Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shamnarain and others v. *The Administrator-General of Bengal on behalf of Munnoo Lall Tewarree, from the High Court of Judicature, at Fort William in Bengal; delivered Thursday, 10th December* 1874.

Present:

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

THIS suit was brought by the Plaintiffs, whom the present Respondents represent, claiming under a zuripeshgee granted by the Rajah of Ramnuggur to secure the sum of Rs. 49,000. The zuripeshgee included 14 mouzahs, and among them a mouzah called Koorkoorcha.

It seems that the Rajah instituted a suit against the mortgagees to set aside the zuripeshgee, on the ground that it had been collusively obtained from him, charging Binda Lall, whom the Appellants in this suit represent, with colluding with the mortgagees in obtaining the mortgage. Then a cross suit was brought by the mortgagees under the zuripeshgee, being the suit in which the present Appeal arises, against Binda Lall for possession of the mouzah of Koorkoorcha, and to set aside a mokurruree lease alleged to be granted by the Rajah to him prior to the mortgage, under which he claimed the possession of

the mouzah upon payment of the rent reserved by the mokurruree of Rs. 41.

The value of the mouzah was Rs. 850 per annum.

Both suits were heard by the Principal Sudder Ameen, who found that the zuripeshgee was a genuine instrument, and that it had not been obtained by fraud; and he affirmed the validity of it. He also found in the present suit that the mokurruree set up by Binda Lall was a fraudulent document, intended to prevent the mortgagees under the zuripeshgee from getting the full benefit of their mortgage as regards the mouzah Koorkoorcha.

There were appeals to the High Court from his decision. The High Court reversed the decree of the Principal Sudder Ameen, which affirmed the validity of the zuripeshgee, holding that although it was executed the consideration had not been paid, and they set the zuripeshgee aside. The consequence of their deciding that the Plaintiffs had no title under the zuripeshgee was that in the present suit it was held that they had no *locus standi* to set aside the mokurruree.

From these decisions of the High Court there were appeals to Her Majesty, and the result was that Her Majesty was recommended to reverse the decree of the High Court which had set aside the judgment of the Principal Sudder Ameen, and disaffirmed the mortgage, and to set up his judgment which had held that the mortgage was valid.

That state of things left the question as to this mokurruree undecided, for the High Court had only decided against the mortgagees in this suit upon the ground that having no title in the mouzah they could not be heard to say that the mokurruree was invalid. It was therefore necessary, after the decision of this tribunal in the Rajah's suit, that the High Court should

hear the original appeal in the present suit as regards the mokurrurec upon the merits; and accordingly this direction was given in the Order of Her Majesty in this suit:—"It is hereby ordered "that the decree of the High Court of Judi- "cature at Fort William in Bengal, of the "21st May 1863 be reversed, and the cause "remitted to the High Court, with a declaration "that the zuripeshgee deed alleged to have "been granted by the Rajah of Ramnuggur to "the Appellant and his brother is a valid instru- "ment, and the High Court is hereby directed, "in case the Respondent does not appear within "a reasonable time to be fixed by the High "Court to dismiss his appeal from the Zillah "Judge of Sarun to the High Court, with costs; "and if the Respondent does so appear, then "the High Court is to hear and determine the "appeal on its merits, and in case the Respon- "dent shall fail to appear in the High Court,"— then there are further directions. The "Respon- dent," being the Appellant in the High Court, did appear, and the High Court heard the appeal and gave judgment affirming the original decision of the Principal Sudder Ameen to the effect that the mokurrurec was a fabricated and fraudulent instrument; and from that judgment comes the present Appeal.

Mr. Doyne could not do otherwise than admit that the judgments of both Courts on the question of fact were against him, but the main point which he urged before their Lordships was that both Courts had improperly shifted the *onus*, and that in consequence of the form of the present suit, it lay upon the Respondents, the Plaintiffs below, to show affirmatively that the mokurrurec was invalid.

Their Lordships, having regard to the form of the suit, which was not only for possession, but

for setting aside the mokurruree, and having regard also to the fact that for some time under a Magistrate's order, the Appellant, or those whom he represents, were in possession under the mokurruree, think that, in the first instance, it did lie upon the Plaintiffs to give some evidence to impeach the validity of the mokurruree, and that some *onus* was therefore upon them; but they are clearly of opinion that this *onus* was satisfied, and a strong *primâ facie* case to impeach the validity of the deed made out, and then the *onus* was shifted, and it was incumbent upon the Appellant to show by satisfactory evidence that the mokurruree was really executed before the date of the zuripeshgee, and that it was granted *bonâ fide* for a real consideration and intended to be operative as between the Rajah and Binda Lall.

There are strong circumstances of suspicion in the case. Binda Lall was the mooktear of the Rajah, and notwithstanding that the Rajah had charged him with having acted collusively with the holders of the zuripeshgee in obtaining it from him, he kept him in his service. These facts are pointed out in the judgment of the Principal Sudder Ameen. It appears that the deed was not registered nor stamped at the time, the value of the mouzah was considerable, the rent very small, and there was no evidence that any consideration was paid. Considering the relation of the parties, and the facts which have been referred to, the Principal Sudder Ameen and the High Court seem to their Lordships to be perfectly justified in saying that unless the holder of the mokurruree gave satisfactory evidence of its execution and of its *bonâ fides* they could not hold that it was a valid instrument as against the zuripeshgee. The High Court do not affirm the judgment of the

Principal Sudder Ameen without looking at the case for themselves, and it appears that they did look at the evidence to which Mr. Doyne referred, to satisfy themselves of its weight and effect, and they thought it was not the kind of proof that should be given in a case which, upon the face of it, was so suspicious. They say in their judgment, "The point for decision really "and substantially is, whether the case made "out by the Plaintiffs, resting as it does upon "the zuripeshgee deed, which, on the finding of "the Privy Council in the several suits between "these parties, is a good and valid instrument, "has been sufficiently answered by the alleged "mokurruree which the Defendants set up. "Now, besides that we have before us what "seems a satisfactory judgment of the Principal "Sudder Ameen, Moulvie Mahomed Wuhee-"dooddeen, upon this point, which was in issue "in his Court, that decision not being impugned "upon what appeared to be any valid grounds; "in point of fact it seems that the Defendant "gave neither in this case, nor in any of the "other cases in which these parties were con-"cerned, anything approaching to direct evidence "of the execution of his mokurruree. It is "shown that in another case between Rajah "Saheb Prolah Sen and the Tewarees, some of "the witnesses referred incidentally to this "mokurruree, and we are asked to infer from "that, that those witnesses might, if further "examined, have given positive testimony on "the point; and it is suggested that the De-"fendant had not fully present to his mind the "necessity of setting up the mokurruree by "direct evidence, and upon that suggestion we "have been asked, at this time of day, to send "this case back to the Court of the Subordinate "Judge of Sarun in order that a fresh issue

" may be framed, and the parties allowed an " opportunity of adducing evidence upon it."

The High Court, having referred to the only evidence given by the Appellant in support of the mokurruree, held it to be entirely insufficient for that purpose ; their Lordships think that their judgment is correct, and that the High Court were also right in not putting a case of this description into a train for further inquiry. They will, therefore, humbly recommend Her Majesty to affirm the judgments appealed from.