

no order was issued in his favour in this judgment. The Sudder Dewanny Adawlut merely decreed, that the heirs of the appellant (who had died during the appeal) should receive from the respondent a fifth share of the [21] eight anna zeminary; with mesne profits of such share since the institution of the suit (a).

KULSOOM KHANUM, *Appellant* v. MIRZA MEHDEE, *Respondent*.
(1798. March 29th.)

Altumgha lands were granted to a mother for the support of her family, and remained to them (a son and two daughters) at her demise. According to the Moohummudan law of inheritance, they are divided into four parts; of which two fall to the son, and one to each of the daughters. A pecuniary pension similarly divided.

THIS was a suit brought by Kulsoom Khanum against Mirza Mehdee, in 1785, in the Dewanny Adawlut at Patna, to recover a third share of certain *altumgha* lands granted by a *firman* in the name of Mah Khanum, her mother, widow of Alinukee Khan; and a third share of a Nizamut pension, granted to Alinukee Khan, and continued after his death, by Government, for the support of his family; together with arrears of each. The suit was dismissed in the Patna Court, as not cognizable under the rules of limitation then in force.

But in appeal to the Sudder Dewanny Adawlut, the Court (present W. Cowper) from further circumstances which appeared, considered the rules of limitation inapplicable; and under an opinion given by their law officers, *viz.*, that Mah Khanum having died leaving a son Mirza Mehdee, and two daughters Kulsoom Khanum and Ammena Khanum, her estate was divisible into four shares, two of which fell to the son, and one to each of the daughters; the Court considered that the appellant was entitled, from the time of her separation from the respondent [22] in the *Fuslee* year 1187, to a fourth share of the *altumgha* granted in the name of her mother Mah Khanum, for the maintenance of the family of Alinukee Khan; which at his death, in 1172 or 1173, consisted of his widow Mah Khanum, his son Mirza Mehdee, his daughter Kulsoom Khanum, and another daughter, who had since died, leaving issue. And the Court also considered the appellant entitled, from the above period, to a fourth of a pension of 92 rupees per month received by the father, which appeared to have been continued by Government for the maintenance of the family. The Court accordingly, setting aside the decree of the Patna Court, adjudged a fourth share

[21] (a) Of the two questions put to the law officers, the first was a question of fact, the second only a question of law. According to the Hindoo law as prevalent in Bengal, within the limits of which a part of Boglipoore is situated, the widow of a coparcener who leaves no male issue is entitled to his share of the joint property. (*Jimuta Vahana*, Ch. 11, Sec. 1.) But according to the doctrine which prevails in Behar, in which province the remainder of Boglipoore is included, the widow would be entitled to maintenance only. (*Mitacshara* on inheritance, Ch. 2, Sec. 1.) The other points which are touched on in the law opinion in this case, require no remark; except the exclusion of a brother who had been adopted into another family. This is in conformity to the law as received in both provinces with relation to a *Dattaca* adoption. (*Menu*, Ch. 9, v. 142). It would be otherwise in regard to the *Kritrima* adoption, which is in use in North Behar, and the contiguous districts of Boglipoore and Purnea.

of the *altumgha* and pension to the appellant, with mesne profits of the one, and arrears of the other, since 1188; specifying, at the same time, that the decree regarded only the relative rights of the parties, which alone were before the Court; and had no reference to the continuance or otherwise of the grant, or pension, by Government. (a)

MOOHUMMUD SADIK, *Appellant v. MOOHUMMUD ALI AND OTHERS*
(SONS OF MOHUBBUT ALI), *Respondents.* (1798. December 6th.)

If a Moohummudan assign property for a pious endowment; and he (or his executor on his part) appoint a trustee; and such trustee (there being no special provision for his successor) on his death bequeath the trust to his sons; the bequest is good in law; and the sons entitled to the superintendence jointly, and to the lawful profits accruing from it; not subject to the confirmation of the ruling power, nor removeable *quam diu se bene gesserint*; but on proof of misconduct, or breach of their trust, the ruling power shall appoint another or others in their stead.

THIS suit was instituted in the former Adawlut of the city of Benares, by the late Moohubbut Ali, against Mohummud Sadik, to prevent the defendant's molestation of the plaintiff in the *towleut* or superintendence of the tomb of Sheikh Moohummud Ali Huzeen, a Moohummudan saint, and of other buildings; which superintendence the plaintiff stated himself to have held thirty years, under an assignment from Moohummud Hoosein, executor to the will of Ali Huzeen; and under confirmatory *sunnuds* from the ruling powers of the time. The profits of the superintendence were stated to amount to about 400 rupees *per annum*. The defendant, son of the executor, insisted, that the plaintiff had abused the trust, and that he had a right to displace him; which abuse of trust the plaintiff denied. The [23] plaintiff died during the original trial of the suit before the former Court, at Benares, and was succeeded by his sons; and a decision was passed in the present City Court, in February 1796, which directed, that the defendant, agreeably to the order of the former Court, should confer the superintendence on either of the sons of Mohubbut Ali, whom he might deem qualified; and should not dismiss him except on proof of misconduct to the satisfaction of the Court.

The Provincial Court of Benares, in appeal, reversed the above decision, after taking an opinion from their law officers; and decreed, that the sons of Mohubbut Ali should share the superintendence amongst them, and the emoluments accruing; the heir of the executor having no right of interference.

In appeal from the above decree by Moohummud Sadik to the Sudder Dewanny Adawlut, the proceedings were given to the Moohummudan law officers for their perusal and opinion; the points on which the case appeared to the Court to turn, and on which the opinions of the law officers were required, being 1st, whether the *towleut-nameh* granted by the executor of Ali Huzeen to Mohubbut Ali (and his heirs), and confirmatory *sunnuds* obtained by Mohubbut Ali, from the King Shah Aulum: the Nabob Shujaodowla; the Raja Cheit Sing,

[22] (a) As a question of Moohummudau law, this was a very simple case of inheritance, (*Sirajiyah*, p. 5).