Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pauliem Valloo Chetti v. *Pauliem Sooryah Chetti from the High Court of Judicature at Madras; delivered February 16th*, 1877.

Present:

SIR JAMES COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT COLLIER.

THIS case has been argued at considerable though not unnecessary length, and in the course of the argument several questions of law of much importance have been raised, but, in the view which their Lordships take of the case, it ultimately resolves itself into one or two questions of fact attended with no great difficulty.

Those questions arise in this way: Chuckeray, the original Plaintiff, upon whose death the present Plaintiff, his son, was substituted on the record, was the son of Aroonachellum. Aroonachellum was one of four brothers, sons of Mauree. Chuckeray brought his suit for the purpose of setting aside the will of Aroonachellum, made in favour of his brothers, upon various grounds; but the only ground now necessary to refer to is that the property of Aroonachellum was joint, because it was ancestral—derived from his father,—and therefore that Aroonachellum could not dispose of it by will, or at all events could not dispose of more than a part of it.

This case has come before three courts in India. It was first heard by Mr. Justice Kernan, who dismissed the suit on the ground that, in his

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opinion, the property of Aroonachellum was not ancestral but was self-acquired. The case then came before the Chief Justice and Mr. Justice Holloway, who differed in opinion; the Chief Justice holding that the property was self-acquired, Mr. Justice Holloway holding that it was ancestral. The opinion of the senior Judge prevailing, there was an appeal to a full bench High Court, which, with the exception of Mr. Justice Holloway, held that the property was self-acquired, and that the will was valid. Their Lordships have not in this case insisted on the rule that they will not permit under ordinary circumstances the concurrent judgments of two courts on a question of fact to be disputed, because the questions of fact appeared to be a good deal mixed up with questions of law.

On the part of the Appellants, it was not denied that Aroonachellum had, in the ordinary sense of the word made his own fortune, that the property which he devised to his brothers was acquired by his successful trading and by the exercise of his industry and intelligence; but it was contended that that property was to be deemed in point of law to have been derived from his father Mauree, firstly, because he had originally received a certain amount of property from Mauree, with which he had commenced his trading, and which became, as it has been termed, the nucleus round which his fortune gathered; and, secondly, because, even if he did not acquire anything from his father, nevertheless, inasmuch as he was educated out of the funds of the family, all his acquisitions became joint in contemplation of law.

The first question is a pure question of fact. Upon it Sooryah, the Defendant, the executor of the will of Aroonachellum, was examined, and he is reported by the Judge of the Court of

first instance to have been a satisfactory and trustworthy witness. This witness, amongst other things, says, "The sons of Mauree got "no property of our father; on the contrary, "we supported the father. He was dubash in "Baker's house in 1805 or 1806. Kistnamah" —he was the eldest son—"was not assisted by "any funds derived from my father. Mauree "suffered loss to 25,000 or so, and Kistnamah "paid that out of his own money." Then he further says, the statements made in the answers filed in the suit of Narrainsawmy, the son of Kistnamah, "especially that Mauree's assets were "not enough to pay debts,—insolvent, in fact. "The debts Mauree left were ten times larger "than the property he left. We paid a lakh "for Court costs after his death from 14 to 34. "Kistnamah carried on on his own account; "so did Aroonachellum; so did Cothundaram "and self" that is, the other brothers. "During "the life of father we were always in the same "house living, and also Sawmy"—he was a cousin—"and cooked and ate together. Up to "the death of Mauree there was no division. "We each worked separately, and the brothers "had to pay 30,000"—rupees or pagodas, it does not appear which—"for the debts of "father, owing to security given by him, but "we laboured separately, and had our property "separate."

In their Lordships opinion, if this evidence, uncontradicted as it is, had stood alone, it would have amply supported the finding of fact of the three Courts. But it is materially corroborated. In the first place, it is corroborated in this way :— a suit was brought against Mauree in 1805 (Mauree died in 1814) by one Devaljee, who had obtained a loan from Mauree on a mortgage, Devaljee alleging that Mauree held possession of the mortgaged premises and received the proceeds

