; but he decided in favour of the Defendants upon the statute of limitations, holding that the Defendants had held, for more than twelve years before the commencement of the suit, adverse possession to the Plaintiffs. On the case coming before the High Court they overruled the decision of the judge of the court of first instance upon the statute of limitations, holding, and their Lordships are of opinion rightly, that the statute does not begin to run in favour of the mokurrureedar against a zemindar until the zemindar has had notice that the mokurrureedar claims under a mokurruree grant, and that in this case it was not shown that notice had been given to the Plaintiffs of such a tenure twelve years before the commencement of the suit. The High Court decided in favour of the Defendants upon the merits. They agree with the Commissioner in considering the case of the Plaintiffs to have been a false one and their kubooleuts forgeries, and they uphold the genuineness of the mokurreree grant. Mr. Justice Kemp answers the objections made by the judge of First Instance to

the mokurruree grant based on the expressions contained in it in a manner which appears to their Lordships satisfactory, and Mr. Justice Kemp their Lordships understand to be a judge well conversant with subjects of that kind.

It has been contended that the High Court were wrong in coming to this conclusion. It has been argued that the *onus* of proof of a mokurreree grant lies entirely upon the Defendant, and that he is not relieved from this burden of proof even if the Plaintiff, as in this case, had failed to prove his kubooleuts, and their Lordships assent to these propositions. The question, therefore, is simply whether there were sufficient grounds on which the finding of the High Court can be supported, that the defendant had made out his case. Their Lordships are of opinion that there were sufficient grounds to support the finding. The grant itself, though perhaps not proved in the most satisfactory manner, still purported to be an ancient grant and came from the proper custody. It is to a certain extent, at all events, verified by the other evidence which has been referred to of the return of the gross produce and of the receipts, and it is still further verified by the evidence which the Defendants gave of long continued possession, carrying that possession back a great deal further than the Plaintiffs had admitted, in fact, to the time of the grant itself and even beyond it; and, further, by the proof which was given by the Defendants, which their Lordships concur with the High Court in considering satisfactory, that the ancestors of the Defendants were relations of the ancestors of the Plaintiffs; and that other grants of the same description had been made to other members of the family.

It only remains to notice some evidence as to admissions of the Defendants, relied on on the part of the Plaintiff. The first of those admissions consists of the two documents put in by Bhugwunt Sahoy. The Assistant Commissioner

in the rent suit, treated one, if not both, of these documents as false. The High Court do not, indeed, very distinctly say whether or not they take this view, but they content themselves generally with observing that the assignment to Bhugwunt does not appear to militate much against the case of the Defendants, and their Lordships are not prepared to say that the High Court were wrong in coming to that conclusion. There is, then, another document much relied upon on the part of the Plaintiffs, and that was what purports to be an authenticated copy of a rasinamah or journal kept in the collectorate, whereby there appears to be an entry of the substance of a petition said to have been filed by the Defendants on the 31st December, 1852, in which they state that they held on lease from 1259 to 1267 Fuslee. The original petition, of which this purports to be an abstract, is not produced, and its non production is accounted for by the allegation that the court-house in which the records were kept was burnt, and all the records with it. How this document escaped the fire, where it was kept, by whom it was kept, who made the entries, there is no evidence whatever. Nor is there any evidence of inquiries being made upon that subject. Therefore whether or not it was possible to call the person who made the entries, their Lordships are unable to say.

Under these circumstances, their Lordships cannot regard the proof of this document as of a very satisfactory character, and they agree with the First Commissioner in his observation that this document is at all events not of sufficient value to outweigh the evidence on the part of the Defendants.

Their Lordships observe that no notice whatever is taken of this document in either of the Judgments in the present suit, and they are very much disposed to infer from that, that no substantial reliance can have been placed upon it on

behalf of the Defendants. But, be that as it may, they do not think it of sufficient weight to counterbalance the evidence on the part of the Defendants.

For these reasons, their Lordships are of opinion that there was ample ground on which the High Court were justified in finding for the Defendants, and that that finding was right. Their Lordships will therefore humbly advise Her Majesty that that Judgment be affirmed, and this Appeal dismissed, with costs.