dent, having formerly authorized and directed her son to sue in his own name as heir to his father, could not now take advantage of the deed of gift to herself from her husband, although she might share as joint heir in the property left by her husband; that, as this suit was brought merely under the deed of gift; and the purchaser and actual possessor of the lands had not been made a party; the respondent could have no judgment now passed in her favour. The decrees of the Courts below **[16]** were therefore reversed by the Sudder Dewanny, who thought it necessary to specify in their judgment, that the landed estate of Gholam Ghose was the property of his heirs at law, notwithstanding any transfer made of it, since his death, by persons not duly authorized [a].

JAFIER KHAN, *Appellant v.* HUBSHEE BEEBEE, *Respondent.* (1796. *March* 31*st.*)

In a suit for lands, to which the defendant pleaded a title under a gift from his wife lately deceased, made some years before her death, the question was whether there had been possession under the gift, sufficient to give it validity in Moohummudan law. The law officers declare, that delivery of seizin was sufficient, and continuance of possession not necessary.

A gift of land, forming part of joint property, to be valid, must be distinct; and the boundaries and extent of the property given be known.

THIS was a suit brought by Hubshee Beebee in the Civil Court of Zillah Dinajpore, in 1792, against Jafier Khan, for certain lands stated to have been held by the plaintiff's sister Tajoo Beebee, wife of the defendant, as the joint property of the two sisters: to which suit the defendant pleaded, that he held the property claimed under a deed of gift from his wife, executed in his favour many years before her death; at the date of which gift the property was wholly hers. Judgment was given for the plaintiff in the Zillah Court; but it was reversed in appeal by the Sudder Dewanny Adawlut (present P. Speke and W. Cowper), to whom it appeared, after taking an opinion from their law officers, that the deed of gift to the defendant was valid; that it was executed by Tajoo Beebee at a time when she was sole owner of the property conveyed by it, no other having an interest therein; that two sisters of Tajoo Beebee, to whom, jointly with her, certain lands, including those in question, had been allotted by a grant from the Raja of Dinajpore, had previously received separately their respective shares.

The principal question in appeal, as to the validity of the gift, was relative to the possession of the appellant under it. Further evidence was taken in the Zillah Court on this point, by order of the Sudder Dewanny Adawlut; but nothing very satisfactory was ascertained; for, the lands being *Lakhiraj*, there had been no engagement for revenue; and no registry had been made of **[17]** them; and it was not ascertainable in whose name they had been held subsequently to the gift. But so far appeared, that the wife, after the execution

[16] (a) On a principal point of law in this case, that a gift for valuable consideration is in fact a sale, and does not require for its validity delivery of possession, the commentary of the *Hedaya* is quoted in the *futwa*. The subject is not noticed in the text of the *Hedaya*. The other points in this *futwa* rest on obvious principles.

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.