

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Darimbya Debbya v. Maharajah Nilmoney Singh Deo Bahadoor, from the High Court of Judicature at Fort William in Bengal; delivered June 28th, 1879.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

IN this case we have to deal with two suits. The first suit is by the widow of one Gobind Pershand Pundit against the Rajah of Pachete, in which she seeks to have a certain contract of sale which her husband entered into with the Rajah re-formed, on the ground that her husband was induced to enter into it by fraudulent misrepresentation on the part of the Rajah. She states her case in this way: that the Rajah settled a talook consisting of 247 mouzahs with her husband in consideration of a premium of Rs. 42,411, and a rent of Rs. 48,070; and she alleges that her husband "relying on the word of the " Rajah, gave a kuboolyet without inquiring " into the mouzahs and the rents; and on com- " mencing to make the collections it has appeared " since that time up to the present that with " regard to the mouzahs, the list of which and " the particulars of the rents thereof which are " objected to are written below according to the " objections of their tenants and the persons in " possession, and on account of certain lands not " being ascertained, the rent of Rs. 16,045. 0. 5. 1.

“ was not realized from the mehal. Information
 “ of this was given to the Zemindar Defendant
 “ and he promised to grant a remission of the
 “ rents objected to, &c.; but up to this time he
 “ has not made any settlement. I therefore
 “ bring this suit for obtaining an abatement of
 “ the rent of Rs. 16,045, 5 gundas, 1 cowrie,
 “ and a refund of the consideration money
 “ proportionate to that amount.”

It would appear that the husband of this lady was a man of considerable property, of much intelligence and enterprise, and that he bought on the 2nd June 1870 a putnee talook of the Rajah of Pachete of great extent, comprising no less than three pergunnahs, and acquired with that putnee the right to receive rents from a number of under-tenants who held under different tenures. The bynama or deed of sale of this property is the document which the widow seeks to have reformed. On the other hand, the Rajah brought against the widow an action for the amount of rent due. The course of litigation may be thus described: The case in the first place came before a Subordinate Judge, who came to the conclusion that no case of fraud had been made out against the Rajah upon the evidence, chiefly documentary, then before him, and further intimated that if a case of fraud had been made out, the Plaintiff, although she might be entitled to set aside the contract, was not entitled to the relief she prayed for. An appeal was preferred from this judgment to the High Court, and the High Court on the 2nd May 1864 intimated that there was some *prima facie* evidence of fraud, inasmuch as it appeared that, at all events with respect to some of the mouzahs mentioned in the bynama, there had been a material misrepresentation on the part of the Rajah of the rents which were received from them. Accordingly the case was remanded

for further inquiry. Upon that a local investigation by an Ameen was directed by the Principal Sudder Ameen, the report of which extends over upwards of one hundred pages. The Ameen inquired with reference to each of the several mouzahs or tenures comprised in this putnee talook, in the first place, what rent was mentioned in the deed of sale; secondly, what rent the Plaintiff stated as realizable; thirdly, what the Plaintiff stated as unrealizable; fourthly, what was proved to be the excess of rent mentioned in the deed of sale above that actually realizable by the Plaintiff, and then the rent of which the Plaintiff is entitled to an abatement, and the amount of consideration money which she was entitled to have refunded.—The Ameen, applying this investigation to each of the mouzahs separately, came to the conclusion, with respect to a great number of them, that the Plaintiff was unable to obtain as much rent as that which the late Pundit paid to the Rajah, and which the Ameen appears to have assumed to be that which the tenants had before paid to the Rajah; and reported that the Plaintiff was entitled to relief upon the footing of the difference between the rent realizable and that which ought to have been realizable according to his view. The Defendant, the Rajah of Pachete, did not appear before the Ameen, on the ground that he had preferred an appeal to the Privy Council against the judgment remanding the case. Their Lordships agree with the High Court in regarding this as an insufficient reason. The report of the Ameen was confirmed, with some reduction of the amount, by the judgment of the Principal Sudder Ameen, who found that gross fraud was practised by the Rajah upon the Plaintiff; he also found that in a document which will be subsequently referred to,—the “sale bund,” as it is sometimes called,—there

was a forgery on the part of the Rajah. The High Court reversed the decision of the Principal Sudder Ameen. They came to the conclusion that there was no forgery in the sale bund, and that there was no sufficient fraud proved on the part of the Plaintiff to entitle her to the relief which she prayed. They also intimated a very serious doubt whether, even assuming that the Plaintiff had been entitled to set aside the contract on the ground of fraud, she was entitled to the remedy which she sought. The High Court also affirmed the right of the Defendant Rajah to obtain the full amount of rent which he claimed. From this judgment the present Appeal is preferred.

