

Privy Council Appeal No. 162 of 1924.

Allahabad Appeal No. 5 of 1923.

Saheb Rai, since deceased (now represented by Jaideo Singh) and
others - - - - - *Appellants*

v.

Shafiq Ahmad and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 10TH FEBRUARY, 1927.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

LORD DARLING.

MR. AMEER ALI.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD SHAW.]

Various questions have been raised in this appeal, and having fully heard the argument for the appellants on one point, to be alluded to, their Lordships do not think it necessary to call on Counsel for the respondents.

The law appears to their Lordships to be correctly laid down by the High Court in the following sentences :—

“*Prima facie* when an arrangement of this nature is come to by which the step-mother is to receive a sum for maintenance the presumption would be that in no case could an absolute interest be intended to be conferred ;”

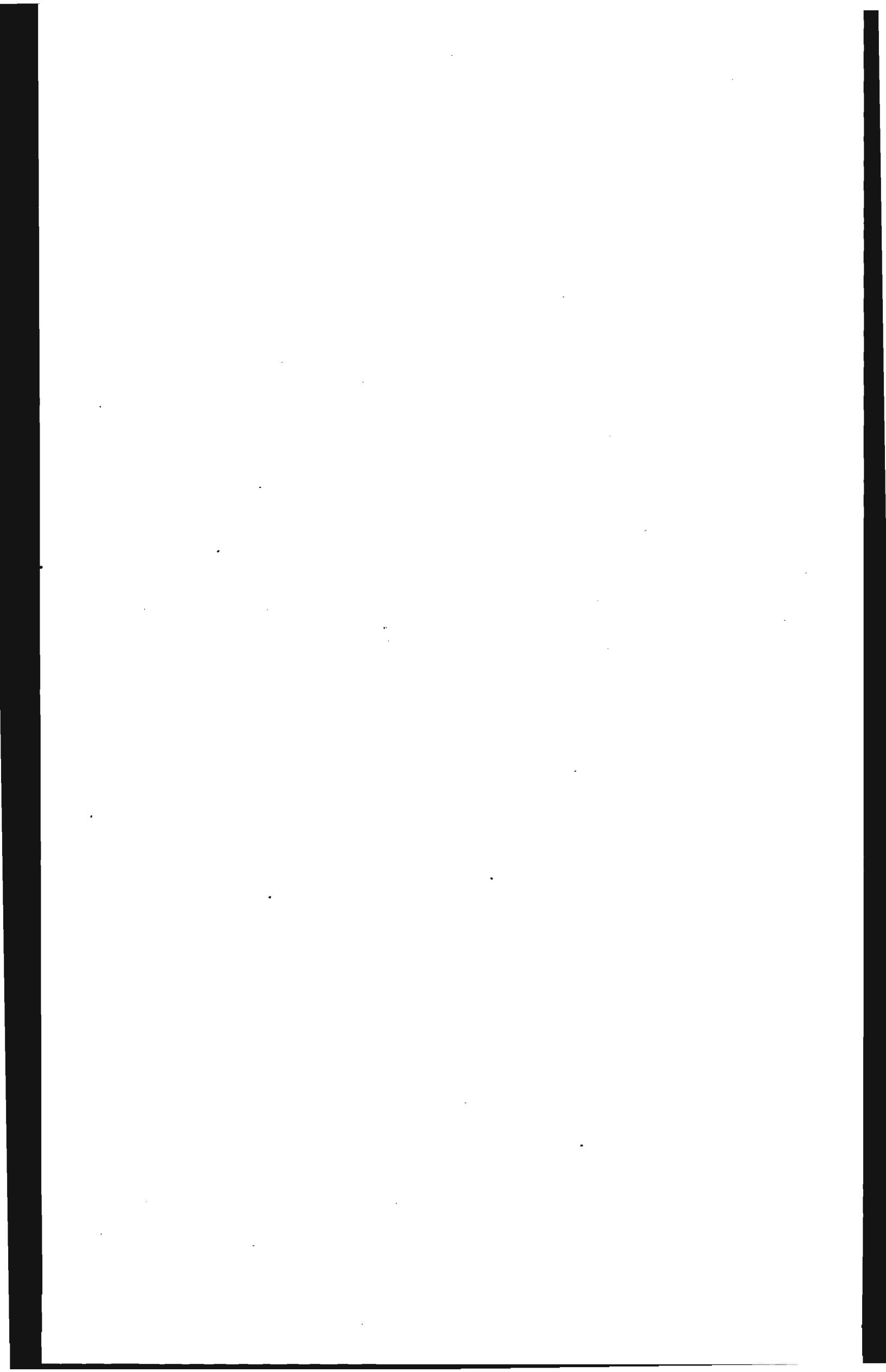
But the Court goes on to say :—

“ But in the present case a presumption of this kind must yield to the other evidence which we have before us. We do not see how any theory that a grant for maintenance was being made to Mohan Kunwar by her step-sons can be reconciled with the fact that the lady was being made responsible for a definite share of the debts which had been incurred by her late husband.”

Their Lordships have considered both sides of these propositions and agree with both, but in regard to the latter they have further considered the exact nature of the transaction which is recorded in the deeds, and, as the result of their consideration, they find that the absolute interest which is in question in this case was created not by way of a transaction as in one of the precedents cited referred to, following a decree of the Court, but as the result of a transaction of a voluntary nature entered into by the two sons and the step-mother with considerations *pro* and *contra*; and upon the whole their Lordships are of opinion that the view taken by the High Court must prevail.

The lady was made in point of fact responsible for a definite share of the debts as well as being made entitled to a definite share of the assets of her late husband. That transaction has stood, their Lordships are aware, for a very long period of time. There has been nothing cited to shake the facts which the documents record, and the balance of opinion is accordingly in favour of allowing a transaction which has in fact (through the fault of the appellants) remained so long unchallenged, to stand.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed, with costs.



In the Privy Council.

SAHEB RAI, SINCE DECEASED (NOW REPRESENTED BY JAIDEO SINGH) AND OTHERS

vs.

SHAFIQ AHMAD AND OTHERS.

DELIVERED BY LORD SHAW.

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