*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramcoomar Koondoo and another v. McQueen and another, from the High Court of Judicature at Fort William, in Bengal; delivered 4th June* 1872.

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Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THEIR Lordships do not think it necessary to call upon Mr. Leith to reply, having come to the conclusion that the Judgment of the High Court cannot be sustained.

The suit was brought by the Respondents to recover 3½ beegahs of land and some buildings erected upon it situated at Howrah, near Calcutta. The land had been purchased by the deceased father of the Appellants, Ramdhone Koondoo, from a Mohametan woman of the name of Bunnoo Bebee, in June 1843. Their father, and they, since his death, have held undisputed possession from that time until the present suit was brought, a period of 24 years.

The short facts are these: Alexander Macdonald, who lived in Calcutta and cohabited with Bunnoo Bebee as his mistress, had two children by her,—Alexander Macdonald, who is dead; and Maria, one of the Respondents, who married Mr. McQueen, the other Respondent. The father died in 1834. The history of the property appears to be this: The land, which is perpetual leasehold, at a fixed rent, was conveyed in August 1831, by the then proprietor to Bunnoo Bebee by a deed of sale, and the price paid at that time was only Rs. 130. In the following September the deed was registered, and thereupon the

zemindar granted a fresh pottah to Bunnoo Bebee, at the fixed rent of Rs. 35. It does not appear with any certainty that Macdonald, the father, was in possession of the land and of the buildings. At all events, it is not clear upon the evidence that he ever resided upon the property. There are two witnesses who speak to his residence. One of them says that he did not live in the new bungalow, and the other says he did. The evidence is far from satisfactory to establish the fact that he really did reside upon the property. But, it is clear that, after his death, Bunnoo Bebee did go to reside upon it, and she resided there for some time. She afterwards let it, and received the rent from the tenants. Then, in June 1843, she sold the property to Ramdhone Koondoo, and conveyed it to him by a deed of sale. The price she obtained was Rs. 945, and there is nothing to show that that was not the full value of the property. At the time she sold, she made a surrender to the zemindar of the leasehold interest, and a fresh pottah was granted to the purchaser, under which undisputed possession was held for 24 years. During that time the purchaser erected important buildings upon the land, and increased the value to such an extent that the property is valued in the present suit at Rs. 40,000. Bunnoo Bebee died before the commencement of the present suit; there is a contest as to the time of her death, which was material only as regards the question of limitation; and as it is not now necessary to consider that point, it becomes immaterial to determine the precise period of her death, whether in 1856 or 1861. Their Lordships, however, see no reason to dissent from the view which the High Court have taken of that fact in the case.

The claim put forward in this suit is that the purchase, although in the name of Bunnoo

Bebee, was a purchase benamee by Macdonald, that he was the real purchaser, but had used her name in making the purchase. His will is put in evidence, and the Respondents claim under it. Undoubtedly if the purchase was a benamee purchase, they have established a *primâ facie* title to this estate, or at least to a moiety of it.

The answer of the Appellants is, that their father purchased the estate of Bunnoo Bebee without any notice of the benamee title, and that they are entitled to hold it, notwithstanding there may have been, originally, a resulting trust in favour of Macdonald. It certainly would require a strong case, to be established on the part of the Respondents, to defeat a possession for so long a period of property for which full value had been given to the person in the apparent ownership of it. The burden of proof lies very strongly on them in such a case. They have of course to establish, in the first instance, the fact that the purchase was really made by Macdonald, and with Macdonald's money, on his own behalf. Their Lordships cannot help observing that the evidence, even on that cardinal fact, is extremely scanty. It rests almost entirely on the admission made by Bunnoo Bebee in the inventory made by her after Macdonald's death, in which she treats the property as part of the estate of Macdonald. There is some evidence that Macdonald improved the property after the purchase, by building a new bungalow upon it; but that evidence, without the admission, would clearly be insufficient to establish the fact that the purchase, contrary to all the documents, was made by Macdonald and with his money. Their Lordships however do not feel it necessary to express any definite opinion upon the fact of the purchase being benamee, having come to the conclusion that, assuming it was so, the Appellants have established their right to hold the property against the benamee title.

It is scarcely suggested that the purchaser had any notice that the title was other than or different from the apparent one. None of the documents give any notice whatever that the transaction was other than it appeared to be. On the contrary, all the documents are entirely consistent with the purchase having been made by Bunnoo Bebee herself, or by somebody for her benefit. The case, therefore, cannot be put on the ground of actual notice, but it was said,—and this appears to have been the ground upon which the High Court decided in favour of the Respondent,—that there were circumstances which ought to have put the purchaser upon inquiry, and that if he had inquired he might have discovered the real title.

