

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Guthrie v. Abool Mozuffer Nooroodin Ahmed from the High Court of Judicature at Fort William, in Bengal; delivered 20th February, 1871.*

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Present :

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE JAMES.

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SIR LAWRENCE PEEL.

THIS appeal is against two decrees which have been made in a suit instituted in December 1862, by one Cazee Nusseeroollah, to recover possession of certain lands with mesne profits, and to set aside a deed of sale purporting to have been executed by him on the 11th of October, 1855, in consideration of 4,000 rupees, to one Mr. Harry Inglis.

The suit was brought against the widow and representative of Mr. Inglis, who died about the beginning of 1861. The Judge of Zillah Sylhet made a decree in favour of the Plaintiff on the 13th of December, 1862, and his decree was affirmed by the High Court of Calcutta on the 30th November, 1863. Both Plaintiff and Defendant have since died, and they are represented—the former by the Respondents, the latter by the Appellants on the record.

The issues settled in the cause are thus stated at page 171 of the Appendix :—

1. Did Plaintiff voluntarily and on receipt of the sum set forth in the Kaballah, referred to in the plaint, execute to Mr. Inglis the deed in question, or was the same forcibly taken from him by the latter?

2. In the event of the Kaballah being proved to be *bond fide* executed for value received, in that case is Defendant in possession of only the talooks therein specified, or has she in addition taken possession of other Seegga lands in addition to that appertaining to the talooks?

It appears, therefore, that besides the principal question as to the validity of the conveyance impeached, there was a subsidiary question as to the extent and description of the lands held by the Defendant under colour of it.

It will be convenient in the first instance shortly to consider what, in September 1855, was the position of the parties to the transaction, and their relation to each other.

The Cazee was a native landholder, and also a Mahometan holding an office in the Court of the Judge of Sylhet. He had acquired this property in 1844. Mr. Inglis was a European, resident at Cherra-Poonjee, and engaged in various mercantile speculations, some of which, it may be presumed, rendered the possession of this particular land desirable to him. He had been in possession of it under a Peishgee lease granted to him by the Cazee, which in terms expired in August 1855; but he contended that, by virtue of an instrument subsequently executed by the Cazee for securing a further advance of 200 rupees, he was entitled to retain possession until the whole of what was due to him had been paid off. The Cazee, on the other hand, treating the interest of Mr. Inglis as determined, had on the 16th of August, 1855, granted a lease of the lands for four years to one Mr. Sweetland, as agent for Moran and Co., a European firm, which seems to have been rivals in trade of Mr. Inglis. The result was probably a state of things not infrequent in India—viz., that in which two European speculators are striving in competition with each other to obtain land from a native proprietor, and the native is playing fast and loose with both of them. On the 10th of Assin, 1262, B.S., corresponding with the 24th September, 1855, Mr. Inglis's agent presented a petition in the Magistrates' Court, stating his master's title to the land and the lease to Sweetland, and praying for the intervention of the Magistrate on the ground of an apprehended affray. And, on the preceding day, the Cazee had filed a petition in the

Judge's Court, stating the loss of his boat containing his official and private seals, his register book, and other property; and insinuating that they had been abstracted and concealed by the contrivance and machinations of the Amlah of Inglis, resident at a place called Chattuck. This petition did not conclude with any prayer for relief, but ends with this statement:—"I, by way of precaution, submit this petition reporting the matter as stated, and am engaged in search of the property. I will submit a detailed account of whatever may come to light hereafter." So stood things immediately before the execution of the deed of sale. In speaking of what next occurred it will be convenient, when a date is mentioned, to use the Hindoo month Assin, which covers the whole of the transactions.

The deed of sale was executed on the 26th of Assin at Chattuck, in the house of one Brijomohun, the dewan or native manager of Mr. Inglis at that place.

On the following day, the 27th of Assin, the Cazez filed a petition in the Magistrates' Court, which contained the following statement of the circumstances under which, as he alleged, the deed had been extorted from him.

