Judgments of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Chundernath Roy Bahadoor v. *Kooar Gobindnath Roy, Ranee Shebessuree, and others, from the High Court of Judicature at Fort William in Bengal; delivered 27th April* 1872: *and on the Appeal of the Collector of Moorshedabad* v. *Ranee Shibessuree from the same Court; delivered 8th June* 1872.

Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN these Appeals the title to the succession to the large and ancient Raj of Nattore on the death of the Rajah Gobindchunder is involved, and it has been thought convenient to determine it before proceeding to deal with the other questions in the suits.

The issue raised on the title is, whether Gobindnath, the Respondent, is entitled to the succession as a son by adoption of the late Rajah Gobindchunder. The adoption was made by his widow Shebessuree, and the power to make it is alleged to have been given by a deed (onoomottee pottro) executed by the late Rajah on the eve of his death. He is alleged to have made at the same time another deed (kottrito pottro) giving his mother Kistomonee, or rather his adoptive mother, the management during the infancy; and the whole question on this issue turns upon the validity or invalidity of these two deeds.

Their Lordships do not think it necessary to go into the history of the long and complicated litigation which has arisen out of this succession,

though parts of it may be incidentally referred to; and the general facts which introduce the period when these deeds were executed are few.

It appears that Gobindchunder died in 1836, having the raj in full right and possession.

He died, leaving his mother Kistomonee, his wife, who was then about the age of 20, and an infant daughter about two years old; and it is material to bear in mind this state of his family in weighing the presumptions which arise from the subsequent conduct of the parties.

The Rajah Gobindchunder had himself been adopted into this family by Kistomonee in the year 1814, and he came of age in 1829. During his minority Kistomonee managed the property, and there were disputes between the Rajah and his adoptive mother, which, when he came of age, led to what has been called by the learned counsel for the Appellant exasperated litigation. There can be no doubt that there was fierce litigation between the mother and the adopted son. In that litigation insults were heaped by one upon the other; and the fair result of the evidence seems to be that they continued for a considerable time in a state of hostility. From conversation held with the Rajah himself, it appeared that only a short time before his death he was not on visiting terms with his mother. She had left the palace at Nattore, and had gone to live at Saidabad, on the other side of the Ganges. But although that state of hostility between mother and son is proved beyond all dispute by the evidence, it is also proved, and with equal certainty to the minds of their Lordships, that on the eve of his death the Rajah became sincerely desirous of seeing his mother, and becoming reconciled with her. He was taken ill some few days before the 9th of December. On the 9th of December, or as one witness says, on the day before the 9th, he was told that his illness was serious; and on the morning of the 9th, when several family physicians were present, when one of his relatives, Hurree Pershad,

the father of his young wife, was also present, the evidence is that the deeds which are now in dispute were executed, attested, one by nine and the other by eleven witnesses, and the deed of adoption (onoomottee puttro) given by the Rajah to Hurree Pershad, who at once delivered it to his daughter, the Rajah's wife, who was behind the screen in the same room. The other deed the Rajah put in his seal box, intending himself to take it to his mother.

The direct evidence of the execution of the deeds is that to which attention should first be called; and, of course, if that evidence fails to establish that those deeds were executed, the case of the Respondent must fail.

Their Lordships having given very careful consideration to the evidence in this case, have come to the conclusion that the Judgment of the High Court is perfectly right; that there is direct evidence of the execution of the instruments, which is, if not so clear as to remove all doubt, at least so satisfactory that in the absence of contrary evidence or very strong presumptions to the contrary it ought to prevail. Their Lordships also think that whilst the direct evidence is satisfactory, the presumptions which exist on the one side and on the other, when they come to be weighed, very strongly preponderate in favour of the execution of these deeds.

Several witnesses have been called who were present when these deeds were executed; and in considering the witnesses who were called, and the absence of witnesses, the length of time which had elapsed from the period when the deeds were executed to the time of the inquiry must be borne in mind. The deeds were executed in December 1836, and these witnesses were examined before Mr. Jackson in 1860, 25 years after the event.

