

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ashruffoodowlah Ahmed Hossein and another v. Hyder Hossein Khan, from the Court of the Judicial Commissioner of the Province of Oude ; delivered 15th December, 1866.*

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Present :

LORD WESTBURY.

SIR JAMES W. COLVILE.

SIR EDWARD VAUGHAN WILLIAMS.

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SIR LAWRENCE PEEL.

THIS is an Appeal from a Decree of Mr. George Campbell made by him when Chief Judicial Commissioner of Oude, which reversed a decision in favour of the Appellants, the Plaintiffs in the suit, made by Mr. Fraser, the Civil Judge at Lucknow. The case comes before their Lordships *ex parte*, and, difficult in itself, occasions by its being heard *ex parte*, an increase of anxiety and difficulty. The Appellants are son and daughter, and as such heirs of Amcenood Dowlah Bahadur, the late Vizier of the ex-King of Oude. The Respondent claims to be also a legitimate son, and as such a co-heir of the late Vizier, founding his claim on a Moottah marriage of his mother, and on his birth in due course, as a son conceived in wedlock of that marriage. He relies also on acknowledgment for many years of him by the late Vizier as his legitimate son. The Appellants deny the alleged parentage, legitimacy, and acknowledgment.

The suit which gave rise to this Appeal results from a precedent litigation between these parties, of which some account is necessary to a complete understanding of the cause.

At the time of the Vizier's death, the Respondent was not *de facto* a member of his family, having been some time previously expelled by his reputed father, the Vizier, from the house, and renounced as a son, under a suspicion of a grave offence imputed to him. On that occasion the Vizier executed a formal instrument, which is described in the suit as a deed of renunciation, declaring the Respondent not to be his son. At the time of the Vizier's death, the Respondent, whatever his legal status, was not *de facto* an apparent heir of the Vizier, and the possession of the Vizier's estate was, after his death, in some one or more of his undisputed heirs, and no risk of disturbance from disputes as to possession seems to have existed.

A portion of the property appears from the statements on the Record to have consisted of Company's paper, indorsed generally to the heirs of the Vizier. But this state of indorsement did not require the institution of a merely possessory suit. In this state of things the Respondent preferred a claim to be admitted as co-heir to a joint possession of the estate of the late Vizier, and his claim being disputed by the Appellants, this gave rise to a summary suit to enforce his claim to possession. If a suit of this kind, which cannot determine right, be instituted where the actual possession is quiet, and where the question in dispute necessarily involves right, the claimant should at once be directed to proceed in a regular suit; for if he proceeds under the Acts subsequently referred to, an expensive and inconclusive litigation is the probable result.

It is unnecessary to go through the history of this previous litigation in detail, or to examine the correctness of the course adopted in its several stages. It was attended with varying success, and finally ended with a Decree of Colonel Abbott on Appeal, in favour of the Respondent, which is to be found at page 9 of the Appendix. That gentleman, the Commissioner and Superin-

tendent of the Lucknow division, after referring to the Acts of the Indian Legislature, 19 of 1841, 20 of 1841, and 10 of 1851, under which, or one or more of which, the summary proceeding was instituted, observes of them, "They cannot determine right, but they place the *prima facie* heirs in possession, and leave the subject to litigation in the proper course of law." This decision then was intended to establish a *prima facie* title in the Respondent as co-heir, leaving the right undetermined; but in this case no *prima facie* title exists distinct from the complete title in dispute; the whole subject of litigation resting on legitimacy alone. The right to that status was left undetermined, and was to be decided in a regular suit, to which the Appellants were referred.

In consequence of this decision, the Plaintiffs brought their suit in the Civil Court at Lucknow, on the 6th June, 1861. The object of their suit, as it appears from the plaint, was to be relieved from the effects of that summary Decree, and to establish the Respondent's illegitimacy, so that the proceeding went on in a somewhat inverted order, arising from a misunderstanding of the object of those Acts. The plaint in that suit is set out at page 19 of the Appendix. The plea is not set out at length, but an abstract of it is to be found in Mr. Fraser's Judgment at page 30 of the Record. The issues are set out in the same page; they, as also the findings on them at page 35, are carefully framed, and evidence an accurate knowledge of the Mahometan law as to legitimacy. The 1st, 2nd, and 3rd issues are alone necessary to be stated here, as nothing which affects the decision of this Appeal turns upon the 4th issue, which relates merely to the share, if legitimate, and a claim to maintenance if illegitimate. The 1st, 2nd, and 3rd issues are as follow:—

1st. Did Nawab Amenood Dowlah (deceased) contract Moottah with Defendant's mother before or after his birth?

