widow of his adoptive father. And it was further decreed, that the appellant should account to the several sharers for the profits of shares, since the date of the Zillah decree.

It should be observed, that, in this case, a question arose incidentally, as to what consequence would attach to an alleged circumstance, if proved, namely, that Durgahy Sing performed the funeral obsequies of Gumbheer Sing, one of the sons of Umur Sing, who died without issue; a ceremony which ought to be performed by the heirs of deceased persons. And the pundits stated, that this singly could not give him any title to the inheritance of the deceased; unless there [29] were evidence to prove the fact of the deceased having made him his heir by adoption.

Another point to which the attention of the pundits was called, was how far the adoption of Bhoop Sing by his uncle, would affect his right of succession to his natural father's estate; and, as above stated, they declared that this excluded him from any share of the paternal inheritance (a).

SHEOCHUND RAI (SON OF NUNDKOMAR RAI, DECEASED), *Appellant* v. LUBUNG DASEE (WIDOW OF RADHANATH RAI), *Respondent.*

(1799. *Feb.* 14*th.*)

In a suit by the widow of a Hindoo, as joint zemindar of an estate in right of her husband who died without issue, for a share of *moshahira* or proprietary income, judgment passed in her favour. A *ruffanameh*, set up by the defendant, importing, that the plaintiff gave up the income rightly due to her, and agreed to receive about a third of it, rejected, as not established; but the pundits gave an opinion, that, if duly executed by her, it would have been valid against her and her husband's heirs. But *Quære.*

THIS was a suit instituted by Lubung Dasee, in the Zillah Court at Burdwan, against the late Nundkomar, to recover a balance of zemindary *moshahira* due to her as joint zemindar of '9 annas pergunnah Moohummud Ameenpore, &c.' and fixed for her by Government in the year 1779, at rupees 2,409 *per annum*; to which extent a deduction was allowed on her account at the decennial settlement of the zemindary concluded with the defendant, one of the joint proprietors, in the Bengal year 1197. The Zillah Judge considered the plaintiff's claim established by the evidence adduced by her; and the defendant having failed to produce the accounts of his actual receipts from the zemindary, which were required with a view to make an equal division of the profit and loss between the three joint proprietors, *viz.*, the defendant, Lubung Dasee, and the widow of Govindchund Rai, a decree

[29] (a) The principles on which the distribution of shares was adjusted will be found in the *Mitacshara* (Ch. 1, on inheritance Sec. 5, § 2) concerning the Case of brothers leaving an unequal number of Sons; and (Sec. 11, § 32) regarding the exclusion of an adopted son (*dattaca*) from the family and estate of his natural father. The claim of the appellant, grounded on the circumstance of his father having performed the obsequies, as he alleged, of an uncle who died childless, was founded on passages of Hindoo law, which intimate, that the succession to the estate and the right of performing the obsequies, go together (*Jaganauth's* Digest, Book 5, v. 455, and 457). But those passages do not imply that the mere act of celebrating the funeral rites gives a title to the succession; but that the successor is bound to the due performance of the last rites for the person whose wealth has devolved on him.

was passed for the plaintiff's [30] receiving the *moshahira*, as fixed by Government in 1779; and recovering arrears of it at that rate. And the Provincial Court of Calcutta, in appeal, affirmed this decision.

A further appeal was brought to the Sudder Dewanny Adawlut by the defendant, resting principally on the instrument termed a *ruffa-nameh*, or deed of compromise, bearing date in 1199, purporting to have been executed by the respondent, but denied on her part, and rejected as a fabrication by the lower Courts: in which deed it was set forth, that by reason of deficiency in the assets of the zemindary, she had agreed with the appellant to "relinquish to him the difference, and to receive during her life only 741 rupees *per annum*, with a provision of 280 rupees yearly to her grandson, Terachund Ghose, after death." The Sudder Dewanny Adawlut (present W. Cowper), after taking an opinion from the pundits relative to the validity of this *ruffa-nameh* in point of law, supposing it established; and after receiving some further evidence which it appeared necessary to examine as to its authenticity, considered that this deed, which was not originally exhibited by the appellant, nor mentioned in his answer to the original plaint; and which was not satisfactorily proved to have been executed by the respondent; was, in point of fact, not admissible; and that the respondent's claim was established. And the Court, affirming the judgments of the Courts below, decreed that the appellant should continue to pay to the respondent the annual amount adjudged by those decrees, as her share of the profits of the zemindary, until he should account to her for his actual receipts and disbursements from the joint zemindary; after which she would be entitled to her third share of the actual profits, whatever they might be.

It is to be observed with respect to the question put to the pundits relative to the *ruffa-nameh*, that they were desired to consider the proceedings in the case, and to state whether supposing it to have been duly executed by the widow of Radhanath Rai, joint zemindar of the 9 anna state, it would be valid in law against her, and against the heirs of her husband; taking into their consideration, that no equivalent appeared to have been allowed to her for the relinquishment of the zemindary *moshahira* of 2,409 rupees; that the profits of the share of the zemindary were not shewn to have been inadequate to the [31] payment of the full allowance at the time it was alleged to have been executed; and, that, from the appellant's refusing to produce his accounts, and objecting to an adjustment according to actual assets, it was rather presumable that the contrary was the case. The pundits, in their answer, stated, that the widow, after her husband's demise, was heir to his property; that if she voluntarily executed the *ruffa-nameh*, it was valid against her and her husband's heirs; but that the deed itself, in point of fact, appeared of no authority; for the alleged reason for its execution, *viz.*, want of assets in the zemindary, did not appear to be true; and they discovered no proof to establish its execution (a).

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[31] (a) The opinion delivered by the pundits, purporting, that the deed of relinquishment, if genuine, might have been binding on the heirs of the husband and successors of the widow, as well as on the widow herself who executed it, is questionable; as importing that it would be binding on them beyond the period of her life, because it was voluntarily executed by her. Being successors not only to the zemindary held by her for her life, but to the savings