It is unnecessary to say which of the parties is responsible for the delay. Undoubtedly, when the conduct of Anundnath comes to be considered, there will appear consider-

able delay on his part; but without casting the responsibility of that delay on the one side or the other, the fact of the delay is certainly important when we come to consider the evidence which was given, and that which, if the case had been heard at an earlier period, might have been expected to be given. Of the witnesses who have been called, without adverting to the others, three appear to be in a respectable position in life, and one of them is a witness whose interest is apparently opposed to the deeds supposed to have been forged, and which he must, if he is saying that which is untrue, be assumed to have assisted in fabricating. This witness, Hurree Pershad Roy, was an old man when he was examined, and the father of Shebessuree the widow of the Rajah. He says he was present when these deeds were executed. He gives a long account of the way in which it was done, and he gives the names of the writers. He says "Bhoyrub Sircar wrote the "onoomottee puttro, and Kisto Dhone Mozoom-"dar wrote the kotritto puttro." Both these persons are dead. He also gives us the name of the officer of the Rajah who drew the will, Hurrish Chunder Khan, who appears to have been the chief dewan in the Rajah's house, and therefore a person very likely to have been consulted. Hurrish Chunder Khan prepared the deeds and read them over. If this witness is to be believed, Hurrish Chunder Khan read them over to the Rajah; then they were executed, and one delivered to Hurree Pershad himself to be given to his daughter in the way which has been already described.

In addition to that witness there is Needan Chunder Roy, a cousin of the Rajah living with him, and therefore a person who would naturally be present upon an occasion of this kind, and Monomohun, the court physician, one of the numerous doctors who were in attendance upon the Rajah. Those witnesses were not

subscribing witnesses; and undoubtedly that which is least satisfactory in this part of the case is that these respectable persons were not subscribing witnesses, and that only one subscribing witness was called upon the inquiry in 1860. But it appears that upon a trial which took place before the Principal Sudder Ameen, in the year 1852, two attesting witnesses were called. The deposition of one of them has been read, and the other (to adopt the phrase used at the Bar) has in some way dropped out of the record. It appears to have been the deposition of one of the physicians. Other witnesses had died before the inquiry in 1860.

Therefore their Lordships find a considerable number of witnesses called to prove the execution of these documents. They do prove them in the most direct way, and if any credit is to be given to their evidence these deeds were executed by the Rajah, and one of them was delivered by his own hand to Hurree Pershad.

On the other side there is no direct evidence, but it is sought to impeach this testimony in favour of the deeds by admissions which were supposed to have been made by the Rajah himself and by his mother the Ranee Kistomonee about the time when it is supposed that these transactions took place. The Rajah himself expressed his desire to be carried to the Ganges to die. His mother lived near the Ganges. In the course of his journey, which apparently was a journey of about 60 miles, he stopped at Rampoora, and there he was seen by a witness, Haradhun Sanyala Mooktear, who from his own statement had been employed by several members of this family in transacting their legal business. His evidence appears in the second record, and he is the only witness called by the Appellants whose evidence goes very seriously to impeach the testimony as to the execution of the deeds. It is no doubt very important, and is entitled to be very carefully considered, because, undoubtedly, if what he says is taken literally and is true, it is

difficult to suppose that the Rajah had executed these two deeds before he had started on his journey. He says he saw the Rajah at Rampoora and had a conversation with him; and he says, "I "told the Rajah that you are unwell, you give a "permission for holding of the house; upon which "he told [me], 'I have an intention of giving per-"mission. It is not written. I cannot do so until "I see my mother. I will go to the banks of the "Ganges. Get a boat for me.' Upon which I told "him, 'You present a petition intimating the said "permission.' He said, 'Let me go to my mother "and I write it. There is no need of giving any "information. Get me a boat and cross me "over.'"