On the 3rd of Assin he left Sylhet in a boat, taking with him his official and private seals, his registry book, two gold mohurs, &c. On the way he received information of the loss of an elephant from his zemindaree at Pharrar Poonjee, and, in order to seek for and trace out the elephant, he went to that place, which he reached on the 6th of Assin. He met there one Dhunceram Doss, an agent of Mr. Inglis, who, after welcoming him with news of the recovery of the elephant, took him to his lodgings and gave him betel and tobacco. On his return to the Ghaut he found his boat and property gone. On this Dhunceram took him back to his lodging, and promised to find the boat, but returned in the evening with 40 or 50 armed khasheas, who ultimately were reinforced by 400 or 500 clubmen. His companions were arrested, imprisoned, beaten, and oppressed. He himself was told that Mr. Inglis was very angry with him for having granted the lease to Mr. Sweetland, and that there was no chance of his saving his life unless he would sell the property to Mr. Inglis. On the next day Dhunceram

Doss again visited him, and told him that, unless he agreed to sell the property, he would not get back his boat and property, nor would he be able to save his honour. Under this pressure he promised that after his return home he would "in some way or another get back the lease to Sweetland and sell to Mr. Harry." He then returned home in another boat, and presented his petition of the 9th Assin in the Judge's Court. Some days afterwards he again left Sylhet in the company of Biddyanund Rai, the Mookhtear of Inglis, went to Chattuck, where he fell into the hands of Dhuneeram Doss and Brojomohun Dewanjee and others, who told him that unless he would sell the mehal to Mr. Harry and receive back his property he would not be able to recover the latter or return home without risking his life and honour. They kept him under restraint for four or five days, and, finally, on the 26th of Assin, compelled him to put his signature to the deed of sale, on which they had already put the impression of his private seal. They then returned his property, with some slight exceptions, and released him from confinement. After detailing all these outrages, the petition prayed the Magistrate to cause a local investigation to be held; to have the houses of the parties implicated searched for the property said to be missing; to call for and consider the forged deed of sale which they had thus forcibly got signed, and to issue an order suspending its registration. The Magistrate, on the 19th of October, 1855, made an order for a local investigation by the Darogahs therein named.

In the other proceedings which followed on the execution of the deed there seems to have been some delay, which is probably to be accounted for by the fact that at that season all the offices were closed for the Doorga Pooja holidays.

On the 14th of November, 1855, the deed was registered on the appearance of Biddyanund Rai, describing himself as the Mookhtear of the party executing, and on the usual evidence of execution. By a petition presented on the following day the Cazee protested against the registration.

On the 18th December, 1855, the Magistrate, pronouncing it to be one of the grossest cases that had ever come before him, dismissed the Cazee's complaint, and by another and substantive proceeding

fined him 200 rupees for having brought a false charge. The first of these orders was affirmed; the latter was reversed, on appeal, by the Zillah Judge on the 23rd January, 1856.

That the Cazee should, after this, have delayed to bring the present suit for nearly six years, is a circumstance which, if unaccounted for, would raise a strong inference against the truth of his case. But this delay is in some measure explained by the intermediate litigation which took place touching the lease to Mr. Sweetland, and which lasted until May 1861. In the course of that litigation to which the Cazee, seeking to get the benefit of an alleged Ekrah, as well as Inglis and the persons claiming under Sweetland were parties, the validity of the deed of sale of the 11th October, 1855, came incidentally in question, and was affirmed by the Decree of the Principal Sudder Ameen of the 14th of May, 1861.

Their Lordships now proceed to consider the case made by the Cazee in the present suit, and the evidence by which it is supported. He has discarded the whole story of the violence to which, as he alleged before the Magistrate, he was subjected on the 6th and 7th of Assin. It was, indeed, incredible that one on whom such outrages had been perpetrated should return a few days afterwards to perform the promise which had been extorted from him, and place himself again in the power of those who had maltreated him. Moreover, the fact that personal violence was offered to him on that occasion was inconsistent with the statements in his petition of the 9th of Assin. He does not, however, recommend himself to credit by throwing over the more improbable portions of a story which had been judicially declared to be false, in order to make the rest more plausible. His case in this suit is that the adherents of Inglis led astray the elephant; that having thereby brought him to Pharrar Poonjee, they (about the 6th of Assin) concealed his boat and the property therein; that afterwards, and in order to get his chattels returned, he was induced to go to Chattuck, where, on the 20th of Assin, the creatures of Inglis shut him up, and fraudulently having got a deed of sale drawn up in respect of the talooks, desired him to sign it; that although he had refused to do so, yet being well aware that

there was no chance of saving his life and reputation unless he attached his signature thereto, he signed and left it, and, proceeding to the Criminal Court, lodged a complaint which had been dismissed. The gist of his case, therefore, is still duress not only of goods but of person,—personal restraint, and danger to his life and reputation. And, accordingly, the latter part of the first of the settled issues was as above stated, “Was the deed forcibly taken from him by Mr. Inglis.”

