***Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Surendrakeshav Roy* v. *Doorgasundari Dassee and another, and, by order of Revivor,* v. *Khetter Kristo Mitter, from the High Court of Judicature at Fort William in Bengal; delivered 6th February* 1891.**

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

On the 19th April 1879 Rajah Bejoykeshav Roy, being at the point of death, made his will in the following terms:—

"I am now ill. God forbid it, but if any mishap occur therefrom, and from fear thereof, I do while of sound mind dedicate and give to Sree Sree Isshur Annapoorna Thakooranee, the Thakoor established by my deceased father, all the ancestral and self-acquired moveable and immoveable properties, zemindaries, and Putnee, &c., whether as my own name or banamee, to which I am entitled and of which I am in possession. I have no sons or daughters of my loins. I have two wives living, viz., Sreemutty Ranee Nobo Doorga the elder and Sreemutty Ranee Doorgasundari the younger. Each of the two Ranees will adopt one son. God forbid it, but if the son adopted by either Ranee should die, or be unfit for duty by reason of illness of any kind, then in such a case she will be competent to take in adoption a second son, and so on to a third. The two adopted sons of both wives shall remain the shebaits of the whole of the moveable and immoveable property dedicated to Annopoornah Thakooranee aforesaid. They will carry out the supervision and the improvement of the said property. But they will do everything according to the advice of all the principal officers appointed by me. They will not be competent to make gift or sale of the different properties. Up

65751. 125.—2/92. A

to the time that the said two adopted sons do not attain their majority, my aforesaid two wives will exercise the care and control of all the said properties, and in carrying out these duties they shall take the advice of all the principal officers which have been appointed by me. They will not be competent to act otherwise. When the two adopted sons shall have attained their majority, and shall have acquired sufficient knowledge for the preservation of the property, my two wives shall make over to them as shabaets, to their satisfaction, all the property dedicated to the *Issur Deb sheba*. Out of the income of the property dedicated to the *Deb sheba*, &c., after performing the *sheba* of the above-mentioned Annopoorna Thakooranee, and the Sree Sree Issurs established by my ancestors and myself, and after meeting the prescribed monthly allowances, and after performing the daily and fixed rites and ceremonies, as they are now performed and met, out of the profits which shall remain, each adopted son shall receive at the rate of 1,000 (one thousand) rupees monthly. Therefore, while of sound mind and understanding, I execute this instrument of will. Finis, date 7th Bysack 1286."

The next day the Rajah died, and the two Ranees mentioned in his will became his heirs-at-law. The estate is a large one. There is no precise evidence of its amount, but it is stated that the yearly income is not less than a lac of rupees. The elder Ranee appears to have relied for advice mainly upon her brother Kaliprosono, and a pleader named Tarrucknauth; the younger upon her father Bhobodaini Mitter, and a pleader named Upendra Bose. There was a long delay in obtaining probate of the will, which, however, was granted to the Ranees on the 30th December 1880.

Very soon after the Rajah's death, Tarrucknauth expressed an opinion that a simultaneous adoption of two boys, such as the Rajah contemplated, was not lawful, and after some discussion within the walls of the Rajbari, a case was prepared by Tarrucknauth for an eminent barrister, Mr. Phillips, to advise both the Ranees as to their position. On the point of adoption, Mr. Phillips's opinion was to the effect that, though the law was not completely settled, a double adoption would not be valid, and that the

will did not authorize any adoption other than a double one.

The ladies determined to make a double adoption. How far they were guided by legal advice, how far by a pious desire to fulfil the directions of their husband, we cannot tell. They and their advisers certainly knew of the legal doubts and difficulties attending a double adoption. But one thing was quite clear. If they were to procure sons for their husband at all, it must be by the simultaneous adoption of two, for the will authorized no other course. It was impossible even to try the question whether their husband's wishes could be fulfilled, unless two boys were found whose parents were willing to give them in adoption one for each Ranee.

The boys were found. On the 20th May 1879, one month after the Rajah's death, and the day of his shradh, the double adoption was made. The elder Ranee adopted the Plaintiff, who is the natural son of one Mirtunjoy, and was then a boy of less than nine years. The younger Ranee adopted a child about a year old, the natural son of her cousin Hurrydass Ghose. She and her adopted boy are the Defendants in the suit.

