Judgment of the Lords of the Judicial Committee of the Privy Council on Appeal of Jowala Buksh v. Dharum Singh and others, from the late Sudder Dewanny Adawlut, Agra; delivered on the 18th June, 1866.

Present:

LORD JUSTICE TURNER.
SIR JAMES COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

SIR LAWRENCE PEEL.

THIS is an Appeal from a Decree of the Sudder Court of the North-Western Provinces, reversing a Decree which the principal Sudder Ameen of Meerut had made in the Appellant's favour, by dismissing the Suit against him.

That Suit was brought by Aram Singh (who is since deceased, but is represented on the record by the four first Respondents) and the Respondent Golol Singh, to recover from the Appellant possession of the Talook of Ourungabad Kaseer, in the district of Bolundshuhur, with mesne profits; and to cancel and invalidate the Deed of Sale of that Talook, which was executed on the 17th of October, 1842, by Mussumat Maha Kooer, wife of Tara Singh, in favour of the Appellant's father, Meeta Ram.

The Appellant was in possession of the property claimed under the following title:—The Ourungabad estate, and also another estate called Chuckathul, which was situate in the Collectorate of Allyghur, formerly belonged to one Roop Singh, otherwise called Pahulwan Ulee Khan, who died A.D. 1753. He was by extraction a Gujar, a race of Hindoos common in the Doab, of which Professsor Wilson says in his Dictionary, "they profess to descend from Rajpoot fathers by women of inferior castes." Roop Singh, however, became a

convert to the Mohammedan faith, and thenceforth adopted the Mussulman *alias* of Pahulwan Ulee Khan; and the custom of bearing both a Hindoo and a Mussulman name seems to have been continued in his family. He left a son, Lootf Ulee Khan, otherwise Tara Singh, who succeeded him in the enjoyment of his property, and died without issue in 1805. He was succeeded by his widow, Thookranee Maha Kooer, who became, as the Appellant contends, sole and absolute proprietor of both Talooks, and, as such, enjoyed them for many years. In 1842 she sold the Ourungabad estate to Meeta Ram (the father of the Appellant) for Rupees 30,000, and executed to him the bill of sale of the 17th of October, 1842, which the Plaintiffs in this Suit seek to have set aside. This document was registered on the 23rd of February, 1843; and certain proceedings were had before the Collector of Bolundshuhur, which resulted in Meeta Ram being recorded, in the month of December, 1843, in the books of that Collectorate as "Zemindar, Lumberdar, and Malguzar" of the whole of this Talook, with the exception of one village. Meta Ram died in August 1844, and on an application by his son, the Appellant, for a mutation of names, the Thookranee raised some objections to the validity of the deed executed by her. These, after inquiry, were overruled by the Collector, and his decision was confirmed by the Commissioner on the 21st of February, 1845. From that time, and at least up to the date of the Decree under Appeal, the Appellant was the registered proprietor of the Ourungabad estate, and in actual possession of it. Thookranee Maha Kooer died on the 8th of September, 1853; and the Suit was instituted on the 14th of August, 1854.

The case made by the Plaint, in opposition to the Appellant's title, was to this effect.

The Ourungabad and Chuckathul Talooks were both the ancestral property of Pahulwan Ulee Khan, who is termed "the great ancestor" of the Plaintiffs. He had three sons, Mohun Singh, Tara Singh, and Mokund Singh. The two latter died without issue, but Mohun, the youngest, left a son, Loll Singh, who was the father of the Plaintiffs. The first settlement of the estates after they came, by the conquest of the provinces in which they lie,

under British rule, was made in 1213 Fuslee (1806), when the only surviving representatives of the great ancestor were Loll Singh and Thookranee Maha Kooer, the wife of Tara Singh, *who, by mutual consent, lived together in partnership.* A summary settlement was made in 1216 Fuslee, A.D. 1809, with the assent of Loll Singh, with the Thookranee; but in the following year, some arrears of revenue having then accrued, another inquiry was made as to the proprietorship of the estates, and both the Thookranee and Loll Singh having been declared disqualified, both Talooks were, by an order of the 9th April, 1811, placed under the management of the Court of Wards. Gunga Ram, the father of Meta Ram, was at one time manager of both Talooks under the Court of Wards, and was, in 1825, succeeded by Meta Ram, who was afterwards dismissed for misconduct from the management of Chuckathul, but continued in that of Ourungabad, which had been transferred to the Collectorate of Bolundshuhur.