for a long time after the mortgage had been paid off. This suit was attended with considerable expense to Mauree in his lifetime; and it went on, and was a source of great expense, and considerable loss, to his sons, until it was finally decided in 1835. We have the Master's various reports in the course of it; and it is enough to say that from those reports it appears that Mauree at the time of his death had been overpaid to the amount of more than 8,000 pagodas, which he owed to Devaljee, and that this sum exceeded considerably any assets which Mauree had. Mauree left a will leaving his property to his sons. But their Lordships do not think it necessary to determine a question raised here, though apparently not in India, whether, if there had been a surplus after satisfying Mauree's liabilities, his sons would have taken by descent or by devise. Three of his sons renounced probate. The eldest son, Kistnamah, took out administration with the will annexed, and, as administrator with the will annexed, obtained possession of the property. It appears that Kistnamah up to the time of his death retained this property, as it was right and prudent for him to do, in order to meet the possible adverse result of the suit of Devaljee; that in defending the suit, and in the expenses of administration, he disbursed considerably more than the whole value of the property; and that, although the greater part of these disbursements were ultimately disallowed as against the creditors, the representatives of Devaljee, the deficiency was made good out of his estate; that after his death, which occurred in 1826, no assets of Mauree came to the hands of his surviving sons, except the half share of the garden at Athepattam and some other immoveable property of small value, all of which was afterwards sold under the final

decree of the Court in satisfaction of the claim of Devaljee's estate.

The statement of the witness Sooryah is also further corroborated in this way:—one Narrainsawmy, the son of Kistnamah, the eldest son of Mauree, brought a suit very much of the same description as the present for the purpose of disputing the will of Kistnamah, on the ground that Kistnamah's property was joint. In that suit the whole of the family agreed in treating the property of Kistnamah as self-acquired; and if Kistnamah's property was self-acquired, and not derived from Mauree, some presumption arises that the property of Aroonachellum was not derived from Mauree.

On these grounds their Lordships entirely concur with the finding of the Courts upon the first question; namely, that Aroonachellum did not receive any property from his father on which he commenced his trading, or which could in any sense be properly called the nucleus of his trading fortune.

The next contention is: that Aroonachellum having been educated out of the joint funds of the family, his acquisitions became in point of law joint. In support of the allegation of fact on which it is sought to found this legal inference the only evidence produced is the answer of the Defendants, Sooryah among them, in a suit filed by one Sawmy, a grandson of Nullamuttu, who was the father of Mauree; Sawmy contending, amongst other things, that the property of Mauree was ancestral, derived from Mauree's father Nullamuttu; and the four brothers, Kistnamah, Aroonachellum, Cothundaram, and Sooryah, contesting that proposition, and contending that the property of their father Mauree was self-acquired. That answer contains this passage: "Aroonachellum was educated "by his said father Mauree by and out of his

" separate funds or means; and when this " Defendant Aroonachellum was of sufficient " age he was put forward in life by his said " father, and by and through his means and " influence only, and afterwards by and through " the industry and exertions of this Defendant " Aroonachellum on his own behalf." If this passage be relied upon as an admission it must be taken as whole, and it contains a distinct assertion, that whatever were the charges of Aroonachellum's education—and it nowhere appears what sort of education he had—those charges were borne by the separate estate of his father, over which he had an absolute power of disposition. There was, therefore, at that time, no joint estate in the proper sense of the word; and the foundation of fact then fails upon which the legal inference was to have been based.

This being their Lordships view, it does not become necessary to consider whether the somewhat startling proposition of law put forward by the Appellant, which, stated in plain terms, amounts to this: that if a member of a joint Hindoo family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property,—is or is not maintainable. Very strong and clear authority would be required to support such a proposition. For the reasons that they have given, it does not appear to them necessary to review the text books or the authorities which have been cited on this subject. It may be enough to say that, according to their Lordships view, no texts which have been cited go to the full extent of the proposition which has been contended for. It appears to them, further, that the case reported in the 10th vol. of Sutherland's Weekly Reporter, in which a judgment

was given by Mr. Justice Jackson and Mr. Justice Mitter, both very high authorities, lays down the law bearing upon this subject by no means so broadly as it is laid down in two cases which have been quoted as decided in Madras; the first being to the effect that a woman adopting a dancing girl, and supplying her with some means of carrying on her profession, was entitled to share in her gains; and the second to the effect that the gains of a vakeel who has received no special education for his profession are to be shared in by the joint family of which he was a member; decisions which have been to a certain extent also acted upon in Bombay. It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Courts of Madras.

For these reasons their Lordships are of opinion that the judgment of the Court below was right, and they will humbly advise Her Majesty that that judgment be affirmed, and this Appeal be dismissed with costs.