of by his widow Bhagwutee, as his heir. At the suit of Prankishen against her, in the Dewanny Adawlut of Moorshedabad for the right to the property, judgment went for the defendant; in appeal from which judgment to the Sudder Dewanny Adawlut, the question was, who was the right heir to [5] this property of Anund Mae, at her demise? On this point the pundit was called on to explain the law; and the answer of Radhakaunt pundit was this: Upon the death of Anund Mae, the property devolves to her daughter. It comes under the description of *Stridhun*, and as such devolves to the daughter. But it is not the *Stridhun* of the daughter, and upon her death, it will not go to her daughter, but to the brother of her mother; and if he is not living, to his son.

The Sudder Dewanny Adawlut (present Earl Cornwallis, F. Speke, W. Cowper, and T. Graham), adjudged, that the claimant should recover the property; and passed a decree accordingly, reversing that of the Zillah Judge (a).

NUNDA SING. *Appellant v.* MEER JAFIER SHAH, *Respondent.*
(1794. *April* 10*th.*)

Suit for lands, to which the defendant pleads a title under a deed of composition for homicide, and certain other instruments. And the Sudder Dewanny Adawlut maintain his title.

JAFIER SHAH was plaintiff in this case, in the Dewanny Adawlut at Tirhoot, and Nunda Sing defendant. The suit was for the mouza Alahdadpore, containing about 1,000 beegas of malguzary land, as being the plaintiff's right by inheritance. The defendant rested his title on three deeds; 1st, *Sunudi khoon beha*, or grant of retribution for the blood of Soobha Sing, grandfather of the defendant, by Nusrodin, maternal grandfather of the plaintiff, to Adhar Sing, the defendant's father, for 100 beegas, *malikana* land in mouza Alahdadpore, dated in the Fusslee year [6] 1149; 2nd, an *ikrar-namah*, by the plaintiff, confirming the above, dated 1188; 3rd, a *hibeh-namah* from the plaintiff, to the defendant running thus, "I hereby declare that I make over the village of Alahdadpore, hitherto mine and possessed by me, to Nunda Sing, son of Adhar Sing, son of Soobha Sing; and constitute him *malika* and *mokuddin*." dated 1911. The validity of this, as a deed of gift, was not admitted by the plaintiff, (though there does not appear any denial of a gift having been made); and he moved that the *moulvee* of the Court might be consulted, whether such a deed was of any avail; and whether, if it were, the gift made by it might not be resumed. An opinion was taken accordingly in the Zillah Court from the

[5] (a) The property having been given to Anund Mae by her father on the occasion of her marriage, was undoubtedly her *Stridhun* (*Jimuta Vahana*, Ch. 4, Sec. 1); and should have devolved, upon her death, on her daughter, whether unmarried, married, or widow. (Ibid. Sec. 2, § 9, 12 and 22.) But on the demise of that daughter, the land being, in respect of her, an inheritance, and not the peculiar property termed *Stridhun*, it would not pass to her daughter being a childless widow (*Jimuta Vahana*, Ch. 11, Sec. 2, § 3); but to the next nearest heir. This appears to be the ground of the opinion delivered by Radhakaunt Pundit in this cause; and it supposes the childless widow to have been so at the time of her mother's decease; for if she had been then unmarried, or if her husband had been living, she would have succeeded to her mother's property of every sort, in preference to the mother's brother or his son; (*Jimuta Vahana*, Ch. 11, Sec. 2) who could only have come in after her decease. (*Ibid.* § 30.)

Moohummudan law officer, who remarked, that the deed had no witnesses, and was deficient in legal form ; that supposing all requisite forms observed, a gratuitous conveyance of property to a stranger would not hold good ; for, provided the donor and donee were in existence, and the thing given remained, without accession ; the gift was resumable. Judgment went against the defendant in the Zillah Court.

In appeal to the Sudder Dewanny Adawlut, questions were put to the Moohummudan law officers, 1st, as to whether the deed of 1191 was a legal vendor for a gift, and whether the donor might retract such gift : 2nd, whether the deeds of 1149 and 1188 were good proof of a title. The answers returned were these 1st, gift, in law, depends on tender and acceptance ; on one person's saying 'I have given,' and the other's answering 'I have accepted.' And seizin of the donee is necessary to complete the gift. The modes of establishing a gift are three ; by evidence of credible witnesses ; by the admission of the defendant ; or by his declining to make oath to his denial. A deed of gift is solely for the purpose of corroboration, and by way of record : by reason of the probability of forgery, it is not a sufficient voucher, unless indeed a copy of it be in the Cazee's office. For these reasons, in the present case, the gift is not established by the deed ; and, should a gift be proved, it may be retracted from a donee who is a stranger ; provided the donor and donee are both alive ; and no consideration was given by the donee ; and no inseparable increase has been made by the donee : 2nd, a paper (or deed), singly, is not considered in law as a voucher ; but should it be established, that Nusrodin gave the 100 beegas [7] *malikana* land to Adhar Sing, the father of Nunda Sing, as the price of blood of Soobha Sing his grandfather, and that Jafier Shah afterwards measured it out and delivered it over, Nunda Sing will be entitled to the property in the 100 beegas stated.