Undoubtedly if that evidence is entitled to credit and to be entirely relied on, it is inconsistent with the execution of the deeds having then taken place. But there are various circumstances which tend to impeach this evidence. Harahdun Sanyal, it appears from his own statement, had quarrelled with Kistomonee; she had in some way withdrawn her confidence from him, and he admits that he then took part with Rajah Anundnath. But what appears still more to throw doubt upon his evidence is this: he says that although he had had this all-important conversation with the Rajah, upon the question which must have agitated the family for many years; although he was acting for Anundnath and in constant communication with him, he never told him of this conversation until after the commencement of this suit. That does appear to be utterly incredible, and to throw not only doubt but discredit upon his testimony.

It is also to be observed that, even if that testimony be true, and although, if the Rajah is assumed himself to have been sincere, his expressions indicate that the deeds had not been executed; yet it is possible that, as he had not employed this man in preparing them, he might not for that reason or for others have chosen to tell him of what he had done;

again, supposing the evidence to be entitled to any credit, two circumstances appear from it extremely favourable to the case of the Respondent; one is, that the Rajah had *the intention* to give the power of adoption to his widow; and the other is, that he was going to see his mother; and from his expressions, as given by this witness, it is plain that he was going not only to see but to consult her, and act according to her advice and wishes. Those two circumstances are strongly in favour of the presumptions of intention on which the Respondent relies.

A great deal of evidence appears to have been given in the suit before Mr. Jackson, to show that Kistomonee and Shebessuree had fabricated these deeds, in order to compromise a quarrel between themselves. The learned counsel, Mr. Field, who very fully and strenuously argued this case, has not ventured to rely upon that evidence. His main support was the judgment of Mr. Jackson, and as Mr. Jackson himself did not believe that story, Mr. Field probably exercised a wise discretion in not relying upon it. But it is perfectly plain that the Appellants had set up a case of fabrication of documents, which entirely broke down and failed to obtain credit. The endeavour to do so, and in a very systematic way, throws great discredit upon the whole of their case.

Anundnath himself was examined, and it appears to their Lordships, as it did to the High Court, that his evidence is very strongly in favour of the validity of these deeds, because it appears that he recognised, by the giving of presents, both the adopted children. He recognised the two sons who were in succession adopted; and the only way in which he gets rid of that damaging fact is, by saying that he was not aware that they were adopted under a valid power given to the widow. He says, he thought they were merely children about the house brought up by Shebussuree: but their Lordships think that such an explanation

is entirely incredible. He was living in the palace at the time the Rajah died. These deeds had been publicly notified to the collector, and had been filed. He must have known of the deeds and of the attesting witnesses to them; and to suppose that this gentleman believed that these children had not been adopted is really impossible.

A letter was put in evidence when he was examined, which, if it be genuine, is decisive to show that he treated the first child as the legally adopted son of Gobindchunder. The letter is this: "Having received the letter con- "ferring blessings, I cannot express the mental "agony I feel on hearing the news of the death "of my brother's son." Nothing can be more precise than that expression. In the mind of a Hindu, when it was used, it must have been perfectly clear that the child who was just dead could only be his "brother's son" by a legal adoption. There could have been no adoption in this case by the widow, unless by virtue of deeds executed by the Rajah before his death.

A question was made whether that letter was really Anundnath's writing or not. The evidence seems to be in favour of its authenticity. Mr. Jackson says he only faintly denies it. He was examined before that judge, who had an opportunity of seeing him. The other circumstances referred to in the examination go a long way to show that it was a genuine letter. A man would not "faintly deny" such a letter if he could have denied it honestly; and the faintness probably arose from the feeling that he could not with a safe conscience say that it was not his own letter.