The Plaint then gives the subsequent history of the Chuckathul estate. It alleges that Meta Ram caused a document, dated the 21st of June, 1840, and purporting to be a Deed of Sale of that property by Thookranee Maha Kooer to his nephew Nittianund, for the pretended consideration of Rupees 50,000, to be fabricated; and on the 1st of March, 1842, obtained a fraudulent and collusive Decree founded on that instrument. It shows that these transactions were afterwards impeached and set aside by a Decree of the Civil Court of the 26th of January, 1849, affirmed by one of the Sudder Court of the 19th of February, 1851; whereupon "the proprietary right reverted to its former status." These Decrees proceeded chiefly on the ground that the estate at the date of the alleged sale was under the management of the Court of Wards, and that the disqualified proprietor had, therefore, no power of alienation.

The Plaint then alleges that the same objections applied to the sale of the Ourungabad estate to Meta Ram in October 1842, that estate being also under the management of the Court of Wards. It insists that "under these circumstances the Deed of Sale executed by one unqualified proprietor, notwithstanding the existence of the other heirs

of the great ancestor, cannot be held to be legal." It also charges that the transaction was fraudulent, and that not a single portion of the alleged consideration money was ever paid.

The Plaint having been filed, the Plaintiffs were met by the difficulty occasioned by a third claim of title. Thookranee Maha Kooer had been registered as the sole owner of both the Chuckathul and Ourungabad estates. After the sale of the former to Nittianund had been set aside, she had again been recognised by the Revenue authorities as the sole owner of that estate; and when she died the question arose, who was entitled to succeed as her heir. The Collector of Allyghur determined this question in favour of the Plaintiffs; but his decision was overruled by the Government, which treating, apparently, the possession of the Thookranee as that of a sole and absolute proprietor, and the succession as governed by the Mohammedan law, determined that one Mussumat Rutta Kooer was, as her niece, entitled to succeed to her; and accordingly placed or continued the estate under the management of the Court of Wards for the benefit of that lady. The Plaintiffs, or rather Aram Singh alone, had brought a suit to contest the title of Mussumat Rutta Kooer to the Chuckathul estate; and feeling that her title as alleged heiress of the Thookranee might embarrass them in this Suit for the recovery of Ourungabad, they applied for and obtained leave to file a supplemental Plaint, in order to make her a Defendant to this Suit also. This supplemental Plaint thus stated the title of the Plaintiffs:—"During the lifetime of Tara Singh, Loll Singh, the Plaintiff's father, was entitled to one half of the ancestral property; and after the death of Tara Singh, his wife, Mussumat Maha Kooer, was entitled to only one fourth of the estate; but in consequence of her being the elder relative, her name was registered in the Collector's office by mutual consent, and the said Thookranee, and the Plaintiff's father, and after his death, the Plaintiffs lived together in partnership, and appropriated the produce. The registration of the name of one of the members of the family was sufficient for all the members of the family. The principal Plaintiffs being Hindoos of the Rajpoot tribe, the Mohammedan Pentateuch is not observed in their family; besides

this, they are called by Hindoo names." And again, "The fourth share held by Thookranee Maha Kooer in the estate of Tara Singh, does not descend by custom to Mussumat Rutta Kooer. In accordance with the usage prevailing in their family, and by heritage, the Plaintiffs are the owners of the entire estate."

The defences set up by the answer of the Appellant, and of his mother, who was joined with him as a Defendant, are reducible to the following heads:—1st. That the Thookranee having been in sole possession of the property up to the date of the sale to Meeta Ram, to the exclusion of the Plaintiffs and their father, their suit was barred by Regulations II. of 1803, sec. 18, and II. of 1805, sec. 3, the general Regulations of Limitation. 2ndly. That the claim of Loll Singh and of the Plaintiffs having been rejected by the Revenue authorities in 1838 and 1843, the present Suit was barred by Act XIII. of 1848, without reference to the other Statutes of Limitation. 3rdly. That the Plaintiffs' grandfather, Mohun Singh, and their father, Loll Singh, were both illegitimate, the former being the son of a slave girl; the latter, of a female minstrel. 4thly. That Loll Singh was never in joint possession and enjoyment of the property with the Thookranee; that the revenue settlements were made with her alone; and that she was, in fact, sole proprietor of the estate, and registered as such, not as one of several co-sharers. 5thly. That the Ourungabad estate, at the time of the sale to Meeta Ram, was no longer under the management of the Court of Wards. And 6thly. That there was no fraud in that transaction, and that the purchase money was really paid.

