Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sookyaboye Ammal v. *Latchmi Ammal, from the High Court of Judicature at Madras, delivered 9th December, 1869.*

Present:

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THEIR Lordships entertain no doubt that the Courts in India have put a correct construction upon this instrument, and that this Appeal ought to be dismissed.

The effect of the parol evidence is, of course, to be considered in so far only as it determines the position of the parties at the time when the second razinama was entered into, which, as Mr. Grady has argued, may afford some reason for the making of the instrument. Their Lordships, however, do not think that it justifies the conclusion which Mr. Grady would draw from it, viz. that it was a natural or likely thing that the widow should say to the brother of her husband, who was then the presumptive heir in reversion, "Take the property at once, "and give me only the sum stipulated for by way "of maintenance."

It seems to their Lordships more probable that the brother, being then the presumptive heir in reversion, may have thought it desirable to obtain the custody and management of the property, in order to avoid the risks which a presumptive heir must always run, that during the continuance of the widow's estate the property may be wasted. That may have been the inducement to him to undertake the care and custody of the property. And, on the other hand, the widow may have felt desirous to be relieved from those cares of management

which a Hindu woman, living in a state of seclusion, is not a person not very competent to undertake. But however this may be, it seems to their Lordships that the relation of these parties was, at all events, such that a transaction between them should be closely scanned; and that a document obtained by the chief male member of the family from a Purdah woman should receive a strict construction.

What then was the intention of the parties to the second razinamah, as it is to be collected from the terms of the instrument, and without regard to what may have been said in the parol evidence touching their intention?

It is stated distinctly by the Judge, Mr. Goldingham, who is doubtless acquainted with the native language, that the terms used in the original do not import, and cannot be construed to import, anything like words of conveyance. To their Lordships it appears that the translation certainly contains no words of that kind.

It has indeed been argued by Mr. Grady that, in order to give some effect and meaning to the provision, that the property should be taken possession of by the brother, that provision must be taken to import conveyance, because he was already in possession; and it must be assumed that the deed intended to give him something which he had not already. Their Lordships are of opinion, that that argument supplies no reason for putting on the terms used a construction which they do not naturally bear.

Mr. Grady further endeavoured to support his argument by saying that, in like manner, the first razinamah, when it speaks of one brother giving possession to the other, imports a conveyance from the one to the other. But this really is not so. Before the execution of the first razinamah, the two brothers were joint owners of the whole property. They made a partition, and the senior member of the family being in the position of manager, and the property standing in his name, it was provided by the razinamah, that he should give over the possession of the younger brother's share to him. The title of the younger brother was complete before the instrument was executed. There was no conveyance of title from one brother to the other,

but simply a provision that on the partition there should be a separate possession of the shares.

Again, it seems to their Lordships that the construction which the High Court has put upon the term, that the ladies' allowance was to be paid out of the income of the property which was put into the custody and care of the brother, is correct; and that that provision clearly impressed the property with a trust. That the allowance should fall so far short of the whole income of the property, may be explained by those considerations which his Lordship, Sir Lawrence Peel, has already suggested, as to the religious obligation of a Hindoo widow to live a recluse, and, in some degree, an ascetic life. Nor is it improbable that there may also have been in the contemplation of the parties the necessity of providing, by the accumulation of the surplus income, against the risks of bad seasons, and the consequent depreciation of the landed property; or for the performance of religious duties for which the razinamah makes no express provision.

To suppose that this woman should, without consideration, absolutely give away property, of which a portion only (viz. the Government bonds) produced an annual income of upwards of 1500 rupees, for an allowance amounting only to about 660 rupees per annum, plus the value of the rice; and that secured only by the personal engagement of the other party;—seems to their Lordships a most improbable hypothesis, and one which is not warranted by any reasonable construction which can be put upon the terms of the instrument.

Their Lordships must, therefore, humbly recommend to Her Majesty that this Appeal be dismissed, and they think that it should be dismissed with costs.