Upon the whole of the evidence, therefore, which their Lordships have considered, but to which it is not necessary to advert in all its parts, their Lordships have come to the conclusion already intimated. But this case has arrived at its present stage and the litigation has been prolonged, not so much by the result which ought to be drawn from the evidence given on both sides

directly applicable to the facts, as from this, that the learned judge, Mr. Jackson, drew from circumstances not given in evidence in the case, and from general knowledge, inferences and presumptions hostile to the direct evidence. It appears to their Lordships that some of those inferences are of a strained character, and some of the presumptions unsound; but the judges of the High Court, who went very carefully through the evidence, have disposed of those inferences and presumptions to a considerable extent, and have made presumptions from the evidence with which their Lordships are very much disposed to agree.

The main presumption which has been relied on in favour of the Appellants against the deeds arises from the state of feeling which existed between his mother Kistomonee and the Rajah. Undoubtedly that state of feeling is entitled to be considered. It has already been stated that it existed. But there is surely nothing contrary to the ordinary workings of human nature in the supposition that on the eve of his death he was desirous of reconciliation, and that an entire revulsion of feeling had come over him.

It is said, Why should he entrust the management of this important raj to his mother who had managed it so much to his own dissatisfaction? It appears that the dissatisfaction was that she preferred to manage it herself, and would not let him have the control of it; and he may have thought that when he left a young wife and an infant child, the mother who was so perfectly capable of managing, was the best manager whom he could select. But that he *did* desire reconciliation and was anxious to consult her is perfectly clear; and that he went out of his way when the hand of death was upon him for the very purpose of seeing and consulting his mother is equally clear.

The next inference suggested as hostile to the deeds arose from their non-publication by the Rajah before his death, or by Kistomonee immediately afterwards. Unquestionably it is most

satisfactory when documents of this kind are registered, and it would be very much for the interest of proprietors in India if when they execute deeds giving their widows after their death power to adopt, they would take the precaution to register the deeds. It might save great litigation, which very frequently wastes the property they desire to preserve. However, it was not done in this case; it was not compulsory on the Rajah to do it; and the time when these deeds were executed, the circumstances under which they were executed, the fact that the transaction was not fully completed until he had taken the deed of management to his mother and she had accepted the trust, may all account for his not having published them before his death.

Then it is said, Why did not Kistomonee, who, when passing through Rampoora, saw some of the old retainers of the family, tell them, and proclaim that she had the management? It would have been better perhaps that she should have done so; but still the delay in publishing the deeds was not very great. About six weeks after the death of the Rajah she presented a petition to the Collector, in which the two deeds are referred to, and the evidence appears to be that they were then produced to the Collector. At all events, whether produced or not, they were specifically referred to, and in the following June, six months after, they were regularly filed.

Again it is said, and an inference is attempted to be drawn hostile to the Respondent from the circumstance, that the adoption of a son did not take place until six or seven years after the Rajah's death. That appears to be explained and accounted for by the circumstance that the Rajah had left a daughter. If she had lived and had married and given birth to a son, that son would have become the representative of the family; he would have been able to have performed the religious rites of the family and of the Rajah, although not to the same full degree that an adopted son might have done; still those circum-

stances would reasonably account for the adoption not having taken place. Mr. Doyne forcibly pointed out the obligation upon the widow to act upon the power given to her by her husband as speedily as possible, and its great importance as a religious duty. The widow may have neglected her duty, but the presumption against the deeds does not seem very strong from that circumstance; whereas the presumption that the Rajah would leave the power to adopt is very great. The stronger the duty to adopt a son, the stronger is the presumption that the Rajah would not like to die without leaving power to his widow to make the adoption. That he should have postponed it to the eve of his death is a circumstance that does not weigh against the probability of the deeds, for he was only of the age of 24 or 25, having a wife younger than himself.

These seem to be the presumptions which have been most relied on against the deeds, but the presumptions in favour of them are not only strong but almost irresistible.

