Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Suraj Bunsi Koer, as mother and guardian of Ram Sahai and Bhuggobutti Sahai (minors), v. Sheo Prosad Singh and others, from the High Court of Judicature at Fort William, in Bengal; delivered Saturday, 1st February 1879.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

THE question to be determined on this appeal is, what are the respective rights of the infant Plaintiff and Appellant on the one hand, and of the Respondents, claiming as purchasers at an execution sale on the other, in an eight-anna share of Mouzah Bissumbhurpore, a village situate in the district of Tirhoot. The material facts out of which this question arises are the following.

Baboo Adit Sahai, the father of the Plaintiff, became, on the death of his father Nursing Sahai in 1862, or by virtue of a subsequent partition effected with a coparcener, the sole owner of certain ancestral immoveable property in Tirhoot, including eight annas of Mouzah Bissumbhurpore. It has been assumed throughout the proceedings that the case was governed by the law of the Mitácsharâ; that, or the Mithila law which is the same in respect of the questions raised in the suit, being the general law of the district. He had afterwards two sons, who are the infant Plaintiffs. Of these, Ram Sahai was born in 1862, and Bhuggobutti in October 1869. These dates were disputed, but have, in their Lordships' opinion, been conclusively established in the suit. On the 21st of January 1870, Adit Sahai executed, in favour of one Bolaki Chowdry, a Defendant in the suit, though not a Respondent on this appeal, an instrument in the form of a bond and Bengali mortgage, whereby he bound himself to repay the sum of Rs. 13,000, which he had borrowed from Bolaki, with interest

at the rate of fifteen per centum per annum, and pledged as security for such repayment the whole and entire proprietary shares owned and possessed by him in Mouzah Surakdeeha (also part of the ancestral estate), and Mouzah Bissumbhurpore. This bond does not expressly state any reason for incurring the debt, but it refers to a negotiation for a loan of a smaller sum from another party, which had fallen through, and says that that sum was not then sufficient to meet the payments of the obligor's several creditors. It was registered on the 21st of January 1870.

On the 30th December 1872, Bolaki Chowdry, suing on this instrument, obtained an *ex parte* decree against Adit Sahai *alone* for the sum of Rs. 16,901. 13. 3, the amount due for principal, interest, and costs. The terms of this decree were in the usual terms of a decree in such a suit, viz., that the sum decreed should be realized by the sale of the mortgaged property, and that if the said property should not be found sufficient to meet the payment of it, the person and other properties of the judgment debtor should be held liable for it.

On the 21st of March 1873, Adit Sahai presented a petition to the Court. This, after stating that, execution having been issued in the usual way, the mortgaged property had been ordered to be put up for sale; that on production of Rs. 3,000 out of the decretal amount the Court had granted time for one month, and postponed the sale to the 7th of April; that the petitioner was very ill, and would be ruined by a forced sale, prayed the Court to grant a further postponement of the sale, and, under the provisions of the 243rd section of Act VIII. of 1869, to appoint a surbarakur of the mouzahs in question, and certain other portions of the ancestral estate. From the order made on this petition it appears that the attachment of Bissumbhurpore had for some reason been already quashed, and that a new attachment was about to be made; and it was accordingly directed that in the meantime the petition should stand over (p. 174). That second attachment must have been made, for subsequent proceedings in execution were had, in the course of which Binda Koer, the mother of Adit Sahai, claimed to be entitled in her own right to one anna of Mouzah Bissumbhurpore, and to some part of the other property taken in execution. Her latter

