

Privy Council Appeals Nos. 138 and 139 of 1915.

Allahabad Appeals Nos. 9 and 10 of 1914.

Kundan Lal	-	-	-	-	-	-	<i>Appellant,</i>
							<i>v.</i>
Musammat Begam-un-Nisa	-	-	-	-	-	-	<i>Respondent.</i>
Same	-	-	-	-	-	-	<i>Appellant,</i>
							<i>v.</i>
Inayet Ali Khan	-	-	-	-	-	-	<i>Respondent.</i>

Consolidated Appeals

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1918.

Present at the Hearing :

VISCOUNT HALDANE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by VISCOUNT HALDANE.*]

These are consolidated appeals from two decrees of the High Court of Judicature for the North-Western Provinces, Allahabad. The High Court reversed by these decrees two decisions of the Additional Judge of Meerut. The appellant, who was plaintiff in both suits, claimed payment or sale under two mortgage bonds executed by the respondents respectively. The question which arises in each case is much the same. It is one of fact, and is whether the debt had been truly discharged and the bond returned to the mortgagor.

It will be convenient to refer first to the suit against Musammat Begam-un-Nisa. This suit was commenced in July 1910 to recover the balance of principal and interest said to remain due on a bond dated the 30th December, 1890, for 8,000 rupees, or for a sale. The bond was given by the lady to one Sant Lal to secure that sum with interest. It is common ground that five payments on account were actually made under the bond, amounting in all to 3,930 rupees. About

these there is no dispute ; the question relates to three subsequent payments alleged to have been made as follows :—

485 rupees	on the 18th March, 1894 ;
150 „ „	20th June, 1895 ;
5,200 „ „	1st July, 1896.

The last of these payments is expressed in the receipt relied on by the respondent to be in complete discharge of everything due on the bond, which is stated to be returned. The bond was written in Urdu and contains a stipulation that, whatever the mortgagor should pay, the payment should be endorsed on the bond, specifying how much was for principal and how much for interest. The receipts in question purport to be so endorsed. They are not signed, excepting that the receipt for 5,200 rupees purports to have appended to it the name of Har Gulal. Har Gulal was a money-lender who carried on business jointly with his son, Sant Lal, at Budhana, in the Meerut district. The son predeceased the father in March 1898, and the father died in August of the same year. It was in favour of Sant Lal that the bond was granted, but it appears to have been held jointly and to have passed to the father on Sant Lal's death. The endorsements of the first five payments on account, which are not in dispute, were proved to have been written in Sant Lal's handwriting, although they bear no signature. As to the first of the three disputed endorsements, the handwriting is not identified. But as to the last two, including the acquittance in full on payment of 5,200 rupees, the handwriting was established on the balance of evidence as that of one Khalil, now dead, a peon. There is controversy as to whether Khalil was in the service of either of Har Gulal or of his son Sant Lal. All these alleged payments, if they were made, were made, during Sant Lal's lifetime.

Har Gulal left a will dated the 1st April, 1898. By this will he purported to leave his property, which included the bonds in question, to Sant Lal's widow, Musummat Sukhi, for life and afterwards in full ownership to the appellant, who was a minor and did not attain his majority until 1910. Musummat Sukhi died in April 1899. The relatives contested the validity of Har Gulal's will and there were disputes as to her possession of the shops in Budhana, where the business of lending money was carried on. The Magistrate intervened, and a tahsildar came and put fastenings on the doors of the shops, which contained deeds and account books, and other documents and also ornaments. In their Lordships' opinion, the evidence establishes that on the night of the 9th October, 1899, some person or persons improperly broke the fastenings and abstracted much of what was in the shops, including a number of deeds and account books. A report of the occurrence was made to the deputy superintendent of police. He, however, after investigating the occurrence, appears to have thought that it was the outcome of a dispute

between the relatives as to the succession, and he did not proceed further.

As to the second suit, this was brought against the respondent Inayet Ali Khan, who is the son of the first respondent, to recover the balance due under a mortgage bond dated the 17th August, 1894, and executed in favour of Sant Lal. This bond also belonged to the firm and it passed on Sant Lal's death to his father. The nature of the proceedings, the form of the bond and the main circumstances do not differ materially from those in the other case. It is not in dispute that under the bond of Inayet Ali Khan a first instalment of 300 rupees was repaid on the 14th August, 1895, and that a proper endorsement of payment was made in the handwriting of Sant Lal, although not signed by him. It was apparently not the practice to sign such endorsements. The controversy is as to four further instalments alleged by this respondent to have been paid by him to Sant Lal, and after his death to his father Har Gulal, and after the death of the latter to Musummat Sukhi, the widow of Sant Lal. These instalments are as follows :—

4,300 rupees on the 15th February, 1897.

