Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Moulvie Sayyud Uzhur Ali, Appellant, and Mussumat Bebee Ultaf Fatima and others, Respondents, from the High Court of Judicature at Fort William in Bengal, delivered 30th November, 1869.

Present:—

Lord Chelmsford.
Sir James W. Colvile.
Sir Joseph Napier.

Sir Lawrence Peel.

IN coming to the conclusion to which they have come in this case, their Lordships feel that they are not departing from the wholesome rule—that, unless they are clearly satisfied that the finding of two concurrent Courts in India upon a question of fact was wrong, it will not be disturbed here. For if the Judgments in the Respondents' favour are carefully examined, it will appear, either that there has been no finding at all of the facts which it was necessary to find, or that those facts have been found in favour of the Appellant. Their Lordships may dismiss the Judgment of the High Court with the respect due to that tribunal, by saying that the learned Judges who then sat appear to have conceived, rightly or wrongly, that the question in dispute between the parties was one of fact, and that they, under the rules which regulate the hearing of Special Appeals, had no jurisdiction to disturb the finding of the Court below.

Then, with respect to the first Judgment—the Judgment of the Court of First Instance—it appears to their Lordships that the Judge never dealt with the real question at issue between the parties, namely, the question whether this property was held benamee by the son and wife of the Appellant, or whether it was held by those persons beneficially and for their own interest, and in their respective shares.

There were two issues before the Court, one of which seems to be not very accurately framed. It is in terms whether the Ikranamah was genuine or not, which apparently is meant to raise the question whether it was a forgery or not.

The real question between the parties and that which appears to have been decided by the Judge was, however, whether the parties who executed, or purported to have executed that document were, at the time when they so executed it, infants or of full age. The Principal Sudder Ameen has found that fact against the Appellant; and the learned Counsel at the bar have not called upon us to interfere with that finding. But what was the inference which the Principal Sudder Ameen drew from the fact so found? It was that this document, which was a mere declaration of trust, and a document intended only to facilitate the mutation of names, *i.e.* the transfer of the property, into the name of the Appellant, being executed in a manner which was not binding on the parties who purported to have executed it, was a fact fatal to the Appellant's title; and that from the fact so found it necessarily followed that the whole of the Respondents' case was established against the Appellant, and that the property was really held by those who were the ostensible owners of it, in their own right, and not benamee for the Appellant. That sweeping inference will not stand a moment's examination..

The case then goes by Appeal to the Zillah Judge, who, so far as he finds any facts, appears to have found the material fact in favour of the Appellant; for he begins his Judgment by stating that the proceedings before the Court proved that the Appellant, during his son's lifetime, had purchased property in his name, and always acted as if the son were the real proprietor of the estate. He goes on to state the Appellant's case: —"It is urged by Azur Ali that all property "purchased by him was purchased in his son's name, "but with his own funds, which is probably the "case." And therefore he has either done what the Principal Sudder Ameen did, namely, omitted to come to any finding at all on the material issue in the case, or he has found that issue in favour of the Plaintiff.

That being the effect of the Judgments, it appears to their Lordships that there has been really no decision against the Appellant in the Courts below, which is capable of being supported on the grounds upon which it professes to rest. The result is, that it lies upon their Lordships to decide the case upon the evidence in the record, putting those decisions entirely out of consideration.

The case is simply this. The Respondents bring their suit in the nature of an ejectment suit, to recover, we will take it, that share of the property which would have belonged to their father, supposing that the purchases originally taken in the joint names of their father and the wife of the Appellant, had been taken for them beneficially. The Defendant alleges that of that property, of which he seems to be now the ostensible owner, he was all along the beneficial owner; that it was purchased by him from his own funds, benamee, in the names of his wife and son, and that every act of ostensible ownership which was done was consistent with that state of the title. It is not a novel thing in India that that state of things should exist. It has been repeatedly brought before this Committee; and the law relating to it was reviewed in the case of *Gosain* v. *Gosain*, 6 Moore's I.A. Of course we cannot apply to the decision of this case, which is one between Mahometans, any of the reasons which in the Judgment delivered at this Board in that case, are drawn exclusively from Hindoo law. It is, however, perfectly clear that in so far as the practice of holding lands and buying lands in the name of another exists, that practice exists in India as much among the Mahometans as among the Hindoos, and the judgment in *Gosain* v. *Gosain* and the cases therein referred to are, at all events, authority for the propositions that the criterion of these cases in India is to consider from what source the purchase-money comes; that the presumption is that purchase made with the money of A in the name of B is for the benefit of A; and that, from the purchase by a father, whether Mahometan or Hindoo father, in the name of his son, you are not at liberty to draw the presumption which the English law would draw, of an advancement in favour of that son. Again, the mere fact that this property was pur-

chased, not in the sole name of the son, but in the name of the wife as well as of the son, affords a strong argument in favour of the hypothesis that it was a benamee purchase, for there was no such community of interest between the wife and the son as would render it probable that they had been made joint owners of the property; and the reason for putting two names rather than one into a trust applies almost as strongly in India as it would in this country.

Again, when we come to the evidence which has been given in the cause, it appears to their Lordships to be all on one side. As we have said before, the evidence of acts of ostensible ownership proves nothing; but we have proof, so far as there is any proof in the cause, of the source from which the money proceeded, that the money was the father's.

We have, moreover, the admission of the son, which though it directly applies only to one portion of the property, throws a light upon or at least tends to corroborate the direct evidence which has been given as to the nature of the other transaction. So that, without going through that evidence in detail, it is sufficient to say that, in their Lordships' opinion, there was but one conclusion to which, if the case were fairly tried out, the Judges of the two Courts which dealt with the question of fact ought to have come.

On these grounds their Lordships will humbly advise Her Majesty that the decisions of all the three Courts below be reversed, and that the suit of the Plaintiffs be dismissed, with costs. They must also pay the costs of this appeal.