Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rai Ibram Bullee v. *Agha Hossein Khan, from the Court of the Financial Commissioner of Oudh; delivered 7th February,* 1871.

Present:—

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE JAMES.

SIR LAWRENCE PEEL.

THIS is an Appeal from the decision of the Commissioner of the Lucknow Division, reversing the decision of the first Judge, who was a Settlement Judge. The decision of the Commissioner was affirmed on special Appeal by the Financial Commissioner of Oudh.

The allegation of the Plaintiff, the Appellant (who had been mortgagee in possession of a Talook) is that "in 1261, Mirza Agah Hossein, younger bro-"ther of Mirza Agha Ali Khan, Nazim of Sultan-"pur, was appointed Munserim of Durriabad and "Rudowlee estates. During his incumbency, he, "without paying the mortgage money, held posses-"sion of the Talaka and forcibly took away all "documents and caused the execution of new deeds "according to will, and left no documents in Peti-"tioner's possession by which his claim would have "been proved." It is a little enlarged afterwards, but that is the substance of the case, which is a case of absolute possession by force, compelling the execution of the deeds and taking away the title deeds by force. The case suggested at the bar,

and the case which prevailed with the Judge of First Instance was, however, not a case of that complexion, not of a forcible entry and of obtaining the execution of deeds by personal intimidation, but that kind of coercion which was due to the relative position of the parties, inasmuch as the person who obtained the deeds was a Munserim and the other was a large Talookdar, possessed of fifty-three villages, and holding the position of Canoongoe, which is supposed to have brought him under the power and influence of the Munserim. Upon that the Judge of the First Instance was of opinion that there was sufficient to throw the *onus probandi* upon the holder of the property and the holder of the deeds to prove the actual payment of the consideration money, and he held that the oral evidence was not sufficient for that purpose. Upon the Appeal the Commissioner of the Lucknow Division relied among other reasons on an *argumentum ad hominem* with regard to the position of the two persons there, that probably the claimant had obtained estates in the same way as the Defendant was alleged to have obtained part of his, and would hardly like to have his title exposed to the same investigation. Their Lordships do not consider that to be a legitimate ground of decision. But the Commissioner did proceed to consider the case upon the real issue, and he arrived at the conclusion that the Plaintiff had failed to show by sufficient evidence that the redemption was so forcibly effected as to invalidate the transaction. This was brought to the attention of the Financial Commissioner, by way of special Appeal. The substance of the special Appeal was that there had been a mistrial, inasmuch as the Commissioner had not given due weight to the circumstances which had, as contended, shifted the *onus probandi*.

The Financial Commissioner's Judgment is as follows:—"The findings of the lower Courts in this "case, on the same evidence, are extremely conflict- "ing, and much of the Commissioner's Judgment is "founded on hypothetical assumptions, unsupported "by facts. Still the lower Appellate Court has dis- "tinctly found that the evidence is insufficient to "satisfy it as to the only issue before the Court of "First Instance, viz. whether the Ikrarnama was ob- "tained by fraud and under influence, as alleged

"by the Plaintiff, or not. It is argued in special "Appeal that although the Commissioner's Judg- "ment on facts cannot be challenged, yet that "where it can be shown that his inferences are not "warranted by evidence, the Judgment must be "held *ipso facto* defective and open to amendment. "Admitting this principle in the general, the Fi- "nancial Commissioner requires the allegation to "be clearly made out. Now, it is sustained vir- "tually by only three circumstances:—1st, That "the special Respondent is the brother of the "Aghaie Tahib, who was Nazim at the time of the "transaction in question. 2nd, That it was un- "usual on redemption on mortgage to draw up an "Ikrarnama. 3rd, That redemption having taken "place at a time other than when the crops were off "the ground, is rendered *primâ facie* open to doubt "and suspicion. It is contended that the accumu- "lation of these circumstances should have pre- "vented the Commissioner from finding that no "sufficient evidence of fraud had been furnished. "The Financial Commissioner cannot accede to this "inference. Doubtless these circumstances were "elements in the consideration. Full opportunity "was afforded to the special Appellants to bring "them to the notice of the Commissioner. But "they remain essentially part of the facts, and the "decision of the Commissioner relative thereto is "within his competence and not open to rectifica- "tion by this Court. On the facts the Financial "Commissioner gives no doubt that the doubtful "circumstances adduced by the special Appellant "do not warrant the conclusion that the lower "Appellate Court did not, to the best of its judg- "ment, deduce its decision from the facts placed "before it in evidence."

Now, true it is that the first Judge had the opportunity of seeing the witnesses, and the opportunity of being acquainted with the circumstances of the country and of the relative position of the parties; but it is equally true that the two gentlemen who sat in appeal upon it must be considered to be entitled to equal weight, as having knowledge of the circumstances of the country and of the weight to be attached to the position of the parties, and their Lordships see no reason whatever to dissent from the conclusion to which the Financial Com-

missioner arrived,—that the case was a case which had been properly tried by the intermediate Appellate Court, and that such Court was right in holding the *onus probandi* to have rested with the Plaintiff.

Their Lordships are further of opinion that the intermediate Court did arrive at a proper conclusion upon the evidence. In fact, their Lordships are satisfied that there really was no evidence whatever to warrant the finding of the first Judge, except the mere circumstances of suspicion attached to the relation between the parties, which do not seem to their Lordships to warrant the conclusion arrived at. They would observe further, that although great latitude must be allowed to the parties in such investigations before such special tribunals as those from which this appeal comes, still parties ought to be required to prove the substance of the case alleged. In this case the allegation of force could not have been properly sustained by the kind of evidence which alone was adduced, of unfair advantage taken of the relative position of the parties.

Their Lordships do not think it necessary to say anything about the Statute of Limitations, though possibly that would have been a sufficient answer to the case if it had been necessary to go into it. They do not at present see how the twelve years' lapse of time is to be got over.

Under these circumstances, their Lordships will humbly recommend to her Majesty that this Appeal be dismissed with costs.