Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raj Bahadoor Singh v. *Achumbit Lal, from the High Court of Judicature at Fort William in Bengal; delivered Thursday, February 6th,* 1879.

Present:

SIR JAMES COLVILE.
SIR MONTAGUE SMITH.
SIR ROBERT COLLIER.

IN this case the Respondent (the Plaintiff), Achumbit Lal, brought his suit to recover possession of certain property to which he alleged that he was entitled as joint heir with his brother, one Doorga Prosad. The Defendant Raj Bahadoor Singh, to whom was joined the brother of the Plaintiff, claims under the widow of Doorga Prosad, and the real question in the cause is whether, under a certain document called a waseeutnamah, executed by Doorga Prosad on the 24th May 1820, the widow's estate was enlarged from the ordinary estate of a Hindoo widow to an absolute estate. The main contention in the Court below appears to have been that the document operated in the nature of a will, conferring upon her, or granting to her, an absolute estate; but the main contention before their Lordships has been somewhat different. It has not been seriously argued that the document conferred upon her or granted to her any estate which she had not before, but it is contended that it operates by its recitals as an admission on the part of Doorga

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Prosad, by which a person claiming under him would be bound, that the widow had in fact a joint interest with Doorga Prosad in the property which is the subject of the waseeutnamah, a part of which is claimed in this suit.

The case was heard before the two Courts in India, both of whom found in favour of the Plaintiff. The High Court was composed of Mr. Justice Glover and a very learned native, Mr. Justice Mitter, and those learned Judges had the original document before them. They appear to have considered that the translation which is now in the Record was to some extent imperfect, and they gave their decision upon the construction which they put upon the original document. It would have been more satisfactory to their Lordships if they could have had before them the translation of the document on which the High Court relied, and they cannot help thinking that it was incumbent on the Appellant, who desires to satisfy them that the High Court was wrong, to furnish them with that translation, or at all events some information with reference to it. As it is, however, their Lordships must deal with the document which is before them. Undoubtedly it is somewhat ambiguous in many of its expressions, but they think it clear, as has been before observed, that there was no intention on the part of Doorga Prosad to grant any new estate to this lady; and they do not see their way to differ from the construction which was put upon it by the High Court, and which is expressed in these terms in the judgment of Mr. Justice Glover, agreed to by Mr. Justice Mitter: "I take the meaning of "Doorga Prosad to be, that feeling old and unable "to manage the complicated affairs of a large "estate, and knowing that his wife, a *purdanashin* "lady, would likewise be incompetent to the

" business, he agrees to pay a manager to take " all the trouble off their hands, and to do so at " once. He speaks of his wife as being joined " with him as owner, but these words cannot be " taken literally, as throughout the document he " speaks of himself as the sole proprietor, and all " his arrangements are made with reference to " his own comfort and advantage in the first " instance. Jusoda Chowdhrain is to get nothing " till his death. The warning given to his other " heirs refers to the time between his own death " and Jusoda's. That the lady herself did not " understand the waseeutnamah to be a will " giving her the property to dispose of after her " death is clear from her own statement " in another suit. Their Lordships, on the whole, are not prepared to disagree with this view, which was taken by the learned Judges of the High Court, and this construction of the document disposes of the main point in the case.

It only remains to notice two subsidiary questions. The widow executed, on the 7th July 1851, a putnee lease in favour of Raj Bahadoor Singh of two out of three of the mouzahs which are the subject of this suit, and part of the prayer of the claim is that that putnee lease be set aside. Inasmuch as it has been found as a fact by both Courts that there was no necessity for borrowing the sum for which the putnee was granted, it follows that if the widow had no more than a Hindoo widow's estate, the putnee could only bind her life interest. It appears that the lady also executed what has been called a deed of adoption on the 24th May 1860, by which she professed to adopt, in pursuance of the permission of her husband, who had died in 1825, the father of Raj Bahadoor, to whom the putnee had been granted, and Chutturdhari Lal, the brother of the Plaintiff and a Defendant, and to make over to them her

property. But the gift was not to take effect until her death, possession being retained by her during her lifetime. It has been admitted on the part of the Appellants that this document cannot be seriously treated as an attempt on the part of the widow to adopt a son or sons as heirs to her husband, but is merely an adoption of heirs to herself, and in fact a disposition of her property, very much in the nature of a will, to them after her death. A part of the claim is that this document also be cancelled. Upon this part of the case a question has been raised concerning the Statute of Limitations, and the schedule to the last Statute of Limitations of 1871 has been quoted, wherein it is enacted that, with respect to a suit to establish or set aside an adoption, the time when the period of limitation begins to run is " the date of the adoption or (at the option of " the Plaintiff) the date of the death of the " adoptive father." On the above view of the document, the words of the statute would seem scarcely applicable to it. Their Lordships are clearly of opinion that this provision relating to adoption, though it might bar a suit brought only for the purpose of setting aside tbe adoption, does not interfere with the right which, but for it, a Plaintiff had of bringing a suit to recover possession of real property within 12 years from the time when the right accrued, and that they regard as the nature of this suit. Inasmuch as according to the admitted construction of the document the widow conveyed by it no more than she had, which was but a life interest, the document is innocuous, and it is immaterial to the Plaintiff whether it be set aside or not. Their Lordships however think it well to say that the decree of the Court below in setting aside this document and the putnee lease, must be considered to have in effect decided no more than that the Plaintiff

was entitled to recover notwithstanding those documents, without in any degree compromising any rights which other parties may have under them.

Their Lordships will humbly advise Her Majesty that the judgment of the Court below should be affirmed, and this Appeal dismissed with costs.