

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Syud
Fuzzul Hossein and others v. Amjud Ali Khan
and others, from the High Court of Judica-
ture at Fort William, in Bengal; delivered
25th March 1872.*

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships have come to the conclusion that in this case it is their duty to advise Her Majesty not to disturb the judgment under appeal.

With respect to two of the transactions in question, the case falls within their Lordships' rule against disturbing, except on very special grounds, the concurrent judgments of two Courts on issues of fact. With respect to the two earlier transactions there are conflicting judgments, and it was therefore open to the Appellants to go fully into their case and to satisfy their Lordships, if it could be done, that the decision of the Principal Sudder Ameen was that which ought to be upheld.

It must be conceded to Sir Roundell Palmer that the Plaintiffs, by alleging in their pleadings that all the documents impeached, including the grant of the Mocurreree, which both Courts have pronounced to be valid, were actually forgeries, have raised an issue which they have failed to establish. And if it were necessary or usual in these Indian cases to hold the parties very strictly to their original pleadings, the case would, no doubt, be fairly open to many of the observations which have been made upon it. It seems, however, to their Lordships, that in determining this appeal, they ought to look to the

issues settled and tried in the cause. Now, the fourth of those issues appears to them to raise the question, whether it be true or not, according to the statement of the Defendants, that the Ranee had executed all or any of the conveyances therein mentioned for the consideration alleged, in such a way as to make the execution of those conveyances her act and deed, and binding upon her; and to throw the burthen of establishing the affirmative of that question upon the Defendants. Upon the issue so settled the parties have gone to trial, and the Judges of both Courts, in dealing with the evidence given, appear to have addressed themselves to the consideration whether it was sufficient to establish that these transactions were *bond fide* transactions in the nature of conveyances executed for the consideration alleged, and so as to be binding upon the Ranee, a purdah woman.

Again, their Lordships, finding that both the Courts have, upon full consideration of the evidence, held that the two last conveyances were not binding on the Ranee, and that the Defendants had failed as to them, have to enter upon the consideration of the rest of this case with the fact found that the Moulvie Mahomed Hossein not only stood in a fiduciary relation to the Ranee, but had, in two instances at least, abused his trust, and obtained from her conveyances of a fraudulent character. That circumstance necessarily throws more or less suspicion upon the other transactions in question.

And when their Lordships consider the particular evidence relating to the execution of the other conveyances, which has been so fully and clearly opened to them by Sir Roundell Palmer, they are constrained to say that they see no grounds for coming to a different conclusion from that to which the High Court has come upon it. There are, no doubt, witnesses who speak to the execution and preparation of the instruments, so far as these can have been seen by persons outside the purdah. Some speak to

admissions of the payment of the consideration on the part of the Ranee, made by her through the purdah, and swear that they knew and recognized her voice. Some, again, speak of having seen bags of money carried into the inner apartments by the hands of Chooah, a kitmudgar, and another menial servant, who was probably admitted behind the purdah, named Bakshoo. It is possible that these persons may be dead, though the fact has not been proved. It is certain that neither has been produced, and that of neither has the absence been accounted for. The whole evidence seems to their Lordships to fall far short of that which is ordinarily given to prove a conveyance by a purdah woman. There is, generally, the evidence of some relation, or, failing a relation, of some female servant; certainly of some person who is admitted behind the purdah, who can speak to having seen the execution of the instrument by the person in question, and who professes to have identified the executing party to the witnesses on the other side of the screen or purdah. Again, it has been often laid down that, when a transaction of this kind is impeached, there ought to be clear evidence, not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about. Now, all these transactions are in favour of the person who naturally would have advised the Ranee. There is no proof that she had the benefit of any independent adviser. The only shred of evidence of that kind is that one of the subscribing witnesses to some of the documents is described as being at that time her dewan. The Ranee, it is true, seems to have had no near relation with whom she was upon intimate terms, or who lived in the house. Still, one would have thought that there must have been some female, some person actually admitted to live with her behind the screen, who could have given more satisfactory evidence than has been given, both as to the fact of the execution and as to the receipt of the consideration money by her.

Again, the evidence as to one of the transactions of the writer, which has been commented upon by the High Court, is certainly of a suspicious character. It is to the effect that he was directed to prepare the formal document by the Moulvie, who brought to him the draft already prepared, with a blank paper signed by the Ranee. This passage in his evidence may admit of two constructions; but it certainly does admit of that which the High Court seems to have put upon it, viz., that the stamped paper on which the formal deed was to be written had already got the signature of the Ranee upon it. The transaction seems to have struck the witness himself as one of an unusual and suspicious character; for he says that he intimated to the Moulvie his doubts as to the propriety of the proceeding; and did not write the Kowala until his scruples were removed by a dye or female servant of the Ranee who came and confirmed the Moulvie's statement.

The principal ground on which the Principal Sudder Ameen has relied upon in distinguishing the two earlier of the transactions in question from the two on which his decision is adverse to the Defendants, are the proceedings which followed the supposed execution of the earlier documents—the registration and the subsequent mutation of names. It is, however, to be observed that in these cases of transactions by purdah women mere registration does go far to corroborate the proof of their validity, unless some such proceeding as that which will be presently mentioned takes place upon it. For the registration must necessarily take place under a mooktearnamah executed by the party executing the principal conveyance; and there can be on the face of the one no higher proof of its execution than there is of the execution of the other. The same witnesses generally depose before the Registrar to the execution of both. But in some of the cases which have come before this Committee there has been proof (and it is unfortunate that

the Registrars did not follow that course in the present case) that when such documents executed by a purdah woman have been produced for registration the Registrar has sent some officer as commissioner to the house of the lady, who, by examining her through the purdah, after satisfying himself of her identity, has obtained an acknowledgment of her signature.

Again, the mutation of names, though a more solemn proceeding, seems invariably to have taken place under a mooktearnamah from the Ranee, and we have the distinct evidence of the pleader that this Mahomed Hossein was acting in all the Ranee's litigious proceedings, that he was in the habit of authorising persons to act for her, and therefore those proceedings have not the effect as against a purdah woman which they would have against a person capable of transacting his own business and acting for himself.

Their Lordships, therefore, looking to the position of the parties, and to the great necessity of protecting these secluded women from the undue effects of that influence which persons connected with them, as the Moulvie was with the Ranee, may acquire over them find it impossible to say that upon the proof given to establish these transactions, the High Court was wrong in refusing to recognise the validity of any of them, except the grant of the mocrere tenure; or that such a conclusion is inconsistent with a fair view of the whole of the evidence in the cause.

For these reasons their Lordships must humbly advise Her Majesty to affirm the decision of the High Court and to dismiss this appeal, with costs.

