Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Bishen Perkash Narain Singh v. *Bawa Misser and others, from the High Court of Judicature at Fort William in Bengal; delivered 17th May* 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

The facts of this case and the law which arises upon them may be very shortly stated. Dabee Dutt Misser shortly before his death executed an instrument whereby he gave to his only son, who was considerably in debt at that time, his ancestral property. His self-acquired property he gave to his grandsons and to his then second wife, afterwards his second widow. At the same time he made his son the guardian of these grandsons during their minority. It was contended in the first place that he had no right to make this disposition of his property, and secondly that this deed was fraudulent; the intention of Dabee Dutt being that, although upon the face of the deed the property was given to the grandsons, it should really belong to the son, and that the transaction was not a real but a colourable one. The Principal Sudder Ameen appears to have adopted this view, but their Lordships are of opinion that there was no sufficient evidence to support it. The only evidence at all pointing in the direction of that

finding would be that after the death of Dabee Dutt, the son remained in possession of the property, but inasmuch as the grandsons were minors and he was appointed their guardian that possession was not inconsistent with the deed.

The High Court reversed the decision of the Principal Sudder Ameen, finding that the transaction was a real one, and not merely a colourable one, a finding in which their Lordships concur.

It only remains then to be decided whether or not by law Dabee Dutt was enabled to make this disposition of his property. The transaction occurred within the Mithila district, and the Mithila law would prevail. Of that law the principal authority is the Vyavada Chintamana, in which it is laid down in very plain terms, without qualification, that self-acquired property can be given by its owner at his pleasure, and subsequently it is stated that "the father has " full dominion over the property of his father, " which, being seized, is recovered by his own " exertions, or over that which is gained by him " through skill, valour, or the like. He may " give it away at his pleasure or he may dis- " tribute it." In their Lordships' view this dictum would apply.

But it has been argued that under the Mitacshara law the father could not dispose of the property away from his son without the son's consent. The Mitacshara law appears to be referred to undoubtedly by the learned judges of the High Court as applying to this case. But assuming what it is not necessary to decide, that the Mitacshara law applied, and assuming the Mitacshara law only to admit of the father making such a disposition with the consent of his son, in this case the consent of the son was given. It was indeed argued that because the son was in debt he could not consent, but their Lordships are of opinion that there is no foundation for that argument. The consent

of the son was given, and in either view Dabee Dutt exercised a power which by law appertained to him.

On these grounds their Lordships are of opinion that the decision of the Court in India was right, and that this Appeal must be dismissed with costs, and will humbly advise Her Majesty to this effect.