There is a good deal of other matter in the Answer, but it is more in the nature of evidence pleaded in support of one or other of the above allegations, than of matter raising other and distinct issues.

The Replication insisted that the Plaintiffs and their father possessed and enjoyed the property jointly with the Thookranee; that the registration in the name of the latter afforded no conclusive presumption against that joint possession; and that these facts were both an answer to the plea of the Statutes of Limitation, and gave the Plaintiffs a present title to the property. It sought to explain

the revenue settlements with the Thookranee by saying that they were made with her as the elder relative, or member of the family. And it met the plea of Act XIII. of 1858 by saying that the present Suit was not brought for reversal of the settlement and orders under the provisions of Regulations VII. of 1822, VII. of 1825, and IX. of 1833, but for reversal of the sale to Meeta Ram within the period of twelve years.

The other pleadings are not of importance. It may be mentioned, however, that those between the Plaintiffs and Rutta Kooer raised more distinctly the question whether the succession to this property from the great ancestor and from the Thookranee was to be governed by the Hindoo or by the Mohammedan law of inheritance; the Plaintiffs insisting on the application of the former.

It has been mentioned that Aram Singh had brought a suit against Mussumat Rutta Kooer for the recovery of the Chuckathul estate. The issues raised in that suit were necessarily almost identical with those raised in this Suit between the Plaintiffs' and Rutta Kooer. And in so far as they involved the questions of the legitimacy of the Plaintiffs' father and grandfather, the nature of the interest which Thookranee Maha Kooer had in both the Talooks in her lifetime, and the heirship to her, they were also similar to the issues to be tried between the Plaintiffs and the Appellant. This being so, this Suit for Chuckathul was by order of the Sudder Court transferred from the Civil Court of Allyghur to that of the Principal Sudder Ameen of Meerut in which the suit for Ourungabad was pending. Both causes were heard together, and the evidence, common to both, was taken in both. On the 29th of August, 1856, the Principal Sudder Ameen, by separate judgments, dismissed both causes. His conclusions upon the issues common to both were stated at length in the judgment in the Chuckathul case. He found that neither the father nor the grandfather of the Plaintiffs was legitimate; that neither the Plaintiffs nor their father had been joint in estate with Thookranee Maha Kooer; and that, by reason of her long and adverse possession, the claim was barred by lapse of time. He also held that the succession to the Thookranee was determinable by

the Mohammedan, and not by the Hindoo law, and that accordingly Mussumat Rutta Kooer was her heir and representative. And having thus found the Plaintiffs to be the heirs neither of Pahulwan Ulee Khan, nor of Thookranee Maha Kooer, "but to be entire strangers, not having any concern with the estate," he deemed it unnecessary to inquire into the genuineness or otherwise of the deed of sale of the 17th October, 1842.

Aram Singh and his brother appealed to the Sudder Court against both these decisions. Pending these appeals a compromise was entered into between Aram Singh and Golol Singh on the one part, and Mussumat Maha Kooer on the other; the effect of which was that they were to divide the Chuckathul estate, and the Ourungabad estate if it could be recovered, in certain proportions; and a Decree was made by consent, in the Chuckathul Suit on the 5th of December, 1861, giving effect to this compromise. The Sudder Court, on the 25th of December, 1861, heard the appeal in this Suit; and on that occasion, after adverting to the compromise, and without coming to any conclusion concerning the Plaintiffs' title, it proceeded to consider whether the deed of the 17th of October, 1842, was illegal and without consideration. It determined this question against the Appellant, mainly on the ground that at the date of the deed Talook Ourungabad, like Talook Chuckathul, was under the Court of Wards. But it also held that the payment of the consideration was not proved, and that the relation of Meeta Ram to the Thookranee, and his antecedents, afforded certain presumptions of fraud. It accordingly decreed possession of the property, with mesne profits, to the Plaintiffs and Mussumat Rutta Kooer, in the terms of the deed of compromise; meeting the objection made by the Appellant's vakeel that it lay on the Plaintiffs first to prove their title, by referring to the compromise and to the Decree passed thereon in the former suit, and by observing that "it would indeed be but an idle and unprofitable prolongation of litigation to dismiss the Suit of Aram Singh only to enable Mussumat Rutta Kooer to sue the Appellant for that which she was willing to share with Aram Singh."

