Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mohima Chunder Roy and another v. *Durga Monee and another, from the High Court of Judicature at Fort William in Bengal; delivered January 14th, 1875.*

Present:

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

THIS was a suit brought by the sons of Tillock Chunder Roy by one of his wives, against the daughter of his other wife, to recover possession of certain property which the daughter alleged that her mother, who died before the suit, was entitled to as an estate of inheritance in the nature of jowtook or streedhon, but which as the sons alleged belonged to her only for her life, and after her death reverted to them.

The plaint relies chiefly upon a certain dowl, which is described in these terms:—"Agreeably "to the deed of specification of shares of our "father, Tillock Chunder Roy Chowdhry, on the "18th Bysack 1244, B.S., and the list dated "the 27th Joisto 1244, signed by him, the six "kâtas (plots) written in the under-mentioned "first schedule, and the two kâtas (plots) of "property written in the second schedule, were, "on account of maintenance, held possession "of by our stepmother, Manoka Chowdranee, "under these conditions,—that she should in "her lifetime enjoy the proceeds of the said "property, without the power of making over

" the same by sale or gift, and on her death " the said property would devolve on the sons " of our father." In the first schedule annexed to the plaint they described the six portions of the property which they had mentioned, and, in the second the other two. Durga Monee, the Defendant, in her written statement, says in answer, with respect to properties Nos. 1 to 6 inclusive, they belonged to her mother. No. 1, she says, was her mother's jowtook estate, and Nos. 2 to 6 property acquired by her mother from her streedhon estate. But with respect to Nos. 7 and 8, she says that they were assigned by her father to her mother under a writing of the 21st Joisto 1244, that is, a writing or list made by him on the 2nd of June 1837, shortly before his death. It is very material to distinguish between the titles which she sets up to these two sets of property, respectively, the first being a title of long standing in her mother, who obtained an estate of inheritance by conveyances of an early date, the second resting entirely upon this list of June 1837, a distinction which has not been adverted to by either of the Courts in India.

The Plaintiffs' and Defendants' cases may be thus respectively stated. The Plaintiffs gave no evidence whatever of any title or sein on the part of their father; they put in no deeds, they gave no evidence of receipts of rent or profits, or any evidence customary in actions of this kind, but they put in this dowl, which bears date the 25th April 1837, some two months, or a little more it may be, before the death of their father, the purport of which is this,—that after making a partition of the great bulk of his property among his four sons, he proceeds to say, "Besides this " I have two wives, Sree Manoka Chow- " dhranee,"—that is the mother of the Defendant,—" and Sree Raj Monee Chowdhranee. The " jageers and other property of mine which they

" hold in their possession shall be confirmed to " them during their lives in lieu of maintenance. " They shall have no power of making sale or " hibba of the same. On their deaths the sons " will receive equal shares thereof respectively. " Moreover when the maintenance is insufficient, " the deficit will be made up in a reasonable " manner." They also put in a list of property stated to have been made by their father on the 8th of June 1837, about six weeks after, and very shortly before his death, which begins in this way, " List of the property assigned over as " maintenance. Creditor Manoka Chowdhranee " and debtor Tillock Chunder Roy." Then follows a description of lands which are stated to have been previously given, a description which substantially agrees with the first schedule in the plaint, relating to lands Nos. 1 to 6 inclusive. These are described as previously given. Then this list gives this heading " Given for making up the deficit," under which heading follows a description of property substantially corresponding with Nos. 7 and 8 in the plaint.

The Plaintiffs have shown that in May 1837 a petition stating the execution of the dowl, and its material provisions was filed by or in the name of Tillock Chunder Roy in the Court of the Judge of Zillah Buhagunga, and that the dowl itself was filed shortly after the death of Tillock in a proceeding whereby his sons sought to substitute themselves for him as parties to a suit; they have also put in copies of two vakalutnamahs, executed, the one by the widow, the other by the sons of Tillock Chunder, in February 1839, from which it appears that the widow having set up some right of adoption, a compromise had been made. In her vakalutnamah she referred to a list made up and prepared by her husband, the other vakalutnamah referred to the dowl and also to their list. This in substance was the case of the Plaintiffs.

The Defendant put in several deeds, and gave the evidence of the attesting witnesses to them, for the purpose of showing that her mother had acquired several of the properties mentioned in the schedule to the plaint; that she had acquired the earliest of those properties as long ago as 1815, another in 1820, and others in 1831. With respect to three of these deeds she called the attesting witnesses. With respect to the fourth, she did not call any attesting witness; but it is to be observed that all of them were more than 30 years old. If these deeds were genuine, she showed that the interest in certain talooks was conveyed to her mother absolutely, subject to the payment of a quitrent; and that these conveyances were confirmed by her father Tillock Chunder, who claimed a right as superior landlord to his wife, upon the payment to him of a certain quitrent. She put in documentary evidence showing her mother's title to four out of the six properties mentioned in the schedule, and she gave some parol evidence, no doubt not of a very satisfactory character, that the others had been purchased out of her mother's jowtook.

