Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Oodey Koowur v. *Mussumat Ladoo and others, from the High Court of Judicature, North-Western Provinces, Agra; delivered 10th December,* 1870.

Present:—

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

THE first question in this case is, whether there was any jurisdiction in the Chief Justice for the North-Western Provinces to make the decree, from which the Appeal is brought, in the Court below? Now the matter has been inquired into, their Lordships are clearly of opinion that there was such jurisdiction. The Appeal had been brought to the Sudder Adawlut of the North-Western Provinces, and the Judges of that Court had given a decision. Then an application had been made for a review, and an order was made that the case should be heard on review. It was so heard, before four Judges, who were equally divided in opinion. By the Law, as it then stood, as appears by the order made at the end of their judgment, they being equally divided in opinion, the case was, under the provisions of Section 7, Regulation 6, of 1831, referred for the opinion of one or more Judges of the High Court of Calcutta. There was, however, a power, by the 24th & 25th Vict. c. 104, for the Crown to erect a Court in the North-Western Provinces, and by Letters Patent of the 17th March, 1866, the Crown did erect a High Court in the North-Western Provinces, which had the effect of abolishing the jurisdiction of the Sudder Adawlut. The consequence was that no final decision having been given on review, that proceeding was a proceeding pending which was therefore to

be decided by the new High Court of the North-Western Provinces. The 27th Section of those Letters Patent is as follows:—"We do hereby "declare that any function which is hereby directed "to be performed by the said High Court of "Judicature for the North-Western Provinces, "in the exercise of its original or appellate juris-"diction, may be performed by any Judge;" and, accordingly, Sir Walter Morgan (the Chief Justice) did sit, apparently as a single Judge. He appears to have heard the parties, and given his final decision, and that was the decision of the High Court of Agra, which their Lordships are of opinion had, under these circumstances, jurisdiction, and the Appeal therefore is brought from that decision.

Now, the action itself is an action brought by one Hindoo widow, Mussumat Ladoo, against another Hindoo widow, Mussumat Oodey, the widow of her eldest son, to recover three several properties. The only question before their Lordships relates to two of those properties, because, as to the third property, all the Judges below agree that the Plaintiff was entitled to recover, and there is no appeal as to that. The Plaintiff brought the suit on the ground that the Defendant was in possession of the property, but that she, the Plaintiff, was entitled to it as heir-at-law of her son Shib Lall, and there appears no question that she was such heir-at-law. The property had originally belonged to Buldeo Buksh. He had two sons, of whom one, the husband of the Defendant in the suit, died in the lifetime of Buldeo Buksh. There appears to have been some attempted adoption, that is to say Buldeo Buksh and Mussumat Ladoo appear to have attempted to give their second son, who was an infant, as an adopted son to the widow of their eldest son. But it is admitted that for various reasons that adoption, if it were ever attempted, was wholly invalid according to Hindoo law; if for no other reason at any rate for this reason, that the husband of the widow who made the adoption had never given any permission to the widow to make such adoption, and it was admitted before us that the adoption was wholly invalid.

Well then, that being so, it is plain that the son

Shib Lall on the death of Buldeo Buksh became solely entitled to the property; and upon his death his mother became entitled as his heir, and therefore, if the matter remained there, it is admitted that she would be entitled. But it is alleged that she had done certain acts and become a party to certain documents, the effect of which was, at any rate as to these two latter portions of the property, to prevent her from recovering.

Buldeo Buksh had mortgaged these two properties in question, and a suit had been commenced, first in the name of Shib Lall by his assumed guardian, probably in the first instance on account of this invalid adoption, against the mortgagees to redeem the mortgage, which was resisted by them on the ground, which it is now quite immaterial to consider, that the mortgage had been a real sale. Some proceedings had also taken place for the mutation of names; and it would appear that in those proceedings for the mutation of names, the Collector and the parties had wrongfully assumed that the two widows and the son were jointly heirs of Buldeo Buksh. Then it was said that the Plaintiff being old and not wishing to interfere with the affairs, she had agreed that Shib Lall and Mussumat Oodey should alone be entered as the owners of the property, and that her name should be omitted.

Then in the suit for the redemption of the mortgage, an objection was taken by the mortgagees that the suit was wrongly constituted, because Mussumat Ladoo, and not Mussumat Oodey, was the proper guardian of the infant, and the proper person to bring the suit. On that occasion Mussumat Ladoo presented a petition on which the matter before us principally turns, the main object of which unquestionably was to enable the suit to be carried on by Mussumat Oodey, either in her own name or as guardian of the infant without joining the name of Mussumat Ladoo, and the entire contention on the part of the Appellant before us is that by the proceedings which have been already described with respect to the mutation of names and by the language of this petition, Mussumat Ladoo in fact abandoned all her right to the

