Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nalla Meera Natchia and others v. *Alli Tamby Assen Neina Marikar, from the Supreme Court of the Island of Ceylon, delivered* 18*th February* 1893.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Nalla Meera Natchia, one of the four Appellants, is the widow of Ibrahim, a notary of Puttalam in the island of Ceylon, who died without issue in the year 1878, possessed of considerable property. The success of the other Appellants is wholly dependent upon the establishment of the claim preferred in this suit by the widow, who will hereafter be referred to as "the Appellant."

In the absence of any antenuptial arrangement to the contrary, the Appellant would have been entitled, on her husband's decease, to one fourth share of his entire estate, moveable and immoveable; but it appears that she had before marriage agreed to accept the sum of Rs. 300 as in full of her magar or widow's right. The deceased left a will disposing of his whole estate, by which he bequeathed to the Appellant, in addition to her magar Rs. 300, the three parcels of land, cultivated as cocoanut gardens, which are the subject of

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dispute in this action. Notwithstanding her antenuptial agreement, the Appellant, on the 26th November 1881, brought an action against the administrator of her husband's estate, claiming her legal interest as his widow. That claim must, presumably, have been put forward, either because one-fourth of the estate exceeded in value her Rs. 300 magar, plus the gardens bequeathed to her, or upon the theory that she was entitled to her legal as well as her testamentary provisions. In either aspect, the claim was destitute of foundation. The action was dismissed for want of prosecution on the 8th May 1882.

On the 22nd September 1882, four months after the dismissal of the action, the Appellant executed a deed in favour of the Respondent, Neina Marikar, who is her half-brother, and of her nephew, Tamby Marikar. The terms of that document, upon which the Respondent relies, represent the action as a still pending litigation, to be conducted in future by the grantees. The Appellant thereby, on the recital that she was entitled to " one-fourth share magar (dowery gift) " from all kinds of moveable and immoveable " property belonging to the estate, No. 311, of " my said husband, Ibrahim," and that she was unable, being a woman, to attend the Court, and also that she had already received from her said half-brother and nephew Rs. 2,000, for her expenses incurred in the action, transferred her " aforesaid right and interest " to them, " to enable them to recover and to take for " themselves the said share lawfully due to me " from all kinds of moveable and immoveable " property belonging to my said husband." The deed contains no reference to and no conveyance of any interest in the widow other than her legal claim for magar.

On the 8th May 1884, the Appellant made an application to the District Court of Chilaw, in the

testamentary suit in which her husband's estate was administered, for possession of the subjects bequeathed to her by his will; and, on the following day, a writ was issued from that Court directing the deputy fiscal to put her in possession of the premises devised to her. Meantime, nothing whatever appears to have been done in the action for recovery of her magar rights after the nonsuit of 8th May 1882.

On the 24th February 1885, the Appellant executed a second deed in favour of the same relatives. By it, the Appellant declares that she has delivered to them the lands now in dispute, which are specifically described. The only consideration assigned for the transfer is the fact that "the one-fourth share and the "sum of money due to me as magar, from the "estate No. 310 of my deceased husband," had already been conveyed by the deed of the 22nd September 1882; and that the Appellant had received the lands in question "belonging "to the said share," according to the order of the District Court of Chilaw.

The Appellant thereafter, on the 23rd May 1888, let the gardens in question on lease for a period of three years to the parties who, along with her, are prosecuting this appeal. The present action, in which all the Appellants are Plaintiffs, was brought against the Respondent Neina Marikar in the District Court of Chilaw, on the 9th July 1888; and the libel prays (1) for a declaration that the Appellant is proprietor of the three gardens, and that the other Plaintiffs, as her lessees, are entitled to possession for the period of three years computed from the 11th day of May 1888; (2) for a decree that the Respondent be ejected, and condemned in payment of Rs. 5,000 as damages, with costs of suit; and (3) for the appointment of a receiver during the pendency of the action.

It is unnecessary to refer in detail to the pleadings which followed upon the libel, in the shape of answer, replication, and joinder in demurrer, and so forth. The Plaintiffs, in substance, maintained that the possession of the Appellant, and subsequently of her lessees, was continuous, from the time when she got possession, in May 1884, until it was interrupted by the Respondent carrying off a quantity of cocoanuts, in assertion of his right, on the 23rd May and 6th July 1888. They alleged that the Appellant received no consideration for the deeds of the 22nd September 1882 and the 24th February 1885; and that she was induced to sign them, and in particular the second of them, by the fraud and misrepresentation of the Respondent and of Tamby Marikar. The Plaintiffs also maintained that the second deed was revocable, in respect it had never been delivered to the grantees; but that plea was rejected in the Courts below, and was not pressed in this appeal. The Respondent, on the other hand, denied all the Plaintiffs' allegations with respect to want of consideration, fraud, and misrepresentation. He alleged that he and the other grantee entered into possession on the execution of the second deed, and retained it down to the time when action was raised.