298 „ 13th April, 1898.

800 „ 3rd July, 1898.

50 „ 21st October, 1898.

57 rupees are said to have been remitted by the widow.

The four instalments set out appear endorsed on the bond given by the second respondent. As to the first of the four disputed endorsements, that for 4,300 rupees, the evidence renders it uncertain who wrote it; but, in their Lordships' opinion, it was not written by Sant Lal. The second and third were found by the Courts below to have been written by Khalil already referred to, the peon as to whom it is in controversy whether he was ever employed by Har Gulal and Sant Lal or not. The fourth purports to have been made in October 1898 after Har Gulal's death. The endorsement is in the writing of one Lachman Das, a relative of Musammnat Sukhi, Sant Lal's widow, from whom he held a power of attorney. This endorsement is to the effect that 50 rupees had been received by the widow, who, on the other hand, had remitted 57 rupees, with the consequence that the bond was returned to one Rahmat Khan as agent for the second respondent, Inayet Ali Khan.

The case of the appellant as regards the two bonds is that the disputed instalments were never paid. He accounts for the possession of the bonds by the respondents respectively by saying that they were carried away from the shops of Har Gulal when these were raided on the night of the 9th October, 1899, after the widow's death, and when the dispute as to the succession to Har Gulal's property arose. In this way they finally got into the hands of the respondents, who managed to acquire them, and are then said to have made false endorsements. The signature of Har Gulal on the bond given by the first respondent is,

according to the appellant, a forgery. On the other bond there is no signature by either Har Gulal or Sant Lal. The Additional Judge of Meerut, who tried the two suits, decided in favour of the appellants. After hearing the witnesses he arrived at conclusions as to their credibility. He was influenced in coming to a decision by the circumstance that in the first case he had before him the account books of Har Gulal and his son Sant Lal up to 1896, although those for the three years subsequently had, he concluded, been taken when the shops were raided in October 1899. The earlier books covered the period in which two of the instalments had been alleged to have been paid, on the 18th March, 1894, and 20th June, 1895, under the bond first referred to. These would naturally have been entered in the accounts, as had been the case with the earlier items not in dispute. But they were not so entered, although the practice of Har Gulal and Sant Lal was to make such entries. He was also impressed by the circumstance that the next endorsement on the first bond, that of the payment of an alleged instalment of 5,200 rupees on the 1st July, 1896, was in Khalil's handwriting. He considered that there was no sufficient explanation offered why it should have been made by Khalil, and not by either of Har Gulal or Sant Lal themselves. On a review of the evidence in each case, he came to the conclusion that the endorsements in dispute in the case of each bond were fictitious, and he decided in favour of the appellant.

The High Court expressed a different view in two elaborate and full judgments. They thought that there had been suspicious delay on the part of the appellant in bringing the suits; that the evidence as to the loss of the documents and account books was weak; that some of the oral testimony given on behalf of the appellant, and particularly that as to the position of Lachman Das, and that as to the various payments, was unsatisfactory. They held in the result that the appellant had failed to discharge the burden which rested on him of proving the case he sought to make, and that the respondents were entitled to judgment.

It is no doubt true that the initial burden of proof rests on the appellant in such a case as this, both on general grounds and by reason of the provisions of section 114 of the Indian Evidence Act. But this burden is one which shifts easily as the evidence is developed, and their Lordships do not, after considering facts which appear to them to be sufficiently established in the two suits, attach much importance to the question on whom the initial onus lay. Nor are they impressed with the delay in bringing the suits. The appellant was a minor up till 1910, and it was only in that year that the disputes as to who was entitled to succeed to Har Gulal's estate were finally settled. The appellant's guardian, his uncle, Nawal Kishore, might well hesitate before that stage was passed about launching these cases on his ward's behalf. As to the raiding of the shops on the night of the 9th October, 1899, their Lordships entertain