The theory of the Appellants must be that these deeds are forgeries, and if they are forgeries Shebessuree and her father Hurree Pershad must have been engaged in them. It was clearly against the interest of the widow that there should be an adoption, for she would have been entitled to the raj and all the property for life, and her daughter, if she had married and had had a son, would have continued the succession. And her father certainly could have had no interest in fabricating a deed which would give Kistomonee the management, because if such a deed had not existed, and his daughter had had her life estate in the property, he would have been the natural person, as her protector, to have had the management of it. Therefore the presumption against forgery, arising from the interest of these two persons who are supposed to be implicated in the fabrication of the deeds, is very strong.

Then there is the presumption to which allusion has been already made, arising from the duty to have a son by birth or adoption, strengthened by the presumption arising from the usage in this family, in which for 150 years, with only one exception, there has been a series of adopted children. It is very unlikely that the late Rajah should have wished to drop that usage. At all events there is a strong probability that he should have desired to act in accordance not only with the general law, but with the custom of his own family.

The last presumption to which their Lordships think it necessary to refer, is that arising from the conduct of Anundnath himself. It has been already incidentally adverted to, but is so strong that their Lordships desire again to direct attention to it at the close of the observations. Anundnath was a man apparently of wealth and position. He recognised the two children who were adopted in succession, and it is not until the year 1849 that he first comes forward, not directly to put forward his claim, but to intervene in another suit which had been brought by Kistomonee, on behalf of the adopted son, to recover some property from third persons. It would appear from the proceedings which took place before the Principal Sudder Ameen, in which it is now said that the validity of these deeds was in question, that, if that was so, Anundnath brought forward then no witnesses to impeach them, and certainly did not put forward Harahdun Sanyal, the mooktear, now his strongest witness. It seems that that proceeding, which was a suit to recover property belonging to the raj, took this course; evidence having been given of the execution of these deeds by one or two witnesses, and no evidence having been called on the other side, it was supposed that enough had been done to establish the title. That may have been a misapprehension. It may have been that the Sudder Dewany Adawlut were right in their first judgment in thinking that the matter was

fully in issue, and that if that were so, sufficient evidence had not been given to establish the validity of the deeds. It certainly looks as if the case had proceeded very much in the way in which an ejectment proceeds in this country, where an heir brings an ejectment to recover possession from a stranger of property belonging to his estate, he introduces a primâ facie case, and unless there is evidence given on the other side, it is considered to be sufficient.

However that may be, the Sudder Dewany Adawlut upon review considered that there had been a misapprehension; that there was an issue which had not been properly tried, and so they sent the case down again.

It is important to observe that upon that first inquiry, the trial was either treated as one where primâ facie evidence was sufficient, or if it was treated as one where both parties were to bring forward all their evidence, Anundnath did not bring forward any; and certainly did not bring forward the mooktear on whom he now so strongly relies.

Their Lordships having come to the conclusion that the judgment of the High Court on the question of succession is right; that decision will dispose of the two Appeals of Rajah Chundernath Roy. They will therefore advise Her Majesty to dismiss those Appeals, with costs. They will also advise Her Majesty wholly to affirm the decree of the High Court made on appeal in the suit originally brought by Anundnath Roy, No. 28, of 1861, and also to affirm the decree of the High Court made on appeal in the suit originally instituted by Kistomonee Dabee against the Collector of Moorshedabad and others in 1849, in which Anundnath Roy intervened, so far as the question of succession is concerned.

[*Their Lordships then proceeded to hear the Appeal of the Collector of Moorshedabad in the last-mentioned suit, and on the* 8*th June* 1872 *the following Judgment was given on that Appeal.*]

THE remaining question in the appeal in the above suit relates to the effect to be given to four out of five hebanamahs executed by the Maharanee Bhobanee in favour of Joymoney, one of the wives of her grandson Bissonath Roy. The Appellants contend that although Gobindnath has established his title as heir by adoption to Bissonath and to the Raj of Nattore, the properties comprised in these deeds did not descend upon him, because, as they allege, Joymoney acquired under them an alienable estate. It is admitted that in point of fact Joymoney in her lifetime gave the properties comprised in four of the above deeds to Doorga Chunder, who has since died, and is represented by Koylas Chunder Roy, the minor Appellant, and the property comprised in one deed to his wife Kaseesoondree, the other Appellant. The question is whether Joymoney had power to make these alienations.

