Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimati Bibi Jarao Kumari v. *Rani Lalonmoni and another, from the High Court of Judicature at Fort William in Bengal; delivered 26th July* 1890.

Present :

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

By a mortgage dated the 6th of October 1871 to secure the repayment of Rs. 1,50,000 and interest, Srimati Lalonmoni Dasi conveyed all her share and interest, and Girindra Chunder Roy released, conveyed, and assured all his share and interest. as well as confirmed the share and interest of Lalonmoni Dasi, unto Doorga Churn Law, his heirs and assigns, according to the nature and tenure thereof, of and in an undivided moiety or eight-annas share of and in a large number of mouzahs, of which the names were stated, which taken collectively were said to compose the zemindari called and known as kismut pergunnah Mahomedaminpore, in the zillah or district of Hooghly, save and except the debutter lands therein comprised, namely (this word being followed by a list of the mouzahs), and against the name of each the quantity in bighas and cottahs of land excepted, making a total of 4,992 bighas 3 cottahs. Amongst the mortgaged mouzahs is one called Sharapuli or Seoraphuli, and the quantity of

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debutter land set against its name is 87 bighas. A suit having been brought by the mortgagee against the mortgagor for realization of what was due to him, and a decree obtained, the property was attached and sold by auction, and was purchased, in the name of his son, by Rai Luchmiput Sing, who obtained a sale certificate, and possession was given to him. He afterwards sold the property to Maharaja Jotindra Mohun Tagore, who granted a putni thereof to the Appellant. The suit was brought by the Appellant and the Maharaja, who has no immediate interest, against the mortgagors, to recover possession of parts of the mortgaged property, including Seoraphuli, of which the Defendants were in possession, and the defence was that the properties claimed and mentioned in the schedule to the plaint were not mortgaged, and that certain of them, including Seoraphuli, were rent free debutter properties.

The present appeal relates only to Seoraphuli, and the question in it is whether the debutter land in Seoraphuli exceeded 87 bighas. The mortgage deed conveyed all the land in the mouzahs which was not debutter, and the statement of the extent of the debutter land comprised in the mouzahs was a deliberate admission by the mortgagors, the Defendants, which imposed upon them the burden of proving that it was untrue, or that they were not bound by it. It was admitted on behalf of the Defendants that they had no original deed of endowment, and they relied on a resumption decree dated the 6th June 1845, from which it appeared that 5,618 bighas 16 cottahs debutter lands, situate in Burdwan, resumed by the Deputy Collector by his decree dated the 26th June 1837, were released as debutter to the ancestors of the Defendants, on condition of their appropriating the proceeds thereof to deb-sheba. The decision

in the resumption suit mainly rested on a chhar chitta of William Lushington, Esq., in 1770, and a letter of the Collector of the District of Nuddea in 1791, it appearing from the decision that the quantity of debutter lands of each village was mentioned on the back of the chhar. This had been filed in 1880 in a suit in the Small Cause Court at Serampore, and there was evidence of its having been returned to one of the Defendants' servants in that year. The Plaintiffs gave the Defendants notice to produce various papers, including the chhar. It was not produced, and the Subordinate Judge held that, in its absence, he must adopt the area of the debutter lands as described in the mortgage deed as the real quantity of debutter lands excluded from its operation, and made his decree accordingly. The decree included many properties, and both parties appealed to the High Court. That Court allowed the Defendants' appeal as regarded Seoraphuli, called plot No. 1, and modified the decree of the Lower Court, and the present appeal is against this decision. The judgment of the High Court appears to be founded upon a thakbust map made in a survey in 1869, which the learned Judges said they were of opinion "should be taken as the basis of the decision" of the question of the identity of the debutter lands, unless it was displaced by any better evidence, and they appear (p. 497 of the record) to have held that it lay upon the Plaintiff to rebut the evidence of the map. The statements in this map of lands being debutter appeared on the face of it to have been made as pointed out by agents on behalf of the proprietor of the mouzah and the principal tenants in the presence of the agents of the holders of estates in the neighbouring mouzahs. The amin who made the map had to lay down boundaries, but had no authority to decide what lands were

debutter. The value of the map must depend upon the inquiry which was made by the amin, and the statements of what lands were debutter may have been and probably were given by the Defendants' agents, no one being present to question the accuracy of them. Section 83 of the Evidence Act has not the effect which the High Court gives to it, of making those statements evidence. Their Lordships agree with the Subordinate Judge in the view which he took of the thakbust map, and are of opinion that it was of no weight against the admission in the mortgage deed. Nor do they see that the decision of the Subordinate Judge proceeded upon an erroneous construction of the recital in the deed. The entire mouzah Seoraphuli, except debutter land, was conveyed, and it lay upon the Defendants to prove that the 87 bighas set against Seoraphuli was a mistake, and that there was a greater quantity of debutter land in that mouzah. Whether or not they could have produced the chhar chitta and purposely refrained from doing so need not be inquired into. The evidence was not sufficient to show that their admission ought not to be taken as proof of the Plaintiffs' case. Such an admission as that is entitled to great weight and should be met by satisfactory evidence. Their Lordships will humbly advise Her Majesty to reverse the decree of the High Court so far as it modifies the decree of the Subordinate Judge, and dismisses the Plaintiffs' suit, and orders the Plaintiffs to pay costs, and to order the Defendants to pay the costs of the appeal to the High Court and the costs of the suit in the Court of the Subordinate Judge as ordered by his decree. The Respondents will pay the costs of this appeal.