Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Prince Suleman Kadr v. *Darab Ali Khan, from the Court of the Commissioner of Lucknow, Oudh; delivered May 24th*, 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS is one of many actions brought by servants and retainers of one of the widows of the late King of Oudh asserting their right to certain legacies under her will. The Defendant is her only son, and the principal devisee under that will. This may be considered a test action, inasmuch as it is understood that upon its decision the other actions pending, to the number of 10, will depend.

In order to make the case intelligible, a short statement of the facts is necessary. It appears that the late King of Oudh desired to have a Government guarantee for the payment of annuities to many persons, and for that purpose he deposited a large sum of money with the Government, obtaining from the Government promissory notes in favour of these persons. It becomes, however, necessary in this case only to refer to the principal of those persons, namely, his Queen. He obtained from the Government a promissory note for four lacs and Rs. 80,000 for the purpose of securing her an annuity of Rs. 2,000 a month. Subsequently, upon the rate of interest being lowered from five

Q 6621. 125.—6/81. Wt. . E. & S.

per cent. to four per cent., he deposited the further sum of a lac of rupees, and received a note corresponding in value. He died, and subsequently the Queen died, having made a will on the 24th August 1866, which is in these terms:—
" Whereas the life of mankind is altogether
" uncertain,"—and so on,—" after my death my
" son, Mirza Suleman Kadr Sahah Alam Bahadur,
" will be my sole heir and proprietor of all my
" assets, including movable and immovable
" property, groves, company's promissory notes,
" &c., without there being a participator thereof,
" and all my relations and Government officers
" are to recognise him as my son and heir after
" my death. No one but Sahah Aham Bahadur
" has any right to be my heir after my death."
Then comes the important bequest—now in question:—" I desire Mirza Suleman Kadr Sahah
" Alam Bahadur, under this will, to pay every
" month Rs. 644 1 7 (being one third of
" Rs. 1,933 5 4, my monthly pay allowed by
" Government for Government promissory notes
" which are deposited) to my dependants and
" personal servants as detailed below; and they
" will give their receipts for the same. It will
" also be the duty of Mirza Suleman Kadr Sahah
" Alam Bahadur to defray the expenses of the
" imambara, of mourning assemblies, of illumination of imambara during the Moharram, and
" of monthly assemblies. Sahah Alam Bahadur
" and all Government officers are to hold this my
" last will to be of sufficient force for ever, and
" to carry out its provisions without any
" alterations. They will not, in the least, contravene the provisions of this will. Sahah
" Alam Bahadur will treat all the dependants and
" servants with such kindness and affability as
" will secure him fame and good name, and give
" satisfaction to the soul of his deceased father,
" King Amjad Ali Sahah. I have, therefore,

" executed this will,"—and so on. " Be it known " that the expenses of imambara, &c. will be " continued for ever, and also the pay of " Gumani Khanam and Mir Amjad will be " defrayed for ever, *i.e.*, generation after genera- " tion. The rest of the servants will be paid for " life only." At the end of the will there is a detail of expenses, and first we have:— " Expenses of imambara, assemblies, Koran " readers, &c., to be continued for ever under " the management of Derab Ali Khan, " Rs. 214 7 1." Then there is:—" Gumani Khanam Sahaba, my sister, to be paid " Rs. 20 per month; then comes the present Plaintiff, who was the principal eunuch, Mahomed Dasab Ali Khan, Rs. 100, and then come the rest of the servants.

The case has been before three courts. The first and the last court, that being the Court of the Judicial Commissioner, have held that the legacy sued for was payable out of the whole estate of the deceased Queen, including the Government promissory notes. The second court held that she had only a life interest in the promissory notes, and therefore it was not payable out of that fund; but, nevertheless, that it was payable out of her general estate.

This appeal has been preferred by her son Mirza. The main grounds which have been contended for are, first, that there is no absolute bequest, but a mere expression of a wish that Mirza shall pay the legacies; secondly, that, if there is a specific bequest of the legacies, it is a bequest of legacies to be paid out of a certain specified fund, and no other, viz., Rs. 1,933, which was the actual amount which the lady received from her Government promissory notes; that the lady had only a life interest in that fund, and therefore could not exercise any testamentary power over it. It was contended further that

the legacies were only to be paid during the continuance of the services of the servants, but that point has been abandoned.

With respect to the first question their Lordships have no doubt that the words, "I desire "Mirza to pay, every month, my dependants "and personal servants," coupled with the statement at the end, "Be it known that the "expenses of imambara, &c. will be con-"tinued for ever," and "the pay of Gumani "Khanam and Mir Amjad will be defrayed for "ever, *i.e.*, generation after generation; the "rest of the servants will be paid for life only," constitute a bequest, and not merely the expression of a wish or a direction.

The next question is whether these legacies are to be paid solely out of this fund of Rs. 1,933, the income of the Government promissory notes. If the paragraph which has been read had stood alone, viz.: "I desire Rs. 644 (being a third of "Rs. 1,933) to be paid to my dependants and "personal servants," there might have been a question whether it was not a legacy to be paid only out of a specific fund; but when their Lordships proceed further, and find that the Queen desires that the expenses of the imambara shall be paid, without specifying out of what fund, —and indeed it is but natural to suppose that for a purpose of that sort she would be disposed to appropriate her general estate,—and when it is found that the sum of no less than Rs. 214 7 1 is part of this Rs. 644 which has been mentioned as being a third of the Rs. 1,933, it appears to their Lordships that, taking these portions of the will together, the bequest of the Rs. 644 7 1 cannot be treated as appropriated entirely, as far as payment is concerned, to that particular sum of Rs. 1,933. The mention of its being a third of Rs. 1,933 appears to their Lordships on the whole to amount to no more than a statement of

her belief that that was the proportion which all the sums mentioned in the schedule bore to her annuity from the Government notes, but did not amount to a specified limitation of the payment from that sum.

This being so, and the rest of the estate being admittedly sufficient to pay all these legacies, the case is disposed of in favour of the Plaintiff. At the same time, their Lordships think it right to guard themselves against it being supposed that they assent to the proposition that, even if this had been a specific legacy payable out of the specific fund mentioned, it would have been invalid. Their Lordships are by no means satisfied that the gift to this lady of these Government promissory notes subject to a condition that she is to have the interest only for life, and that after her death there is to be a trust in perpetuity for all her heirs to all time, is not, according to Mahomedan law, in its legal effect a gift to her absolutely, the condition being void. However, without determining a point which is not necessary for the decision of the case, their Lordships think it enough to say that, for the reasons which they have given, they will humbly advise Her Majesty that this judgment should be affirmed, and this Appeal dismissed with costs.