Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Sueun Sing v. Mussumat Pran Pearee from the High Court of Judicature at Fort William in Bengal, delivered December 8, 1870.

Present:—

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

IN this case their Lordships are of opinion that it is impossible to treat this deed of conditional sale and mortgage as creating any estoppel. It is sought to be enforced by a person out of possession. It is in truth the case of a common mortgage in which the Defendant says there never was the money advanced. It is open to a mortgagor in this country to deny that the money, the receipt of which is formally acknowledged under his hand and seal, was advanced and to cut it down to a nominal sum or nothing. That being so, and the instrument being relied upon by a person out of possession seeking to obtain possession through the medium of a foreclosure suit, it appears to their Lordships that there is nothing whatever to prevent the Defendant from showing the real truth of the transaction. Then with regard to the supposed estoppel by pleading, it is equally clear that a pleading by two Defendanst against the suit of another Plaintiff never can amount to an estoppel as between them. Their Lordships are satisfied that the decision of the High Court was quite right. Their Lordships will therefore advise Her Majesty that it be affirmed and the Appeal dismissed with Costs.