2nd. Has the deed of repudiation (A, dated 23 Suffur, 1272, Hijree) the effect of cancelling previous acknowledgment of Defendant's legitimacy, if such were made?



3rd. If Defendant be not a legitimate son, is he an illegitimate son of deceased?

It was admitted on the pleadings that a Moottah marriage at some time had been contracted between the late Vizier and the Respondent's mother, but the Plaintiff stated in effect that the conception and birth of the Respondent preceded that marriage. The plea distinctly stated the marriage, though without assigning a date to it, and alleged the legitimacy of the Respondent as a child born of that marriage. The existence of a Moottah marriage therefore at some time was not contested, and the first issue, which by implication admits a marriage, is framed correctly on that state of the pleadings. The second issue, it may be observed, is also very correctly framed. It substitutes for the ambiguous word "sonship," which might include an illegitimate son, the word "legitimacy," and uses the word "acknowledgment" in its legal sense, under the Mahometan law, of acknowledgment of antecedent right established by the acknowledgment on the acknowledger, that is, in the sense of a recognition, not simply of sonship, but of legitimacy as son. The first and second issues include the two legal grounds of legitimacy, viz., marriage and acknowledgment, to which the plea is limited. Acknowledgment in the sense of treatment, as evidence simply of marriage or of legitimation, could not have been included with propriety in the issues, though as evidence it would not lose any part of its efficacy by reason of the wording of the issues.

It is not necessary to state the evidence in detail, nor to weigh the conflicting direct evidence; since both Courts, viz., the Civil Court and the Court of the Commissioner, agreed in their view of the facts generally on which the decision turned, the latter adopting the facts as stated in the Judgment of Mr. Fraser. Mr. Campbell's Judgment was founded mainly on the inferences which he drew from those facts.

Mr. Fraser was assisted in his decision of this important and difficult case by a Panchayet as it is termed, formed out of twenty Mahometan gentlemen, selected with care, and reduced to ten by five challenges on either side; and as the

reduced number consisted of ten men, including the High Priest, and another Mussulman Priest, all of whom are stated to have been mutually approved on both sides, a more competent tribunal could hardly have been appointed for the decision of such a case. Their opinion against the claim of the Respondent was unanimous. Their opinion had substantially the concurrence of the Judge, Mr. Fraser, who made it the ground of his decision, treating them as assessors, and concurring in their finding.

On a question of Mahometan law, so closely allied as it is with the religion of the Mahometans, the opinion of Priests, of the dignity of these, would be entitled to respect, since they are unlikely to be ignorant of it, or consciously to swerve from it. Such a decision therefore creates a more than ordinary presumption in favour of its correctness. It cannot readily be supposed that the High Priests would sanction so irreligious an act, in the view of Mahometans, as the sacrifice of a son's legitimate status, conferred by acknowledgment of a father, to mere caprice, or to resentment working on the mind of the father; and their decision does not seem to be open to the suspicion of a tendency in the members of the Punchayet unduly to augment a father's power. Upon turning to the findings of the issues, they appear to furnish no ground for questioning the care, or learning, or impartiality of the Punchayet.

On the first issue, they find that the Moottah marriage took place after birth. Mr. Fraser says that according to the stronger evidence impregnation took place during the service, and therefore *primâ facie* before the marriage. The second finding is as follows: "We do not find that deceased's acknowledgment that Hyder Hossein was born of his body *has been proved according to the conditions of the law; therefore* the deed of repudiation is correct." This finding, if it were construed literally, and disconnected from the context, would seem to favour the belief which Mr. Campbell seems to have entertained, that the Punchayet may have been proceeding on some stricter rules of evidence, under the Mahometan law, than the procedure of the Courts at

Lucknow authorized ; but there is no proof that such was the case, and it cannot be presumed that any rules of the Mahometan law of evidence were adopted by them which they could not legally adopt. The presumption should be in support of the regularity of their course.

