Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chedambara Chetty v. *Runga Krishna Muthu Vira Puchaiya Naickar, from the High Court of Judicature at Madras; delivered the 8th of May* 1874.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.

SIR LAWRENCE PEEL.

IN this case the Appellant sued the Respondent, who was the Zemindar of Marungapury, to recover the amount alleged to be due upon the bond marked A, and set out at page 10 of the record. The material portion of the bond is this—"With "reference to the dealings which you had heretofore held with Luckmani and others, widows "of my elder brother Tirumalai Poochai Naiker, "the late Zemindar, on account of their maintenance and court costs as per a loan bond for "Rs. 20,000 and an agreement for Rs. 100,000, "the accounts being adjusted up to date, the "sum which was found due by them and which "alone was assigned to be paid by me is Rs. "67,000. As I have undertaken to pay you the "same, I hereby bind myself to pay you the said "sum of 67,000 rupees within the 30th September of the current year, and get back this bond "and the bond and agreement above referred to. "On failure to pay the money within the above "prescribed time, I bind myself to pay you on "demand the said sum of Rs. 67,000, with

" interest at half per cent. per mensem, and " receive back this and the aforesaid bonds." The bond and the agreement referred to are Exhibit B, at page 11, and Exhibit C, at page 12 of the record. Their effect will be afterwards stated.

The Respondent was the younger brother of the late Zemindar or Polligar of Marungapury. He seems to have been treated as heir presumptive by his brother. Immediately upon his brother's death he was recognized by the authorities as the Zemindar; and, being a minor, he and his estate were placed under the guardianship of the Court of Wards. It is stated in the judgments, and, if the record in the former suit which has been recently before the court is looked at, it amply appears, that the widows themselves also recognized in the first instance this boy as the heir. And even without going out of the record, it appears upon what is strictly in evidence in this case, that for two years they acquiesced in his recognition by the Government as heir, and received at the hands of the collector, who was exercising the power of the Court of Wards, certain sums by way of maintenance. In December 1866 a change came over them. The Plaintiff in this suit then came upon the stage, and the agreement which is marked B was executed on the 21st day of that month. It is an agreement of a very singular nature, and the material portions of it are these—" As with reference to the " monies to be borrowed of you by executing " loan bonds in view to meet the expenses " incidental to suing out (our claims) in the " revenue and civil courts, and before the " superior authorities respecting our zemindary, " which is now held by the Court of Wards in " their management on behalf of another, to " whom it is intended to be transferred, and to " meet our maintenance expenses, we have

" agreed of our own free will to repay on " demand the amount so borrowed of you, with " interest at the rates provided for in such " bonds, and in consideration of the aid you " propose to give us in money, and in exertions " towards establishing our title to the said " zemindary, to pay you as allowance and " gratuity, immediately after the zemindary is " granted to us, one lac of rupees out of the " incomes thereof, and a moiety of the surplus " proceeds that may be transferred to us by the " Court of Wards; you shall accordingly prose- " cute the claims, and shall, immediately after " the said zemindary is granted to us, have the " zemindary under the management of your " own agent, disburse the maintenance amounts " due to us as per agreement, the peishcush " (revenue), and the establishment charges, and " pay yourself from the surplus proceeds the " lac of rupees above agreed to be paid to you; " and we shall redeem the zemindary from your " agent's management only after the said amount " has been fully paid to you." After this comes this material passage:—"In the meantime we " shall not transgress the directions of your " agent in the matter either of the said claim " —that is, of the suit to be brought—" or of our " household affairs, &c., or of the management " of the zemindary. If, on the contrary, we fail " so to conduct ourselves, we agree of our free " will to pay you at once, without any objection, " from out of our assets and those of our heirs, " the principal and interest due on the loan bonds, " the allowance of one lac of rupees agreed above " to be paid, and the amount forming a moiety " of the surplus proceeds remaining with the " Court of Wards on that day. We further " agree not to execute any bonds in the matter " of this claim or debts to anybody other than " yourself." It appears then that these ladies

having changed their mind, and determined to claim the estate as the heirs of the late Zemindar, for that purpose put themselves wholly into the power and into the hands of the Plaintiff; that they agreed to pay him on demand the monies to be advanced with interest at the rates to be provided for in the bonds which the agreement contemplated they would give the Plaintiff for the advances when made; that they further agreed that if they succeeded in the suit they would pay him a lac of rupees and a moiety of the surplus collections, mortgaging the zemindary to secure those payments; that they would do nothing in the suit or otherwise without his consent; and that if they violated the agreement they should at once become liable to pay both the principal and interest due on the loan bonds, and also the lac of rupees and the amount of the surplus collections remaining with the Court of Wards on that day.