Their Lordships are of opinion that this Decree

of the Sudder Court cannot be supported. The Appellant was in possession of the estate. He and his father had held continual possession of it from December, 1843, if not from October, 1842. His own possession of it had been unquestioned since February, 1845, when he was recorded as the proprietor of it. It was essential, therefore, for any party seeking to oust him from that possession to show a better title to the estate, *i. e.* a title which would give the claimant a right to the estate failing the title impeached. The Judgment of the Sudder Court assumes that the title set up by the Plaintiffs may be wholly bad; but it says, if they are not entitled to recover the estate on showing that the Appellant's title is bad, Mussumat Rutta Kooer would be so entitled; and as they have agreed to divide the spoils with her, it matters not on which title the property is recovered. The title of Rutta Kooer could not be tried between her and the Appellant in this Suit. The effect, therefore, of the Judgment is to defeat the Appellant's possessory title, without giving him an opportunity of contesting the title of the party by whom he is turned out of possession. Their Lordships cannot give their sanction to this course of proceeding, which appears to them to be in violation of the legal principles which protect possession, as well as of the substantial principles of justice which regulate the joinder of parties and union of titles to sue in one suit. The decision, in effect, sustains an union of titles indirectly, which could not have been directly advanced in union against the Appellant's possession. It is difficult to estimate the full weight of the grave dangers to which so irregular a course might expose possession. They conceive that the first question which the Sudder Court ought to have decided, and which must now be decided on this Appeal, is, whether the Plaintiffs have shown any title to this property.

In the determination of this question, the first material issue of fact to be considered is, whether, as the Plaintiffs allege, Loll Singh, and afterwards the Plaintiffs themselves, were in the possession and enjoyment of the property jointly with Thookranee Maha Kooer, or whether her admitted possession was in exclusion of them. Upon the determination of this issue depend not only a material

link in the title laid, but also the application of the Law of Limitation to the case, and various presumptions that have an important bearing on the solution of other questions raised in the cause, particularly that of the legitimacy of the Plaintiffs' line of descent.

That the Thookranee was in her time the sole recorded proprietor of both the Talooks is incontestable. This, in an ordinary case, might be a circumstance of little moment; because it has been ruled, and is consistent with reason, that one member of a joint Hindoo family may be so recorded on behalf of the family. But in the present case arises the question, why the name in which the property was recorded should be that of the female rather than that of the male member of the family, particularly when, upon the application of the ordinary Hindoo law to the facts as stated by the Plaintiffs, that male member (Loll Singh) would, upon his uncle's death, have been entitled to the whole estate, and the female member (the Thookranee) would have had only a right to maintenance. It is no satisfactory answer to this question that this was done because the Thookranee was the elder member of the family; for it appears on the evidence that she was, in fact, younger in years than Loll Singh, and whether young or old, she was equally excluded by the Hindoo law from the inheritance to her husband's share in joint and ancestral property.

This recognition of her, therefore, as apparently sole proprietor, raises a presumption against the case of joint possession and enjoyment set up by the Plaintiffs.

Again, the broad facts deducible from the documentary evidence, so far from rebutting, positively confirm this presumption. The first settlement of both Talooks was made after inquiring into the title with the Thookranee in 1809 (p. 23). Two years afterwards, the revenue being in arrear, both Talooks were placed under the Court of Wards as "the estate of the widow of Tara Singh." In the proceeding of the Collector of the 10th April, 1811, by which this was done (p. 25), there is no mention of Loll Singh. The assumption of the estate by the Court of Wards would have been irregular under sec. 4 of Regulation LII. of 1803, if there

had been then any co-proprietor not disqualified under sec. 3 of that Regulation. That Loll Singh was disqualified, by mental incapacity or otherwise, under that section, or had been declared to be so, there is not the slightest proof. The only foundation for the suggestion that he had been declared disqualified seems to be a loose statement in the Deputy Collector's letter of the 2nd March, 1811, which, assuming Loll Sing to be the heir of the Ranee, says that he is not qualified (and as such he could not be qualified) to have a settlement made with him (p. 31).

