Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition to dismiss the Appeal of Ranee Bistoopria Pulwadaye v. Nund Dhul and others, from the High Court of Judicature, at Fort William, in Bengal, delivered 12th December, 1870.

Present:—

SIR JAMES W. COLVILE.
THE JUDGE OF THE ADMIRALTY COURT.
SIR JOSEPH NAPIER.

IN this case we understand that the lady represented by Mr. Bell, as guardian of an infant who was represented to have been duly adopted as the son of her late husband, instituted a suit to recover certain property from the Respondent who was in possession under a claim that the infant was the son and legal heir of the deceased. The suit was heard by two Courts. It is unnecessary for us, upon this application, to consider further whether the decision both passed against the title of the infant was right or wrong. We will assume that she may have had legitimate ground for applying in the Court below for leave to appeal to this Board.

That leave was granted in 1866 when the boy was still admittedly an infant. So far the proceedings seem to have been entirely regular. The transcript came home in 1867. The Record was printed here, and the only thing which can be suggested as any irregularity may have been the lodging of the Petition of Appeal so late as 1870, after the infant had come of age, and was for all purposes *dominus litis*.

It appears that the proceedings which are embodied in the supplementary record, have taken place in India, and the effect of them is to

show that upon being called into that Court the infant expressed his desire to abandon the Appeal, and that the Court ultimately felt that it could not decide that question, and, the Appeal having been transmitted here, sent the whole of the proceedings for the adjudication of their Lordships.

In that state of things the Respondent applies that the Appeal may be dismissed, and the application is resisted by the lady who was originally the guardian of the infant.

At one time it appeared to their Lordships that it might possibly be necessary to ascertain more clearly that the son is a consenting party to this application, which could only be done by directing the Court in India to take further proceedings, in order to have the fact ascertained. But looking to these proceedings and considering what the Court has done, it appears to their Lordships unnecessary to take that step, and to put the parties to the further delay and expense which it would involve. When the suggestions were made to Mr. Leith their Lordships had not sufficiently adverted to the terms of the Mookhtearnama. We knew that the boy had made a clear admission to the Moonsiff, which had satisfied the Judge and the High Court, that he was of age, and that he had executed that Mookhtearnama; but it did not, as it appeared to us at that time, follow that he had adopted all the statements in the petition which was presented under the Mookhtearnama. But when you come to look at the Mookhtearnama, of which he has admitted the execution, it seems very clear that he knew what he was about and what his Mookhtear would do under that instrument.

He says, "Now I have attained majority, and "considering that no other profit will arise by car- "rying on the said case than a useless expenditure "of money, and with the desire of withdrawing "from the said case, I do appoint Jugmohun Doss "Putto Naik, inhabitant of Saooda Khotee of "Pergunna Mayahagun, in Zillah Midnapore, as "Mookhtar in my behalf, in order to engage a "Pleader of the High Court, and agree that the "Pleader of the High Court in Calcutta who will "be appointed by the said Mookhtear, will file a "petition of withdrawal from the said case, and

" the said withdrawal will be one as if filed by " me, and completely valid."

Therefore, it seems to their Lordships that they have sufficient evidence before them in these proceedings, that the young man is a consenting party to this application.

The question, then, is reduced to this—whether the lady who is represented by Mr. Bell has really such an interest in the Appeal or such a *locus standi* in this Court as entitles her to resist this application and to insist that the Appeal shall go on, although the party in whose name it is brought wishes to withdraw from it.

Their Lordships are of opinion that she has not; if she has incurred costs there can be no Appeal for mere costs; having incurred costs on behalf of the infant in this suit, she may have a claim to be recouped from his estate, if he has any; but that does not entitle her to prosecute this Appeal in his name against his will, with probably but faint chances of success.

It was thrown out that the decree had not dealt with the title of the Defendant, and that she might have a preferable title to him; but the obvious answer to that argument is this—there has been a clear adjudication that the nominal Plaintiff in this suit had no title. If the lady herself, as widow, has a better title, that title cannot be litigated in this suit, but must be litigated in an independent suit, in which, rejecting the adoption, she would come forward as the next heir of the deceased.

Therefore, we do not see that we should be justified in keeping this Appeal upon our Records. But considering the peculiar nature of the application and the position of the parties, it does not seem to us that we can do anything but dismiss the Appeal *simpliciter*, saying nothing about costs. There is no proof that the infant has undertaken to pay the costs; and we also think that we ought not to give to either side the costs of this petition.