

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Sri Rajah Krishna Bhupati Garu v. Sri
Rajah Sitarama Garu, from the High
Court of Judicature at Madras; delivered
26th June, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE general nature of transactions by way of mortgage and transactions by way of conditional sale, the distinction between them, the effect of the decisions on this point of this Board, and of Courts of the different Presidencies of India, having been fully discussed in the judgment which has been delivered this morning, it is unnecessary now to refer to these subjects. It is enough in the present case to say, that the High Court of Madras, notwithstanding the disposition of that Court to treat as a mortgage in the ordinary sense, rather than as a mortgage by way of conditional sale, any instrument whose terms are at all ambiguous, have determined that the instrument upon which the whole question turns was not ambiguous, but was plainly a deed of conditional sale. They have further determined, after remanding the case for the purpose of this question being investigated, that it is not proved that the intention of the parties was other than that which is expressed in the terms of the instrument. In their Lordship's opinion the High Court of

Madras is right, and they will therefore humbly advise Her Majesty to affirm that decision and to dismiss this Appeal with costs.