Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Coomari Rodeshwar v. *Manroop Koer and another from the High Court of Judicature at Fort William in Bengal; delivered* 18*th July* 1885.

Present:

LORD WATSON.
LORD MONKSWELL.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

THE only substantial question in this appeal relates to the genuineness of an ikrarnama, which is alleged by the Respondents to have been duly executed in their favour, on the 13th December 1852, by the deceased Ramkishen Singh, the husband of the late Rajroop Koer, the original Appellant, whose daughter, Coomari Rodheshwar, has now been substituted as Appellant, by an Order in Council of 24th June 1885.

Radha Mohun Singh, who died on the 24th December 1850, was owner of an estate consisting of shares of numerous villages in Pergunnahs Mahashee, and Bibrah. On his decease, the estate was claimed, on the one hand, by Ramkishen Singh, as his maternal grandson and heir *ab intestato*, and, on the other hand, by Roghunundun Singh, son of Dost Dewan, an elder brother of Radha Mohun, as the guardian of Deonundun Singh, who was his nephew and a grandson of Dost Dewan. The Respondents, Manroop Koer and Janki Koer, are, respectively, the widow and daughter of Hurnundun, son of Radha Mohun, who died many years before his father. It is not matter of dispute that the

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Respondents were and are entitled to maintenance from the estate of Radha Mohun.

Cross applications were made by Ramkishen and Roghunundun, in the year 1851, under Act XIX. of 1841, for a certificate to the estate of Radha Mohun. In support of his claim, Roghunundun produced and founded on a *wasiutnama* or will, which purported to have been executed by Radha Mohun, upon the 7th September 1849, in favour of his ward Deonundun. The Judge appears to have declined to entertain any question as to the validity of the will, which Ramkishen disputed; and, accordingly, he dismissed Ramkishen's application, and directed that the minor Deonundun, under the guardianship of Roghunundun, should continue in possession, until some other order was passed.

On the 4th October 1852, Ramkishen brought a suit before the Zillah Court of Sarun, against Deonundun, and his brother Sheonundun, who had meanwhile succeeded to the guardianship on the death of Roghunundun, for the purpose of setting aside the will, and of establishing his right to succeed, as heir, to the estate of Radha Mohun. The suit was defended, mainly on these grounds,—that there had been no partition of the ancestral estate between Radha Mohun and his brother Dost Dewan, and that the will of Radha Mohun had been duly executed. As regards the first of these defences, it is sufficient, for the purposes of the present case, to state that, whilst the Judge of first instance decided that there had been complete partition, the Judges of the High Court were of opinion that there had been none; and that, on appeal to this Board, their Lordships held that there had been a separation of the families and their estates, but that twenty-six villages or lots, forming part of the property in dispute, were excluded from the partition. As regards the second of these defences, all three

tribunals pronounced against the validity of the will. The Judge of the Zillah Court was of opinion that there was no sufficient proof to establish the validity of the will; but the conclusion to which the High Court came, upon the evidence, was, "*that the wasiutnama* was not "executed by Radha Mohun Singh, and that he "did not give possession of his share of the "estate to Roghunundun Singh as guardian for "the minor Deonundun, but retained it till the "time of his death." In accordance with its usual practice, this Board affirmed the concurrent decisions of the Courts below, upon this part of the case, it being admitted by the Defenders' counsel "that no special grounds existed upon "which they could hope to disturb on appeal "these concurrent judgements upon a question of "fact." The result of the litigation, which began in October 1852, and was terminated by the judgement of this Board on the 25th March 1875, was to affirm the right of Ramkishen to take, as heir, the whole estate of Radha Mohun, with the exception of the twenty-six villages or lots which were held to be joint ancestral estate.

The Respondents, Manroop Koer and Janki Koer, were called by Ramkishen as defenders in the suit thus instituted by him on the 4th October 1852; and it may be convenient to explain now the connection which the Respondents had with these proceedings.