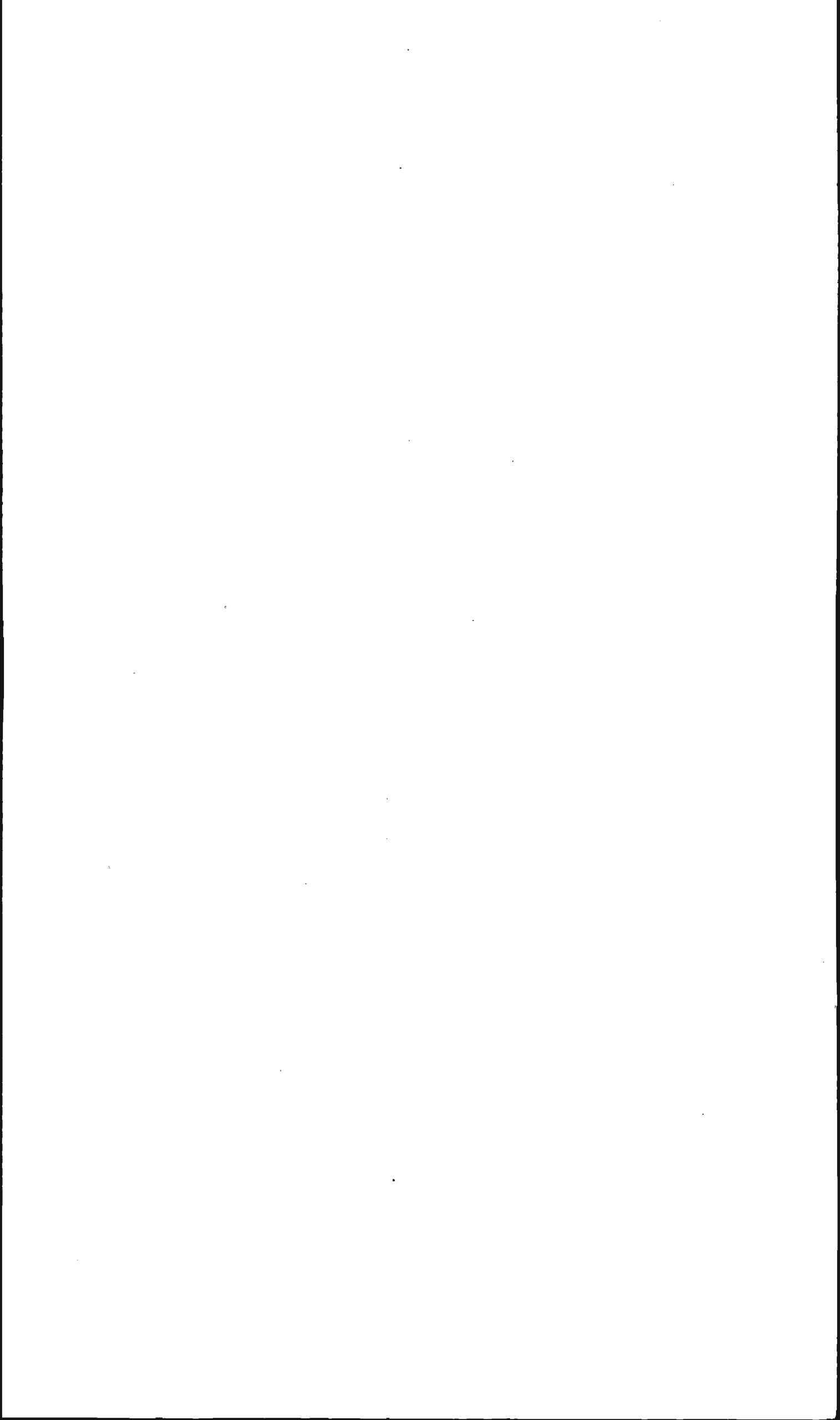
no doubt that this raid took place, and that a large number of documents, including bonds and books, were abstracted. If so, some of these may well have got into the hands of the various debtors. The only evidence as to whether the documents taken comprised the bonds in question is that of Nawal Kishore, who says that he had seen them among the others just before the raid. It is far from unlikely that they were along with the other documents, but it would be unsafe to place reliance on Nawal Kishore's recollection after many years, if the conduct of the respondents did not in itself render it probable that they had got possession of the bonds and had dealt with them improperly. As to this, their Lordships are impressed by the unlikelihood that the endorsements were genuine. Khalil was only a peon, employed at a very small remuneration, if employed at all, by Har Gulal and Sant Lal. Why should these men of business have entrusted such a person with the making of endorsements on the bonds of vital importance? Why should Sant Lal, who knew Urdu and had been himself in the practice of making the endorsements on these bonds, have allowed Khalil to do it in at least one case which occurred during his own lifetime? How did it happen that in the instance of the endorsements on the first bond those that were disputed did not appear in the books which have been produced for the period in which they took place, and which record the earlier and undisputed endorsements? Again, on a scrutiny of the original of the first bond their Lordships are impressed by the obvious difficulty which anyone would experience in coming to a reliable conclusion as to the alleged signature by Har Gulal to the acknowledgment of the payment of 5,200 rupees, as well as by the fact that Sant Lal, the grantee of the bond, who was then alive and the only one of the two who knew the Urdu language, in which the bond was written, did not sign it himself, if it was to be signed at all. As to the story told by Lachman Das, who made the endorsement on the second bond of the receipt of the final instalment of 50 rupees, their Lordships think, with the learned Judge who tried the case and saw him in the witness-box, that his story is one that it is not safe to accept. He could not read his own endorsement, and could barely write. His memory was defective. He had been Musummat Sukhi's attorney, but he was not clear as to the circumstances under which he ceased to be so. Their Lordships think that the trial Judge was warranted in attaching little value to his evidence, given twelve years after the alleged transaction, as to the facts connected with this endorsement.