No long time elapsed before there occurred the familiar incident of quarrels between the two wives. Some argument has turned upon these quarrels; but we do not know what they were about, or what was their duration, or when there was peace, and when war. Pearymohun, who was Kaliprosono's man of business, and went often to the Rajbari with communications to the Ranees, tells us (Rec., p. 218),—"The "ladies were on good terms with each other for "some time. . . . They were not on good "terms at the time of the adoption; they had "fallen out three or four days before. I heard "there was a quarrel. I did not hear what it

" was about. They had made up, and were on
" good terms for ten and fourteen days, and then
" there was a quarrel, and this way it went on.
" When there are two co-wives these quarrels
" occur." That is a probable statement of the case. But whether in the intervals of peace, or notwithstanding quarrels, they managed to do business together.

On the 5th July 1879 they executed a document of great importance, viz., an ikrar relating to their management and enjoyment of the estate. After referring to the Rajah's will, and stating that " he had made over to both of
" us as shebaits the responsibility of looking
" after the property," and after mentioning the direction to adopt, they continue thus :—

"In accordance therewith on the 7th Joistee last we have together, at the same time and with reciprocal consent, each taken a son in adoption in accordance with the *Shasters* and general usage ; that is to say, I, Sreemutty Ranee Nobodoorga, have taken as a son Sree Keshav Lall Dutt third son of Sree Mirttonjoy Dutt inhabitant of Hautkhola in the town of Calcutta, by changing his former name and naming him Sreeman Coomar Surendrakeshav Roy; and I, Sreemutty Ranee Doorgasundari, have taken as a son the third son of Sreejoot Baboo Hurrydass Ghose inhabitant of Senhat in the district of Hooghly, and have had him named Sreeman Coomar Annoda Persaud Roy *alias* Coomar Norendrokeshav Roy. The said two Coomars have become the heirs and representatives of our deceased husband, in the same way as if they had been sons born of his loins. During the present minority of the two sons we as their mothers and guardians will continue to rear and take care of them. With regard to the rights of the said two sons, neither we nor any of our heirs will ever be competent to raise any objection."

They then state that it is necessary to make rules for the preservation and supervision of the property, and covenant that they will in equal shares as shebaits of the Thakooranee continue in possession of and preserve the debuttur property; paying in equal shares the various charges on upon it; and that if either does not pay her share she shall be liable to indemnify the other. Then they go on :—

"After the debts of the estate have been liquidated, then after meeting the fixed expenditure we will both of us divide and take in equal shares the money which shall be left in the joint *tovil* (till). And out of that money, meeting our respective necessary expenses and the expenses of the maintenance and education of our respective adopted sons, whatever surplus money remains, we will keep the same in our respective custody; and when our respective adopted son attains his majority we will make the same over to him to his satisfaction. Besides this we will not be liable to any one else for an account of the said money. In order that the collections and supervision of the zemindaries and putnee talooks and mokruree and lakhraj mehals, and all the other immoveable property left by our husband, may be performed without any hindrance, keeping a few of the properties in *khas tehseel*, we have given Izarah of all the rest of the property. The expenditure which has been fixed for the performance of the *Debsheva* and the daily and fixed ceremonies, &c., as well as all that will have to be performed in accordance with the will of our husband, the money for the said expenses, we will both of us provide in equal shares. And so that there may be no dispute in respect of the performance of the said *Debsheva*, and the daily and fixed ceremonies, &c., each of us will for one year at a time in rotation take upon herself the whole responsibility of the *Debsheva*, and the daily and fixed ceremonies, &c. And I, Sreemutty Ranee Nobodoorga, being the elder, have taken the first turn."

The Izara mentioned in this ikrar was effected by two contemporaneous deeds. By one of them 13 mehals were demised for five years to Kaliprosono, and by the other 10 mehals were demised for a like term to Bhobodaini. The rents are reserved to the two Ranees in equal shares. The Appellate Court below has thought that this transaction throws light on the object of the ikrar; but their Lordships can hardly appreciate its bearing on the case.

The two boys were taken into the Rajbari, and were there treated as adopted sons till after the death of the elder Ranee. That event happened on the 28th July 1884. Almost immediately afterwards disputes arose between the younger Ranee and the Plaintiff or his friends, and this suit was commenced on the 20th August in that year.