The decrees under appeal must be taken to find this issue in favour of the Plaintiff; and either to rule that in consequence of the violence done to him he was entitled to treat the deed as a nullity and to recover the lands without returning the consideration money, or to negative the fact that the alleged consideration of 4,000 rupees was paid to him. They do not, in terms, find whether he did or did not receive that sum.

That the money was in fact paid by Inglis's people, and received by the Cazeo, their Lordships on the evidence have no doubt. The payment is sworn to by the Defendants' witnesses, and they are confirmed by at least three of the Plaintiff's witnesses, viz., Gazeo Buksh, Gholam Hossein, and Kumuruddee, who all admit that the money reached the Cazeo's boat. In his earlier deposition before the Magistrate, Gholam Hossein admits this fact even more explicitly, and also his own participation in counting the money. Nor does the Cazeo anywhere expressly deny that he received the money. From the Magistrate's order it appears that on the investigation of his complaint he did not dispute, if indeed he did not expressly admit, the payment of the 4,000 rupees.

Again, their Lordships are of opinion not only that the evidence in the cause falls very far short of proof that the Cazeo was subjected to personal violence of the nature and degree stated in the Plaintiff, but that it is insufficient to warrant the general conclusion that the deed was forcibly taken from him. It appears from the testimony of the more credible witnesses produced by him, viz., Gholam Hossein and Kumuruddee, that so far from being “shut up,” he lived two days or more during which the negotiation was going on on board his boat which was lying off the Ghaut at Chattuck;

that he passed freely from his boat to and from the house of Brijomohun the dewan ; and that he was in communication with a Jemadar of police, who would doubtless have protected him had his liberty been threatened. These witnesses further admit that on on the first day of the negotiation and before there was any show of personal violence, he agreed to grant to Mr. Inglis a permanent lease of the land, though he refused to grant a putnee. The earlier deposition of Gholam Mahomed which, as made *recente facto*, is far more trustworthy than the testimony given by him in this suit, contains an admission that after two days' negotiations and before going to the house of Brijomohun for the last time on the 26th of Assin, the Cazee had agreed "to dispose of the mehal for the sum of 4,000 rupees." It further admits that he signed the deed and handed it to Kumuruddee to be sealed. The only pressure to which this deposition, if taken to be true throughout, shows that the Cazee yielded was the fear that unless he signed he would not get back his missing property. The statement that though he had told the witness that he would not have been able to save his reputation unless he affixed his signature is indeed thrown in at the end of the deposition. But no fact which renders that statement probable is proved. Against this testimony, the evidence of the witnesses from the Bazaar is worthless. But even their testimony does not amount to proof of the allegations in the Plaint. Their Lordships are therefore of opinion that the Plaintiff in the suit altogether failed to establish the case alleged ; and that the evidence in the cause was insufficient to warrant the decrees under appeal.

Their Lordships need hardly remark that, in coming to this conclusion, they have not been insensible to the difficulty which they always feel in disturbing the concurrent judgments of two Indian Courts upon an issue of fact. They observe however that they have not here to deal with a consistent case deposed to by the witnesses for the Plaintiff, and contradicted by the witnesses for the Defendant, a case of which the determination depends on the credit to be given to the witnesses on one side or the other. In this case their Lordships' conclusion is very much founded on the inconsistencies and

imperfections of the Plaintiffs proofs. Moreover the finding of the Courts below is inconsistent with the result of the investigation of the magistrate held immediately after the transaction, and with the finding of the Principal Sudder Ameen already adverted to in favour of the validity of the deed. The judgment of the Zillah judge contains several inferences which do not appear to their Lordships to have been warranted by the facts before him, and it treats the order of the Magistrate dismissing the complaint of the Cazee as reversed, whereas it was confirmed, on Appeal. The judgment of the High Court is a mere statement that the judges of that Court saw no reason to differ from the finding of the Zillah judge.