Under this stringent agreement, the suit No. 30 of 1868 was instituted in their names; but it is impossible to read the agreement and to know anything of the manner in which litigation is conducted in India without seeing that although the suit was carried on in the name of the ladies, the whole management of it was committed to the Plaintiff, and that he was, as was represented in the argument, the real *dominus litis*. It further appears that but one bond was executed by the widows under this agreement, viz., the bond which is dated the 26th of May 1867, and purports to be a bond for securing the repayment of the sum of Rs. 20,000 (the amount of the Plaintiff's advances up to that time), with interest at 12 per centum per annum. The principal, if not the only, question raised in the suit by the widows was the legitimacy of their husband's younger brother. The family being a joint Hindoo family, he, if legitimate, was un-

questionably entitled to the zemindary as the heir preferable to the widows. A further question was, however, raised by the collector who defended the suit as guardian of the minor Zemindar, viz., whether the Polliam was an hereditary estate at all, or one the succession to which, upon the death of the actual Polligar, was determinable by Government. The suit being in that state, the boy, having attained the age of 18, which, is the age fixed by the regulations for the majority of a Zemindar, was put by the Court of Wards into possession of his estate, and made a formal Defendant; and immediately upon, or very shortly after that, the transactions which are in question in this suit took place. We find the dates given in the judgment of the judge, Mr. Davidson, and there is no doubt about them. The Defendant was installed as Zemindar on the 23rd of July; on the 2nd of August 1869 he had notice that he had been made supplemental Defendant to the suit. The suit was fixed for hearing on the 16th; and on the 11th, in anticipation of that hearing, certain commissioners were sent to Marungapury by the Court, in order to examine the widows, who, of course, were purdah women. The widows seem then to have become desirous of settling and compromising their suit, and the terms upon which they were willing to compromise were finally embodied in a razeenamah. Those terms, however, did not include any subsidiary arrangement to be made in respect of the money which was due from them to the Plaintiff; the razeenamah only expressed that they were willing to consent to the dismissal of their suit upon the terms of their having assigned to them certain villages by way of maintenance, and each party paying his own costs.

As to what took place on the 11th and the subsequent days there is a considerable conflict of testimony; but their Lordships, adverting to what

was said by Mr. Davidson, the judge, as to the credit due to the witnesses on either side, and particularly as to the manner in which the Zemindar gave his evidence, and to the fact that the finding of the learned judge has been adopted by the superior court, have no doubt that it is their duty, upon any matter of fact upon which the testimony is conflicting, to adopt the finding of the zillah judge. It must, therefore, be taken as found, that on the 12th, when the first negociation for the compromise took place, there were present on that occasion not only the vakeels and agents of the nominal parties to the suit, but certain persons acting on behalf of, or as agents for, the Appellant; that the latter then contended that the compromise could not be carried into effect without their principal's consent; that a large sum of money was due from the ladies to him; that something was to be paid to him in respect of his interest under the agreement, and that it lay upon the Zemindar to make those payments. It must further be taken to be found that although Lekamani, the principal widow, stated that the sum due to the Plaintiff was small, his agents made use of threats to the Respondent to the effect that unless he would make himself liable for monies to the amount of Rs. 62,000, the consent of the Plaintiff to the compromise would be refused; that the case would go on, and would probably terminate in the loss of his zemindary. Their Lordships cannot doubt that such threats were used; that the note for Rs. 62,000 was given by the Respondent in consequence of them, and that that note was not given, as it has been once or twice represented in the argument, to Lekamani, or anybody on Lekamani's behalf, but was given to Rungaiengar, who was one of the persons acting on behalf of the Plaintiff.