The considerations to which they have now referred make their Lordships think that on the balance of probability the bonds in question were among those improperly removed from the shops in October 1899, and that they got wrongly in the hands of the respondents and were by them fraudulently dealt with. They have arrived at this conclusion only after considering the circumstances of the case as a whole, in which no element can be adequately weighed without weighing it in

relation to the other elements. The case is one in which it is far from easy to ascertain the truth, and there are points in it which have caused them anxiety. For instance, no witness was asked by the appellant's advocate the specific question whether the signature of Har Gulal to the endorsement of receipt of the 5,200 rupees on the bond first referred to was genuine. The respondent's witnesses swore that it was. But it is evident that the trial Judge was satisfied that no part of this endorsement was genuine, and he may well have thought that no evidence that could be offered was likely to be reliable, and also that no further evidence as to the signature was required when he had arrived at the conclusion that the whole group of endorsements in which this was included were fraudulent. The non-appearance of certain of the disputed payments in the account books which were produced, the unsatisfactory reasons given for Khalil being allowed to make the endorsements, and the circumstances in which the bonds and the books were abstracted in 1899, formed grounds, when taken together, on which a Judge who tried this case might well reject the whole of the story told on behalf of the respondents.

In the same way, the circumstances render doubtful the evidence of Lachman Das as to the part he alleges that he played in returning Inayet Ali Khan's bond as satisfied on receiving 50 rupees on behalf of Musammat Sukhi on the 21st October, 1898. At that date disputes had arisen which rendered the lady's title to the bond doubtful, and it is not probable that Inayet Ali Khan would at that time have been content to recognise her as entitled to receive the instalment and hand over the bond discharged. It is more likely that Lachman Das was got hold of by the mortgagor at a much later date after Musammat Sukhi's death when her title to have given her discharge at the time had become established. The evidence Lachman Das gave in the box was, on the face of it, not very reliable, and the trial Judge did not place reliance on the evidence of Qubul Singh, a witness who was brought before him to confirm the story told.

Their Lordships are of opinion that the evidence in this litigation, taken as a whole, is of such a character and so full of doubtful statements that it could only be weighed adequately by Judges who had seen the witnesses. The learned trial Judge formed an opinion, after seeing them, adverse to the respondents, and in their Lordships' view the balance of probabilities lies on the side of the conclusion to which he came. After weighing the elaborate and searching criticism to which his judgment was subjected by the learned Judges of the High Court they have arrived at the conclusion that there was not sufficient reason for overruling that judgment. They will, therefore, humbly advise His Majesty that the appeals should be allowed, and that the decrees of the Additional Judge of Meerut should be restored. The respondents must pay the costs of the appeals to the High Court and to the Sovereign in Council.



In the Privy Council.

KUNDAN LAL

o.

MUSAMMAT BEGAM-UN-NISA.

SAME

o.

INAYET ALI KHAN.

DELIVERED BY
VISCOUNT HALDANE.