Their Lordships however regret to say that they are by no means prepared to affirm upon the evidence before them that the conduct of Inglis and his agents throughout these transactions was fair, honest, and straightforward. The Defendant allowed her defence to be conducted so as to leave her case open to grave suspicions. She has failed to explain what the negotiation really was which induced the Cazee, who a few days before was in a state of hostility, to make the sale. Brijomohun, Dhunecram, and Biddyanund Mookhtear were all subject to the gravest imputations, yet not one of them was called as a witness to deny the charges against him. They are not shown to have been dead when the cause was tried; it is pretty clear that Brijomohun at least was then alive.

They had to meet not merely the charge of violence, but the imputation of having contrived, by means of the abstraction of the Cazee's goods, to trick him into coming to Chattuck, where he would be under their influence, and of having made the detention of his goods the means of pressure upon him. From the latter imputation they have certainly not relieved themselves. Nor has Biddyanund shown by what authority he represented himself to be the Mookhtear of the Cazee when he procured the registration of the deed. The non-delivery of the title-deeds upon which stress was laid in the Zillah Court, seems to their Lordships to be a circumstance of no moment, since it is consistent with either view of the transaction; for those documents are not



likely to have been with the Cazeer at Chattuck ; and his repudiation of the deed followed immediately on its execution. Nor are their Lordships disposed to think that the consideration for the purchase was at the date of the transaction inadequate. The lands, whatever be now their value, were then recently settled ; and the Peishgee leases afford some criterion of their then annual value.

Let it, however, be assumed that Inglis' Amlah entered into the alleged plot to bring the Cazeer to Chattuck ; that they caused his goods to be abstracted and made the execution of the deed of sale the condition of their restoration ; and that, on his side, he agreed to sell, and executed the conveyance in order to get back his goods but with a mental reservation that he would take the earliest opportunity of impeaching the transaction. The testimony of his most trustworthy witness scarcely carries the case beyond this. What, on such a case, would be his rights ? The contract was complete, and he could only be relieved from it in a suit properly framed for that purpose upon proof of facts entitling him to that relief, and upon the terms of accounting for the 4,000 rupees, with interest. Whatever be the law applied to such a transaction, whether it be the law of England which, in this case, was the law of the Defendant, or the Mahometan law, which was the law of the Plaintiff, or the general rule of equity and good conscience, which was the law of the Forum, these consequences would equally follow. The Plaintiff could not insist that he was subjected to such duress as destroyed his free agency and entitled him to treat his deed as a mere nullity. He could not both avoid the contract and retain the money. For the law of England it is sufficient to cite *Skeate v. Beale*, 11 Ad., and *Ellis*, p. 983, or *Sheppard's "Touchstone"* p. 61. The Mahometan law on the point may be found in the 3rd vol. of the *Hedaya*, pp. 454 to 458. The Cazeer, however, did not take this course. He thought to gain an advantage over his opponents by making the transaction the groundwork of false charges which would bring them within the scope of the criminal law. Whether he might have succeeded in establishing a case for such equitable relief as is above suggested, their Lordships are not in a position

to say, since no such case has been alleged or proved before them. On this appeal they can only say that he has failed to prove the case made and that his suit ought to have been dismissed. To such a case the rule laid down in *Hickson v. Lombard*, L. R., 1 House of Lords, p. 324, clearly applies.

Their Lordships, therefore, will humbly advise Her Majesty that this Appeal should be allowed, that the Decrees under Appeal be reversed, and that, in lieu thereof, a Decree be made dismissing the suit with costs in both the Courts below. Their Lordships would, however, further recommend that this dismissal be without prejudice to any question as to the lands alleged not to have been comprised in the purchase-deed, or to the title of any person other than the Cazez, or those claiming as his representatives. They deem this reservation to be necessary, inasmuch as the evidence as to any lands being held by Mrs. Inglis in excess of those conveyed by the deed is altogether unsatisfactory; and a claim appears to have been advanced by certain members of the Cazez's family under a title alleged to be prior to that conveyed by the deed which was not tried, and could not have been tried between them and the Defendant.