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evils consequent upon the pernicious system of benami so prevalent throughout Bengal.

It appears to me, looking at the plaint and the whole of the evidence in the case, that the plaintiff has failed to make out against the defendants, Uma Sundari and the sons of Ganganarayan, such a case as entitles him to recover any portion of the land mentioned in the schedules annexed to the respective written statements of those defendants, and the latter have made out their rights to those properties respectively.

If Gentlemen will purchase and hold property benami, keep fictitious books, and make false statements in petitions to Courts of Justice, and in their private correspondence, whether it be for the purpose of concealing property from their creditors, or deceiving the members of their own family, they have only themselves to blame; and they must not be surprised if they are not believed when, for their own benefit, they offer themselves as witnesses in a Court of Justice, and openly, without shame, avow that all that has been said or done was false and fictitious, for the purpose of carrying into effect their own infamous designs.

* * * * *

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Miller.

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 March 2.

RICHARD SNADDEN (DEFENDANT) v. MAH WINE AND AGA SYUD ABDUL HOSSEIN (PLAINTIFFS).*

Cutting Timber—Exclusive Right—Damages.

Where one acquires, by license, an exclusive right to cut and to authorize others to cut timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person, who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others.

Mr. Paul for appellant.

The Advocate-General for respondents.

THIS was an appeal from a decision of the Recorder of Moulmein.

* Regular Appeal, No. 43 of 1868, from a decree of the Recorder of Moulmein dated the 16th December 1867.

Mah Wine, as the widow and representative of one MOUNG SHOAY BAW of Moulmein, and AGA SYUD ABDUL HOSSEIN, as executor of the last will and testatment of AGA YAKUB ALI, sued to recover certain timber, or the value thereof, under the following circumstances :—

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It was alleged for the plaintiff that the late MOUNG SHOAY BAW went to the Mhyneloongyee forest, where he cut, with the permission and authority of the Chief of Zimmay, 643 logs of teak timber under “ a permit ” obtained from that Chief and through his agent, Plo Tsee, in the year 1226 (corresponding to 1864) ; and that he afterwards paid the duty and obtained a receipt for the same, which was filed in the suit. The timber which he cut, he marked with his own mark. The permit which the plaintiffs relied on was as follows :—

“ Order of the Chief (Shoay Naw Shing) of Zimmay for the
“ information of all Thit-goungs. That Thit-goung MOUNG
“ Khine having appeared before us with presents, and applied
“ to us for permission to work out timber in the Mhyneloongyee
“ forest, as far as Mainlahgyee creek we permitted him to work,
“ within our territory, for the year 1226,—extending from Mhy-
“ neloongyee to the east as far as the Mainlahgyee creek, and to
“ the west as far as he pleases. That no Thit-goungs, whether
“ he be a Kulla (western foreigner) or a Burman or Taling, or a
“ Shan, or a Kareen, shall take possession of the timbers cut,
“ worked, or dragged by MOUNG KHINE, or shall be in any way
“ annoyed or opposed by him. If other Thit-goungs shall desire
“ to work out timber in the forests, they shall be introduced into
“ our presence by MOUNG KHINE, when we may permit them to
“ work if we see fit to do so. The duty on each log is rupees
“ 4-8. On the arrival of the overseer (or superintendent) of the
“ forests, the Thit-goungs shall produce their orders (or permits)
“ to him ; and they who do not wish to cut and work shall return
“ their permits. The logs shall be marked and removed only
“ after the overseer shall have taken the accounts of them. At
“ the time of paying the duty, the Thit-goungs shall give up
“ their former order (or permits) ; and those who wish to continue
“ on with the working of the timber, will have new permits
“ granted to them, so that the work of the year 1226 may
“ not be mixed up with the work of 1227. Any Thit-goungs

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“ who shall mark or remove their timber before they are registered by the overseer (or superintendent), shall be liable to confiscation of property, timbers, and elephants, and also to severe punishment on their persons.”

The plaintiffs went on to allege that, after MOUNG SHOAY BAW had marked and dragged his timber, the defendants, with his servants and agents, unlawfully and without authority, seized the timber, and fraudulently supermarked it with their own mark. The defendant Snadden claimed, as assignee of Nga Shoay Gaw, a right under a document given to him in 1220 (corresponding to 1859) by the Chow Rajapoot of Zimmay to all the timber cut and worked in the Mhyneloongyee forests for the term of ten years, from the year 1220. That document is hereunder set out :—

“ The letter of Chow Rajapoot of Zimmay sent in friendship to Chow Luang of Moulmein, and to Ayabeng, &c., and the authorities of Moulmein.