It is not necessary to say whether this case is to be decided upon the principles on which the English Court of Chancery acts in cases of resulting trusts, when questions arise between the equitable owner and the purchaser for value without notice; or whether it is to be decided upon the general rules of equity and good conscience, which bind the courts in India, because the principle of decision must in either case be the same. It is a principle of natural equity, which must be universally applicable, that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it, for value, from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing, either that he had direct notice, or something which amounts to constructive notice, of the real title, or that there existed circumstances which ought to have put him upon an inquiry, that, if prosecuted, would have lead to a discovery of it.

The High Court treat the defence as an attempt to introduce "a very peculiar doctrine of "the English Court of Chancery." Their Lordships cannot think that this is a correct view of the defence which is set up in this case. It is one to which, no doubt, the Court of Chancery in England gives effect, but it only gives effect to it in a peculiar manner, because of the distinction in England between legal and equitable estates, and legal and equitable remedies. If this case had arisen in England, the Respondent would have had no *locus standi* whatever in a court of law, and must have resorted to a court of equity.

After the discussion which has taken place, the case seems to result in this,—whether or not, under the circumstances of this case, the purchaser ought to have inquired. The High Court think that he ought to have made inquiry, because of the status and position of Bunnoo Bebee. The learned counsel who has argued this case for the Respondent does not himself rely upon that circumstance as one which ought to have put the purchaser upon inquiry, and their Lordships cannot see that there is anything in her position as a Mohametan woman living with her children upon this estate, and sometimes letting it, which should have put anyone upon inquiry whether she was the real owner or not. It is admitted that if an inquirer had gone to the office of the zemindar or to the Public Registry he would have found that she was the owner. She was in possession, and her former life led to no presumption that she might not have had money to purchase for herself, or that others might not have purchased by way of gift to her; on the contrary, the circumstance that she had cohabited with one or two persons of some property might have fairly led to the supposition either that she had acquired money, or that gifts had been made to her for her advancement and comfort in life.

But circumstances have been relied upon at the bar which were not adverted to by the High Court. In cases of this kind the circumstances which should prompt inquiry may be infinitely varied; but, without laying down any general rule, it may be said that they must be of such a specific character that the Court can place its finger upon them, and say that upon such facts some particular inquiry ought to have been made. It is not enough to assert generally that inquiries should be made, or that a prudent man would make inquiries; some specific circumstances should be pointed out as the starting point of an inquiry, which might be expected to lead to some result. Mr. Cowie, feeling that the case must really depend upon the existence of such circumstances, has referred to two. First he says, that if any inquiry had been made, it would have been found that Macdonald had been in possession, and had improved the property. It has been already observed that the facts do not show, with anything like distinctness, that Macdonald was in possession during his lifetime. There is evidence that he had built upon the property, but, supposing inquiry had been made, and the fact ascertained, it would not lead to the inference that, contrary to the apparent title, he had purchased the land for himself; for it is quite probable to suppose that he would spend money to improve property which belonged to the woman with whom he was living.

The other circumstance relied on is, that in the deed of sale itself from Bunnoo Bebee to the Appellants' father, she says she made the sale with the consent of her family. If this had been shown to have been an unusual clause, or that it had been only usual to insert it in deeds where the consent of the family was really required and obtained, there might have been some ground for the superstructure of argument which was built upon it but their Lordships have no evidence

and no suggestion that this is not in common form; on the contrary, it appears that in the deed of sale to Bunnoo Bebee herself from her own vendor the same expressions occur. It appears to their Lordships that the clause is one without any specific force or meaning, inserted, like many other general phrases, in Indian deeds, to exclude any possible objection that might be raised against them. It is very like that which so frequently occurs after a full conveyance: "I and my heirs " have no longer any claim." Those words are often unnecessary, but they are of very frequent occurrence. Their Lordships therefore think that the two facts relied on as those which ought to have put the purchaser on inquiry do not support the contention made at the Bar, and that the whole case of the Respondents fails on its substantial merits.

Other questions have been raised in the case with which it is not now necessary to deal. Their Lordships, in the result, are glad to come to a conclusion by which it is quite evident substantial justice will be done. There has not been a suggestion throughout of any collusion between the purchaser and Bunnoo Bebee, or that the purchase was not made entirely *bonâ fide* on his part, and without notice of any title other than that he took from her.

In the result their Lordships will humbly advise Her Majesty to allow this Appeal and to reverse the Judgment of the High Court. Their Lordships will further advise Her Majesty that the suit be dismissed, and that the Appellants should have the costs in India and of this Appeal.