claim was allowed, but that affecting Bissumbhurpore was rejected; and the execution sale stood fixed for the 23rd of May 1873, when, on the 19th of that month, Adit Sahai died. The proceedings against Adit Sahai were thereupon revived in the usual way against his two sons as his heirs, and the 28th of July 1873 was fixed as the day of the sale of the property liable to the execution. On the 14th of that month, however, Mussumat Sooraj Bunsi Koer, as the mother and guardian of the infant Appellants, filed a petition of objections for the protection of their interests as the sons of, and, therefore, under the Mitácsharâ law, the co-sharers with, their father in his lifetime in the property; and the order passed on that petition was in effect that the objections could not be heard and decided in the execution department; but that if the petitioners had any interest in the property attached apart from and other than what their late father possessed, they could obtain their remedy by bringing a regular suit. The execution accordingly proceeded, the sale took place on the 28th of July, and the lot described as "the eight-anna share "of the judgment debtor in Mouzah Bissumbhur-"pore, part of the mortgaged property as per in-"ventory of the decree holder" was purchased by the Respondents for Rs. 6,600. The sale proceeding was ordered to be duly kept with the record. Whether the usual certificate was afterwards issued to the purchasers, or in what terms, if issued, it was expressed, does not clearly appear on the record; but it is certain that they had not been put into possession on the 27th of August 1873, when the present suit was commenced.

That is a suit by the infant Appellants, suing, by their mother and guardian, against the Respondents as the purchasers of the eight annas of Bissumbhurpore at the execution sale, and also against Bolaki Chowdry the execution creditor. The plaint prayed for the adjudication of the right of the Plaintiffs to, and the confirmation of their possession in the eight annas of Bissumbhurpore; to have the mortgage bond of the 21st of January 1870, the *ex parte* judgment obtained by the Defendant Bolaki thereon, the miscellaneous orders rejecting the Plaintiffs' objections, and the auction sale of the 28th of July 1873, set aside; and for an injunction to restrain the delivery of possession of the disputed property

to the Respondents. The claim to this relief was founded on the rights which, under the law of the Mitácshará, a son acquires on his birth in ancestral property, and the consequent limitation on the father's power to alienate, encumber, or waste that property; and the plaint contained the charges, usual in such cases, of immoral and extravagant conduct on the part of Adit Sahai.

The Subordinate Judge, by his judgment of the 27th of April 1874, found for the Plaintiffs on all the issues in the suit, and gave them a decree for the confirmation of their possession, and the cancellation of the bond of the 21st of January, the decree founded thereon, and the execution sale.

He found in particular that there was no justifying necessity for the loan of the Rs. 13,000, or for the former loans in repayment of which part of that money was employed; that the balance of the money was not shewn to have been applied to family purposes; that Bolaki had failed in his duty to make *bonâ fide* inquiry into the necessity, but had lent without such inquiry the money to a man whom he well knew to be over head and ears in debt, and living a life of debauchery and sensuality; that consequently the *ex parte* decree was void of all legal form against the family estate of which the debtor was but a joint owner; and that for the same reason the execution sale effected thereunder could not stand so far as the family property was concerned. He also held that the rights of the purchasers stood on no better ground than those of the execution creditor; that they were "not innocent "purchasers in the proper sense of the term, "since notice was given before the sale by the "Plaintiffs that the family property advertised for "sale could not legally be sold for the debt of one "of the joint members of the family."

On appeal to a Division Bench of the High Court the learned Judges, in their judgment of the 21st of July 1875, said :—

"The Subordinate Judge has decided (in the words of the well known case of Hunooman Pershad, 6 Moore, I.A. 421) that although the creditor would have been justified in advancing his money if he had made such inquiry as was open to him, and satisfied himself, as well as he could, as to the existence of the necessity, he did not in this case make such inquiry; or rather, perhaps, his words may be taken to mean that the result of any inquiry must have shewn him quite clearly that the only necessity of Adit Sahai was his own improper and immoral way of life, which required the expenditure of funds not derivable from his

regular income. And this decision would, we think, have been perfectly fair and right, were we dealing with Bolaki Chowdry only; for he appears to have acted as the family mahajun for a long time previous, and must necessarily have been acquainted with Adit's circumstances and way of life."