Of the same date with the *wasiutnama* or will of the 7th September 1849, Roghunundun Singh, as the guardian of his nephew, executed an ikrarnama, which is referred to in the will as containing the conditions laid down for the expenses and subsistence of Radha Mohun, as well as for the subsistence of the deorhi. That ikrarnama narrates the execution and import of the will, and its first and leading condition is that fifteen mouzahs, which are described in a

schedule annexed to the document, have been charged with payment of the personal expenses of Radha Mohun and the deorhi, &c., without being encumbered with payment of revenue, and other expenses in any suit relating thereto, during the lifetime of Radha Mohun, of Mussumat Ram Koer, and of the Respondent Manroop Koer. Thereafter, on the 23rd January 1850, Radha Mohun executed, or at least is said to have executed, a deed or letter of gift, by which, after reciting the wasiutnama of 7th September 1849, and the relative ikrarnama of the same date by his son Roghunundun, and also the death of Mussumat Ram Koer, he makes over to the Respondent Manroop Koer, for her maintenance, "the 15 mouzahs mentioned in the ikrarnama, "together with jagirs, mokurruri, &c., which "are in the names of my dependents." There is a letter of the same date, purporting to bear the seal and signature of Radha Mohun, by which he directs possession of his shares of these 15 mouzahs to be given to Manroop Koer, and declares that thenceforth he, and the legatee under his will, shall have no concern with the management of the villages, lands, &c.

Assuming, as we are bound to do, that the wasiutnama was not executed by Radha Mohun, it is impossible to suppose that Roghunundun's ikrarnama, the letter of gift, and relative letter of intimation of 23rd January 1850, are genuine documents. Independently of the wasiutnama, Roghunundun's ikrarnama could have no meaning and no effect; and it is inconceivable that Radha Mohun should have made a gift to the Respondent Manroop Koer in these terms, when he had not parted with his estate, and should have affirmed the existence of a will which he had never executed. All of these documents hang together; they are *partes ejusdem negotii*, and their terms and character

must have been known to all the fabricators, whoever they may have been. That the Respondent Manroop Koer had such knowledge is very plainly apparent from a petition of intervention presented by her against the claim of Deonundun for registration in the year 1859. In that proceeding, she founded upon the will and Roghunundun's ikrarnama, and prayed for confirmation of her possession of her shares of the 15 mouzahs, upon the allegation that they had been in her possession from the time when they were made over to her, by her father-in-law Radha Mohun, under a deed dated the 23rd January 1850.

The alleged ikrarnama, the genuineness of which is the subject of controversy in the present appeal, bears date the 13th December 1852, about two months after Ramkishen Singh had brought his suit for establishing his rights as heir of Radha Mohun. It narrates the institution and object of that suit, and also that Radha Mohun "in his own lifetime had settled and "granted kismut of the talook kolom out of "his own shares and rights in villages and 377 "bighas, 1 biswa of zerat lands mentioned "below, for the expenses of Mussumat Manroop "Koer, the widow, and Babui Janki Koer, minor "daughter, the heir of Rajcoomar Babu Hur-"nundun Singh deceased, *and accordingly it is in* "*the possession of the aforesaid ladies.*" Ramkishen Singh then goes on to declare that, in the event of a favourable issue to his suit, on his obtaining possession of the villages mentioned in his plaint, he "shall confirm and maintain" the possession of the Respondents "over the villages "mentioned below, and the zerat lands in hât "and gunge of Kahturwa, and hât and gunge "of Birugnian, *as before.*" He farther declares that the two Respondents, "*who are in possession* "*of the aforementioned villages and zerat, &c. shall*

" *as before remain in possession*, and pay the pro-
" portionate recorded Government revenue into
" the treasury of the Collector." There is no consideration expressed in the deed, but the Respondents aver, in their plaint, that Ramkishen Singh was, at the time, in straitened circumstances, that the Respondent Manroop Koer " helped him fully with money, influence, and " with oral and documentary evidence;" that the suit was brought and the case conducted with her aid; and that owing to her help thus given to him, as well as in consideration of the Respondents' rights which his ancestor had granted, Ramkishen, during the pendency of the case, executed and delivered to them the ikrarnama in question.

Ramkishen Singh did not live to reap the fruits of his successful litigation, having died upon the 18th October 1875, before the Order of Her Majesty in Council could be carried into execution. It was not until his widow, the late Rajroop Koer, took steps to have her name registered as owner of all the villages to which he was found to have right, by that Order, that the Respondents asserted their right to have possession of the mouzahs now in question, in virtue of the alleged ikrarnama of 13th December 1852. That circumstance does not appear to be in itself material, inasmuch as the ikrarnama, even assuming its validity, did not, by its terms, become legally enforceable against Ramkishen, or his representatives, until they actually obtained possession of the estate decreed to him. Notwithstanding the opposition of the Respondents, Rajroop Koer, in April 1878, eventually succeeded in obtaining registration; and that led to the institution, by the Respondents, of the suit in which this appeal is taken, in which they pray, *inter alia*, to have their right to the mouzahs therein specified established in terms of

the said ikrarnama of 13th December 1852; to have their possession of the property in suit confirmed and allowed to stand; and to have the name of Rajroop Koer expunged, and their own names inserted in the register as owners of the mouzahs.

