Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baboo Gungapershad v. *Mowjee Lall, from the High Court of Judicature at Fort William in Bengal; delivered July 5th*, 1871.

Present:—

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice James.
Lord Justice Mellish.

Sir Lawrence Peel.

THIS is an action on a Bond which was given accompanied by a mortgage, and it also seeks to set aside a subsequent sale by the Defendant, who granted the bond of the property mortgaged to his wife; and the defence was that the bond was a forgery, and was never executed by the Defendant. The Principal Sudder Ameen, the first Judge who heard it, and who also heard the witnesses, came to the conclusion that the bond was executed. The High Court came to a contrary conclusion; and their Lordships have to determine on which side the evidence really preponderated, and with which of the two Judgments they agree.

Now the signature to the bond was in the first instance proved by the Plaintiff, by two of the attesting witnesses, and by the mooktear who wrote the bond and framed it. The Defendant denied that it was his signature, but he did not call any evidence at all to prove that the bond was not in his handwriting, neither did he produce any of his undoubted signatures, in order that the Court might have the opportunity of comparing the disputed signature on the bond with his admitted signatures. Therefore, as far as depends on the direct evidence whether the bond was genuine or not, the

evidence on the part of the Plaintiff in support of the genuineness of the bond appears very greatly to preponderate, because there is the evidence of the attesting witnesses, and of the person who drew it; and there is nothing against it but the evidence of the Defendant himself.

But then the circumstances under which the bond was alleged to be executed have to be considered, for the purpose of seeing whether it is probable that such a bond should be executed or not. It appears that there were two sons of the Defendant who carried on business; one of them appears to have been not more than fifteen years of age at the time of the trial of the suit, and therefore he must have been very considerably younger at the time when the bond was executed; and as respects the other son, it appears that he admits that he had no money of his own at all, and that all the money he had he procured from his father. There is some further evidence given as to what had happened in other suits, which may tend to prove that the Defendant was a partner in the house of his sons, or rather, in fact, that he was carrying on business in his son's name. The High Court appear to have believed that; at least they say that they do not come to any contrary conclusion on that part of the case. Then it appears that the sons, or the house of business, were unquestionably in some difficulties at the time when this bond was given; and it also appears that one of the brothers of the Plaintiff had married a daughter of one of the Defendants. Then the bond is given for two separate debts; one a debt of Rs. 25,000, due to the first Plaintiff, and another, a debt of Rs. 5,000, due to the second Plaintiff. The first strong corroboration on the part of the Plaintiff's case was the entries in the books of the Defendant's two sons, and these unquestionably prove beyond all question that these two debts of Rs. 25,000 and Rs. 5,000 were due, and therefore there is no doubt that there was an actual debt of Rs. 30,000. They add up those two sums which are entered in the cash-book—"amount due "to you Rs. 25,000, besides which there is due to "Mussodun Lall Rs. 5,000, in all Rs. 30,000;" and then it mentions the date, which is the same date as the date of the bond; then it states the

interest, and then it states Rs. 100 for Gungapershaud's paper. The sums of principal are added together, and the two sums of interest and the sum for the stamp are also added together. That is very strongly relied upon, and their Lordships think properly relied upon, by the Principal Sudder Ameen, as showing that some security or another was given for the entire debt. Then one of the Defendants, the elder son, who carried on this business, was called to explain this. No doubt he tries to give an explanation that a chitta was given for the Rs. 25,000, and a separate one for the Rs. 5,000, and that the Rs. 100 stamp was the stamp which was got for the Rs. 25,000. That, their Lordships think, is not altogether a satisfactory explanation. It was not brought forward by him in the first instance. It came out on cross-examination, and appears to be nothing more than the natural sort of explanation that a man might be driven to who saw what strong evidence this account gave against him.

