

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussamuts Gonda Koouer and Sawitree Koouer, Widows of Chowdry Puddum Singh, v. Koouer Oodey Singh, from the High Court of Judicature, North-Western Provinces, Allahabad; delivered 23rd March, 1874.*

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Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THIS suit originated thus:—

Chowdry Mohur Singh in 1862 brought a suit in the nature of an ejectment, claiming the whole of the property, real and personal, of Chowdry Nem Singh, deceased, as his heir, against Chowdry Puddum Singh, who claimed to hold it as Nem Singh's adopted son. This suit came by appeal before this Board, which held that the adoption of Puddum Singh had not been proved. The following is an extract from the judgment delivered in the appeal on the 14th of March, 1869:—

“Their Lordships, however, think it right, for the purpose of restricting future litigation within as narrow bounds as possible, to declare that it has been established between the parties to the suit that the Appellant is not the duly adopted son of Nem Singh, and that on the death of Kooshal Koer (the widow of Nem Singh), Mohur Singh, the father of the Respondent, and the other heirs in equal degree then living, became entitled to inherit the estate of Nem Singh, of which his widow died possessed. And they will recommend to Her Majesty that, with this declaration,

the cause be remitted to the High Court of Agra, to make such inquiries as shall be necessary to ascertain :—1. What share of the estate of Nem Singh the said Mohur Singh was entitled to ; and, 2. What part of the property claimed by the Plaintiff was the estate of Nem Singh."

The inquiries thus directed form the subject-matter of the present suit. As to the first, no question now arises, and the second alone has to be dealt with.

The issue on this subject, which the High Court of North-Western Provinces, in order to give effect to Her Majesty's order, settled and sent for the trial by the Lower Court, is in these terms :—

"What part of the property claimed by the Plaintiff was the estate left by Nem Singh, or added thereto by his widow by the outlay of his profits."

It appeared that Nem Singh, who died in 1834, had inherited some property and had purchased some ; and further that his widow, after his death, had purchased a good deal of property. The property in dispute consisted wholly of houses and lands.

Kourshall Koer left by will all the property which she had power to dispose of to Puddum Singh.

The right of the present Plaintiff Koer Oudey Singh, who represents his late father, to all the property inherited or purchased by Nem Singh, was not denied ; the only question arose as to that purchased by his widow.

It was contended, on behalf of Puddum and of those who represented him, that his mother had made the purchases in question from property which she had derived from her father, that, consequently, it was her own, and that she had power to dispose of it by will. It was contended on behalf of Koer Oodey Singh, that such purchases had been made from the profit or accumulations of the property of Nem Singh, and this was treated as the only question between the parties in the Court of the Principal Sudder Ameen, and in the High Court.

The Principal Sudder Ameen came to no distinct conclusion in this question, and both parties made objections to his judgment.

The High Court for the North-Western Provinces thus express themselves on the question.

"With respect to the averment that Kooshall Kooar had acquired a portion of the property by

means of her own, it is sufficient to remark that there is no proof on the record as to the mode in which she obtained the fund for any such purchases, and that the presumption is that she made them from the proceeds of her husband's estate. If her father, said to have been wealthy, had given her the means of making purchases, more clear evidence that he did so should be forthcoming. Nor do we find that any such averment was distinctly made when the suit was heard originally. This being so, we are of opinion that the Defendant's objection should be dismissed."

This judgment has been appealed against by the two widows of Puddum Singh, who have been permitted to institute this appeal, a settlement having been come to between the Plaintiff and the son of Puddum Singh.

It has not been here contended that the High Court was wrong in finding as a fact that the purchases were made by the widow out of the proceeds of her husband's estate. But a question has been raised at their Lordship's Bar which does not appear to have suggested itself either to the parties or to the Judges in the Courts below.

It has been argued that, assuming the purchases to have made by the widow out of the proceeds of her husband's estate, nevertheless, they do not form increments to that estate, but belong to the widow absolutely and are at her absolute disposal, either by gift in her lifetime or by will. It has been further argued that, even if the presumption be that such purchases are increments to the husband's estate, it may be rebutted by clear proof of her intention to sever them from that estate, and to treat them as made in her own right, whereupon she acquires the power to dispose of them, and that such intention is proved in this case. The principal authority relied upon by the Appellant was *Sreemutty Soorgeemoney Dossee v. Denobundoo Mullick*, 9 Moore, Indian Appeals, p. 123, where it was declared by this Board, varying the Decree of the late Supreme Court at Calcutta, that the widow was entitled absolutely in her own right to all such interest and accumulations as, since the death of her deceased husband, had arisen from the one-fifth part of the accumulations which she had before been declared entitled to hold and enjoy as

a Hindoo widow in the manner prescribed by Hindoo law.

Although the Decree in that case as so altered made a distinction between the principal funds to which the widow was entitled as heiress of her husband, and the accumulations of income which had arisen therefore since his death, and in terms treated her right to the latter as absolute and unqualified, it is nevertheless to be observed that there were no questions in that case as to any conflicting rights between her heirs and the reversionary heirs of her husband. The case, moreover, was governed by the law of Bengal, and the accumulations of income, to which the widow was declared absolutely entitled, were the produce of a reserve fund. Their Lordships cannot, therefore, regard this case as a conclusion, or even a direct authority upon the questions raised on this Appeal.

In the present case their Lordships are of opinion that Koorsal Kooar, who always maintained the validity of her son's adoption as heir to her deceased husband and treated him as entitled to succeed to her husband's property, must be presumed to have intended to make her purchases as accretions to that property; nor do they see any evidence to rebut this presumption. It is true that she made a will in her son's favour, but it contains no specific gift of the property in question, and might well have been intended to apply to any property of her own which may have belonged to her as her stridhana. That the property in question was understood by Puddum Singh himself to be part of Nem Singh's estate is shown by the pleadings in the original suit, in which he claimed it as the adopted son and heir of Nem Singh. It therefore becomes unnecessary to decide what might have been the effect of a distinct intention on her part, if it had been proved, to appropriate to herself, and to sever from the bulk of the estate such purchases as she had made, with the view of conferring them on her adopted son. Their Lordships accordingly see no sufficient ground for reversing the judgment appealed against, and will humbly advise Her Majesty that that Judgment be affirmed and the Appeal dismissed with costs.