The alleged ikrarnama by Ramkishen, which is the sole foundation of the claims urged by the Respondents in this suit, appears to their lordships to be, *primâ facie*, a document of very doubtful authenticity. From the narrative already given of the transactions by which it was preceded, during the lifetime of Radha Mohun, it is obvious that a system of fabrication of deeds was being unscrupulously carried out, with the view of depriving Ramkishen Singh of his inheritance, and of vesting the succession which truly belonged to him in Deonundun and the Respondents. Roghunundun's ikrarnama, and Radha Mohun's two letters of the 23rd January 1857, were undoubtedly fabricated in the interest of the Respondents; and it is by no means improbable that those persons, who had already been guilty of such fraudulent practices, for the purpose of giving the Respondents possession of the fifteen mouzahs, should have gone one step farther, in order to secure the possession of the Respondents, in the possible event of these previous frauds being detected, and Ramkishen's right of inheritance vindicated. In point of fact, the ikrarnama attributed to Ramkishen, is, by its tenor, almost as closely linked to the deeds previously fabricated, as each of these deeds is to the others; and it is not easy to reject the inference that the same tissue of fraud runs through them all, and connects the ikrarnama now set up with its predecessors, which were falsely represented to be the deeds of Radha Mohun.

The internal evidence afforded by the ikrarnama of 13th December 1852 does not tend

to dispel the suspicions created by its antecedents and general character. Ramkishen is thereby made to affirm that Radha Mohun had granted certain villages to the Respondents for their maintenance; and it is not pretended that there ever was such a grant, unless it were contained in the letter of gift dated the 23rd January 1850, which is not a genuine letter. It is hardly credible that Ramkishen should have recognised the authenticity of that letter or the validity of the gift thereby made to the Respondents; because the letter, if genuine, was an affirmation, under the hand and seal of Radha Mohun, that he had executed the very wasiutnama, which Ramkishen was then endeavouring to set aside on the ground that it had not been executed by Radha Mohun. It might possibly be suggested that Ramkishen accepted the Respondents' statement that there had been such a gift to them by Radha Mohun; but the Respondents cannot make that suggestion, because any such statement would have been false and fraudulent. It is also a remarkable feature of this ikrarnama that it makes Ramkishen undertake an obligation to "confirm and maintain" the Respondents' possession, not only of the 15 mouzahs included in Radha Mohun's fabricated letter of gift, but of six additional mouzahs, of which Ramkishen is farther made to state that the Respondents were actually in possession at the date of the ikrarnama. That statement is now proved to have been untrue; but an ingenious attempt has been made to show that the obligation undertaken by Ramkishen was, to confirm the Respondents' possession of the 15 mouzahs, and to deliver to them possession of the six new mouzahs. In the opinion of their Lordships it is impossible to put that construction upon the plain and unambiguous language of the deed; and it is not the construction which the Respondents themselves have put upon it, but a

mere afterthought, suggested by the necessities of their case. In the 5th article of their plaint the Respondents aver that—"In accordance with "the ikrarnama above adverted to (*i.e.*, the "ikrarnama of 13th December 1852), Raja Ram-"kishen Singh, husband of the Defendant, "having admitted the proprietary right and "title of the Plaintiffs *to the mouzahs, lands, "gunj, &c. specified in the ikrarnama aforesaid, "which were in the possession of the Plaintiffs since "former times.*" Again, in the 7th article of their plaint they aver that the Appellant, after the death of Ramkishen, "executed the decree of the Privy "Council, and, at the time of carrying out the "process of delivery of possession, in conformity "with the conditions set forth in the ikrarnama "above adverted to, *allowed the possession of the "Plaintiffs to stand in regard to the mouzahs and "lands specified below*, which are included in the "decree of the Privy Council."

The Respondents may, of course, rebut the presumptions arising from these suspicious circumstances by reliable evidence showing that the ikrarnama was, in point of fact, duly executed and delivered to them by Ramkishen Singh. The burden of proving the due execution and delivery of the deed lies upon the parties who, in these circumstances, are endeavouring to set it up; and it now becomes necessary to consider how far the Respondents have succeeded in satisfying the heavy *onus* thus incumbent on them.