The learned Judges, however, proceeded to rule that the purchasers (the Respondents) stood on higher ground; that under the authority of the case of Muddun Thakoor *v.* Kantoo Lal, L.R. 1, I.A. 321, they were to be treated as strangers who had purchased at public auction for valuable consideration, and had bought on the faith that the decree under which the sale was made was a proper decree, and properly obtained. In a subsequent part of their judgment they threw out that the onus of shewing against the purchasers that the decree was an improper one lay upon the Plaintiffs; and that the evidence in the cause as to the habits and immoral conduct of Adit Sahai, though strong enough to support a decree against Bolaki Chowdry, might not be strong enough to support one against the purchasers. The formal decree passed was that the decree of the Lower Court should be reversed, and the suit as against the purchasers, Defendants, dismissed.

The result, then, of the judgment and decree under appeal is that the Plaintiffs had established, as against the execution creditor, a case which, had he been the purchaser at the execution sale, would have entitled them to full relief against him; but that they had not established a title to any relief against the purchasers, the Respondents.

The extreme contention on the part of the Appellants is that nothing passed or could pass to the Respondents under the execution sale, because, on the death of the judgment debtor before the sale, the whole of his interest vested by survivorship in his sons, leaving nothing upon which the execution could operate.

The extreme contention on the part of the Respondents is that the sale took effect on the whole of the mortgaged property, and passed the interest of the sons, as well as that of the father therein.

An intermediate proposition is that the sale was operative upon the right, title, and interest of the judgment debtor in the property put up for sale, so as to pass the share to which, upon a partition effected in his lifetime, he would have been entitled in eight annas of Mouzah Bissumbhurpore.

The arguments addressed to their Lordships

make it desirable to consider, somewhat in detail, what are the principles of the Hindoo law which are the foundation of the Plaintiff's claim, and what the rights which flow from them. These questions are of course determinable by the texts of the Mitácsharâ, as interpreted by judicial decisions either of the Courts of India or of this Board; and it cannot be said that the course of decision has been altogether uniform and consistent.

That under the law of the Mitácsharâ each son upon his birth takes a share equal to that of his father in ancestral immoveable estate is indisputable. Upon the questions whether he has the same right in the self-acquired immoveable estate of his father, and what are the extent and nature of the father's power over ancestral moveable property, there has been greater diversity of opinion. But these questions do not arise upon this appeal. The material texts of the Mitácsharâ are to be found in the 27th and following slokas of the first section of the first chapter. It was argued at the bar that, because in the third sloka of the above section it is said that the wealth of the father becomes the property of his sons, in right of their being his sons, and that "that is an inheritance not liable to obstruction," their rights in the family estate must be taken to be only inchoate and imperfect during their father's life, and in particular that they cannot, without his consent, have a partition even of immoveable ancestral property. There was some authority in favour of this proposition, notwithstanding the texts to the contrary which are to be found in the Mitácsharâ itself (*see* Slokas 5, 7, 8, 11 of the 5th section of the 1st chapter). But it seems to be now settled law in the Courts of the three Presidencies that a son can compel his father to make a partition of ancestral immoveable property. On this point it is sufficient to cite the cases of Laljeet Singh *v.* Rajcoomar Singh, 12 Bengal L. R., 373, and Raja Ram Tewarry *v.* Luchman Persad, Bengal Full Bench Rulings from 1863 to 1867, p. 731, decided by the High Court of Calcutta; that of Kaliparshad *v.* Ram-Charan, 1 Allahabad Reports, 159, decided by the High Court of the North-West Provinces; that of Na'galinga Mudali *v.* Subbiramaniya Mudali and others, 1 H. C. Madras, 77, decided by the High Court of Madras; and the case of Moro Vishvana'th and others *v.* Ganesh Vithal and others, 10 Bombay H. C., 444, decided by the High Court of Bombay. The

decisions do not seem to go beyond *ancestral* immoveable property.

Hence, the rights of the coparceners in an undivided Hindu family governed by the law of the Mitácsharâ, which consists of a father and his sons, do not differ from those of the coparceners in a like family which consists of undivided brethren, except so far as they are affected by the peculiar obligation of paying their father's debts which the Hindu law imposes upon sons (a question to be hereafter considered), and the fact that the father is in all cases naturally, and, in the case of infant sons, necessarily, the manager of the joint family estate.