The rules of evidence of the Mahometan law were not generally in force there : it cannot be inferred without proof that they meant to be governed by rules of evidence foreign to the tribunal. The whole sentence must be read together. Their conclusion, "*therefore*" the deed of repudiation is correct, is a conclusion from the former part of the sentence, and they are plainly referring to that species of "acknowledgment" which the second issue embodies, viz., one of legitimation, and not one simply constituting a piece of evidence. This is explained also by what follows in the statement of the Priests as to the law, constituting proof of sonship. "They reply, had the Nawab distinctly stated Defendant is to be his son, whether orally or in writing, that would have been *conclusive*." They say nothing here of any peculiarity of proof of such a statement, as a necessary condition of its legitimating power. The conditions of law to which this passage probably refers, are those which are to be found in the 3rd Volume of the Hedaya, p. 168, title "Miscellaneous Cases," which treats of acknowledgment of parentage ; and the terms "conditions of law" would refer on that supposition to "acknowledgment," and not to the more immediate antecedent "proved." But supposing that the learned Commissioner was correct in his conclusion that the Panchayet had proceeded on some special rule of evidence under the Mahometan law, applicable to acknowledgment of parentage, the rejection of their finding on that ground merely would not be reconcileable altogether with the opinion expressed by the Privy Council in their Judgment (at p. 318 of the 3rd Vol. of Moore's Indian Appeals) in the case of *Khajah Hidayut Oollah v. Rai Jan Khanum* : "We apprehend," say their Lordships, "that in considering *this question* of Mahometan law (that is, the question of legitimacy), we must, at least to a certain extent, be governed by the same



principle of evidence, which the Mussulman lawyers themselves would apply to the consideration of such a question.

The general rules of evidence of the Mahometan law did not prevail in the Courts in which that cause was heard, any more than they prevail in the Courts at Lucknow; but in relation to that particular subject, so intimately connected with family feelings and usages, that deference was recommended if not enjoined.

Taking the whole of this finding together, and viewing it with relation to the particular issue which it finds, it appears to do no more than say, as sonship does not appear, that is, as the Respondent is one of doubtful parentage, the deed of repudiation is correct, whereas it would have been untenable after an established acknowledgment; this reconciles the opinion here expressed with that of the Priest at p. 6 of the Appendix, l. 68.

On the third issue they find thus: "We do not find it proved that Hyder Hossein is a son begotten of the body of the deceased Nawab." The propriety of this finding with reference to the matter in dispute, viz., legitimacy, resolves itself into the question whether, on the whole evidence in this cause, legitimacy ought to have been declared to be established. The consideration, therefore, of this part of the case is for the present postponed.

The Judgment of Mr. Fraser is to be found at p. 35 of the Appendix. He states in the commencement of it, "that the onus of proof in this case was thrown on the Plaintiff, for the Defendant had acquired the right of being regarded as one of the legitimate sons of the late Nawab Ameenood Dowlah, such being the summary Judgment passed by the Commissioner." The reason assigned seems to admit the correctness of the general rule, and to assign to the Appellant the burthen of proving what is substantially a negative, to the inversion also, in this case, of the ordinary course of proceeding as to possession. The title of the Respondent, if established, was one in privity with the Appellant's title. The mere fact of possession of a portion of the disputed property by either party was not a

matter of any importance to the decision of the question on whom the burthen of proof rested in this cause : that depended on the nature of the issues.

Mr. Leith made this inversion of the usual order of proof a subject of complaint against the decision. In many cases, undoubtedly, an unauthorized transfer of possession would work serious injury and injustice to a claimant ; but in this particular case it does not appear that the mistake as to the transfer of possession, and as to that of the *onus probandi* which, in the judgment of Mr. Fraser, it involved, worked any real injustice or imposed any difficulty on the Appellants from which they would otherwise have been free ; and their Lordships' decision is unaffected by this objection.

This preliminary objection to the mode in which the case was dealt with below being removed, it becomes necessary to view the whole of the facts in proof in the cause ; for the case really depends on a conflict of evidence, and the due application of presumptive proof. The facts on which the Commissioner grounded his decision he took from the Judgment of Mr. Fraser in the Court below, but they require to be stated with one not unimportant addition, the want of which was made, on the argument, a ground for questioning the correctness of his view of the facts.