The evidence adduced and relied on by the Respondents, in support of the genuineness of the ikrarnama, may be conveniently dealt with under these two heads:—*First*, evidence tending to prove that the deed was executed by Ramkishen, of the date it bears; and that, in consideration of its execution and delivery to them, the Respondents, in terms of a verbal agreement to that effect, gave Ramkishen documents, and

money to the amount of Rs. 5,500, to assist him in the prosecution of his suit; and *Secondly*, evidence tending to prove that Rajroop Koer, after her husband's death, fully recognised the validity of the ikrarnama; and also that, at the time when she executed the decree of the Privy Council, Rajroop Koer expressly confirmed the Respondents' possession of the fifteen mouzahs described in Radha Mohun's letter of gift, and likewise gave them possession of the six additional mouzahs specified in Ramkishen's ikrarnama.

Their Lordships agree with the Judge of the Subordinate Court in thinking that the evidence comprised in the first of these heads is not of a reliable character. There are, no doubt, four witnesses, Sham Lal, Chulhai Roy, Chowdry Jodu, and Sajiwan Lal, who speak to the verbal communications which are alleged to have passed between Ramkishen and the Respondents, at the time when the ikrarnama is said to have been arranged and executed; but their depositions are neither consistent with each other, nor satisfactory, and, moreover, they do not tally with the terms of the ikrarnama. Chulhai Roy also attests his own signature, as a witness, to the ikrarnama, and another witness attests his father's signature; but the evidence of Chulhai Roy upon that point cannot be credited, if his testimony, upon other and equally important matters, be, as their Lordships think it ought to be, rejected. There is also a considerable amount of oral testimony as to the money payments, amounting in all to Rs. 5,500, said to have been made at various times to Ramkishen; and that evidence is supported by letters alleged to have been sent to the Respondent Manroop Koer by Ramkishen, none of which are authenticated by his seal or signature. In a case like the present, where there has been so much fabrication of formal deeds, such writings

as these must be received with extreme caution. Regular account books were kept by the Respondents, but these have not been produced. It is not probable that Ramkishen Singh, who at the time when the greater part of these advances are said to have been made, was the adopted son of a wealthy Maharanee, stood in need of pecuniary assistance. Nor is it probable that money intended for remittance to Calcutta or London, for the purposes of Ramkishen's suit, should have been sent to him *in specie;* but evidence of payment in that shape can be very easily got up, and cannot be so easily checked as when money is remitted by banker's draft or letter. The subordinate Judge before whom the numerous witnesses who testified to these payments were examined, did not believe them; and that is a circumstance to which their Lordships attach considerable weight, especially in a case where the conclusion drawn by the Judge who saw the witnesses under examination is in accordance with all the presumptions arising from facts established beyond dispute.

It has also been argued in connection with this part of the case that the written pleadings filed by the Respondents, as defenders in Ramkishen's suit, afford conclusive evidence that they were acting in concert with the Plaintiff, and aiding his contention that the wasiutnama set up by Deonundun and his guardian was invalid. The learned Judges of the High Court express an opinion that "in both these written statements " the wasiutnama was denounced as an unreal " document." Their Lordships have been unable to find a single passage in these documents which will bear that construction. Manroop Koer did state by her pleader that, "according to the " assertion of the Plaintiff, the wasiutnama was " in reality false;" but the substance of her defence was that the wasiutnama had already

been held to be valid, in the proceedings under Act XIX. of 1841, and that, inasmuch as Deonundun and his guardian had been, "in "conformity with the condition laid down in "the said wasiutnama, as well as in the ikrarnama "dated 7th September 1849, executed by Raja "Roghunundun Singh, in possession, and your "Petitioner's client, too, has been in possession "of some of the villages covered by these "documents. Where then has the Plaintiff any "claim now?" In the written statement filed by Janki Koer, it is not asserted that Radha Mohun did not, in point of fact, execute the wasiutnama, but that Radha Mohun had no power to dispose thereby of certain village shares which, she alleged, had pertained to her father, and belonged to her by right of inheritance.

