Judgment of the Lords of the Judicial Committee of the Privy Council in the Appeal of Moonshee Banee Lall v. *Moonshee Choonee Lall, from the late Court of Sudder Dewanny Adawlut at Agra, North-Western Provinces, Bengal; delivered* 11*th March*, 1869.

Present:

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
THE JUDGE OF THE ADMIRALTY COURT.
LORD JUSTICE SELWYN.
LORD JUSTICE GIFFARD.

THE question in this Appeal turns on the construction of the Deed of Allotment of the ancestral property and debts, as applied to the transaction which has actually taken place.

Now, their Lordships are of opinion, in the first place, that that transaction really was a foreclosure and sale, with the view of getting payment of a debt which was owing to a party who had no other means of getting his money; and they are of opinion that such a transaction is not an acquisition within the meaning of the 4th clause of the deed in question, it being in fact a mere method of realizing the money due and nothing else.

But, beyond that, their Lordships are of opinion that the 4th clause of the deed in question could not have been intended to apply to anything more than that which at its date really was ancestral property. When we look at the 4th clause apart from the recitals of the deed, this is plain, for by just transposing a few words it reads thus:—"Should any one of us wish to transfer or mort-"gage any of the villages out of the whole of the "ancestral and bequeathed estates, portions of which "have been received by each of both parties ac-"cording to the present division, or out of what "each may have subsequently acquired." That

which governs the whole surely is "the ancestral and bequeathed estates." "Any of the villages "which any one of us may wish to transfer or "mortgage," must surely mean "any of the vil- "lages out of the whole of the ancestral and be- "queathed estates, portions of which have been "received by us, other portions of which may have "been acquired by us." If that is so, it is conclusive on the subject. Then if we turn to the recitals, the words in the 4th clause, "or out of "what each may have subsequently acquired," would seem to apply to that which is mentioned in the recitals. The recitals speak of "all the pro- "perty purchased and acquired by us, all the pro- "perty inherited, and all the property acquired "under a particular Deed of Gift." And the first clause, after the recitals, is this, "That although "out of the entire ancestral estate, consisting of "moveable and immoveable property, and as also "out of that acquired under a Deed of Gift, which "we heretofore held jointly." Thus, therefore, speaking of this same subject matter, viz. "the "whole of the ancestral and bequeathed estates, "portions of which have been received by each of "both parties, and portions of which may be ac- "quired by succession or otherwise," a rational interpretation can be put upon the clause, an interpretation consistent with the ordinary dealings of mankind, and which will render it unnecessary to follow (as you would have to do upon the other interpretation of the clause) every particle of the profits, and every particle of the joint estates which might be laid out in the purchase of immoveable property, as we conceive at any time; this latter would be a very irrational construction. The other construction is not only a rational construction, but consistent with the actual words of the deed, and with the intention of the parties.

Therefore, their Lordships are of opinion that the Decree of the late Court of Sudder Dewanny Adawlut at Agra of the 3rd June, 1861, ought to be affirmed, and that this Appeal must be dismissed with costs, and will humbly report to Her Majesty accordingly.