It appears to have been a mere omission of statement ; the fact does not appear to have escaped the attention of the Commissioner. The addition required is this, that the mother of the Respondent entered the Vizier's family as a servant in a menial capacity, and served in that capacity for some time, and after some period of service was taken behind the purdah. The Vizier, it may be observed, was then simply a Darogah, not much elevated in position above the woman whom he hired and afterwards married. The facts then, when stated more fully, should stand thus : that the mother of the Respondent entered the service of the Darogah, afterwards the Vizier, in a menial position as cook ; that she was a widow ; that the date of her husband's death was not proved ; that she went out in the course of her service



into the bazaar to make purchases, and was taken subsequently behind the purdah; that the date of the commencement of her cohabitation with the Darogah was not proved; that the date of her pregnancy and of the birth were not proved; that the date of the Moottah marriage was not proved; and that it was not proved that any change in her position or treatment occurred before the date of her pregnancy. There is, therefore, a total failure of proof whether marriage preceded or followed pregnancy. Mr. Fraser said that pregnancy commenced during the service. Mr. Campbell removed the difficulty by a presumption of an antecedent marriage. Can the defect of the evidence in this case be supplied by a presumption placing that marriage itself at a time anterior to pregnancy? This is the main question in the cause.

It is to be observed, in considering the propriety of strengthening the weakness of the direct proof by this last presumption, that the mother was living at the time of trial, and that the date of her marriage was a fact which she was competent to prove, as well as the time of the birth of her child. No explanation has been afforded by the Judges who have heard this cause, why the evidence fails on these important points, or why that is to be worked out by a presumption from marriage which living testimony might support, especially in a case where the treatment has been interrupted, and an impediment of more or less weight interposed by the repudiation of the parentage by the reputed father. It would be an easy matter to legitimize a child conceived before marriage by withholding proof of the time of marriage, and resting on an inference from the marriage itself. These or similar reasons may have been present to the minds of the Panchayet when they found on the first issue that the birth succeeded the Moottah marriage. It is important to consider the real nature of such a document. It has no effect whatever on the status of a legitimate son, whether legitimate by birth or made legitimate by acknowledgment. The finding of the Panchayet does not contravene that position. Their finding on the issues as to acknowledgment and sonship leaves the Re-

spondent in the position of a son of an unacknowledged father. On the status of such a son, the renunciation may be operative according to the Mahometan law ; but it is not conclusive, and may be contradicted and disproved, and does not seem to be more weighty in itself than a declaration by a deceased parent in a case of pedigree. The Punchayet say that the renunciation is correct, that is, that their law admits it to take effect ; whereas in either of the other cases "the denial is untenable," p. 6. It might be inferred from the proceedings of the Punchayet alone, that such an instrument is in use amongst the Mahometans ; a similar document was admitted in proof in a case which came before the Privy Council, *Jeswunt Singhee v. Jet Singhee* (3 Moore's Privy Council Cases, p. 253). Had this deed of renunciation been evidence on which reliance could be placed as to the denial of sonship which it contained, then it might have sufficed to displace a mere presumption of legitimacy, founded on treatment as a son of one in truth illegitimate. It might be designed and suffice to remove a growing repute. That document, however, cannot be relied on. It was executed under great resentment ; it spoke the mind of one irritated by a grievous sense of wrong, and it would be dangerous to give effect to such a document, so prepared and executed, and to place it in the power of an irritated man to bastardize his offspring by an instrument executed under a sense of wrong, especially amongst a vindictive race. It is so difficult to credit the story that the Vizier adopted the Respondent, who on that supposition would be the bastard son of a loose woman of low degree by some unknown father, that the insertion of that statement in the deed detracts greatly from its credit : an untrue account of the origin of the Vizier's connection with the Respondent gives rise to some degree of suspicion that the disclosure of the real state of the case might aid the Respondent's claim to be deemed legitimate.

As it appears then that the Punchayet below, and the Court which adopted its finding, attached an undue importance to this deed of renunciation, and as this undue estimate of its weight

may have greatly influenced their findings on the other issues, the learned Commissioner seems to be substantially correct in forming his own judgment independently of the findings, in which there had been a miscarriage. Whether he was correct in deciding the issues in favour of the Respondent, is a doubtful and difficult question. It would be desirable to know to what authorities, if particular cases were in his contemplation, Mr. Campbell refers at page 44, par. 12.

Unfortunately he does not name any, but he refers to Mr. Baillie's book on Inheritance as questioning the broad assumption that "mere continued cohabitation suffices to raise such a legal presumption of marriage as to legitimize the offspring." This statement drops the important qualification "with acknowledgment."