“ The whole of the timber forest of Mei Yuom, from the creek of Mei La Luanylong downwards to the mouth of the Mei Yuom belong all to Chow Rajapoot.

“ Chow Rajapoot has made MOUNG SHOAY GAW to overlook, and to cut, and buy and sell, teak timber to traders as MOUNG SHOAY GAW pleases, and to allow any one to cut timber from the date 1220 to 1230. Within this period any persons coming to cut timber in the forests are first to ask MOUNG SHOAY GAW. If MOUNG SHOAY GAW direct them to cut, they can do ; but if MOUNG SHOAY GAW should not direct them to cut, they cannot cut ; because Chow Rajapoot has given MOUNG SHOAY GAW charge to overlook. If any Chow Nai Thow Khaw, or any person, come to cut teak timber in the forest of Mei Yuom, they must first enquire of MOUNG SHOAY GAW. Should they not enquire, they are to be forbidden to cut.”

The above is the document referred to as X S A. in the judgment of the Chief Justice.

The question as to the effect of this document had come before the Royal Court of Siam at Bangkok, when the following decision was passed :—

“ The letter of Chow Rajapoot which was sent to the Commissioner of Moulmein in the Siamese civil era 1220, giving Mounḡ Shoay Gaw the superintendence of the forest, was simply a document for public information that Chow Rajapoot had made Mounḡ Shoay Gaw the superintendent of the forest of Muang Yuom. It was not an agreement. Agreements which are made and recognized to be valid in the kingdom of Siam, must bear the signature of the contracting parties, and each party must have a copy. Then it will be a valid agreement.

“ The letter of Chow Rajapoot to the Commissioner of Moulmein in the Siamese civil era 1224, asking for the paper granting Mounḡ Shoay Gaw the superintendence of the forests in substance was as follows :—

“ The Chow Rajapoot gave a paper, granting him the superintendence of the forest of Muang Yuom, and Muang Shoay Gaw went to live in Moulmein, and did not superintend the forest. Therefore, Mounḡ Shoay Gaw will no longer be allowed to superintend the forest, or cut timber.”

“ The Commissioner of Moulmein replied that he had called Mounḡ Shoay Gaw to him and questioned him. Mounḡ Shoay Gaw said that, when he was prosecuting Mr. Lenaine, the Moulmein Judges sent that document to India; but when the Indian Judges returned it, the paper would be forwarded to Chow Rajapoot. Regarding the letter of Chow Rajapoot to the Commissioner of Moulmein, granting the superintendence of the Muang Yuom forest for ten years, Mounḡ Shoay Gaw received that letter in the Siamese civil era 1220 and went to reside in Moulmein, and did not superintend the forest, thereby injuring the interests of Chow Rajapoot until the Siamese civil era 1224. Such conduct bears resemblance to the conduct provided against in the Treaty Art. IV. relating to the purchase of lands or houses by British subjects.

“ In order to obtain possession of such lands or houses, it will be necessary that the British subject shall, in the first place, make application, through the Consul, to the proper Siamese Officer, and the Siamese Officer and the Consul, having satisfied themselves of the honest intentions of the applicant, will assist him in settling upon equitable terms the amount of pur-

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“chase-money will mark out and fix the boundaries of the pro-
 perty, and will convey the same to the purchaser under sealed
 deeds, whereupon he and his property shall be placed under
 the protection of the Governor of the district and that of the
 proper local authorities; he shall conform in ordinary matters
 to any just direction given him by them, and will be subject to
 the same taxation that is levied on Siamese subjects. But if,
 through negligence the want of capital or other cause, a British
 subject shall fail to commence the cultivation or improvement
 of the lands so acquired within a term of three years, from the
 date of receiving possession thereof, the Siamese Government
 shall have the power of resuming the property upon returning
 to the British subject the purchase-money paid by him for the
 same.”