The suit is in effect one for the administration of the Rajah's will, but with an addition

which was made by amendment for the purpose of raising a claim under the ikrar. At the hearing in the original Court it was contended on the Plaintiff's behalf, first, that his adoption was prior in point of time to that of the younger boy and valid on that ground; secondly, that a simultaneous adoption was valid in law; and, thirdly, that the will carried the shebaitship to any one who was adopted according to its terms, whether his adoption was or was not good in law. The Judge of the Original Court, Mr. Justice Norris, decided against the Plaintiff on the first two points, and in his favour on the third.

Both parties appealed, and the Court of Appeal agreed with the Original Court on the first two points, about which there is now no longer any question. On the third point they differed from the Original Court. But they considered that there were still questions arising on the acts of the Defendant, the younger Ranee, and on the 19th March 1886 they made an order of remand in the following terms:—

"It is ordered that this suit be remanded to the Court below to try the following issue, that is to say,—whether the said Defendant (Appellant) had so acted as to be estopped from denying the Plaintiff's title, or to have made herself a trustee for him to the extent of the interest which he claims. And that the said Court do take any additional evidence that may be adduced by either party for that purpose, and do return its finding upon such issue to this Court, together with the evidence taken."

Upon this remand the case was again tried before Mr. Justice Norris, and a great quantity of evidence was taken, of which some is relevant to show the knowledge possessed by the Ranees of their position in May and July 1879, and also to show the connection between the adoption and the ikrar. The Original Court concluded "that the Ranees agreed to execute the ikrar to "preserve the rights of their adopted sons," and formally found the issue in favour of the Plaintiff.

The Defendant, the younger Ranee, then appealed, when the Appellate Court reversed

the finding of the Original Court, and dismissed the suit. Their views are expressed in a full and elaborate judgment, but, so far as they have been relied on by the younger Ranee at this bar, may be briefly summarized. It is not denied that both the Ranees knew of the invalidity, or doubtful validity, of the adoption they made. But it is said that the ikrar was not thought of before the adoption; that it was not made in consequence of the legal difficulty about the adoption, but to settle quarrels, to provide for the management of the estate, and to enable the brother of one Ranee and the father of the other to get the leases which they did get. It was therefore a separate contract between the Ranees, to which the boys were strangers, and which they could not enforce.

The Plaintiff now appeals from the decree dismissing his suit, and the whole case is thus opened. It seems to their Lordships that the issue which was tried on remand is not conceived in very apt terms, because there may be no estoppel binding the younger Ranee, and no trust except in a somewhat strained use of the term, and yet she may have entered into a bargain which she is bound to make good to the extent of her interest in the estate. But their Lordships, having the whole case before them, are at liberty to draw such conclusions as the allegations and proofs warrant. If the Plaintiff has a good claim under the ikrar, he is entitled to enforce it in this suit. The points substantially urged on his behalf at the bar are, first, that he takes as sufficiently described by the will, and, secondly, that he can sustain a claim against the younger Ranee personally by virtue of the ikrar. It is not now contended that his adoption is valid in law, as indeed it clearly is settled that it is not.

Their Lordships concur with the Appellate

Court in the opinion that the Plaintiff can take nothing under the will. They do not find it necessary to give any opinion on the question whether a gift to persons whose description does not import that they should be born in the donor's lifetime can be valid, because they think the case rests on a clearer ground. There is no gift to the adopted sons except in the character of shebaits. And it would require very strong and clear expressions indeed to show that a Hindoo gentleman contemplated introducing as shebaits of his family Thakoor, two persons unknown to himself and strangers to his family. There is not a trace in this will to show any such intention, or to show that the testator doubted the legality of his scheme, or thought of any adoption but a legal one.

The original Court decided in favour of the Plaintiff on this point, in reliance on the authority of *Dey* v. *Dey* (2 Indian Jurist N.S. 24). But in that case the testator had himself made a double adoption, and the boys lived with him and were called and treated as his adopted sons. As regarded them, there was strong ground for saying, as the Judges all agreed in saying, that a gift to his "adopted sons" was meant to go to the two boys whom he actually knew as such. Then the question arose as to another boy, who was substituted on the death of one of the original two, in pursuance of a power given by the testator to his widow. Was he too sufficiently described? The Court, though not unanimously, held that he was, on the ground that he answered the same description which was applicable to the boy for whom he was substituted, and fell within the same intention of the testator to give his property in moieties to the two who had gone through the form of adoption. Their Lordships need not say whether they would decide that case the same

way if it were before them. It is sufficient that it differs from the present case in an essential circumstance which governed the decision.

