Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Raja Rao Venkata Mahipati Surya Rao Bahadur v. *The Hon. Sri Raja Rao Venkata Mahipati Gangadhara Rama Rao Bahadur, and another, from the High Court of Judicature at Madras; delivered June 4th*, 1886.

Present:

LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

THIS case has been very ably argued by the learned counsel for the Appellant. He very properly did not contend that the custom not to adopt had been proved. That is a question of fact which was decided concurrently by both Courts below, and could not properly be raised now before this Committee.

The case having now been thoroughly sifted, it appears that the only point to be decided is, what was the legal effect of the agreement of the 26th of April 1845 between Surya Rao and his brother Kumara. At that time Gangadhara, the son of Surya, was living. The estate was governed by the Mitakshara law. It is clear that Surya, the father, could not by the agreement of 1845 so bind the estate that an adopted son of his son Gangadhara should not take by descent. The agreement is contained in the 10th Article, at page 32 of the Record, by which the two brothers stipulated as follows:—
" As to the immoveable property belonging to us
" both, the said immoveable property shall, in case
" of the failure of 'aurasa' (self-begotten) male
" issue in either of these two lines, *i.e.*, either for

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" yourself or in your line of aurasa sons or in my " line of aurasa sons, be put in possession of " the other line, but it shall not be alienated by " making adoption and the like." It is unnecessary for their Lordships to determine whether that agreement was or was not binding between the parties who made it. It is clear that the father of Gangadhara could not bind his son, who was then in existence, not to adopt, or legally stipulate that if he should adopt, the son so adopted should not inherit. The words are :—" in case of the failure of self-begotten male issue." Mr. Mayne was forced to admit that those words meant an indefinite failure of issue ; and that an adopted son should not ever take by descent from his father. It appears to their Lordships that that would be entirely altering the law of descent, and contrary to the principle laid down in the Tagore case.

Their Lordships are therefore of opinion that the decision of the High Court was right, and that the agreement of 1845 did not operate to prevent the adopted son of Gangadhara from succeeding to this property. It has been very properly admitted by the learned counsel for the Appellant that the similar agreement which was made by Gangadhara is not one of which the present Plaintiff, who was no party to it, could take advantage.

Under these circumstances their Lordships will humbly recommend Her Majesty to affirm the Judgement of the High Court, and dismiss this appeal. The Appellant must pay the costs of the appeal.