A decision hostile to the validity of an adoption of Doorga Chunder by Joymoney, under an alleged authority from her deceased husband Bissonath Roy, was given in the course of the protracted litigation referred to in the record: so that he must be regarded as a stranger to the family of her husband Bissonath.

Maharanee Bhobanee, in consequence of minorities, managed for many years the Raj of Nattore, but the property comprised in the deeds in question was acquired by her in her own right. Some part of it, once forming part of the estates of the Raj, was purchased by her at auction sales, when it was sold for the debts of Bissonath Roy. The Respondents indeed do not dispute that the property was held by the Maharanee Bhobanee as her Stridhun, nor her power of dealing with it

as she chose; but their contention is, that she dedicated it to religious worship in such a manner that it became inalienable by Joymoney, and descendible only to her heirs.

There is no sufficient evidence that the idols mentioned in the deeds were ancestral or family idols, or that the property, before the Maharanee acquired it, was devoted to religious purposes. The dedication to such uses, whatever may be the nature and extent of it, appears to have been made for the first time by herself, and she must be considered as the founder of the endowments.

With regard to one of the deeds (No. 4), dated 27 August A.D. 1802, no question arises. It contains no reference to worship, and has an express power of alienation. The courts in India have concurred, and as their Lordships think rightly, in treating it as an absolute gift of the property to Joymoney with all the rights of unrestricted ownership.

Their Lordships consider also that little difficulty arises with respect to another of the deeds (No. 2), dated 19th July 1802, relating to the "auction purchased zemindary Hoodda Burrangore." That hebanamah contains an absolute gift of the estate to Joymoney; and the words "you will do virtuous actions, &c. from the profits," do not appear to their Lordships to contain any specific direction or trust capable of being enforced. They appear to be simply recommendatory of a moral duty, and do not qualify the absolute character of the gift. The clause "you shall enjoy it with your sons and "grandsons; if at any time any heir of mine "should make any claim, that will be null and "void," ought not in their Lordships' view, to be construed as a limitation to the sons, and consequently as a restraint on alienation. It may have been added to express the absolute and irrevocable nature of the gift.

The High Court considered that the absence of an express power of alienation led to the pre-

sumption that the gift was limited; and, apparently disregarding their own rule, that each deed should be interpreted by itself, they infer from the insertion of such a power in the subsequent deed (No. 4), and the omission of it in this, an intention to restrain alienation. Their Lordships think that the subsequent deed cannot properly be referred to for this purpose. If it had appeared expressly, or by reasonable implication from the contents of the deeds, that they all formed part of one entire design, then the construction of any one could properly be aided by the dispositions made and the language found in the others, but it cannot be inferred from these deeds that they are parts of one design, or that they form a connected series to be construed as a whole. Their Lordships consider that this hebanamah No. 2, construed by itself, contains an absolute and unrestricted gift of the property comprised in it to Joymoney, and consequently that the judgments given by the Courts in India in favor of the Respondents, on the ground that she had no power to alienate, cannot be sustained

The three other deeds, No. 1, No. 3, and No. 5, are different in their character from the two hitherto discussed. They contain provisions for the endowment and support of idols and their worship, which are in the nature of trusts impressed on the property to be performed by the donee. In the case of a bare trust leaving no beneficial enjoyment to the donee, there would be strong ground for the implication that the property was not alienable, and was to descend to the donee's heirs as trustees in succession. But it was contended that in these grants the trust is coupled with an interest, giving the donee a right to the enjoyment of the surplus usufruct of the property, after making due provision for the sustentation of the idols and their worship, and therefore that there is a beneficial ownership capable of alienation.

