Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Behari Lal (and since his death by Maina Dai Gyawalin) v. Madho Lal Ahir Gyawal and another, from the High Court of Judicature at Fort William in Bengal; delivered 12th December 1891.

Present:

LORD WATSON.
LORD MORRIS.
SIR RICHARD COUCH.
MR. SHAND (LORD SHAND).

[*Delivered by Lord Morris.*]

Damodur Mahton was the owner of the immoveable property, the subject of this suit; he died in the year 1845, leaving his widow, Lacho Dai, and two daughters, Rani Dai and Phoola Dai, him surviving. The Plaintiff Behari Lal is the son of Rani Dai by her marriage with Gungabishen Meherwar; the Defendant Mahdo Lal is the son of Phoola Dai by her marriage with Sadashib Ahir; the Plaintiff and Defendant are thus first cousins. On the death of Damodur Mahton, his widow Lacho Dai succeeded to the immoveable property as a Hindu widow under the Hindu law. On the 13th September 1849 Lacho Dai executed an ikrarnama of that date. Lacho Dai died in 1878; Behari Lal has brought this suit against Madho Lal and Rani Dai, seeking to be declared entitled to the immoveable pro-

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perty left by his grandfather Damodur Mahton; Rani Dai does not resist the Plaintiff's claim, and the question lies between Behari Lal and Madho Lal. The case really depends on what is the construction of the ikrarnama. The material part of it is as follows :—

"Whereas I, the declarant, and my husband have two daughters by me, viz., (1) Mussummat Rani Dai, and (2) Mussummat Bhola Dai. My husband died by the will of God (on the 11th Pous 1253 Fusli), (*a*) leaving me as heiress. All the mouzahs of this district and zillah Tirhoot, jatris, houses and household furniture, ready money, grain, ornaments set with precious stones, plates, weapons, woollen stuff, silk, and male and female slaves left by him are held by me, without the partnership and possession of any other individual. Whereas Mussummat Bhola Dai, my daughter, has got no son, and Mussummat Rani Dai, my daughter, has got a son, by name Behari Lal Meherwar, and consequently as I have no son, according to the Shastra the said Behari Lal Meherwar, my daughter's son, is the heir of my husband and myself, and he has been performing the Gyawal duties for the jatris of my husband and myself, who come from Tirhoot and other places. Notwithstanding this, with a view to completion, I (with the permission of my husband) (*b*) do hereby declare and give in writing that all the mouzahs lying in this district and zillah Tirhoot, houses, household furniture, ready money, grain, ornaments, jewels, plates, weapons, woollen clothes, silk stuff, slaves, and jatris, especially Maharaja Ruder Narain Singh, Bahadoor, the Raja of Darbhanga, and his relatives and descendants, and others, left by my husband, and owned and held by me, and debts and dues of my husband and myself, belong to Behari Lal Meherwar, aforesaid. I, the declarant, shall, till the end of my life, hold possession, as I have heretofore done, without the partnership and possession, of any other individual, and *shall perform acts of charity** (shall receive my maintenance) (*c*). After my death, Behari Lal Meherwar shall enter into possession and enjoy all the profits of all the mouzahs lying in this district, and in the district of Tirhoot, and all the properties movable and immovable, *personal and standing in my own name** (cash and household effects) &c., left by my husband and by me, to which no one shall have any right, demand, or dispute."

After the execution of the ikrarnama the widow applied to have Behari Lal's name put on the Collector's records, but with herself as the registered owner.

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* The words italicized are not in the original document.

At the time of the execution of the ikrarnama Madho Lal was not born, so that the Plaintiff was then the apparent reversionary heir, subject to the life estate of his grandmother Lacho Dai; it may be accepted that, according to Hindu law, the widow can accelerate the estate of the heir, by conveying absolutely and destroying her life estate.

It was essentially necessary to withdraw her own life estate, so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life estate is a practical check on the frequency of such conveyances. Now in the ikrarnama in question Lacho Dai, so far from destroying her life estate, expressly says "I shall, till the end of my life, "hold possession, as I have heretofore done, "without the partnership and possession of any "other individual," and again she says "after "my death, Behari Lal Meherwar shall enter "into possession, &c." The object of Lacho Dai was to declare the rights of Behari Lal, who was performing the Gyawal ceremonies, and obtaining the fees for her; she wished to leave the management in his hands but not to surrender her life estate. As to an alleged custom amongst Gyawals, that the widow could, overriding Hindu law, have an absolute and entire power over the immoveable estate of her husband, it is sufficient to say that no such custom has been proved. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the High Court, and dismiss the appeal with costs.