Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mirza Himmut Bahadoor v. *Sahebzadee Begum and another, from the High Court of Judicature at Fort William in Bengal; delivered on the 28th November* 1873.

Present:

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

SIR LAWRENCE PEEL.

THIS was a case in which Mirza Himmut Bahadoor was the Plaintiff, Sahebzadee Begum and Mussamat Bismullah Begum, one being the widow and the other the illegitimate sister of Mirza Ekbal Bahadoor, were Defendants. The case of the Plaintiff was that he was one of the co-heirs of Mirza Ekbal. If this point were decided in his favour, other questions would arise respecting the title of the widow to dower, and the title of the sister to maintain possession of certain property of Ekbal which she was possessed of; but if the question of heirship be decided against Mirza Himmut, none of these questions arise, and their Lordships are of opinion that the judgment of the High Court is right, which decided this question against him.

In the Court below a question was raised on which a good deal of evidence was given, and which was discussed at great length, whether or not Mirza Himmut and Ekbal were the legitimate sons of their mother Baratee and their father Modenarain Sing, but the Court below as well as

the Court above have come to the conclusion that there was no marriage between their parents, and it must be taken and indeed is admitted that they were illegitimate. The Court below held, however, that notwithstanding this illegitimacy, and notwithstanding therefore that by the law of the Sheah sect of the Mahomedans, (which by admission of both parties applies to this case,) the Plaintiff would not be heir of Ekbal,—that Ekbal had so acknowledged the Plaintiff to be his heir that the Plaintiff acquired that status, and was entitled to succeed to his property as such. The High Court, agreeing with the Court below upon the first question as to the legitimacy, reversed its decision upon the second point, being of opinion that there was no proof of any such acknowledgment on the part of Ekbal; and the sole question before their Lordships now is whether or not there was such an acknowledgment. There is no question that under the Mahomedan law acknowledgments may be made of such a kind as to operate not merely as admissions but as actually conferring certain descriptions of status, among others a status of heirship, limited or general, as the case may be, upon the persons acknowledged. With respect to acknowledgments of relationships, their Lordships have been referred to Mr. Baillie's "Digest of Mahomedan Law," Part I., published in 1865, and they find it there thus laid down:—"The acknowledgement " of a man is valid in regard to five persons, his " father, mother, child, wife, and mowla, because " in all these cases he acknowledges an obliga- " tion, and it is not valid except for these," and then, further, after giving cases of those acknowledgments which have been stated to be valid, on page 406 this is found:—"The acknowledgment " of a man is not valid with respect to any other " persons than those before mentioned, such as a

" brother, or a paternal or a maternal uncle, or " the like," so that if this passage stood without further explanation it would lead to the conclusion that by the Mahomedan law an acknowledgment of one person by another as his brother, and as such his heir and successor, would have no validity. However, the passage is further explained thus :—" When it is said " that the acknowledgment of a man is not " valid with respect to any other than those " above mentioned, it is only meant that it " is not obligatory on any other except the " acknowledger and the acknowledged; but with " regard to such rights as affect them only the " acknowledgment is valid, so that if one were " to acknowledge a brother, for instance, having " other heirs besides who deny the brothership, " and the acknowledger should die, the brother " would not inherit with the other heirs, nor " would he inherit from the acknowledger's " father if he denied the descent, but he would " be entitled to maintenance as against the " acknowledger himself during his life." The acknowledgment contended for consists in this and this only :—it appears that after the death of the mother a proceeding in the Civil Court of Gyah was instituted on the 20th January 1866, in which it is recited that Mirza Himmut Bahadoor, Mirza Ekbal Bahadoor, and Mussamut Bismullah Begum, sons and daughter of Mussamut Baratee Begum, deceased, by their pleaders, prayed for a certificate under the provisions of Act XXVII. of 1860, on the proof of heirship to the said Mussamut Baratee Begum. That, coupled with this further fact which appears, that these three did by some means or other obtain possession of some property belonging to an elder sister, apparently in the character of her heirs, is relied upon as such an acknowledgment as to constitute the status of full brotherhood

and heirship on the part of the Plaintiff to the Defendant. Their Lordships are of opinion that it would be carrying the doctrine of heirship constituted by acknowledgment to an extent to which it has never been carried before, and farther than the principles of the Mahommedan law as to acknowledgments warrant, if they were to give such an effect as has been contended for to what is but an argumentative or inferential admission at best. All that is directly admitted by the statement in Court, (the language, being that of the pleader of the parties,) is that the Plaintiff and the Defendant were the sons of Baratee, and as such claimed her property. It is sought to deduce from this that they must therefore necessarily be taken to have declared, not only that they were sons and heirs of Baratee, but that they were to all intents and purposes brothers and heirs to each other,—"full brothers" is the term in the plaint,—and that they were entitled to succeed to each other's property, not only property obtained from Baratee but any property which may have been obtained by either of them from any source whatever. It appears to their Lordships that it would be very unduly stretching the purport of this document to give it any such interpretation. It does not appear to their Lordships by any necessary implication that they must have intended to constitute each full brother of the other for all intents and purposes as has been contended. It may be that they sought to avail themselves of the Soonee Mahomedan law, whereby, as it was admitted, they would, although illegitimate, be heirs of their mother. If that were so, the statement in this document amounts to no admission at all, but simply to a statement of fact, and to the inference which the law would derive from that fact. But, be that as it may,

their Lordships are of opinion that it is by no means shown, and no inference can be fairly deduced, that it was the intention of the parties by this document to constitute each brother to the other, so as to make him an heir to his estate.

This being their Lordships' opinion on the question of fact, it is unnecessary for them to consider the question whether the widow, who is generally included with the other sharers in the term "heirs," but is not, like sharers, entitled in the absence of "residuaries" to a "return," is or is not an heir in the sense in which the word is used in the passage above cited, and also in the passages in the Hedaya to which their Lordships were referred in the course of the argument, so that her existence would have destroyed the effect of the acknowledgment, had one been proved.

On these grounds their Lordships are of opinion that the judgment of the High Court is right; and they will humbly advise Her Majesty that it be affirmed, and this appeal dismissed with costs.