The case of Sonatun Bysack v. Sreemutty Juggutsoondree Dossee, 8 Moore, I. A., p. 66, was

cited to show that such a beneficial interest may exist as a secular right in property dedicated primarily to the worship of idols. In that case, it is true, a disposition of the surplus was expressly made by the will of the donor; but their Lordships do not doubt that cases may occur where, from the nature and terms of the gift, the intention of the donor to confer a beneficial and alienable interest in property so dedicated may be inferred.

The question arising for decision on these several deeds is, whether it can be collected from their language that the donor Maharanee Bhobanee intended to make such a gift, or whether she meant that the worship and the endowments should remain in the family of Joymoney.

It would unquestionably be more consonant with the genius and spirit of Hindoo law and usages that endowments of this kind should be made to a family, by whose members in succession the worship might be performed, than to an individual who might sell or give them to a stranger.

The following cases were referred to on this subject during the argument: 1 S. D. A. Reports (1807), 180; 4 Idem (1829), 343; 5 Idem (1832), 210; 5 W. R. 202; 7 Idem, 266.

There is considerable difficulty in arriving at the intention of the donor in the present case, in consequence of the peculiar position of this family, and the vague and varying language of the several grants. The Raj of Nattore was from its nature an impartible estate, descending on a single heir; and the Maharanee certainly does not seem to have intended to annex this property and worship to the Raj. She clearly also did not desire that they should go to her grandsons, Bissonath Roy and Sheebnath Roy. It may be inferred from the hebanamahs that she intended one of two things; either to make an absolute gift to Joymoney, giving her full dominion over the property and worship; or to vest them in her, and her heirs, as family property and sheba

in such manner that the succession should be to her heirs, passing over her husband Bissonath and his brother. It is important to observe that Joymoney at the time of these deeds was the mother of two sons.

Bearing in mind, whilst construing these hebanamahs, the presumption already adverted to, that endowments of this nature are usually made by Hindoos with the object of preserving the sheba in families, rather than of conferring a benefit on individuals, their Lordships have been led to the conclusion, with regard to the hebanamah No. 1, that upon the right construction of that deed, Joymoney had no power to alienate the property contained in it. In that hebanamah dated 8th November 1798, the Marahanee Bhobanee says, "I have certain pro- "perty for the service of the gods worshipped "by me at Mamoodpore &c. * * My eldest "grandson is Rajah Bissonath Roy; his under- "standing is unsettled, he is incapable of "managing the property, and the zemindary in "his hands is gradually diminishing. My "second grandson, Koer Sheebnath Roy, is a "minor, and disobedient to my commands; by "neither of these two can the service of the "gods be performed."

She thus declares her motive for desiring to exclude her immediate heirs, but that motive does not afford a reason for a desire to allow the sheba to go entirely out of her family.

The deed goes on, "Knowing you are the wife "of my grandson and the mother of a son; more- "over you are always employed in taking care "of me, you will be able to take care in a very "good way of the service of the gods, and my "property will remain intact."

The above passages which refer to Joymoney being the mother of a son, and to her ability to take care of the service of the gods, and the conclusion the Maharanee draws from these facts, seem strongly to indicate an intention "that "the property should remain intact" in the family.

The deed goes on, "for these reasons the worship of the aforesaid gods, and their debutter pergunnahs, (naming them,) the ornaments of the gods, and all the property appropriated to the worship of the gods, I make over to you, by a gift. Having caused your name to be enrolled in the shebaettee, you will take possession of the debutter, &c., and continue to perform the prescribed worship of the gods from generation to generation. You have the power to appoint a shebaet for the worship of the gods."

The power to appoint a shebaet is perhaps consistent with either construction. The words "from generation to generation" may, in some cases, mean no more than to express the absolute character of the gift; but, considering the subject matter, it seems more probable that in this deed they were used in their natural sense to denote an intention to perpetuate the worship in the family.