The note having been thus given and obtained

on the 12th, the razeenamah was signed by Lekamani, and the Respondent on the 13th. In the meantime a messenger had been sent from Marungapury to bring the Plaintiff from Shivagunga, where he seems to have resided. It is stated that he was sent for on the 11th, but that he did not arrive until the evening of the 14th. On the 15th there was a further transaction; he asserted that Rs. 62,000 was not a sufficient satisfaction of his claims, and that he must have 67,000 rupees. As to what then took place there is again a considerable conflict of evidence. It is sworn by him and by his witnesses that some examination of his accounts was made; that by the account so rendered it appeared that he had actually advanced to the ladies Rs. 58,000, although a bond had been taken for only Rs. 20,000; that he estimated the compensation to be allowed for the further benefit which, if the suit had been successful, he might have derived under the agreement B., at the sum of Rs. 13,000 odd; that the 67,000 rupees were compounded of those two sums, and that the Respondent voluntarily executed the bond A. for that amount. On the other hand, the case made for the Respondent (which is deposed to both by him and his witnesses) is that there was no rendering of accounts at all; that there was merely a demand for Rs. 67,000 instead of the 62,000 rupees; and that the Plaintiff himself then renewed the threats which had been previously made by his agents.

Some but not all of the witnesses say that he threatened, if his demand was not acceded to, not only to go on with the pending suit, but also to sue on the note of hand for Rs. 62,000. All, however, speak to threats to the effect that he would go on with the suit, that he would carry it through all the courts up to this board, and that the result to the young Zemindar would probably be the loss of his zemindary and the

ruin which had fallen upon other Zemindars; they also swear that the Respondent in vain asked for time to consult the Collector who had so recently been his guardian, and that, under the pressure so put upon him, he was induced to execute the bond for Rs. 67,000.

Their Lordships have already said that when the evidence is conflicting they must adopt the view which was taken of it by the judge, Mr. Davidson. They must, therefore, hold not only that the Respondent acted under the pressure of the threats deposed to, but, upon the material question whether any accounts were rendered, that there was no accounting at all; that the sum for which the bond was given was an arbitrary sum fixed by the Plaintiff as the amount for which he would be content to allow the arrangement between the widows and the Zemindar to be carried out. It may be observed that the bond as drawn out is not altogether consistent with the story told by the Plaintiff himself, since on the face of it the Rs. 67,000 would appear to be the balance found to be due in respect of advances, for maintenance and for costs; whereas upon the statement and admission of the Plaintiff himself, it included the sum of 13,000 and odd rupees as a compensation for that contingent advantage which he was to derive under the agreement B., in the event of the success of the suit.

It may be well to state what afterwards took place before considering the legal effect of these transactions. On the 16th of August the suit came on for hearing; the razeenamah was then presented, but Mr. Norton, who had been counsel for the Collector, as guardian of the infant, and who appeared on that day as counsel for the Zemindar, now adult, before the razeenamah was filed and acted upon, prayed for an adjournment. That was granted, and on the 31st of August the case came on for final

hearing. Mr. Norton then, as Advocate-General, acting for the Collector alone and not for the Zemindar, raised the question which was lately before their Lordships and was then finally decided; viz., that the estate was not hereditary; that the nomination of the infant Zemindar as the next Zemindar was an act of state with which the municipal court had nothing to do; and upon that plea, which must now be taken to be unsustainable, the judge dismissed the Plaintiff's claim, directing her to pay all the costs. Lekamani then appealed against that decision. No doubt she might have acquiesced in the title of the Zemindar, and they might have privately carried out the arrangements, supposing they were to be carried out, upon which they had previously agreed. However, she saw fit to appeal; but by her appeal she sought only that the decree, instead of being the decree that was made, should be a decree framed in consonance with the razeenamah. In this she did not go beyond her rights. The Respondent appeared upon the appeal by his counsel, and treated the razeenamah as a thing altogether gone, and by which he was no longer bound. The High Court seems to have considered that that was so, and that the razeenamah was to be out of the case. They dealt with the ground upon which the suit had been dismissed, and finally decided, in a very elaborate judgment, which has since been confirmed by Her Majesty in Council, that there was nothing in that ground, that the estate must be taken to be an hereditary estate, and that the succession to it was to be determined by the Civil Courts according to the ordinary law of inheritance. They then gave the widow time to consider whether she would press her suit, and have the case remanded in order that the issue as to the legitimacy of the Respondent might be regu-