Then, there is a further confirmation by the evidence at page 10 of one of the Defendant's witnesses, who appears to have been present at the time when the deed was executed by which the Defendant professed to sell the property mortgaged to his wife; and there, on cross-examination, he certainly appears to say, "Having written the deed of sale, I "made it over to Mowjee Lall. Mowjee Lall took "it away with him to his house, Mumtauz Ally, "in that majiles (assembly), and in the presence of "Mowjee Lall spoke about the Tamoosook to Gun-"gapershaud and the pledge, on which Mowjee "Lall said, 'he has to do with his own money, "'what business is it of yours?'" The great importance of that evidence rests on this, that it appears to prove by the evidence of a witness called on the part of the Defendant, that the bond was in existence prior to the time when the deed was executed by which the Defendant sold his property to his wife; and if that were the case, then that gives an answer to the theory of the High Court, who are of opinion that this bond was forged for the express purpose of defeating that deed, in order that they might apparently have a mortgage which would take precedence of that deed.

Then, the other matter that is relied upon as against the genuineness of the bond, is the stamps. It appears that there are two Rs. 50 stamps on it. They appear to have been purchased only a short time before, in the month of April, and they appear to have been purchased by a person who was one of the witnesses to the bond. That person was not called, and it does not appear whether he was a witness who, in fact, belonged to, and was connected with the Defendants, or whether he was a witness connected with the Plaintiff; and it appears perfectly consistent that the Defendant's sons, or the Defendant, in their ordinary business having purchased two Rs. 50 stamps a short time before, had inserted it on this bond, and that is the reason why it is charged in the accounts.

Then, another matter which is strongly relied upon, is the non-registration of the bond, and it may be admitted that, *valeat quantum*, that is evidence to some extent against the genuineness; that is to say, it seems more probable that it would have been registered, because it appears by an Act which was then in force, unless it was registered it would not be binding, at any rate as against a subsequent mortgage; that it would not bind as against a subsequent sale, appears more doubtful, but at any rate not as against a subsequent mortgage. On the other hand, it is said that it may have been understood at the time that it was not to be registered. The parties were at that time friends, and to a certain extent connections, and registering a bond of this kind might destroy the credit of the house, and bring them at once to insolvency, and therefore it well may be that it was understood at the time it should not be registered. There appears some reason for that, because by the laws of registry, when a deed is registered the Registrar requires that both parties should be present, either by themselves or by somebody appointed by them; and therefore if a person executes a bond of this kind, and says, "I will give you a bond, and I "will put a charge on my property, but I will not "consent to have it registered, it must be an under-"stood thing that it shall not be registered." If that is the understanding, the other side apparently cannot get the deed registered at all; at any rate, they could not do so without a suit, which there might

be great difficulty under such circumstances in maintaining, and therefore it does not appear anything extraordinary that the Defendant should have said, "I gave a bond for this debt of my sons, "which I know I am in all probability liable for "myself. I make it payable in two years. I get "two years' credit, and I will charge my estate "with it, but it must not be registered." There is nothing very extraordinary in an agreement of that sort being entered into. At any rate, their Lordships are of opinion that the mere circumstance of its not being registered is not sufficient by itself to overbalance the evidence which appears to their Lordships to be generally satisfactory in proof of the validity of the bond.

Then assuming the bond to be genuine, it is hardly necessary in this case to determine whether the subsequent sale would, if it were a really valid sale, prevail against the bond, for it appears very clear to their Lordships that the sale was a sham; in fact, that it was no real sale, and there is no satisfactory evidence of a farthing of money being paid under it, and it looks simply like a pretended sale made for the express purpose of defrauding the Defendant's creditors. Their Lordships are of opinion that the Defendant has produced no evidence at all which really is of any value in contradiction to the case of the Plaintiff.

Their Lordships will recommend to Her Majesty that the Judgment of the High Court should be reversed, and the Judgment of the Principal Sudder Ameen should be affirmed, and that the Plaintiff should have the costs before the High Court, and also the costs of this Appeal.