The words "I and my heirs have no concern with it," were strongly relied on by the learned counsel for the Appellant, and they undoubtedly favor his construction; but their Lordships consider, although not without some doubt, that those words may be satisfied by referring them to the intention of the Maharanee to exclude her grandsons, who were her immediate heirs, and that they are not sufficient to rebut the construction derivable from the other parts of the document.

The judgment on this deed will therefore be in accordance with the decision of both the Courts in India.

Their Lordships have come to an opposite conclusion with respect to the hebanamah (No. 3) dated the 12th August 1802. It contains no words of succession, nor any reference to family or descendants. In it the Maharanee says she has in her Burranagore house the worship of the idol Sree Sree Ishwur, that her daughter was Shebaet. "I worship now." She

goes on:—" For the purpose of worship there is " Turruf, &c., and the ornaments, &c. I give it " to you as a gift; you will take possession in " accordance with the hebah; you will always " perform the worship of the gods; you will " cause your name to be written as shebaet " in the Government records, and will always " pay the revenue. Therefore I give this deed " of gift."

No words occur to limit the completeness of the gift to Joymoney, subject to her making due provision for the worship of the idol. It may be that the Maharanee Bhobanee intended that Joymoney should enjoy this property and worship as fully and in the same manner as she herself had held them; and their Lordships do not consider the presumption already referred to arising from general Hindoo usages is sufficient of itself, in the absence of any language denoting the intention of the donor that the gift should belong to the family, to impress that construction upon it. Their Lordships, therefore, with regard to this deed (No. 3) disagree with the judgment of the High Court, which reversed the decision of the first Judge (Mr. L. Jackson).

The construction of the last deed (No. 5), dated 5th September 1802, depends very much on the same considerations and reasons as those which determine, in their Lordship's view, that of the hebanamah No. 1. These deeds are substantially to the same effect. The Maharanee in the last says "The Sheva of Sree Sree Doorga is mine; " of that sheva I had a desire to make a gift to a " daughter-in-law, Ranee Sunkary." She then refers to having purchased property sold for arrears due from Bissonath, and paid the value in the name of the goddess, and to the death of Sunkary, and then goes on, "For this reason I " make a gift of the same sheva to you (Joy- " money), who are my granddaughter-in-law, of the " entire talook, turruff, &c., and the ornaments of " the goddess, and all the sheva. You will have " your name registered as shebaet, and take

" possession of the mehuls through your men, " and continue to perform the worship of the " gods from son to grandson, and so on. For " this reason I give this deed of gift."

Their Lordships do not think it necessary to repeat the reasons already given in commenting upon the first deed, which led them to the conclusion that the maharanee intended that the endowments and worship should remain in the family of Joymoney. They think the declaration of the donor, that the worship should continue "from son to grandson, and so on," and that for that reason she made the gift, construed with the aid of the presumption arising from the nature of it, sufficiently indicates this intention. Their Lordship must therefore hold, in accordance with the judgments of both the Courts below, that the alienation made by Joymoney of the property comprised in this last deed cannot be supported.

It was not disputed, in the end, that the Respondent Gobindnath Roy, having established his title as heir by adoption to Bissonath Roy, became also heir to Joymoney, and entitled to recover such of the properties comprised in the hebanamah as should be held to be inalienable by her.

In the result their Lordships will humbly advise Her Majesty in the appeal of the Collector of Moorshedabad in the suit originally brought by Kistomonee Dabee in 1849, as follows; that is to say, that with respect to the properties comprised in the hebanamahs Nos. 1 and 5 the appeal be dismissed, and the judgments of the Courts below affirmed; that with respect to the property in the hebanamah No. 2, the appeal be allowed, and the judgments of both the courts below reversed, and the suit, so far as it relates to this property, dismissed; and that with respect to the property in the hebanamah No. 3, the appeal be allowed, and the judgment of the High Court reversed, and that of the judge of Rayshaye affirmed.

The parties to the last-mentioned appeal will bear their own costs of that appeal; and their costs in the courts in India should be apportioned according to the course of those courts in cases where the Plaintiff is only partially successful.