larly tried. The widow elected to have that issue tried. The case was remanded, and the Respondent was found to be legitimate. The widow afterwards appealed against that decision to Her Majesty in Council, and her appeal upon that point was dismissed. Therefore the question of the legitimacy was fought out between the parties to the bitter end.

Now upon the transactions which took place between the 11th and 16th August, several questions have been raised. The issues settled in this suit were in effect whether there was any consideration for the bond; and whether the bond had been obtained by such undue pressure and threats as were sufficient to vitiate the contract.

And the principal questions which have been argued at the bar are, first, whether there was sufficient consideration for the bond; next, whether, if there were, there had not been a failure of that consideration; and thirdly, whether the plea impeaching the bond on the ground of pressure and threats could be supported.

Upon the first point their Lordships will assume, at all events for the sake of argument, that if the transaction had been between parties dealing with each other at arms' length, and unaffected by any of the circumstances on which the third plea is founded, there would have been a sufficient legal consideration to support the bond.

Assuming, however, that there was a real substantial debt due to the Appellant from the women on an agreement to which no objection could have been taken; that there was a *bonâ fide* arrangement by which the widows were to have their suit dismissed; and that one term of that arrangement was that they should be relieved of the debt due to the Plaintiff,—their Lordships must observe that they agree with the judges of the High Court in holding that the transaction

would hardly amount to what is called a "novation." It was not a transaction by which the widows were altogether released from the debt which they had incurred to the Plaintiff, nor was the Plaintiff's position altered by reason of his having lost his remedy against them. It appears upon the face of the bond, that he was to retain his securities against them until the bond was satisfied; and that the contract on his part was, in fact, rather an agreement to abandon his remedy against them on the payment of the Rs. 67,000 than an actual abandonment at the time of the transaction.

The question which has been raised as to the failure of consideration, if it were necessary to determine it, might present some difficulty. It is quite clear that the Respondent never got the benefit of that for which he stipulated; that circumstances prevented the razeenamah from being acted upon, and that in the events which afterwards took place he was exposed to have his title questioned and carried up to the Court of ultimate appeal, just in the same way as it would have been litigated had the razeenamah never been executed. On the other hand, there is, no doubt, a good deal of truth in the argument of Mr. Mayne to the effect that the failure of consideration was in some degree due to the Respondent himself; and that if, when the widow had appealed from the first decision in her suit, and claimed the benefit of the razeenamah, he had joined in also asking for the benefit of the razeenamah, the whole transaction might have been carried out as the parties had originally intended it should be. It is, however, unnecessary to decide this question, since it appears to their Lordships that the Respondent is entitled to succeed on the other issue settled in this suit.

What was really the position of the parties? Here was a man who had originally nothing at

all to do with this family. All the members of the family appear at first to have been agreed that this young boy was the true heir to the zemindary. The widows afterwards, then, either of their own mere motion, or at the instigation of the Plaintiff or his agents, determined to dispute that title. They next deprived themselves of all freedom of action with respect to the suit which they thought fit to bring, by giving the interest and the powers which are given by the agreement B. to the Plaintiff.

With respect to the law of champerty or maintenance, it must be admitted, and indeed it is admitted in many decided cases, that the law in India is not the same as it is in England. The statute of champerty, being part of the statute law of England, has of course no effect in the mofussil of India; and the Courts of India do admit the validity of many transactions of that nature, which would not be recognised or treated as valid by the Courts in England. On the other hand, the cases cited show that the Indian Courts will not sanction every description of maintenance. Probably the true principle is that stated by Sir Barnes Peacock in the course of the argument, viz., that administering, as they are bound to administer, justice according to the broad principles of equity and good conscience, those Courts will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive. Now, looking at all the facts of this case, their Lordships think it is extremely doubtful whether the Plaintiff could have recovered on this agreement if the question had arisen between the