The right of coparceners to impeach an alienation made by one member of the family without their authority, express or implied, has of late years been frequently before the Courts of India, and it cannot be said that there has been complete uniformity of decision respecting it.

All are agreed that the alienation of any portion of the joint estate, without such express or implied authority, may be impeached by the coparceners, and that such an authority will be implied, at least in the case of minors, if it can be shown that the alienation was made by the managing member of the family for legitimate family purposes. It is not so clearly settled whether, in order to bind adult coparceners, their express consent is not required; but this is a question which does not arise in the present case.

To what extent an unauthorized alienation can be impeached by coparceners is a more important question, and one upon which there has been a greater conflict of authorities. Nor can it be said that the same law even yet prevails in all parts of India upon it.

A distinction has been often made, both by Courts of justice and by text writers, between alienations by private contract and conveyance, and alienations under legal process, as in the case of joint family property seized and sold in execution of a decree against one member of the family for his separate debt.

Since the decision, however, of the cases of Virasavami Gramini *v.* Ayyasvami, 1 Madras H.C., 471; of Peddamuthalatty and others *v.* N. Timma Reddy, 2 Madras H. C., 270; Palanivelappa-Kaundau *v.* Mannâru Naikan and another, 2 Madras

H. C., 416; and J. Rayarcharlu *v.* J. V. Venkataramaniah, 4 Madras H. C., 60, it has been settled law in the Presidency of Madras that one coparcener may dispose of ancestral undivided estate, even by private contract and conveyance, to the extent of his own share; and *á fortiori* that such share may be seized and sold in execution for is separate debt.

That the same law now obtains in the Presidency of Bombay, is shewn by the cases of Damodhar Vîthal Khare *v.* Dhamodar Hari Soman, 1 Bombay H. C., 182; Pandurang Anandrav *v.* Bhaskar Shadáshiv, 11 Bombay H. C., 72; and Udaram Sitaram *v.* Ranu Panduji and another, 11 Bombay H. C., 76. But it appears from the case of Vrandavandás Ramdás *v.* Yamunabai 12 Bombay H.C., 229, and the cases there cited, that, in order to support the alienation by one coparcener of his share in undivided property, the alienation must be for value. The Madras Courts, on the other hand, seem to have gone so far as to recognize an alienation by gift. There can be little doubt that all such alienations, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided Hindu family; and the law as established in Madras and Bombay has been one of gradual growth, founded upon the equity which a purchaser for value has to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition. *See* 1 Strange H. L., 1st edition, p. 179, and App. Vol. II., pp. 277 and 282.

In Bengal, however, the law which prevails in the other Presidencies as regards alienation by private deed has not yet been adopted. In a leading case on the subject, that of Sadabart Prasad Sahu *v.* Foolbash Koer, 3 Bengal L. R., Full Bench Rulings, p. 31, the law was carefully reviewed, and the Court, refusing to follow the Madras and Bombay decisions, held that, according to the Mitácshará law as received in the Presidency of Fort William, one coparcener had not authority without the consent of his co-sharers to mortgage his undivided share in a portion of the joint family estate, in order to raise money on his own account, and not for the benefit of the family. In another part of the same case the Chief Justice intimated a doubt upon a question which did not then call for decision, viz., whether, under a decree against one

coparcener in his lifetime, his share of joint property might be seized and sold in execution. That question must now be taken to have been set at rest by the recent decision of this tribunal in Deendyal Lal *v.* Jugdeep Narain Singh, L. R., 4 I. A., 247, by which the law has so far been assimilated to that prevailing in Madras and Bombay, that it has been ruled that the purchaser of undivided property at an execution sale *during the life of the debtor* for his separate debt does acquire his share in such property with the power of ascertaining and realizing it by a partition.

But then the question arises, what is the consequence of the debtor dying before the execution is complete; whether in that event the coparceners take his undivided share by survivorship, so as to defeat the remedy which the creditor would otherwise have against it.

