Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Appoovier v. *Ramasubba Aiyan and others, from the late Sudder Dewanny Udalut of Madras; delivered* 17*th November*, 1866.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

SIR LAWRENCE PEEL.

THIS is an Appeal brought from a Decree of the Sudr Court at Madras, which affirmed the Decree of the Zillah Court of Tinnevelly, which itself affirmed the original Decree of the Sudder Ameen of that district. It is therefore an Appeal from three Decrees, unanimous in rejecting the claim of the Appellant.

The present Appeal is founded upon an allegation that certain property, shares in which are claimed by the Appellant, continues the undivided property of the family of which the Appellant was a member, and which was originally an undivided family. The foundation of the defence to the Appellant's claim is an instrument which we will call, for the present purpose, a deed of division, dated the 22nd of March, 1834.

Certain principles, or alleged rules of law, have been strongly contended for by the Appellant. One of them is, that if there be a deed of division between the members of an undivided family, which speaks of a division having been agreed upon, to be thereafter made, of the property of that family, that deed is ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds.

Their Lordships do not find that any such doc-

trine has been established; and the argument appears to their Lordships to proceed upon error in confounding the division of title with the division of the subject, to which the title is applied.

According to the true notion of an undivided family in Hindoo law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or bailiff of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment of the members of an undivided family. But when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided.

With reference to the cases in the inferior Courts which have been relied upon by the Appellant, we believe, upon an examination of them, that there is not to be found in any one, clearly and affirmatively, the doctrine contended for with reference to an agreement for the conversion of joint ownership into separate ownership, namely, that such agreement is of no effect to convert an undivided family into a divided family without an actual partition.

In the last case cited and relied upon by the Appellant, decided in the month of February, 1865, in the High Court at Madras, the Court refuses to assent to the doctrine that nothing short of an absolute partition by metes and bounds in the lifetime of the different members will make the shares of the property divided.

Undoubtedly their Lordships would be unwilling to reverse any rule of property which had been

long and consistently acted upon in the Courts of the Presidency, but it is impossible for them here to come to the conclusion that the doctrine contended for by the Appellant is to be considered a rule, which has been so accepted or acted upon by those Courts. Upon an examination of the cases, it will be found that in some the deed of partition was not attended by any subsequent act, and had been repudiated by subsequent conduct of the parties; and in another of the cases cited, where there had been a decree of partition, it seems that the decree of partition had been abandoned.

If then the rules derivable from the true theory of undivided family are such as we have described, and are not at variance with any settled course of legal decision,—let us apply those rules to the deed upon which this case in reality depends.

The Appellant admits that the deed was operative with regard to a certain number of villages, because, he says, those were actually divided; but he contended it was not a deed which made the family a divided family with regard to the rest of the villages, because it has not been followed by actual partition.

It is necessary to bear in mind the twofold application of the word "division." There may be a division of right; and there may be a division of property; and thus, after the execution of this instrument, there was a division of right in the whole property, although, in some portions, that division of right was not intended to be followed up by an actual partition by metes and bounds, that being postponed till some future time when it would be convenient to make that partition.

The deed, after dealing with the villages that were intended at once to be the subject of an actual partition, proceeds thus:—"But inasmuch as it is not intended to divide now"— What is the meaning of the words, "divide now"? Clearly, to make the same partition of the villages that follow as had previously been directed to be made of the villages which precede. "But inasmuch as it is not convenient to divide now our moiety of the villages" (then follows an enumeration of the villages), "we shall divide every year in six shares the produce of them, and enjoy it, after deducting the sarkar sist and charges on the villages." No-

thing can express more definitely a conversion of the tenancy, and with that conversion a change of the *status* of the family *quoad* this property. The produce is no longer to be brought to the common chest as representing the income of an undivided property, but the proceeds are to be enjoyed in six distinct equal shares by the members of the family who are thenceforth to become entitled to those definite shares. Thus—using the language of the English law merely by way of illustration—the joint tenancy is severed, and converted into a tenancy in common.

Then, if there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by a *de facto* actual division of the subject-matter. This may at any time be claimed by virtue of the separate right.

The words with which this instrument of the 22nd of March, 1834, concludes manifest an intention to become divided, for after expressing that they have already divided the silver, brass, utensils, the parties use these words:—"We have henceforward no interest in each other's effects and debts except friendship between us." We find, therefore, a clear intention to subject the whole of the property to a division of interest although it was not immediately to be perfected by an actual partition.

We have examined the whole of these papers with great anxiety and care; we have been very much assisted by the argument at the bar; and by the able manner in which the cases on both sides have been prepared. We have no doubt of the true principle which is applicable to the matter, or of the legal effect of this deed of March, 1834. It operated in law a conversion of the character of the property and an alteration of the title of the family converting it from a joint to separate ownership, and we think the conclusion of law is correct, viz. that that is sufficient to make a divided family, and to make a divided possession of what was previously undivided, without the necessity of its being carried out into an actual partition of the subject-matter.

Upon all these grounds, we concur with the decisions of the Courts below, and we think it right to advise Her Majesty to dismiss this Appeal, and to dismiss it with costs.

As the Appellant admitted, with great propriety, that provided the conclusion of their Lordships was that the property was divided, then the shares which he now claims have followed a course of descent with which he has no right whatever to interfere,—we say nothing upon the questions of adoption. Her Majesty's Order will merely confirm the Decree of the Court below.