Upon the issues thus raised, the case went to trial before the District Judge. Four witnesses were adduced for the Plaintiffs, namely, the Appellant, one of her lessees, his manager, and the police headman of the village in which the gardens are situated. The Appellant deposed that no money was paid to her as consideration for either deed; that the second deed was brought for her signature by the grantees, and was signed by her on their representation that it was required "in order that they might conduct the case;" and that it would not devolve

the lands upon them until after her death. The lady also deponed that she never gave them possession, and that she continued to possess until the intrusion of the Respondent in May and July 1888. Her evidence on that point is so far corroborated by that of the lessee and his manager, and is entirely confirmed by the testimony of the village headman, who states positively, on cross-examination, that previously to the 6th July 1888 the land was in the possession of the Appellant. Although thus challenged, the Respondent neither examined himself, Tamby Marikar, nor any other witness. He simply relied upon the tenor and legal effect of the two deeds of 1882 and 1885.

The District Judge upon that evidence, taken in connection with the deeds in the Respondent's favour, dismissed the suit with costs; and his decision was affirmed by a Bench of the Supreme Court, composed of Sir Bruce Lockhart Burnside, C. J., with Clarence and Dias, J.J. The case was first considered by the Supreme Court on Appeal, and a second time on Review, after leave was given to appeal to this Board. On the first occasion, the opinion of the Court was delivered by Dias, J.; and, on the second, the Chief Justice and Clarence, J., stated their reasons for the judgment. Practically the same view was taken in both Courts. The learned Judges held that the Plaintiffs could not prevail, unless it were established that the deeds were obtained from the Appellant (1) without consideration and (2) by undue influence; and that the onus of proof lay upon the Plaintiffs. So far their Lordships see no reason to differ; but the learned Judges also held that the Plaintiffs had failed to prove either of these cardinal facts,—a conclusion which, in the circumstances of the case, is somewhat startling.

It is matter for observation that the learned

Judges either ignore, or deal very lightly with the state of possession between the date of the second deed and the time when it is conceded that the Respondent took actual possession in May and July 1888. Yet it is plain that if the Respondent did not, as he alleges, get possession in the end of February 1885 and retain it until May 1888, that circumstance is calculated to throw considerable light upon the transaction of the24th February 1885, and tends to support the Appellant's deposition that the deed then executed was represented to her as one which was to have no effect upon her right of possession during her lifetime. If the Respondent's allegation were true, it would have been easy of proof; but, save his own averment, there is nothing to show that it is true. On the other hand, the evidence of the Appellant, confirmed by that of the village headman, appears to their Lordships, in the absence of any evidence to the contrary, to be sufficient to establish the fact that, notwithstanding the execution of the second deed, the Appellant was allowed to remain in possession.

The District Judge correctly states that, "Where the consideration moving from the "grantor is out of all proportion to the con- "sideration moving from the grantee, a Court "is inclined to view the transaction with sus- "picion." But he removes all taint of suspicion by finding, mainly upon evidence which was not adduced upon the question of value, that the gardens in dispute were only worth Rs. 80 per annum, and that the consideration of Rs. 2,000 specified in the first deed, being equivalent to 25 years' purchase, was a fair price for the property. The learned Judge entirely overlooks the fact that, in the first article of their libel, the Plaintiffs aver that the gardens were of the present value of Rs. 20,000;

and that, in the first article of the Respondent's answer, their statement of value is admitted without qualification or reservation. In that state of the pleadings, it is out of the question that the Respondent should be heard to traverse his own judicial admission.

A payment of one-tenth of the value of a subject, as consideration for its conveyance, is in the sense of law grossly inadequate. But the matter does not rest there. Assuming that, contrary to the Appellant's evidence, she received Rs. 2,000 for the first deed, that payment cannot be consideration for the second deed, unless, by the tenor of the first, she was bound to execute the second. If she was not under that obligation, then no consideration was given for the execution of the deed of the 24th February 1885.

It is obvious that the learned judges in both Courts took the same view as to adequacy of consideration, and also agreed in the assumption that the consideration given for the first deed entitled the grantees to demand the transfer which was made by the second. On no other theory is their decision intelligible. Clarence, J., expressly says that the second deed was, as it purports to be, "an assurance made in confirma-" tion of the deed of 1882."

In their Lordships' opinion, the most unfavourable feature of the deed of 1885, in so far as concerns the Respondent, is to be found in the fact that it professes to be in confirmation of the deed of 1882, and sets forth that the land thereby conveyed was part of the Appellant's magar. If that recital had been true, the deed of 1885 might have been unimpeachable. But it is false. The conveyance in the deed of 1882 was strictly limited to what the Appellant could claim as her magar share of her husband's estate; and in the event of that claim proving unfounded, as it obviously was, the deed gives the grantees

no right whatever to any property coming to the Appellant under her husband's will.

It may well be doubted whether a deed which, upon the legal construction of its own terms and of the documents to which it refers, is shown to have been granted without present consideration, and upon a statement of previous consideration which is false, ought to receive any effect against the grantor. In this case, the internal evidence afforded by the deeds themselves so strongly corroborates the evidence of the Appellant, which the Respondent, though personally implicated, has not ventured to rebut by his own testimony or that of the other grantee who has not attempted to assert his right, that their Lordships have had no hesitation in coming to the conclusion that this appeal ought to be allowed. They will accordingly humbly advise Her Majesty that the judgments appealed from must be reversed, and that the Appellants ought to have their respective rights declared, and decree of ejectment against the Respondent, in terms of their libel, with costs against the Respondent in both Courts below; and that the case ought to be remitted to the Supreme Court for ascertainment of damages. The Respondent must pay to the Appellants their costs of this appeal.