Again, though Chuckathul remained under the custody of the Court of Wards, Talook Ourungabad was released from that custody sometime about the year 1833 (p. 71). In 1833 a new settlement of Ourungabad was made with the Thookranee. In the Collector's Proceedings (see p. 57) it is stated that she then claimed the entire Zemindaree, and asserted that there was no co-sharer of the estate who could call for division. A similar statement appears in the Proceedings of the Collector of the 5th of September, 1836, which extended the settlement (p. 59). A further extension of the settlement took place in 1839 (p. 70).

In 1837 we have evidence of his exclusion from Loll Singh himself. In December of that year, and again in April, 1838, he presented petitions to the Collector of Allyghur, praying for an investigation of his right as a co-sharer in Chuckathul; treating the Thookranee as in possession, and himself as poor, destitute, and excluded by her. On the 10th of July, 1838, a proceeding was had before the Collector. In this it is distinctly stated that neither the claimant nor his father, Mohun Singh, were ever in possession of the estate. The illegitimacy of the Loll Singh's descent was also a point distinctly raised by the Thookranee on this occasion. The result was that the claim was dismissed, and Loll Singh referred to the Civil Court for the assertion of his alleged rights (pp. 32–34). In September, 1841, he applied to the Principal Sudder Ameen for leave to sue *in formâ pauperis* for a moiety of both the Chuckathul and the Ourungabad estates. His right to sue *in formâ pauperis* was contested by the Thookranee, who, in her petition to the Court, repeats her objections

to his title, as well as the grounds on which she sought to dispauper him. Nothing came of the Suit, if it was really instituted, and Loll Singh died in 1842.

Again, the Proceedings of the Collector of the 9th of December, 1843 (p. 83), on the application of Meeta Ram to be recorded as purchaser and lumberdar of Ourungabad, on which occasion Aram Singh and others appeared as objectors, is also inconsistent with the theory that the Plaintiffs were from the time of Loll Sing's death to the date of the sale in the possession and enjoyment of the property as co-sharers with the Thookranee. On the application for the mutation of names in 1846. they did not even appear as objectors, leaving the contest to the Thookranee, who resisted it in the character of sole proprietor.

The petition of Aram Singh touching his under-tenure (p. 31) is also consistent with the theory that Mohun Singh, Loll Singh, and the Plaintiffs were treated as illegitimate relations and dependants of the family. It is inconsistent with the theory that they were ever admitted to the rights of co-sharers in a joint ancestral estate. The proceedings also, which resulted in setting aside the sale of Chuckathul, and are so strongly relied upon for another purpose, are destructive of this part of the Respondent's case. These proceedings were instituted by and with the authority of the Court of Wards, the Collector, on the part of Government, being a party; and the result of them was to replace the Court of Wards in possession of the estate on behalf of the Thookranee. Yet, as has been shown above, the possession of the Court of Wards would have been wholly irregular, had Aram Singh and his brother then been co-sharers in that estate. The Plaintiffs, therefore, have upon the evidence wholly failed to prove that they or their immediate ancestors were in possession or enjoyment of this property as co-sharers at any time during the tenure of Thookranee Maha Kooer, or indeed at any time since the death of "the great ancestor," in 1753.

Mr. Leith, when pressed by this difficulty, had recourse to a theory that the property was in the nature of an impartible Raj, and was therefore held by the elder to the exclusion of the junior