This is the substance of Art. IV. of the treaty : “Whereas
 Moug Shoay Gaw received a paper, making him superin-
 tendent of Muang Yuom from the Siamese year 1220, and
 neither paid attention, nor superintended the forests till the
 Siamese year 1224. The three years' limit has expired. If that
 paper were an agreement between the parties, similar to the
 usual agreements of the country, it has become useless. But
 the paper upon which Moug Shoay Gaw bases his com-
 plaint, is not an agreement. With reference to Moug Shoay
 Gaw resuming the cutting of timber, it is proper he should
 have personal conference with the tributary prince of Zim-
 may, Chow Rajapoot, and their relatives, as the province has
 been under the charge of the prince of Zimmay and rela-
 tives for successive generations. The forests of Muang
 Yuom, which is in the territory of Zimmay, are wholly under
 the jurisdiction of the prince of Zimmay and his relatives, and
 entirely at their disposal, being rulers of the country, as
 far as its internal administration is concerned.”

“With regard to the duties for the privilege of cutting timber
 belonging to Chow Rajapoot, and the money and goods which
 Moug Shoay Gaw has given Chow Rajapoot, let Moug
 Shoay Gaw and Chow Rajapoot bring together their accounts,
 and make a final settlement.”

The Recorder of Moulmenin passed a decree in the plaintiffs
 favor; and from this the present appeal was preferred.

In giving the judgment of the High Court on appeal, the following remarks were made by

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PEACOCK, C. J.—In treating the letter of Chow Rajapoot as a notice, and not as an agreement, I am taking the same view of it as the Court at Bangkok in the decision of His Royal Highness Krom Kenaug Wongsā Dheraj Sīnde in the suit brought against the Chief of Zimmay (under whose permit the plaintiff claims) by the defendant Moug Shoay Gaw, under whom the appellant claims. The document may be taken as evidence against them of the law of that place and of the evidence given in the suit.

It appears from the said judgment and otherwise that Moug Shoay Gaw went to reside in Moulmein, and did not superintend the forest; and that in the Siamese civil year 1224, Chow Rajapoot wrote to the Commissioner at Moulmein, asking for the paper granted to Moug Shoay Gaw, which letter was in substance as follows :—

“The Chow Rajapoot gave Moug Shoay Gaw a paper granting the superintendence of the forest of Moug Youm, and Moug Shoay Gaw went to live in Moulmein, and did not superintend the forest. Therefore, Moug Shoay Gaw will no longer be allowed to superintend the forest or cut timber.”

The Commissioner replied that he had called Moug Shoay Gaw to him and questioned him; that Moug Shoay Gaw said that, when he was prosecuting Mr. Lenaine, the Moulmein Judges sent that document to India; but when the Indian Judges returned the paper, it would be forwarded to Chow Rajapoot. From this Moug Shoay Gaw tacitly admitted that his interest whatever it was had ceased.

It was considered by the Court at Bangkok that the neglect of Moug Shoay Gaw to work the forest for a period of three years came within the terms of Article 4 of the Treaty with the British Government, of which a copy was set out in the judgment; and, consequently that, if the paper given by Chow Rajapoot to Moug Shoay Gaw had been an agreement similar to the usual agreements in the country, which it was not, being only a notice to the British authorities, it had become useless; and that

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Moung Shoay Gaw could not resume the cutting of the timber without personal conference with the tributary prince of Zimmay, Chow Rajapoot, and their relatives. Chow Rajapoot in his examination says that the document X. S. A. was the original letter written to the authorities; that the forests belonged to him; that having once given a similar power to that marked X. S. A. to work a forest for ten years, it cannot be cancelled, unless there was some proper cause; that it might be transferred by the grantee without the knowledge or consent of the grantor; and that the non-user of such a document would not justify its cancelment. But he also stated, with reference to the Chief of Zimmay, that he could not give any opinion as to the correctness or incorrectness of the acts of his superiors. It was stated by the Regent of the Northern Provinces of Siam that Zimmay was a state subject to Siam, and subject to Siam, and subject to orders sent by him; and that, with reference to the answers of Chow Rajapoot as to the circumstances of his grant to Moung Shoay Gaw, and to questions of law and custom as to its transference and cancelment, the statements of Chow Rajapoot were not entitled to any value, as the Shan states are in a semi-civilized condition, and their laws and customs cannot be considered as defined.

It is unnecessary, for the purpose of this case, to decide whether Chow Rajapoot had the right to grant to Mount Shoay Gaw the exclusive right to cut timber in the forest in which the timber in dispute was cut, or whether the right, if granted, was transferable or forfeited by the grantee's absence from the country. Nor is it necessary to decide whether Chow Rajapoot did or did not grant to Moung Shoay Gaw the exclusive right to cut timber in the said forest, or to enter into all the numerous questions which appear to have been raised in the suit.