To come next to the evidence of possession, which is of some importance in this case. There can be no doubt that, if the Respondents were able to show that, before this suit was instituted, they had, with the assent of Rajroop Koer, obtained, and had thereafter continued in possession of the mouzahs in question, under and in virtue of the ikrarnama of 13th December 1852, that would go a long way towards establishing the validity of the deed, in any question between them and the Appellant. The alleged possession of the Respondents may be divided into three periods. The first of these begins with Radha Mohun's letter of gift, dated the 23rd January 1850, and ends with the execution of the decree of the Privy Council, in favour of Ramkishen, by his widow, Rajroop Koer; the second begins with the execution of that decree, and terminates with the institution of the proceedings taken by Rajroop Koer, with the view of obtaining registration of her name as owner of the mouzahs in question; and the third embraces the period between the last-mentioned date and the institution of the present suit by the Respondents.

Having regard to the terms of the Judgements pronounced in Ramkishen's suit, to which the Respondents were parties, it is at least doubtful whether they can be held to have been in possession of the 15 mouzahs specified in the letter of gift of 23rd January 1850, before the death of Radha Mohun, on the 24th December of the same year. But it does not seem to admit of doubt that, from the death of Radha Mohun, until the decree of the Privy Council was executed by Rajroop Koer, the Respondents were in the possession of these mouzahs. Their possession, during the whole of that period, was dependent upon the right of Deonundun, derived from the invalid wasiutnama of 7th September 1849, and can therefore throw no light upon the question arising for decision in this appeal. The state of actual possession during the third period already referred to is also, in the estimation of their Lordships, of little or no value as evidencing the genuineness of Ramkishen's ikrarnama, because, during the whole of that period, there were disputes going on, both as to the validity of that deed, and the possession of the mouzahs to which it relates.

The second of the periods referred to is, accordingly, the only one which is of real importance, as regards possession. A great mass of oral testimony has been adduced by the Respondents, to the effect that, when the decree of the Privy Council was executed, Rajroop Koer caused intimation, at the same time, to be made to all concerned, that the Respondents were to remain in possession of the mouzahs already possessed by them, and were also to have possession of the six new mouzahs specified in Ramkishen's ikrarnama. Their Lordships have come to the conclusion, with the Judge of the Subordinate Court, that the witnesses who speak to these facts are unworthy of credit. They are unable to endorse the views expressed, upon

this part of the case, by the learned Judges of the High Court. They seem to be of opinion that, it not being proved to their satisfaction that Rajroop Koor was in actual possession of these mouzahs, it must necessarily follow, not only that the Respondents were in possession, but that possession had been ceded to them by Rajroop Koer in terms of Ramkishen's ikrarnama. But it must be observed, that the execution of the decree of 1875 had not the effect of transferring actual possession, it was merely an authoritative intimation, to persons interested, that the decree holder had the right to possess for the future. Nothing is more probable than that the Respondents, who had then begun to set up the ikrarnama, upon which they now rely, should have attempted to retain the mouzahs which they then possessed, and to usurp possession of the additional mouzahs which they now claim. But it does not follow that Rajroop Koer assented to their retaining or taking possession. On the contrary, all the real evidence, apart from the depositions of the Respondents' witnesses, points to the conclusion that she did not assent. About a year after the execution of the decree, Rajroop Koer presented four separate petitions for registration, in respect of these very mouzahs, all of which were opposed by the Respondents, on the ground that they were in possession under Ramkishen's ikrarnama. The question of possession was decided against the Respondents, both in the Collector's Court, and in the Civil Court to which they appealed. It is a remarkable fact, and one not easily reconcileable with the depositions of the Respondents' witnesses in this suit, that, as recorded by the Judge in these registration proceedings, Manroop Koer virtually abandoned "her claim respecting present possession," and merely pleaded that she had a right to be in possession. The Judge of the Civil

Court not only records the fact that her allegations of present possession were given up, but states expressly that it was quite clear that Rajroop Koer, when taking out execution of the Privy Council's decree, made no exception of shares in the Respondents' favour, but took out execution of the entire decree. The Respondents have made no attempt to explain the reason why that judicial admission was made in April 1878; and the absence of any such explanation strongly suggests that the evidence of possession which they have adduced in this suit was not, at that time, in existence.

Their Lordships will therefore humbly advise Her Majesty that the Judgement of the High Court, dated the 13th May 1882, ought to be reversed, and the Judgement of the Subordinate Court, dated the 29th April 1880, restored. Seeing that both Courts below have held that the original Appellant was guilty of using fabricated documents in support of her allegations of possession, their Lordships deem it right to mark their sense of the impropriety of such conduct by making no order as to costs.