Adopted sons then being out of the question, what becomes of the property? The younger Ranee says that nothing can be more simple. All is given to the Thakoor, the heirs become shebaits, and manage the property in the usual way. But the matter is not quite so simple. It is true that by the first sentence of the will all is given to the Thakoor; and though in the plaint the question is mooted whether the gift is made *bonâ fide* (and of course such gifts may be a mere scheme for making the family property inalienable) it has not been really disputed. Nor indeed could it well be disputed in this case. For the last part of the will shows clearly enough that the income was to be applied first in performing the sheba of the Thakoor who is mentioned as the object of the gift, and of other family Thakoors, and in meeting the prescribed monthly allowances, and in performing the daily and fixed rites and ceremonies "as "they are now performed and met." The testator must have been well aware that after all these charges had been met there would be a very large surplus. In fact he directs that out of the surplus each adopted son shall receive Rs. 1,000 monthly; but of the residue after that he says nothing.

There is no indication that the testator intended any extension of the worship of the family Thakoors. He does not, as is sometimes done, admit others to the benefit of the worship. He does not direct any additional ceremonies. He shows no intention save that which may be reasonably atttributed to a devout Hindoo gentleman, viz., to secure that his family worship shall be conducted in the accustomed way, by giving his property to one of the Thakoors whom

he venerates most. But the effect of that, when the estate is large, is to leave some beneficial interest undisposed of, and that interest must be subject to the legal incidents of property.

In this case the Ranees were the testator's heirs. As heirs they would take the shebaitship. In some cases doubts have been expressed whether women ought to be shebaits; but whatever may be the force of those doubts, they can hardly apply to this case, seeing that the Rajah appoints nobody but his wives to perform the duties which his sons cannot perform by reason of nonage. Neither in this case can any question arise between the shebait and the heir, for they are the same persons. It appears to their Lordships that after performing their prescribed duties as shebaits, the Ranees became entitled to the beneficial interest in the surplus for the widow's estate. If that is so, each of them could contract so as to bind her own interest. The question now is whether the younger Ranee has done so.

It was earnestly urged at the bar that the younger Ranee is estopped from denying the Plaintiff's claim. Their Lordships cannot assent to that. They observe that the word "estop" is often used in Indian cases very loosely to denote obligations which do not rest on estoppel at all. Such uses of the word are not countenanced by the definition of estoppel in Section 115 of the Indian Evidence Act. It would indeed be difficult to see how the younger Ranee, who represents the whole inheritance in an administration suit, could be prevented from pleading anything but the true state of the case. However that may be, it is not the fact that she has caused anybody to believe something to be true which she now alleges not to be true. She is entitled to raise any defence which the facts of the case will support.

The arguments to show that she has undertaken a trust appear to their Lordships to be verbal rather than substantial. The younger Ranee has not, by her dealings with the elder or with the boys, possessed herself of any property which she would not have got otherwise. The adoption indeed would, if it were legal, deprive her of property. There is no trust independently of the contract she has made. If that binds her to give the Plaintiff certain benefits she must give them ; if it does not, she is not bound in any other way. The essential question in this case is one of contract.

To solve this question, let us first see what the position of the parties was. It is quite clear that, though aware of the risk of illegality, the Ranees were determined on a literal execution of their husband's wishes. For that purpose it was necessary, not only that they should act in combination together, but that they should procure two boys to take part in the operations. It is no slight matter for a boy to be passed from one family into another. Even in England such a thing cannot be done without a serious effect, for good or ill, on the boy's welfare. In India the ties of family life are far stricter, and if a boy has been transplanted from his own family into another by a *de facto* adoption, and then the adoption turns out to be invalid in law, and he is rejected out of his adopted family, his relations to his natural family must be seriously disturbed. Whether his previously existing legal *status* would be taken away is a point not calling for any opinion. Assuming that the Plaintiff could return after an absence of five years, and so resume his legal position, it is impossible that his personal position should be the same as if the tie to his family had never been broken.

