MEER NUJEEB ULLAH, *Appellant v.* MUSSUMAUT KUSEEMA, *Respondent.*
(1795. *Nov.* 18*th.*)

The widow of a Muhummudan claims the estate of her husband, who died 26 years before, under a gift from him, in lieu of dower, (*hibeh-bil-iwuz*) dated two years before he died. No possession on her part since his death: and her son, in the interval, by her direction, had sued and obtained judgment as heir to his father's estate. Such having been the case, the law officers hold that the widow is estopped from claiming under a gift from her husband; though she may come in for her share as one of the heirs. To the validity of *hibeh-bil-iwuz* or gift for consideration, which in effect is sale, seizin of the donee is not requisite in Muhummudan law.

KUSEEMA BEEBEE, the original plaintiff in this cause, was the widow of Gholam Ghose, proprietor of the talook Mustaphapore, forming a half share of tuppa Khanzadpore, &c. in the Zillah Tirhoot. She brought her action in the Tirhoot Dewanny Adawlut, in April 1793, or *Bysakh of the Fuslee* year 1200, against Nujeebollah, for the right to the above lands, under a deed of (*hibeh-bil-iwuz*) from her husband, dated in the *Fuslee* year 1174; in which deed it was set forth, that he had settled on his wife two lacs of rupees as dower, then demandable from him; that, in lieu of 5,000 rupees of it, he thereby made over to her the lands now disputed. The defendant pleaded that the plaintiff had no just claim: that, in 1194, the lands were sold, in discharge of balance of revenue due from his (the defendant's) father, then *sudder* farmer, to one Kootub Zemaun; by whom they were sold in 1196, to one Ahmud Ali Khan; who had since held them. The plaintiff proved the execution of the deed of gift; and brought one of three subscribing witnesses to an *ikrarnamah*, or written acknowledgment, by her husband, dated in the same year, declaring that he had delivered possession to his wife; and had accepted the office of manager of the lands on her part. But it did not appear that the plaintiff had ever availed herself of her title under the gift, from 1176, when her husband died, till the institution of this suit in 1200; and it **[14]** appeared too that, in the interval, Gholam Dustgeer, the plaintiff's son, had sued in the Patna Dewanny Adawlut, as heir to his father, against Moizodeen, proprietor of a share of Khanzadpore, &c., (and who, after Gholam Ghose's death, had managed his share of it); and obtained a judgment, on the defendant's admission of claim, in 1184, for the *malikana* of past years, and possession of his father's share; and that in 1185, he obtained a judgment from the Patna Council, directing, that Moizodeen, according to an award given in arbitration, should deliver over to him 651 beegas of land in lieu of some he had sold while he managed Gholam Ghose's share. The sale pleaded by the defendant appeared to have been a *bye-bil-wufa*, executed in 1194, to the defendant's father, in a feigned name, for a sum stated to be arrears of revenue, by three persons, Noor Ali, nephew of Moizodeen; Gholam Jelanee, a son of Gholam Ghose, by another wife; and one Muhummedee; which three persons were therein

form, as described in the answer of the pundits to the Provincial Court, is precisely that directed in a passage cited in a note to the *Mitacshara*. (Ch. I, on Inheritance, Sec. 11, § 17). There is no doubt that this adopted son is heir, as declared by the answers of the pundits to the Sudder Court, to all the property real or personal, hereditary or acquired, of his adoptive father.'

alleged to be proprietors; but were then holding apparently, as farmers, under Burkut Ullah, *aumil* of the pergunna Mehoee. The Zillah Judge set aside this sale, as obtained by compulsion, as far at least as respected the signature of Gholam Jelanee: independently of the question as to the competency of these persons to make the sale; and judgment went for the plaintiff in the Zillah Adawlut, under the deed of gift from her husband: which judgment the Provincial Court of Patna affirmed in appeal.

In further appeal by the defendant to the Sudder Dewanny Adawlut, it was inserted, that in the *bye-bil-wufa* sale there was no compulsion, which the appellant would prove by other witnesses; that under the alleged gift, the widow never had possession during 27 years; wherefore the deed could be of no effect: that the decree for the plaintiff's son, and her acquiescence in his suit, were incompatible with any claim of her own; for she thereby virtually admitted that the property was heritage left by her husband, and not settled by gift on her before his death. The Court proposed the following questions to their law officers, to be answered by them after perusing the proceedings: 1st, could Gholam Ghose, having a son living at the time, legally execute to his wife the deed of conveyance termed *hibeh-bil-iwuz*? 2nd, if he could legally execute it, was delivery of possession necessary to give effect to the deed; and if so, is the requisite **[15]** delivery of possession proved? 3d, if delivery of possession was not necessary; or, if it was necessary, and sufficiently proved; has the widow now forfeited her title, or not, to the property which the deed purports to convey, by having omitted to avail herself of her title under it, for 24 years, which elapsed between her husband's death in 1176, and the institution of this suit in 1200, and by having allowed her son, Dustgeer, to sue in the Patna Adawlut and Provincial Council, as her to his father's estate, and obtain judgments in his favour? 4th, supposing the title of the widow to remain valid, notwithstanding the above objections, could any sale of the estate, made by another person subsequent to the date of the deed in the widow's favour, and after her husband's death, whether for the discharge of a balance of revenue, or other purpose, be valid in Moohummudan law?—The answers to these questions were, 1st, Gholam Ghose, notwithstanding he had a son alive, could convey his property to his wife, *hibeh-bil-iwuz*, 2nd, lawyers distinguish between *hibeh-bil-iwuz*, or gift for consideration, and *hibeh-bashirt-ool-iwuz*. In a case of *hibeh-bil-iwuz*, which is in fact sale, delivery of possession is not requisite. This point the author of the *Nehaya* (a commentary on the *Hedaya*) has illustrated. By the wife's having neglected to avail herself of her title under the gift, the title is not invalidated; but her allowing and directing her son to sue as principal, and on his own part, for the proprietary right in the lands, as son of Gholam Ghose, is incompatible with her claim. Yet her right, and that of her son Dustgeer, as heirs of Gholam Ghose, are not affected. 4th, should one sell the property of another without his order, that is, without due power so to do, and the owner not afterwards confirm the sale, it cannot hold good.—In conformity with the above opinion, the Sudder Dewanny Adawlut determined (present Sir J. Shore, P. Speke, and W. Cowper), that the respon-

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.