The binding decisions on this subject must be looked for in the Judgments of the Privy Council. No decision can be found there which supports so broad an assumption, or which, when rightly understood, is in conflict with the law, as stated by the priests in this case.

The presumption of legitimacy from marriage "follows the bed," and whilst the marriage lasts, the child of the woman is taken to be the husband's child; but this presumption follows the bed, and is not antedated by relation. An ante-nuptial child is illegitimate. A child born out of wedlock is illegitimate; if acknowledged, he acquires the status of legitimacy. When, therefore, a child really illegitimate by birth becomes legitimated, it is by force of an acknowledgment express or implied, directly proved or presumed. These presumptions are inferences of fact. They are built on the foundations of the law, and do not widen the grounds of legitimacy by confounding concubinage and marriage. The child of marriage is legitimate as soon as born. The child of a concubine may become legitimate by treatment as legitimate. Such treatment would furnish evidence of acknowledgment. A Court would not be justified, though dealing with this subject of legitimacy, in making any presumptions of fact which a rational view of the principles of evidence would exclude. The presumption in favour of marriage and legitimacy must rest on



sufficient grounds, and cannot be permitted to override overbalancing proofs, whether direct or presumptive. The case of Mahomed Bauher Hossein Khan *v.* Shurfoon Nissa Begum (8 Moore's Reports, p. 159), affirms this principle.

Their Lordships said in that case, which was one of legitimacy under the Mahometan law :—

“ In arriving at this conclusion, they wish to be distinctly understood as not denying or questioning the position that, according to the Mahometan law, the law which regulates the rights of the parties before us, the legitimacy or legitimation of a child of Mahometan parents, may properly be presumed or inferred from circumstances without proof, or at least without any direct proof either of a marriage between the parents, or of any formal act of legitimation. Here there is, to their Lordships' judgment, an absence of circumstances sufficient to found or justify such a presumption or such an inference.”

Their Lordships are not aware that these principles have ever been lost sight of in the Courts in India. They believe that they have been constantly observed by, and have guided the decisions of, their Lordships in the Judicial Committee.

In the case in 3 Moore's In. Cases at p. 323, already cited (*Khajah Hidayut Oollah v. Rai Jan Khanum*), it is observed in the Judgment :— “ Without going into the question of the oral evidence, whether there was an express acknowledgment of the child by Fyz Ali Khan, as the son or not, there seems to be that which at least is tantamount to oral evidence of any declaration, because there is a consecutive course of treatment both of the mother and the child for a period of between seven and eight years under circumstances in which it appears to their Lordships to be next to impossible that such a mode of treatment would have been continued except from the presumption of the cohabitation, and of the son being the issue of the loins of Fyz Ali Khan.” The cohabitation alluded to in that Judgment was continual ; it was proved to have preceded conception, and to

have been between a man and woman cohabiting together as man and wife, and having that repute before the cohabitation commenced; and the case decided that not cohabitation simply and birth, but that cohabitation and birth with treatment tantamount to acknowledgment sufficed to prove legitimacy. The presumption throughout the whole Judgment is treated as one of fact.

It would be much to be regretted if any variance on this important matter arose between the decisions of the Courts and the text of the Mahometan law of legitimacy as understood and declared by the High Priest, connected as their law and religion are. Such a variance exists between the law as expounded in this case at p. 35, Appendix, and the position contained in Mr. Campbell's Judgment, at p. 12, that "mere continued cohabitation suffices to raise such a legal presumption of marriage as to legitimize the offspring." This position, if established, would have sufficed to legalize the status of the claimant in the case before referred to in 8 Moore, for in that case there was abundant evidence of continued cohabitation between the father and the mother of the claimant; but as there was no proof in that case, either of marriage or of acknowledgment, he was adjudged to be illegitimate.

This case, then, must be determined on the principles of evidence which are applicable to presumptive proof, every reasonable legal presumption being made in favour of legitimacy. The force of presumptions of fact as evidence will vary with varying circumstances, and cannot well be fixed by decision. The Courts have properly presumed, in many cases, both marriage and acknowledgment; for to presume acknowledgment, and to consider treatment as tantamount to it, is virtually the same thing. The loss or destruction of evidence by time or design is as likely to take place with respect to acknowledgment as with respect to any other subject; and whilst matters of the highest import are capable of being inferred, and are inferred, from circumstances, it would be a merely arbitrary limitation of legitimate inference to exempt this one subject from its operation.