Is then the ikrar a transaction standing entirely by itself, a mere arrangement for the

convenience of the two Ranees, or is it the latest in a series of transactions, beginning with the resolve of the Ranees to make a double adoption? Tarrucknauth, who prepared the draft, died before the remand, and therefore has given no evidence as to the connection between the adoption and the ikrar. His bill of costs is in evidence, which shows only that the ikrar was for control and management of the estate, and for effecting an amicable settlement between the Ranees. Kaliprosono says that, when the question of adoption was discussed before the adoption, it was first suggested that the ikrar should be executed; that the suggestion emanated from Tarrucknauth, and Mr. Phillips's opinion had then been received. Pearymohun says that he explained the opinion to the Ranees, and communicated to them Tarrucknauth's advice to take two boys in adoption, and afterwards execute an ikrar, and that the rights of the adopted sons would be preserved. He adds that the elder Ranee assented to that personally, and that Bhobodaini assented for the younger. Gobind Chunder, one of the amla, says that he was present on that occasion; and he confirms Pearymohun in essentials. He differs however in saying that the younger Ranee expressed her assent, whereas Pearymohun says that she did not, but her father did. Hurrydass Ghose, the natural father of the younger boy, speaks to a conversation with the younger Ranee, in which she stated that "We two "Ranees have agreed between us that we will "take two boys, one each, according to the terms "of the will of our husband, and after taking "two boys in adoption we will give them such "a pucka writing that their interest will not be "jeopardized, and even if such adoption should "not be held valid, we will by the document "we intend to give make over our respective

"rights to those boys." The same assurance, he says, was repeated by her in her father's presence on another occasion before the adoption. Answering questions in cross-examination he says, "When she said she would give a writing "I consented. I said, 'I will give you the "'child, and you can do what you think proper.' "I did not make it a condition, but when she "said she would give a writing I was quite "satisfied." This witness is commended and relied on by the original Judge.

On the other hand, the younger Ranee and Bhobodaini deny the whole story; but they were so entirely discredited before the Original Court that their denials are of no value, nor does the Appellate Court rely on them. They rest principally on Tarrucknauth's bill of costs, and on statements of Upendra Bose, who, though advising one of the parties, states that "nothing "was said as to securing the rights of the "adopted sons," and contradicts some statements made by Pearymohun respecting Mr. Phillips's opinion. They also rely on the fact that Mirtunjoy, the father of the Plaintiff, and several members of the household, either knew nothing about the matter or have not been called as witnesses. It appears to their Lordships that the sole evidence of any weight against the connection between the adoption and the ikrar is that of Upendra Bose, who certainly might be expected to have known the facts. The quantity of evidence, and, as the Judge who heard it thought, the quality of it, is in favour of that connection; and the Appellate Court think it clear that the two things were connected, but not in consequence of the invalidity of the adoption.

But after all the main evidence is that of the ikrar itself. How can it be explained? The views of the two Courts have been before stated. Their Lordships quite concur with the Ap-

pellate Court thus far, that it may have been an object of the ikrar to settle quarrels between the Ranees, though it does not seem to have been efficacious for that purpose, nor particularly well adapted for it. They might still quarrel over every item of joint expenditure, and over the division of the surplus, as effectually as when their interests remained joint. But their Lordships cannot understand how the ikrar facilitated the grants made to the relatives of the Ranees, nor how those grants tended to settle quarrels, seeing that it was not provided that the elder Ranee should take the whole rent reserved on Kaliprosono's lease, and the younger the whole reserved on Bhobodaini's, but the rents reserved on each lease were made payable to the two Ranees in equal shares. Nor are they able to understand in what way the ikrar was connected with the adoption, as the Appellate Court think it clearly was, unless it were for the purpose of conferring an interest on the boys.

It is true that the document does not say outright that the adoption may be invalid, and that it is intended in that event to give the boys an interest in the widows' estate. Perhaps the framer of it did not choose to put on record the misgivings of the parties as to the legality of their action. Neither does it say that quarrels have arisen, and are to be settled in this way. The bolder course of stating the real motives and intentions would also have been the safer; but it is not followed. The deed does not on the face of it express either the motives supposed by the Original Court or those supposed by the Appellate Court. But those supposed by the Appellate Court do not account for the introduction of the boys, who on their theory have no place or part in the arrangement at all.