It is to be observed that the late Pundit entered into negotiations with respect to this purchase in the year 1859. He signed the sale bund, which contained an enumeration of the mouzahs purchased, together with the rent payable for each, on the 24th January 1860—that is, five months before the actual deed of sale was executed; and the observation arises which has been made by the High Court, that undoubtedly he had time during that interval, if he were so minded, to make any inquiries he pleased for the purpose of satisfying himself on the subject of his purchase. Whether he did make any inquiries or not, there is certainly no direct evidence. There is a letter from him by which it appears that he was disposed to take so much of the property as lies in one of the pergunnahs, namely, Chowrasee, at 50 per cent. above the current rent,—a letter which seems to have been ignored by the Principal Sudder Ameen. It further appears that on one or two occasions he did make representations to the Rajah with respect to a difficulty which there was in obtaining the rent from some of the mouzahs, and that the Rajah paid attention to his remonstrances.

The value of this portion of the evidence is but slight; but, as far as it goes, it indicates that he was awake to his own interests. The bynamah was executed on the 2nd June 1860, and contains a schedule corresponding, with a slight variation, to the list in the sale bund of the rents which he is to pay to the Rajah. Gobind Pershand Pundit lived for 18 months after the completion of the sale. On account of some riot or affray he was imprisoned in December 1860; he remained in prison for 12 months and died in December 1861. It appears that throughout the whole of that time he paid the stipulated rent according to the terms of the deed, making no complaint of any misrepresentation which had been practised upon him, and their Lordships cannot help thinking this a very material consideration. In the course of 18 months he and his agents would have time to ascertain what rents he was able to realize and what the general state of the property was; and there seems a strong presumption that if he had any reason to suppose that he had been defrauded he would have made some complaint in his lifetime. It is only after his death that his widow for the first time sets up the case of her husband having been imposed upon. That case is supported by the evidence of two witnesses. Neither of them is the Dewan or the Collector of the Pundit, although it appears that the Pundit had a Dewan. But the first of them states that he became Collector for the widow after the death of the Pundit. The effect of the evidence of those two witnesses, servants of the Plaintiff, is in general terms that the Pundit relied upon the representations of the Rajah, that he was shown the Rajah's rent roll, and that he agreed to give the sums which are specified in the deed of sale on the strength of that rent roll. On the other hand a number of witnesses were

called on the part of the Rajah who swore that the Pundit was informed that the jummah entered in the rent roll was not in all cases that which was received, but in several cases a good deal more. It is stated that he, being a speculative man, and the owner of coal mines, silk and indigo factories, and having extensive operations, took this land, a large portion of which would appear to be waste, with the view of cultivating it or using it in various ways ancillary to the trades which he was carrying on. There is also evidence that there had been offers from other persons of an additional rent amounting to 50 per cent. upon so much of the property as lies in Pergunnah Chowrasse, one of the three Pergunnahs in which the property was situated.

If these witnesses were to be believed, undoubtedly there would be no case of imposture which would entitle either the Pundit or his representatives to set aside the sale. With respect to the alleged forgery their Lordships agree with the High Court that it is by no means established. Under these circumstances, having regard to the probabilities of the case, to the fact that the action was not brought until the person who alone was able to throw much light upon it, as far as the Plaintiff's case was concerned, was dead, and considering the character of the evidence, their Lordships have come to the conclusion, that although there may be some suspicion of misrepresentations having been made to the Pundit, no sufficient case of fraud has been made out to induce them to reverse the decision of the High Court.

They think it right further to observe that they must not be understood as intimating any opinion that even if the Plaintiff would have been entitled to set aside the contract on the ground of fraud she would have been entitled to such relief as she seeks in the present suit.

On these grounds their Lordships will think it their duty humbly to advise Her Majesty to affirm the judgment of the High Court, and to dismiss this Appeal. Inasmuch as the Rajah has not thought fit to appear at the bar, the Appeal will be dismissed without costs, although some costs may perhaps have been incurred.