It appears to me to be clear that, if Moung Shoay Gaw did acquire the exclusive right to cut and to authorize others to cut timber in the forest, such right did not vest in Moung Shoay Gaw all the timber in the forest. It might give him a right to recover damages against any person, who, by cutting timber, should interfere with his exclusive right, but would not vest in him the timber so cut by others. There is nothing to show that,

by the law of the country in which the forest was situate, Moung Shoay Gaw or his assignees acquired the right to all the timber in the forest, and to take possession of all the timber which, under any circumstances, might be cut by others between the years 1220 and 1230 of the Siamese civil era.

It is not material whether the license was granted at the request of Moung Shoay Gow or not. It is clear that the plaintiff and his agent did cut under the authority granted *de facto*, and that the timber so cut did not vest in Moung Shoay Gaw.

[The Chief Justice then commented on the evidence as to cutting, and proceeded thus]:—

I am of opinion that the Recorder was right in finding that Nga Shoay Baw did under a license cut, pay duty for, and mark the timber, which is the subject of this suit; that R. C. Burn and his party, acting in concert with the appellant, marked the said timber, and caused it to be floated to Moulmein; and that neither Burn nor Moung Shoay Gaw, nor the defendant Snadden, had any lawful right to the timber. But I consider it immaterial whether the timber was cut by Moung Shoay Baw under a valid license or not. I am of opinion that it was in his lawful possession when Burn and Moung Shoay Gaw, having no right to it, by means of an armed force forcibly took possession of it in the territory of Zimmay; and that, having marked it with their own mark, they caused it to be floated down to Moulmein, where the defendant Snadden obtained possession of it. I do not believe that Moung Shoay Baw and Yakub Ali would have been allowed by Moung Shoay Gaw or his agents to put their mark upon it, if the timber had been cut by Moung Shoay Gaw. The license from Chow Rajapoot to Moung Shoay Gaw, though ratified by the Zimmay Chief, did not vest in Moung Shoay Gaw or his assignees the timber which had been cut by Moung Shoay Baw. Indeed, Moung Shoay Gaw never made a claim to any of the logs, except those which, according to his statement, had been cut by himself, though in his petition he stated that 3,000 had been cut by others.

[The Chief Justice then commented on certain correspondence between the appellant and his agents, and proceeded]:—

I think the Recorder was right in decreeing the suit in favor of the plaintiff; but the decree is merely for the restoration of

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the timber. By section 191, Act VIII. of 1859, it is enacted that, when the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had. The learned Advocate-General was allowed to add as a cross-objection that the Court ought to have awarded alternative damages, and we think that the decree ought to be amended in that respect.

It is, therefore, necessary to fix the amount of damages. The plaintiff has valued the logs at rupees 80 each; but there is no sufficient evidence to show that they are of that value. By the 6th Article of the agreement of the 26th of January 1865 between R. C. Burn and another, and R. and W. Snadden, the latter bound themselves to purchase the timber at the rate of rupees 42-8 per log, for all logs of three cubits in girth and upwards. The defendant has got the timber in his possession, and had the means of proving its dimensions and value. Looking to the circumstances under which Snadden bound himself to R. C. Burn and Mounq Shoay Gaw to purchase the timber at rupees 42-8 per log, half the purchase-money to be applied in satisfaction of their demand, on which interest at the rate of 24 and 36 per cent. was reserved, I think we may fairly add as against the defendant, who can return the timber if he pleases, 50 per cent. upon the amount of rupees 42-8 per log, at which he agreed to purchase. The logs are, therefore, valued at rupees 63-12 each. It was stated by Mounq Shoay Gaw, in his petition dated 3rd March 1863, before he assigned his interests to Mr. Lenaine, under whom appellant claims, the assignment being dated 30th June 1863, that the market price in Moulmein was rupees 60 a log.

The decree is affirmed, and it is ordered that, if delivery of the timber cannot be had, the defendant shall pay to the plaintiff, as alternative damages for each log of which such delivery cannot be had, the sum of rupees 63-12. The appellant will pay the the costs of this appeal to be calculated upon the value of 122 logs, at rupees 63-12 each, amounting altogether to rupees 7,777-8. There is no appeal as to the amount of costs in the lower Court, and, therefore, the costs in that Court will stand as they have been given by the Recorder.