Nothing can be more explicit or precise than the recognition of the rights of the boys to

nurture and to the enjoyment of the estate, while it is remarkable that they are not mentioned at all in the character of shebaits. According to the ikrar, the Ranees are shebaits. The boys are "heirs and representatives" of the Rajah. During their minority "we, as their "mothers and guardians, will continue to rear "and take care of them." With regard to their rights, "neither we nor any of our heirs will "ever be competent to raise any objection." Furthermore, the Ranees go on to effect a partition, not only between themselves, but between the boys until the younger attained majority. The surplus of each moiety is to be accumulated and handed over by each widow to her own son when he comes of age. If the boys were really heirs, such an arrangement as that would be futile; they would be joint heirs, and their property would be joint property. It could only take effect out of the widows' interest, and on the footing that the boys were not the owners. And all this is done by persons who are advised that there has been no legal adoption, and who are stated by credible witnesses to have agreed to give a writing for the protection of the boys. The Ranees wished to make the boys the heirs of the Rajah. In form they did so; they could not do it in substance. But they could, so far as their own interest would go, give them the same benefit out of the property as if they had actually been heirs. Their Lordships hold that the deed expresses this intention, and that by it the Ranees became bound to one another and to the boys to carry it into effect. It is a startling thing to be told that the Ranees could immediately afterwards turn the boys adrift, or that the survivor of them can do so after the arrangement has been in force for five years.

But it was strongly urged at the bar that the

boys cannot enforce a contract to which they are not parties. It is true that they are not parties to the ikrar considered as an isolated transaction; nor could they be, by reason of their tender age. But if, as above shown, it is true that the ikrar is one of a series of transactions, that it is closely connected with the adoption, that the use of the boys was a necessary part of the attempt to accomplish the Rajah's wishes, and that their position in life was substantially altered by taking them away from their natural families for an indefinite time, it seems to their Lordships impossible to maintain that they are strangers in the matter, and that they cannot insist on the performance of the contract by which each Ranee bound herself to the other to deal with the estate in their favour.

The decree of the Appellate Court dismissing the suit should be discharged. The decree of the Original Court cannot be restored, partly because it proceeds on the ground that the boys take under the will, and partly because the accounts directed by it are not applicable under the circumstances. Their Lordships think that the decree should take the following form:—

Declare that, according to the true construction of the testator's will, the property thereby given to the Thakoor therein mentioned was given for the purpose of securing the proper performance of the sheba of the said Thakoor and the other family Thakoors in the will mentioned, and the prescribed monthly allowances, and the proper performance of the daily and fixed rites and ceremonies as they were performed and met in the testator's lifetime.

Declare that the other dispositions of the will are inoperative, and that on the testator's death his two widows were his heirs-at-law, and as such became shebaits of the Thakoor, and

entitled for the widows' estate to such interests in the testator's property as remained undisposed of by the will.

Declare that according to the true construction of the ikrar, and in the events which have happened, the Plaintiff on attaining his majority became entitled to the accumulations of one moiety of the surplus income of the testator's property after answering the various charges and outgoings in the ikrar in that behalf mentioned.

Declare that, upon attaining his majority, the Plaintiff became entitled to receive one moiety of such surplus income during the life of the Defendant Doorgasundari.

Declare that the Defendant Annadaprashad Roy, also called Norendrokeshav Roy, is entitled to the other moiety of such surplus income during the life of the Defendant Doorgasundari, and to the accumulations thereof.

Direct the Court below to order an account to be taken of the testator's property at his death, and of all the income thereof which has come to the hands of his widows, or of either of them, or of any person by their order or on their behalf or for their use during the life of the Defendant Doorgasundari.

Also an account of what has been properly expended upon the sheba, and the monthly allowances, and the daily and fixed rites and ceremonies mentioned in the will, and upon the several outgoings and charges mentioned in the ikrar as precedent to the division of the property between the two widows, and of the respective necessary expenses of the widows, and of the maintenance and education of their respective adopted sons.

Any other questions arising out of the relief granted must be reserved for further directions by the Court below.

As regards costs, their Lordships consider that these unhappy disputes have arisen mainly out of the testator's will, and the apparently quite honest attempt of his widows and heirs to fulfil his intentions. It is only just that the costs of the parties in both the Courts below, including the costs of this appeal, should be defrayed out of the corpus of his estate.

They will humbly advise Her Majesty accordingly.

After this case had been argued, their Lordships received an intimation that the Defendant Doorgasundari had died. This death made the suit defective in two respects; first, by the death of the then heir the inheritance ceased to be represented; secondly, there was no person in whose presence the accounts directed against the widows could properly be taken. The proceedings were suspended, in order that these defects might be cured; but though the Rajah's heir has been brought into the suit, there is still no representative of the widows. Their Lordships, however, think that it is not necessary on account of this defect to delay the decree any longer. It rests with the Plaintiff to apply to the Court below for all such parties as are necessary for this purpose to be brought upon the record.