The Principal Sudder Ameen decided in favour of the Plaintiffs. He held that they had proved their dowl and the accompanying list. He held that the Defendant had not proved her documents; on the contrary, that they were forgeries; and he gave judgment for the Plaintiffs. This judgment was reversed by the High Court. The High Court found that the dowl was a forgery. They do not expressly state, but perhaps it may be collected from what fell from them, that they did not agree with the view of the Principal Sudder Ameen that the documents put in by the Defendants were false, but their Lordships have to regret that they have not the assistance of any distinct finding

on the part of the High Court on this subject. The High Court treated the genuineness of the dowl as the sole question in the case. They reversed the judgment of the Court below, and gave judgment for the Defendants. Their Lordships regret to have to observe that neither of these judgments appear to them satisfactory, and it will be necessary to state their view of the case. Their Lordships are by no means satisfied with the reasons given by the High Court for reversing the judgment of the Principal Sudder Ameen, to the effect that the dowl was genuine. On the whole their Lordships are inclined to think that the dowl and the document accompanying it—the list—were genuine documents. On the other hand, they are not prepared to dissent from what, as before observed, would appear to be the finding of the High Court, that the deeds of the Defendant were genuine. It would appear by the case of the Plaintiffs themselves, that the Defendant's mother had been in possession of these properties for a considerable time; that she had in one of them at least what is called a nim ousut talook, which would probably be created by some document or other; and it may be assumed that some documents relating to her title were in existence. She puts in documents; she proves them by the evidence of attesting witnesses—at all events three of them. The Plaintiffs on the other side put in no title deeds of their own, nor any kubooleats or counterparts such as might be expected to be in their possession of the title deeds under which the Defendant's mother held such of the properties as she admittedly held under her husband; and further it is to be observed that when summoned as witnesses for her by the Defendant, they declined to put themselves into the box. On the whole their Lordships are of opinion that there is no sufficient ground for

coming to the conclusion that these documents on the part of the Defendant are forged.

That being so, it is necessary to consider what aspect the case presents. It appears to their Lordships that, assuming the genuineness of these documents on the part of the Defendant, it is made out she was entitled to an absolute estate, in lots Nos. 1 to 6, both inclusive. They come to that conclusion, partly on the strength of her evidence, partly in the absence of any evidence whatever on the subject on the part of the Plaintiffs. Then, if that were so, her husband could not cut down her interest to a life interest by any dowl which he might make, and accordingly the dowl, assuming it to be genuine, appears to their Lordships to have been inoperative. Whether each or both of the lists are genuine, it does not appear to their Lordships absolutely necessary to decide. They are disposed to find as a fact that the list which came to the possession of the Defendant is that which she now produces. It is possible that another list also may have been made, and that may have been, as the Plaintiff Mohima states, entrusted to his possession. It is not necessary to go with great minuteness into an examination of these two documents, because it appears to their Lordships that, having come to the conclusion which they have already expressed, the materiality of the list produced by the Defendant would appear to be that, with respect to Nos. 7 and 8, those properties were given to her for the purpose of supplementing her maintenance. Adopting her own view, that the reference in this list to those properties which she then held recognises her title to an estate of inheritance in them, it appears to their Lordships that the proper construction of the supplemental grant for the purpose of making her maintenance

sufficient for her purpose is, that that grant should be for life and for life only. They think it highly improbable that that portion of the supplemental grant which consisted of a part of the dwelling-house of the family should have been intended to be granted to her in perpetuity. Their Lordships therefore have come to the conclusion that as far as lots from Nos. 1 to 6 are concerned the Plaintiffs have failed to make out their case, and that the Defendant is entitled to judgment; but that as far as lots 7 and 8 are concerned they have made out their case, and that the Plaintiffs are entitled to judgment.

Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court, except so far as it reverses the decree of the Principal Sudder Ameen; and in lieu thereof to declare that the Plaintiffs have failed to establish, as against the Defendants, any title to the lots 1 to 6 in the plaint mentioned, and to decree that they do recover possession of the said lots 7 and 8 from the Defendant, with the mesne profits received by her since the date of the institution of the suit, but that the said suit, so far as it seeks to recover the said other lots, do stand dismissed; and to direct that the costs in the lower Courts be borne by parties respectively, according to the value of the property decreed and disallowed. Each party will bear their own costs of this Appeal.