

*Judgment of the Lords of the Judicial Committee of the Privy Council on Petition for leave to appeal in formá pauperis in the case of Kishen Dutt Misr v. Tameswar Parshad, from Allaha- bad; delivered 14th June 1879.*

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that there has been great delay in presenting this petition. The judgment was given in 1877. But even if their Lordships should grant the application and waive the question of delay, there would be no probability of the Applicant's succeeding in his Appeal. His case depended upon the allegation that he was joint in estate with Isra Pershad, and that consequently Isra Pershad had no power to alienate to the Defendant in the suit the estate which the Applicant claimed. But both the first Court and the High Court have decided that Isra Pershad and the Petitioner had separated, and were not joint in estate, and consequently that Isra Pershad had the power to alienate to the Defendant in the suit. The Petitioner further contends that at the time when Isra Pershad executed the deed he was not of sound mind, and that the deed was consequently void; but both the Courts have found that Isra Pershad was not of unsound mind when he executed the deed. The Petitioner contends that the 40,000 Rupees which were alleged in the deed to be paid to Isra Pershad for the sale of the estate had not been paid, but the Court were of opinion that it was unimportant whether the money had been paid to Isra Pershad or not; for even if it had not been paid,

that would not give the Plaintiff the right to recover the estate. Then the Applicant made a contention in the High Court that he had a right of pre-emption, that he had a right to purchase in preference to the man to whom Isra Pershad conveyed the estate; but the High Court held that so far from the claim to a right of pre-emption having been raised in the Lower Court, the Applicant had contended that he was joint in estate with Isra Pershad. Their Lordships, therefore, on the whole are satisfied that even if they were to allow the Petitioner to present his Appeal he could not be successful in the Appeal when it came on to be heard, and under those circumstances they regret that they are unable to give the Petitioner any relief, and that his petition must be dismissed.