property in question, so that when she became in point of law entitled to the property as heir of her son, she could no longer avail herself of that right as against the Defendant. The petition is in these terms:—"Humbly showeth, The facts regarding "the suit instituted in this Court by Mussumat "Oodey Koonwur, the widow of my deceased son "Kullyan Singh, to recover possession by re- "demption of mortgage of Mouzahs Omeepore "and Umlera, Pergunnah Chandouse, valued at "Rupees 81,000 against Mussumats Kurreemool- "nissa, Muhtab Koowur, and Chand Koowur, De- "fendants, are as follow: Since the date of Kullyan "Singh's demise, Buldeo Buksh my husband and "myself gave our son Sheo Lall to Mussumat "Oodey Kowur to be adopted as her son, and since "then she has been his guardian and protectress. "Moreover, owing to my old age, infirmity, and "imbecility, I also caused only the names of Oodey "Koowur and Sheo Lall to be entered in the pro- "prietary column of the certificate of death of "Buldeo Buksh, and I have no claim whatever to "the proprietary rights in the two villages in "question, Oodey Koowur, however, herself, and "as guardian of Sheo Lall being their sole owner. "I have now become very old and imbecile and "have no strength to go about, look after, or un- "derstand my affairs, and Mussumat Oodey Koowur "herself, and as guardian of Sheo Lall my son, is "in every way proprietor and owner."

If that is to prevent her recovering the property now in question, it must do so either because it operated as a conveyance or as a contract to convey the interest which she now claims, or because it operated by way of estoppel. There is no other way in which it can operate. Now, did it operate either as a conveyance or as a contract to convey the interest to which she has now become entitled as heir of her son? Their Lordships are of opinion that it is quite impossible that it could so operate, and that for two reasons: first, because at the time when she presented this petition she had not in fact any interest in the property at all, and certainly had not become entitled to any interest as the heir of her son, who was at that time alive; and in the next place, there is not the least reason to suppose that in the

petition she in any degree contemplated a conveyance of any such right. That was not the right which they were then considering at all. The main object of the Petition was simply to enable the redemption suit to go on, and to enable the persons who had begun it as Plaintiffs—Oodey Koowur and Sheo Lall—to carry it on. There was nothing in the language and nothing in the position of the parties which could lead any one to suppose that she had any interest that she might hereafter acquire as heir of her son, in her contemplation at all. On these grounds, it appears quite impossible that it can operate either as a conveyance or as a contract to convey her subsequently acquired interest.

Well, now, is she in any way estopped? It is very difficult to see how she can possibly be estopped. There has been a difference of opinion among the learned Judges in the Court below as to the construction of this instrument,—whether it ought to be construed solely as relating to her rights as guardian, and to convey them, and not to relate to the property at all? The language certainly, in some parts of it, does appear to refer very strongly to an interest as owner, and probably it may be that the meaning of the instrument rather refers to her supposed interest as owner, but it appears to their Lordships hardly necessary conclusively to decide upon the proper construction of this instrument, because even assuming that it does refer to her interest as owner, that is to say, to her present interest as owner, and that she is assuming incorrectly that she has some interest as heir of her husband, their Lordships are of opinion that her stating that, and professing to resign that in favour of Oodey Koowur, could not possibly in point of law, estop, or prevent her from setting up her real right as heir of her son, when that right actually accrued. There is, in the first place, no consideration whatever for this conveyance of her particular interest; even if she had it, she receives nothing for it. Neither does Oodey Koowur act on any representation made by her, or alter her position in any way. There is no misrepresentation to Oodey Koowur of any sort or kind. Oodey Kowur was acquainted with the actual facts of the case, just as much as

Mussumat Ladoo was. The real effect of the petition seems rather to be that they mutually agreed to represent what was not the fact, for the purpose of enabling a certain suit to be carried on. Their Lordships are of opinion that, assuming she did intend to convey a present interest in the properties, which she supposed or assumed she had, there is no principle of law or justice by which that can prevent her from setting up her real right when that right has accrued. It is true that this petition had the desired effect, and that Mussumat Oodey was allowed to carry on the suit, and afterwards when Shib Lall died, and Mussumat Ladoo immediately proceeded to present petitions to be allowed to carry on the suit instead of her, the Court, as their Lordships are disposed to think improperly, prevented her from carrying on the redemption suit, would not grant that petition, and allowed the redemption suit to go on in the name of Mussumat Oodey, who had begun it, but that mistake cannot, as their Lordships think, possibly deprive her now of the right to which she is in law entitled, though it accounts for the judgment of the Judge in the first instance, who properly considered that it was no business of his to overrule or to differ from the judgment of the Superior Court.

On these grounds their Lordships are of opinion that this petition cannot possibly operate either as a conveyance, or as a contract to convey, nor by way of estoppel, so as to deprive the plaintiff of her right to recover all these properties, and their Lordships entirely agree in the Judgment of Sir Walter Morgan, which was practically to the same effect. Their Lordships, therefore, will advise Her Majesty that this Appeal ought to be dismissed, and the Judgment of the Supreme Court of Agra ought to be confirmed, with costs.