branch of the family. But, to say nothing of the absence of any evidence of the existence of this supposed tenure, and of its inconsistency with the title set up by Loll Singh in 1837, and now pleaded by the Plaintiffs in this suit, it is obvious that though the theory might explain the enjoyment of the property by Tara Singh in exclusion of Mohun Singh and afterwards of Loll Singh, it would afford no explanation whatever of its enjoyment by Thookranee Maha Kooer in exclusion of Loll Singh and his sons. For, by the Hindoo law, Loll Singh, if the legitimate male heir of the great ancestor, would have taken the Raj on the death of his uncle Tara Singh, to the exclusion of the widow, the property being assumed to be ancestral and the family undivided. In the case of *Kattama Natchiar* v. *The Rajah of Shivagunga*, 9 Moore's E. I. Appeals, 539, it was admitted that this would have been the course of descent according to the *Mitacshará*, if the property had been ancestral. The reason why in that case this Committee, overruling the decision of the Court below founded on the opinion of the Madras Pundits, preferred the title of the daughter to that of the nephew of the last possessor, was, that the Shivagunga Raj was the separate acquisition of the deceased, and therefore passed according to the canon which regulates the descent of separate property, and not according to that which determines the succession to the joint or ancestral property of an undivided family.

The facts relating to the possession of the property having now been determined, it may be convenient next to dispose of the questions arising under the different Statutes of Limitation which were so much debated at the Bar. Their Lordships are of opinion that no ground has been shown for the application to this suit of the statutory bar of three years under Act XIII. of 1848. The operation of that Act is limited to awards made by the Collectors under the Regulations VII. of 1822, IX. of 1825, and IX. of 1833, which gave to the revenue authorities judicial power to determine certain questions of possession and other matters, with a right of appeal to the regular Courts against their awards. That right of appeal is by the Act of 1848 subjected to the three years' limitation. But the order for the mutation of names

in the Register in 1843, to which alone it is important to apply the three years' bar, does not seem to be an award of the same nature with those contemplated by the Act. Nor, in their Lordships' opinion, could the award of the Collector conclude any of the questions of title, as distinguished from possession, which are raised in this suit. These, therefore, can only be affected by the general Law of Limitation. The applicability of that law to the present case depends very much upon the nature of the title on which the Plaintiffs are to be taken to rely. If they are to be taken to sue as the heirs of Thookranee Maha Kooer to set aside a conveyance obtained from her by fraud, their right of action accrued at the date of the conveyance, and their suit was just within even the twelve years' limitation. If they are to be taken to sue as the next heirs of her husband to set aside a conveyance which, whether fraudulent or not, she, considered as a Hindoo widow, was incompetent to execute, their right of action accrued at the date of her death, and this suit was *à fortiori* within the legal period of twelve years. But, in so far as their title was adverse to that of Thookranee Maha Kooer—and it is difficult to treat the title laid as not being of that nature—the facts proved touching her possession show that the claim is obnoxious to the objection that it is barred by lapse of time. The general rule, that the possession of one member of a joint Hindoo family is the possession of all, does not apply where the claimant has been clearly excluded. In the latter case the possession is adverse, and time will run. The cases of *Muhpal Singh* v. *Gyadutt*, 1854, and *Bunseedhur and another* v. *Cheddunnee Loll*, 1852, in the Decisions of the Sudder Court of Agra for those years respectively, are instances of the general rule, and of the exception.

It is unnecessary, however, to invoke the Statutes of Limitation if the Plaintiffs have failed, as their Lordships think they have failed, to establish the legitimacy of either Mohun Singh or Loll Singh. That is an objection fatal to their title, in whatever character they are taken to sue. It has been seen that the illegitimacy of these persons was alleged by the Thookranee certainly as early as 1857. Oral testimony of it, whatever that may be worth,

has been given by the Appellant in this Suit. The Plaintiffs have given no evidence of the legitimacy of their ancestors. They seem to rest on certain vague statements and admissions in the earlier Revenue proceedings, to the effect that Loll Singh was the grandson of the great ancestor, and the heir of the Thookranee. The presumption of their illegitimacy is almost irresistible. There is nothing to show why, if they were legitimate, Mohun Singh, and, after his death, Loll Singh, did not share the property with Tara Singh; or why, on Tara Singh's death, Loll Singh did not succeed to it. On the other hand, the devolution of the property and all the facts proved concerning their exclusion, and the sole possession of the Thookranee in succession to her husband, are consistent with the hypothesis that they were illegitimate; and, as illegitimate connections of and dependants on the family, received, by means of their under-tenure or otherwise, support and maintenance, and were to a certain extent recognized as relations.

