Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gossain Luchmi Narain Poori v. *Pokhraj Singh Din Dyal Lal and others, from the High Court of Judicature at Fort William, Bengal; delivered* 21*st January* 1879.

Present:

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

THE question upon which this Appeal depends is, whether a mokurreri lease granted by one Mitterjeet, a mohunt, and a member of a mendicant fraternity, is a genuine or a forged document. The High Court has found it to be genuine. The question is one purely of fact, and their Lordships are entirely unable to see their way upon the evidence in the record to disturb the finding of the High Court.

The property of Mitterjeet was confiscated by the Indian Government in or sometime before the year 1859, in consequence of his having joined in the Rebellion. A good deal of evidence appears in the Record as to the history of this property, but it is quite unnecessary to refer to it, inasmuch as it has been assumed throughout that Mitterjeet was in rightful possession of, and had full power of disposition over it. Under proceedings taken in the Collectorate the property of Mitterjeet was sold by auction, after confiscation, by order of the Government. The estates in question in this suit, namely, eight annas of Mouzah Baghour and two annas thirteen dams and six kowris of one third of Mouzah

Bhandajore, were purchased at that auction sale by a predecessor of the present Plaintiff, in the name of Futteh Singh, who upon being made a party to this suit disclaims all interest. The Plaintiff having become the owner of the rights in the mouzahs, under this Government sale which was made on the 23rd September 1859, in May 1871 brings this suit to set aside a mokurreri which it is alleged had been granted by Mitterjeet prior to his leaving the country and joining the rebels.

It appears that Mitterjeet had on the 8th December 1856 made a zurpeshgi lease of the above mouzahs and others to one Himmut Ram for 15 years in consideration of an advance of a sum of Rs. 10,000, upon which a rent was reserved of Rs. 94. It is a part of the case on both sides that that lease was valid, and there is no doubt apparently entertained that the sum of Rs. 10,000 was advanced to him. The mokurreri in question bears date in the following year, the 28th July 1857, and purports to be made, in consideration of Rs. 5,000, to Baboo Girwurdhari Singh, son of Ressal Singh. A question has arisen whether the son, Girwurdhari, took the mokurreri in his own right or as benamee for his father. That question, however —though it might arise between the son and the representatives of the father—is not material to be considered in the present case except so far as it bears upon some conflicting evidence which appears to have been given on the part of the several Defendants.

Several parties are made Defendants to the suit; first the three sons of Ressal Singh, of whom Girwurdhari is one; then Dal Chand the alleged purchaser of a share in the mokurreri, and Dindyal Lal, who was the purchaser of another share in it under an execution. Futteh Singh, to whom reference has before been made,

is also a Defendant; and the last Defendant is Narain Poori, who was an intervener in the suit, and claimed to be entitled to a moiety of the interest purchased at the Government sale.

The first consideration which demands notice in the case is the delay which took place on the part of the Plaintiff in putting forward this claim. The Government sale was in 1859. In the proceedings which took place prior to that sale various persons put in petitions of objection, and amongst others those who claimed under the mokurreri. There were petitions refuting the claim, and it was decided by the Collector that the question of the validity of the mokurreri could not then be gone into; that all that could be done was to sell the right and interest of Mitterjeet in the property, the purchaser taking it with notice of the claim under the mokurreri. Therefore the purchaser bought with full notice of the claim under the mokurreri. But for the mokurreri the purchaser would have been entitled to a share of the rent reserved upon the zurpeshgi, which was Rs. 94. Yet prior to the commencement of the present suit, no attempt was made to enforce the payment of this rent. That the parties entitled to the mokurreri were claiming the zurpeshgi rent was fully known to the Plaintiff, because in the year 1867 a suit was brought by Ressal Singh and others who claimed under the mokurreri against the representatives of Himmut Ram to recover the arrears of the rent under the zurpeshgi; and in that suit the Plaintiff intervened and denied the right of the Plaintiffs under the mokurreri to receive this rent. It was held that he was not entitled so to intervene, and that if he wished to question the validity of the mokurreri he must do so by a regular suit. That was in the year 1867, and this suit was not brought until the year 1871,

which was nearly 12 years after the original purchase from Government. In considering the evidence it is necessary to bear in mind this great delay on the part of the Plaintiff.

Coming to the evidence their Lordships find that on the part of the Plaintiff who sought to set aside the deed as a forged and fabricated document there is no affirmative evidence whatever to establish that the deed was forged or fabricated. A great number of witnesses, mohunts, and disciples of Mitterjeet, no doubt, say that they never heard of it, and refer to circumstances which more or less tend to raise a probability, but a probability only, that he did not execute it. Many of these witnesses speak to his having executed other deeds, and there can be no doubt that they had full knowledge of his handwriting; yet the question is not put to any one of them whether the signature to this deed, purporting to be that of Mitterjeet, is of his handwriting.

Supposing the case had rested there, could it be held that the Plaintiff had given sufficient primâ facie evidence to impeach a deed which has been acted upon for a period of nearly 12 years? The Defendants did not however rely only upon the weakness of the case which the Plaintiff has made for setting aside the deed, but called two or three people who were attesting witnesses to the deed, and several who were present, and spoke to the execution of this deed by Mittejeet. They, and a great number of other witnesses deposed to the actual payment of Rs. 5,000 to Mitterjeet by either Ressal Singh or his son Girwurdhari. Undoubtedly there is some discrepancy in the evidence, and their Lordships are far from saying that the case is very satisfactorily proved on the part of the Defendants. But part of the incon-

sistency which appears on the evidence may be accounted for by the fact that the Defendants have as between themselves conflicting interests. The sons of Ressal other than Girwurdhari have an interest in asserting that Ressel was the actual holder of the mokurreri; Girwurdhari on the other hand has his own separate interest, and asserts that the mokurreri was granted to him in his own right. It does happen that as between themselves they set up cases which are not consistent the one with the other; but the broad facts are proved by a great number of witnesses, who say that the deed was executed and that the money was paid. One of the obvious consequences of a long delay in bringing a suit to impeach a deed on the ground that it is not a genuine one is, that after the lapse of years witnesses disappear, and the recollection of those who survive becomes dimmed and less accurate than it might have been if the inquiry had taken place at an earlier period. In this case it appears that the three persons who were principals in these transactions, namely, Ressal, Mitterjeet, and Himmut Ram, are dead. It appears also that two at least of the attesting witnesses are dead. Surely there ought to be a strong case on the part of a Plaintiff who comes into Court to set aside a deed at so late a period to induce a Court to give him relief. In this case there is certainly no such case presented on the part of the Plaintiff; and there is evidence, though it may not be entirely satisfactory, to prove that the document was really executed, and the money really paid.

Under those circumstances, their Lordships think that the High Court were right in coming to the conclusion that the Plaintiff had failed to establish his case Mr. Arathoon endeavoured to raise and argue a further objection to the mokurreri, viz., that it was executed by Mitter-

jeet in contemplation of his joining the rebels, and with a view to escape the consequences of a forfeiture of his property. It is enough to say that that case is not made either in the plaint or in the pleadings; nor does it seem to have been raised in either of the Courts below; it is quite a different case from that which alone is put forward in the plaint, and which alone has been the subject of discussion in the Courts below.

In the result, therefore, their Lordships, will humbly advise Her Majesty to affirm the decision of the High Court, and to dismiss this Appeal, with costs.