Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Charan, sole representative of Umrao Singh deceased, v. *Debi Din and others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered July 8th,* 1890.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE Plaintiff in this suit, the late Umrao Singh, who is now represented by the Appellant, and the Defendant, Debi Din, are the sons of one Jian, who had a brother named Nayan. The Plaintiff asked in his plaint for a partition of the property, which he alleged was joint family property, part of it having come to the brothers from their father Jian, and another part of it having been acquired after the death of the father, and in such a manner as to be joint family property. The defence was that there had been a partition subsequently to the death of Jian. There had been a previous partition between Jian and his brother of the property which came to them from their father, but that is not material. The real question was, whether there had been a partition between the Plaintiff and the Defendant, Debi Din. The issue was: "Did Plaintiff and first Defendant separate after "the demise of their father, or did they continue "to live in joint partnership until 16th October "1877, and hold joint possession of all ancestral "property, or was the property acquired with

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" the ancestral stock while they lived as members " of a joint family ? " The subordinate judge in his judgment says : " From the evidence of the " Defendants' witnesses, and the tenor of the " letters of the parties produced in this case, it is " shown that the parties had separate concerns, " and each received the profit due to his share in " respect to the villages, in which his own or his " son's name was recorded as proprietor or " mortgagee separately, and for his exclusive " use." This is a finding that, as alleged by the Defendants, there had been a separation, and that each of the parties, although no separation had been made by metes and bounds, had had separate enjoyment of his share of the property. When the case came before the High Court on appeal the finding of the High Court on the question was : " Having very carefully con- " sidered the evidence and the arguments of the " learned counsel and pleaders on either side, we " have arrived at the conclusion that no sufficient " reason for disturbing the judgment of the able " and experienced subordinate judge has been " shown; on the contrary, we agree with the " lower court that it is proved that the " ancestral property was but of small value; " that the two brothers made a partition of their " ancestral property though they continued to " live under the same roof; that Debi Din " engaged in business on a much larger scale " than did Umrao, who was in the service of the " Government as a jamadar in the Opium Depart- " ment; that the two brothers sometimes made " purchases separately and sometimes jointly " with their children or with strangers, but in all " joint transactions the interest of each purchaser " was limited to the amount contributed by him." This again is a definite finding that a partition had been made between the two brothers. It has been contended on the part of the Appellant

that the onus of proof had been improperly put upon the Plaintiff to show that the family was joint. It does not appear from the judgments that the onus was so put upon the Plaintiff. The case was fully gone into ; the evidence offered by either party was received, and the whole of it was considered by both the lower courts. It is not shown in any way that there has been any error in law in putting the onus of proof upon the Plaintiff. There are two concurrent judgments of the lower courts upon the question of fact, and there is no ground for the present appeal.

Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the High Court and to dismiss the Appeal.

As the Respondent does not appear there will be no order as to costs.