The case has hitherto been treated upon the assumption, which the Plaintiffs seem to have made part of their case, that this family, though converted to Mohammedanism, is to be taken as still conforming to the Hindoo laws and usages; and that, consequently, the questions of title raised in in this cause are to be governed by Hindoo law. Their Lordships, however, are far from admitting the correctness of that assumption.

This case is distinguishable from that of *Abraham* v. *Abraham*, 9 Moore, E. I. Reports. There the parties were native Christians, not having, as such, any law of inheritance defined by statute; and in the absence of one, this Committee applied the law by which, as the evidence proved, the particular family intended to be governed. But the written law of India has prescribed broadly that in questions of succession and inheritance the Hindoo law is to be applied to Hindoos, and the Mohammedan law to Mohammedans; and in the Judgment delivered by Lord Kingsdown, in *Abraham* v. *Abraham*, it is said that "this rule must be understood to refer to Hindoos and Mohammedans, not by birth merely, but by religion also." The two cases in the second volume of *Sir William MacNaghten's Hindoo Law*, pp. 131, 132, which deal

with the case of converts from the Hindoo to the Mohammedan faith, and rule that the heirs according to Hindoo law will take all the property which the deceased had at the time of his conversion, are also authorities for the proposition that the devolution of his subsequently acquired property is to be governed by the Mohammedan law. Here there is nothing to show conclusively when or how the property was acquired by "the great ancestor." There was no conflict, as in the cases just referred to, between Hindoos and Mohammedans touching the succession to him. Whatever he had is admitted to have passed to his descendants, of whom all, like himself, were Mohammedans; and it seems to be contrary to principle that, as between them, the succession should be governed by any but Mohammedan law. Whether it is competent for a family converted from the Hindoo to the Mohammedan faith to retain for several generations Hindoo usages and customs, and by virtue of that retention to set up for itself a special and customary law of inheritance, is a question which, so far as their Lordships are aware, has never been decided. It is not absolutely necessary for the determination of this Appeal to decide that question in the negative, and their Lordships abstain from doing so. They must, however, observe, that to control the general law, if, indeed, the Mohammedan law admits of such control, much stronger proof of special usage would be required than has been given in this case.

The title advanced by the Respondents, the Plaintiffs in this Suit, is that of Hindoo heirs claiming under a Hindoo title, and it is not necessary, therefore, for their Lordships to give any opinion upon the question how the case would have stood if the Plaintiffs' title had been vested upon the Mohammedan law; but as this view of the case was put forward by Mr. Leith, in the course of his argument on the part of the Respondents, their Lordships may observe that it does not seem to them that the Plaintiffs' case would have stood any better under the Mohammedan than under the Hindoo law, for according to Mohammedan law, Mohun Singh, if legitimate within the wide sense allowed by that law to the term, would have taken an equal share with Tara Singh in the inheritance of "the great

ancestor;" and Loll Singh, if legitimate, would have succeeded to his father's share, and would also, on Tara Singh's death, have come in as "residuary" for a portion of his uncle's share; and the proved exclusion of Mohun Singh and of Loll Singh would raise as strong a presumption of their spurious birth as has been already shown to prevail against the Plaintiffs' title, as rested upon the Hindoo law.

The Plaintiffs having thus failed to establish a title to the property, their Lordships do not think it would be right to express a judicial opinion upon the validity of the sale to Meeta Ram. They will only observe that the principal ground on which that transaction was impeached by the Sudder Court entirely fails; Mr. Leith having fairly admitted that on the evidence the Ourungabad estate must be taken to have been released by the Court of Wards long before the date of the sale. It may also be doubted whether sufficient weight was given to the proceedings before the Collector in 1843 and 1845. The transaction is not impeached as a purchase obtained by undue influence for inadequate consideration, but as one by which the property was obtained, under colour of a fictitious sale, for no consideration at all. It seems improbable that so gross a fraud should have escaped detection on either of the two local investigations referred to.

Their Lordships' decision, however, is to be taken to proceed wholly on the Plaintiffs' failure to prove a title to the property; and the order which they will humbly recommend her Majesty to make, is that the Appeal be allowed; that the Decree of the Sudder Court be reversed; that the Decree of the Zillah Court, dismissing the Plaintiffs' Suit, do stand; and that the costs of this Appeal be paid by the Respondents.