of the gift, had directed the tenants to pay their rents to the husband; which might be considered as delivery of possession; and that the husband, for a time, granted leases, and received the rents in his own name. But it was clear that the seal of the wife had been afterwards occasionally current; and particularly that she had managed the business of the talook in her own name, during her husband's absence. The law officers declared, that the possession of the husband for a few days, which was in proof, was sufficient to give legal validity to the gift; that the wife could not retract it; that a deed, which she had executed nine years after it, and one year before her death, declaring the gift of no effect, and making a devise in favour of her sister, the claimant, would not avail in law.

Another question, respecting the validity of a gift of joint property, under Moohummudan law, came incidentally under consideration in this case, though the decision did not turn upon it; and the following is an extract from an opinion given by the law officers: "In Moohummudan law, a necessary condition is, that property given be not attached to, or included in, the property of another (so as to be undefined): and if it be land, that the partition be determined by known boundaries: in which case alone the gift is perfect (a).

RAJKISHOR RAI AND FOUR OTHERS (SONS OF KALICHURN RAI), *Appellants v.* WIDOW OF SANTOODAS (SON OF JYKISHEN RAI), *Respondent.* (1796. *October 26th.*)

A member of a Hindoo family, among whom there have been no formal articles of separation, but who, as well as his father, has messed separately from the rest, and had no share of their profits or loss in trade, though he has occasionally been employed by them, and has received supplies for his private expenses, is presumed separate from family partnership, and shall not be admitted to claim a share of acquisitions made by others of the family.

KALICHURN, Jykishen, and Soobaram, were brothers. Soobaram died, leaving a son, Radhanath. Then died Jykishen, leaving a son, Santoodas. Then died Kalichurn, leaving five sons, Rajkishor Rai, &c., the original defendants in this suit. Kalichurn during his life conducted a banking house, which after his death, was carried on by his eldest son Rajkishor, in concert with the other brothers. Santoodas, the cousin of these (son of [18] Jykishen), was occasionally employed in transacting business for Rajkishor, and, as well as his father, received money for his private expenses from Kalichurn and Rajkishor; but does not appear to have received any specific share of the profits in trade; or to have been present at the balancing of the accounts; or to have been made acquainted with the profit or loss. The account books contain no mention of the parties, except that, in the *buhy kuhsra*, or day-book, disbursements for private expenses are entered, which include the monthly expenses of Santoodas and Radhanath; the latter of whom was at the time engaged in a separate business, independent of his cousins. The three brothers, Kalichurn, Jykishen, and Soobaram, all messed apart; as

[17] (a) The ground of the law opinion in this case may be seen in the *Hedaya*, Vol. 3, pp. 291 and 298.

did also their respective heirs; but Santoodas and Radhanath continued to receive money for their private expenses from Rajkishor, for more than twenty years after the decease of their fathers; until disputes arising, they each claimed a third share of the trade which had been managed by Kalichurn and Rajkishor, together with a third of the household effects, money, and jewels, possessed by Rajkishor; alleging, that these were held by him and his father, as joint and common property of the family; and resting their claim on the circumstance of no separation of property having taken place between them or their fathers, and Rajkishor or his father; and on their having continued to receive money for their expenses from (as they termed it) the common fund managed by Rajkishor and his brothers. That Jykishen and Soobaram, or their sons Santoodas and Radhanath, had any coparcenary with Kalichurn or his sons, or ever possessed any property jointly with them, was denied by Rajkishor and his brothers; who pleaded, that the property in their possession was the produce of the exclusive and separate industry of their father and themselves. These being the circumstances, the Sudder Dewanny Adawlut consulted their pundits, whether according to the Hindoo law of succession and partnership, the claim of Santoodas, the original plaintiff in this suit, against Rajkishor Rai and his brothers, was or was not maintainable: to which the pundits replied, in substance, that under the circumstances stated, the claimant, having messed apart from the defendants, having received maintenance, but no share of the profits in trade, and never having advanced a claim till now, must in law be deemed separate, as far as respected family partnership, though no written declaration of separation should have been **[19]** made; and that the claim in the present suit could not be maintained.

In conformity with this opinion, the Sudder Dewanny Adawlut (present P. Speke and W. Cowper), gave judgment against the claim, reversing a decree passed in favour of it in appeal, by the Provincial Court of Moorshedabad, and affirming one passed against it, in the first instance, in the Zillah Court of Rajshahi(a).

SRINATH SERMA, *Appellant v.* RADHAKAUNT, *Respondent.* (1796. *Nov.* 24*th.*)

An hereditary zemindary, managed many years by some one heir of the original zemindar for the benefit of the rest, they receiving portions of the profits, adjudged to be thus divisible (according to the Hindoo law), at the suit of one of the heirs for a division; *viz.*, three sons of eight left by the zemindar, died without issue; but of these three one left a widow, now surviving; and one of the other five was adopted into another family, and thereby excluded from the paternal inheritance. The zemindary therefore divided into five parts, of which four fell to the heirs of four of the sons who left issue; and one to the widow of the son who left her his heir.

THE following is a sketch of the family of the parties in this case:—

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[19] (a) This was a question of evidence. The Hindoo law provides, that in case of a dispute as to the fact of a partition, recourse shall be had to presumptive proof in default of written and oral evidence (*Jimuta Vahana*, Ch. 14). The presumption, on the grounds stated by the law officers, was, that this family had long been separate in regard to property.