widows and the Plaintiff after he had got the estate for them; whether, upon the principles laid down by Chief Justice Peacock and cited by Mr. Justice Kemp in this case in the 13th Weekly Reporter, the Courts might not have refused to enforce such an agreement. The principle laid down by the learned judge was that although the law of champerty was not a law applicable to the mofussil, the courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family affairs, by an agreement between him and the real heirs that if he should establish their claim he should be entitled to a share of the estate. Nor, in holding that such an agreement could not be enforced, would the Courts, as it seems to their Lordships, be running counter to what was decided by this Committee in the case of Fischer *v.* Kamala Naick; for the judgment there assumes that if the agreement is something against good policy and justice, something tending to promote unnecessary litigation, something that in the legal sense is immoral, it cannot be supported. But it is not necessary for their Lordships to decide a question which has not arisen, viz., what would have been the rights of the Appellant as against the widow. It is sufficient for them to say that they are dealing with a person who had got up or at all events intervened in a suit with which he had no necessary concern; who had made himself *dominus litis* in that suit, and had acquired over the Plaintiffs in it the power of preventing them from doing what they felt to be right and just; and from interested and corrupt motives was exercising that power. The Zemindar must be taken to have been the legitimate heir; and even if the widows had *bonâ fide* entered into the litigation to dispute that legitimacy, it is

perfectly clear that at the time when this transaction took place they had come to a better mind, and had satisfied themselves that the right thing as regarded the boy and as regarded the family was to acquiesce in his title, to admit his legitimacy, and to allow him to remain Zemindar.

Their Lordships think it would be contrary to every sound principle of justice and of policy, to permit a person who had acquired this sort of irregular interest in a suit,—and a power which cannot be safely conceded to any speculator,—to make his power of preventing a family arrangement so just and proper from being carried into effect, the means of extorting a large sum of money from the person whose title had been unjustly challenged? The case, however, does not rest here. The transaction was not one entered into between two persons, each of whom was capable of taking care of himself. Here was a boy of 18 without proper counsel or assistance, for such of his servants as gave him any advice thought with him that he should do nothing until he could see the Collector; and his vakeel, who is represented as his legal adviser in the matter, disowns having given him any counsel, and has been treated as having failed in his duty in refusing that counsel. There is, moreover, clear evidence that he was threatened with the consequences of not immediately acquiescing in the Plaintiff's demand; that these threats were addressed by a powerful man to a boy, and were therefore likely to disturb his mind and render him incapable of acting as a free agent. Whoever has had to do with litigation in India must know that such threats are of far greater weight there than they would be in this country. This suit was one in which the legitimacy of the Respondent was called in question; and the person threatening was a person con-

versant with law-suits,—a person of great wealth and great power; and we all know how easy it is in India, upon such an issue as that, to get up any amount of false evidence, and that it is not because a man has a true case that he is sure to bring it to a successful issue. Their Lordships think the judges of the High Court have rather understated the case when they treated the threats as threats only of consequences perfectly legal; for (putting aside the threat as to suing on the note for Rs. 62,000, which is not so satisfactorily proved as the others,) they think that the threats proved may well be taken to be threats of carrying on the litigation against the Respondent *per fas aut nefas*. In any case they were threats which overcame his free will, and induced him, contrary to his own judgment and his own sense of right, and without any evidence that any such sum as was claimed was due, to execute the bond extorted from him.

That being their Lordships' view, they think that the Court below was right in holding that the bond cannot stand against the Respondent. It is not necessary to go into the question which has been argued on both sides as to the power of the Court to make the bond stand as a security for what may really have been advanced. It is not necessary to consider whether in a suit brought to enforce a fraudulent deed against a person from whom something is justly due, a Court of Justice ought to exercise the power of saying that such a deed shall stand as security for what is really due; because in this case, but for the bond which was thus extorted from him, nothing was ever due from the Respondent to the Appellant, and there existed no privity of contract between them.

Upon these grounds their Lordships think that the decisions of the Courts below, now under appeal, were right, and they must humbly advise Her Majesty to affirm them, and to dismiss this Appeal, with costs.