Mr. Campbell's conclusion that the Respondent

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was the son of the late Vizier seems to their Lordships a just inference from the facts, nor does it seem to be at variance with the opinion of Mr. Fraser. Mr. Campbell, in p. 6, treats this as the only question of fact in the case. But the issues distinguish properly between sonship and legitimate birth. Mr. Fraser keeps that distinction clearly before him in his Judgment. Mr. Campbell, indeed, does not appear to have lost sight of it, but to have considered that he was entitled to presume the Respondent's legitimacy, if cohabitation of his parents, and his birth from them at any time, whether before or after the marriage, were established as facts.

Mr. Campbell does not question, in his Judgment, the correctness of the opinion expressed by Mr. Fraser, that pregnancy commenced during the service. At that time cohabitation, in the sense of permanent intercourse such as takes place ordinarily between man and wife, is not proved to have existed between the late Vizier and the mother of the Respondent. The evidence forbids the presumption that that kind of cohabitation commenced with her service, for a change in the treatment of her ensues when she is taken behind the purdah, and the antecedent relation, according to the evidence, was that of ordinary servitude. If pregnancy occurred, as Mr. Fraser is of opinion that it did, during that service, and when she was in the habit of going from the house freely into the bazaar, sexual intercourse then in that state between her and her master would not have the character of cohabitation of a permanent nature, such as under this head of law distinguishes concubinage from casual intercourse. If the subsequent marriage were adjudged to have relation back, by presumption of law, to the time of impregnation, then such a *præsumptio juris* would destroy altogether the difference between a law which admits to inheritance and a law which excludes from inheritance an antenuptial child. As a presumption of fact such a presumption is admissible, but then it must be subject to the application of the ordinary principles of evidence.

A subsequent marriage, so far from furnishing, as Mr. Campbell supposes, a ground for pre-



suming a prior marriage, *prima facie*, at least, excludes that presumption. Therefore no ground exists for presuming a marriage antecedent to the Moottah marriage which at some period or other was established between the Vizier and the mother of the Defendant. Laying, then, this presumption aside, it appears to have been found in the Court below, on evidence which justified that finding, that pregnancy commenced during the time when the mother of the Respondent was in service, and before she had the acknowledged status of a Moottah wife. There was a marriage, but when it does not appear. It does not appear when the intercourse began which led to the birth, nor what was the nature of it, whether casual or of a more permanent character. It is obvious that the pregnancy might induce the desire to give the woman the reparation of marriage. No difficulty is suggested about rendering these dates certain, which are now left utterly uncertain.

The treatment of the Respondent by the Nawab appears for many years to have been that of a son by its father: this, however, is correctly treated by Mr. Fraser as inconclusive in itself, since a son conceived before marriage, and whom his father desired to recognize at some time as a legitimate son, would receive similar treatment. The treatment itself, therefore, does not suffice to dispel the darkness in which this case is left. The onus of proof lay on the Respondent, on the pleadings in this cause, to prove his mother's marriage, and his own legitimacy as a child of that marriage. There has been no continuing treatment up to the time of the father's death; there has, on the contrary, been an absolute denial of paternity by the reputed father; there is no proof of any acknowledgment, but there is proof of treatment strong enough to prove legitimacy in an ordinary case, but of treatment not inconsistent with the status of a son conceived before marriage. It is shown that the Respondent did not receive all the honours which his brother received. This circumstance is much pressed against him by the Appellants.

It may be, however, that the inferiority of his mother's condition, or his own later birth, caused

the difference ; or, on the other hand, the father may have postponed a legitimating acknowledgment, being as yet undecided as to his future treatment of him, and he may have waited to see how the youth conducted himself at puberty. The circumstance of some inferiority of condition having been continued down to the time of final rupture, to some extent supports the case of the Appellants, that the Respondent was not legitimate. Their Lordships are therefore of opinion that the decision of the Commissioner is founded upon presumptions not warranted by the facts of the case, and in some degree upon a misconception of the authorities, and ought not to be allowed to stand. They will therefore humbly advise Her Majesty to reverse that decision, and to affirm the Judgment of the Court of First Instance. Considering, however, that the uncertainty as to the status of the Respondent has been mainly caused by the acts of the deceased Vizier, the residue of whose estate will, in consequence of this decision, fall to the Appellants, their Lordships are not disposed to subject the Respondent to the costs in the Commissioner's Court or to those of this Appeal.

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