This was much considered in the case already cited from the 11 Bombay H. C. Report, p. 76. There the debt was the separate debt of a son joint in estate with his father. The suit was brought, after the death of the son, against the father. A decree was obtained against the father and the son's widow, and it was sought, in a supplemental suit, to enforce that decree against the son's undivided share in joint property, treating that share as liable, in the father's hands, for the son's debt. It was ruled that this could not be done; that, though a son might be liable to pay his father's separate debts, there was no corresponding obligation on a father to pay his son's debts; that the right of a son to a share in the joint ancestral property had died with him; and that his share, having survived to the father, was no longer a subject upon which the execution could operate. This case is the more important, because the Court, whilst coming to the above decision, fully recognized the alienability of the share of one coparcener, as established at Bombay; and showed, with some detail, how the remedy against such a share is to be worked out by the holder of a decree in the debtor's lifetime.

Mr. Mayne, in his valuable Treatise on Hindu Law and Usage, Section 288, states that there had recently been a decision to the same effect as that just stated at Madras. Indeed, this was stronger than that at Bombay, because the debtor had died after decree, though before execution. The case is cited as that of Kooppookonan *v.* Chinnayen, 1

Madras, Reporter 63, but their Lordships have been unable to obtain access to a copy of those reports, and can refer only to the abstract of the case in Mr. Mayne's work. The Chief Justice in that case seems to have taken a distinction between a specific charge on the land and a mere personal decree. The existence of such a distinction would be the logical consequence of the power of a coparcener, as recognized at Madras and Bombay, to sell or mortgage joint property to the extent of his undivided share.

In his judgment in the Bombay case, *see* p. 85 of 11 Bombay H. C. Reports, Westropp, Ch. J., cites a decision of the High Court of the North-West Provinces, Goor Pershad *v.* Sheodin, 4 N.-W. Prov. Report, 137, which is still stronger than the last-mentioned case at Madras, because there the property had been actually attached in the debtor's lifetime.

It may be further observed that the Chief Justice, in the case already cited from 3 Bengal Reports (*see* p. 36, *et seq.*), seems to have intimated an opinion in favour of the general rule that an undivided share in joint property cannot be followed in the hands of coparceners to whom it passed by right of survivorship. It was not, however, necessary to decide the point in that case.

Their Lordships have hitherto dealt with the powers and rights of ordinary coparceners. They have now to consider how far those rights and powers are qualified by the obligation which the Hindu law lays upon a son of paying his father's debts. The obligation is thus succinctly stated by Chief Justice Westropp at p. 83 of 11 Bombay H. C. :—

"Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes), the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father and grandfather."

And as authorities for this proposition he cites Colebrooke's Digest, Book I., chap. V., fl. clxvii., and Girdhari Lall *v.* Kantoo Lall, L. R., 1 I. A., 34. One of the earlier authorities cited at the bar upon this point was a case decided by the late Suddur Court of Lower Bengal in 1861, which is reported at p. 213 of the Decisions of the Suddur Dewanny Adawlut of Bengal for that year. In it an infant son sued by his guardian, in the lifetime of his father, to set aside various conveyances which had been made by the father of portions of the joint

family estate, and to recover the property sold under them, and also to recover other portions of the estate which had been sold under orders of the Court in execution of decrees. The family was governed by the Mithila law, and the first point decided was that the restrictions on a father's power of alienation over ancestral immoveable estate under that law were the same as those imposed by the law of the Mitácshará.

This case recognized the distinction between alienations by conveyance and those made under process of execution. The Court set aside the sales by conveyance because no justifying necessity for them had been established, and it did this although the considerations for the sales were in some instances money raised in order to satisfy either judgment or bond debts. On the other hand, it dismissed the suit so far as it sought to recover property which had been sold under decrees of Court, on the ground that the son was under an obligation to pay the debts of the father if not contracted for immoral purposes, and that he had failed in this case to prove, as against the purchasers under the decrees, that they were so contracted. The words of the judgment on this point are, "Freedom on the part of the son, as far as re- "gards ancestral property, from the obligation to "discharge the father's debts, under Hindu law, can "be successfully pleaded only by a consideration of "the invalid nature of the debts incurred. Now "we are clearly of opinion that the Plaintiff has "been unable to show that the expenses for which "these decrees were passed were, looking to the "decrees themselves, and we cannot now look "beyond them, immoral, and such as, under Hindu "law, the son would not be liable for."

