

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Thakur Durga Singh v. Thakur Sheopal
Singh, from the Court of the Judicial
Commissioner of Oudh; delivered the 21st
February 1906.*

Present :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

In this Appeal the question is raised whether a certain mortgage executed by a Hindu widow for one of her husband's debts is valid as against the reversionary heirs of her husband, of whose estate they are now in possession. There were two issues of fact:—First, whether the mortgage was in fact executed for the sum for which it purports to have been executed, and whether that sum was in fact received by the widow, and was by her paid into Court to satisfy a decree which had been obtained against her; and, secondly, whether there was a necessity for the money being borrowed by the widow. On the answer to that question, as Mr Ross has very properly conceded, must depend the question whether a certain debt which was paid by the borrowed money was to be treated as the husband's debt. On both these points there have been concurrent decisions in the Courts below, and they are purely questions of fact.

The case is complicated a little, because the husband gave a bond for Rs. 9,000 to a man named Mulchand, and after his death his widow gave a mortgage to the same mortgagee for a sum of money which the Courts below held was the debt of the husband. An action was brought against the widow on that bond, and

she then borrowed the money in question in this Appeal from another mortgagee in order to pay off the sum of Rs. 18,582.8.5, which was found due from her in that action. In that way the questions which have been mentioned arose, viz.:— Did the widow receive the Rs. 18,582.8.5? Was this money used to pay off the debt in the action brought against her? And was the debt in that action the husband's debt? In the previous suit the Court, in decreeing the payment of the sum of Rs. 18,582.8.5 by the widow, declared that that debt was "as between parties" a debt of the husband, and it is suggested that those words mean, as between the widow personally and the then Plaintiffs, and not as between the widow and the reversionary heirs. The Judicial Commissioner points out the fallacy of that argument, and that it would be contrary to the whole theory of the nature of a widow's interest in India, and contrary to the decisions to which he refers.

There being, therefore, concurrent decisions of fact, and their Lordships entirely agreeing with the view expressed by the learned Judicial Commissioner on the point of law, they will humbly advise His Majesty that the Appeal be dismissed. The Appellant will pay the costs of it.