The decision of this tribunal in the before-mentioned case of Kantoo Lal has, however, gone beyond this decision of the Sudder Dewanny Adawlut, because it treats the obligation of a son to pay his father's debts, unless contracted for an immoral purpose, as affording of itself a sufficient answer to a suit brought by a son either to impeach sales by private contract for the purpose of raising money in order to satisfy pre-existing debts, or to recover property sold in execution of decrees of Court. The judgment, moreover, and this is the portion of it that is chiefly material to the determination of the present appeal, affirms the principle laid down in the

judgment of the Sudder Dewanny Adawlut, that a purchaser under an execution is not bound to go further back than to see that there was a decree against the father; and that the property was property liable to satisfy the decree, if the decree had been given properly against the father. In such a case, one who has *bonâ fide* purchased the estate under the execution, and *bonâ fide* paid a valuable consideration for it, is protected against the suit of the sons seeking to set aside all that has been done under the decree and execution, and to recover back the estate as joint ancestral property.

This case then, which is a decision of this tribunal, is undoubtedly an authority for these propositions:—

1st. That where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted; and, 2ndly, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings.

Their Lordships have now to apply the principles to be extracted from the authorities which have been considered to the case before them.

It has been found by both the Indian Courts, and, in their Lordships' opinion, properly found, that the Plaintiffs, as between them and Bolaki Chowdhry, the judgment creditor of Adit Sahai, had established that neither they, nor the ancestral immoveable estate in their hands, were liable for the debt to Bolaki which had been contracted by their father. The two material issues on this point were, 1st, Whether the bond to Bolaki, executed by the late father of the minors, was legally valid so far as the minors' interest is concerned, and whether the money thus borrowed was devoted to the satisfaction of debts incurred when the minors had no existence; and, 2ndly, What sort of a life did Adit Sahai live; did he spend the money borrowed from Bolaki Chowdhry in immoral purposes? The Subordinate Judge, upon a full consideration of the evidence, found

both these issues in favour of the Plaintiffs, and decreed to them the relief sought by their plaint. The judgment of the High Court does not impeach this finding as regards Bolaki Chowdhry. On the contrary, the words of the learned Judge who wrote the judgment of the Court are, "And this decision "would, I think, have been perfectly fair and right "were we dealing with Bolaki Chowdhry only." There is no doubt a subsequent passage to the effect that the onus was clearly on the Plaintiffs of shewing against the Respondents, who purchased at the execution, that the decree against Adit Sahai was an improper one, and that the evidence was insufficient to prove the fact.

If in this last passage of the judgment the Court meant to rule that the evidence which was sufficient to prove the two issues above mentioned, and the matters of fact involved in them against Bolaki Chowdhry, was insufficient to prove them against the Respondents, that ruling would, in their Lordships' opinion, be erroneous. The Respondents were parties to the suit, they went to trial upon those issues, and had equally with Bolaki Chowdry the means of cross-examining the Plaintiffs' witnesses, and of adducing counter evidence. This observation, however, leaves untouched the principal ground upon which the High Court dismissed the Plaintiffs' suit as against the Respondents, viz., that upon the authority of the decision of this Board in Muddun Thakoor *v.* Kantoo Lal, the Respondents are to be treated on the footing of purchasers for value, without notice; for it is one thing to prove a fact, and another to prove that a particular party had notice of that fact. Their Lordships desire to say nothing that can be taken to affect the authority of Muddun Thakoor's case, or of the cases which may have since been decided in India in conformity with it. The material passage of the judgment in Muddun Thakoor's case is in these words:—

"A purchaser under an execution is surely not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or, having given it, in putting up the property for sale under an execution upon it. It has already been shown that if the decree was a proper one, the interest of the sons as well as the interest of the fathers in the property, although it was ancestral, was liable for the payment of the father's debts. The purchaser under the execution, it appears to their Lordships, was not bound to go further back than to see that there was a decree against the fathers; that the property was property liable

to satisfy the decree, if the decree had been given properly against them ; and he having inquired into that, and *bonâ fide* purchased the estate under the execution, and *bonâ fide* paid a valuable consideration for it, the Plaintiffs are not entitled to come in, and to set aside all that has been done under the decree and execution, and recover back the estate from the Defendant."

It appears to their Lordships that the present case is clearly distinguishable from that of Muddun Thakoor, and does not fall within the principle laid down in the passage just cited. It has been seen that before the Respondents purchased, the claim of the Plaintiffs was preferred in the Court wherein the execution proceedings were pending in the form of objections to the sale. The Court refused to adjudicate upon the claim in an execution proceeding, and accordingly allowed the sale to take place, but made an order referring the Plaintiffs to a regular suit for the establishment of their rights. Their Lordships think that the Respondents must be taken to have had notice, actual or constructive, of the Plaintiffs' objections, and of the order made upon them, and therefore to have purchased with knowledge of the Plaintiffs' claim, and subject to the result of this suit. It follows that, as against them as well as against Bolaki Chowdry, the Plaintiffs have established that by reason of the nature of the debt neither they nor their interests in the joint ancestral estate are liable to satisfy their father's debt.

The question remains, Whether they are entitled to any and what relief as regards the father's share in this suit? It seems to be clear upon the authorities that if the debt had been a mere bond debt, not binding on the sons by virtue of their liability to pay their father's debts, and no sufficient proceedings had been taken to enforce it in the father's lifetime, his interest in the property would have survived on his death to his sons, so that it could not afterwards be reached by the creditor in their hands. On the other hand, if the law of the Presidency of Fort William were identical with that of Madras, the mortgage executed by Adit Sahai in his lifetime, as a security for the debt, might operate after his death as a valid charge upon Mouzah Bissumburpore to the extent of his own then share. The difficulty is that, so far as the decisions have yet gone, the law, as understood in Bengal, does not recognize the validity of such an alienation.

Their Lordships are of opinion that it is not necessary in this case to determine that vexed question, which their former decisions have hitherto left open. They think that, at the time of Adit Sahai's death, the execution proceedings under which the mouzah had been attached and ordered to be sold had gone so far as to constitute, in favour of the judgment creditor, a valid charge upon the land, to the extent of Adit Sahai's undivided share and interest therein, which could not be defeated by his death before the actual sale. They are aware that this opinion is opposed to that of the High Court of the North-West Provinces, 4 N.-W. Prov. Rep., 137, already referred to. But it is to be observed that the Court by which that decision was passed does not seem to have recognized the seizable character of an undivided share in joint property which has since been established by the before-mentioned decision of this tribunal in the case of Deendyal Lal. If this be so, the effect of the execution sale was to transfer to the Respondents the undivided share in eight annas of Mouzah Bissumbhurpore, which had formerly belonged to Adit Sahai in his lifetime; and their Lordships are of opinion that, notwithstanding his death, the Respondents are entitled to work out the rights which they have thus acquired by means of a partition.

They will therefore humbly advise Her Majesty to allow this appeal, and to reverse the decree of the High Court, and also that of the Subordinate Judge, which is clearly wrong in so far as it absolutely set aside the bond, the decree, and the execution sale, and in lieu thereof to make an order declaring that by virtue of the execution sale to them the Respondents acquired only the one undivided third share in the eight-anna share of Mouzah Bissumbhurpore, in the pleadings mentioned, which formerly belonged to Adit Sahai, with such power of ascertaining the extent of such third part or share by means of a partition as Adit Sahai possessed in his lifetime; and ordering that the Appellants be confirmed in the possession of the said eight-anna share of Mouzah Bissumbhurpore, subject to such proceedings as the Respondents may take in order to enforce their rights above declared. The order should further direct that the costs in the Courts below be apportioned according

to the usual practice of those Courts, when the party Plaintiff is only partially successful. But the Appellants, having succeeded here on a material portion of their claim, are entitled to the costs of this appeal.

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