After receiving these opinions of their law officers, the Sudder Dewanny Adawlut (present Sir J. Shore and Council,) set aside the judgment of the Zillah Court ; and decreed, that the deed executed in 1149 by Nusrodin to the appellant's father, and the two deeds executed by the respondent in the *Fusslee* years 1188 and 1191, the former confirming the grant of 1149 for the *malikana* land, and the latter transferring the *milkeut* and *mokuddumeut* of the remainder of the village Alahdadpore, should be maintained ; and the whole village be declared the right of the appellant.(a)

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[7] (a) Composition for murder is allowed by the Moohummudan law, and the agreement for it becomes a binding contract. (*Hedaya*, vol. 4, p. 99.)

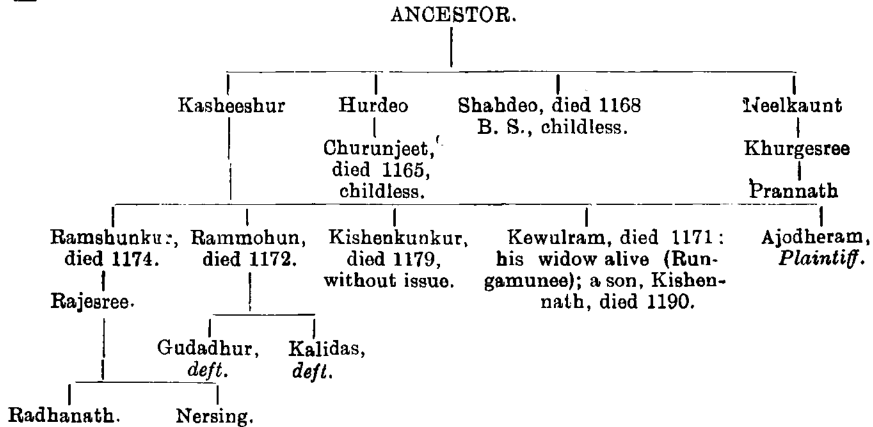
[8] The right of retracting gratuitous donations to strangers, in the life-time of the parties, unless some improvement or increase have been incorporated in the thing, or it have passed into other hands, is recognised by the law (*Hedaya*, Book 30, Ch. 2) : and, the reasons of the Court's judgment not being stated it does not appear on what grounds the right was disallowed in this case, for the excess beyond the original composition for homicide.

The ideas of Moohummudan lawyers on the force of written evidence may be seen in the law opinion delivered by them in this case. Deeds can have little efficacy after the death of witnesses, unless registered.

GUDADHUR SERMA AND KALIDAS SERMA, *Appellants v.* AJODHERAM CHOWDRY, *Respondent.* (1794. *October* 30*th.)*

In a zemindary acquired by one of four brothers living together, either with aid from joint funds, or with personal aid from the brothers, two-fifths declared the share of the acquirer, and one-fifth the share of each of the others. Division of the zemindary made accordingly among the heirs and defendants of the brothers.

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



Kasheeshur, Hurdeo, Shahdeo and Neelkaunt were four brothers, living together. Kasheeshur, by his own industry, acquired a zemindary, *viz.*, 5 annas of pergunnah Choura ; which, [8] as yet, had not been divided. Kasheeshur died, leaving his three brothers abovementioned ; and five sons, Ramshunkur, Rammohun, Kishenkunkur, Kewulram, Ajodheram. Hurdeo then died leaving a son, Churunjeet. Then Shahdeo died, without issue. Then died Kewulram, fourth son of Kasheeshur, leaving a son Kishennauth ; and a widow Rungamunee, mother of Kishennath. Rammohun then died, leaving two sons, Gudadhur and Kalidas. Then died Ramshunkur, leaving a daughter, Rajesree, and two sons of that daughter, *viz.*, Radhanath and Nersing. Then died Churunjeet, son of Hurdeo, without issue. Then died Kishenkunkur, without issue. Neelkaunt then died leaving a daughter, Khurgesree ; which Khurgesree, after her father's death, had a son, Prannath. After this, in 1190, Kishennath died without issue. The survivors of the family at the time of the present suit, were Ajodheram, son of Kasheeshur ; Gudadhur and Kalidas, sons of Rammohun ; Rungamunee, widow of Kewulram ; Rajesree, daughter of Ramshunkur ; Radhanath and Nursing, sons of Rajesree ; Khurgesree, daughter of Neelkaunt ; and Prannath, son of Khurgesree. The question was, what division was to be made of the zemindary : and the following opinion was given by Radhakaunt pundit : 1st, "there having been four brothers living together in one family, of whom Kasheeshur was the eldest ; if, without there being a paternal inheritance, or without the use of joint property, or without the labour or assistance of the brothers, he (Kasheeshur) acquired a zemindary, the other brothers would have no title to share in such zemindary. Should there have been a paternal inheritance, or an expenditure of joint funds ; or should the brothers have lent their

exertions, then the zemindary being divided into five parts, Kasheeshur, the acquirer, would take two, and the other brothers one each : 2nd, on the death of Kasheeshur, his five sons, [9] inherit his portion, divided into equal parts; on the death of Kasheeshur's son Rammohun, his (Rammohun's) two sons, Gudadhur and Kalidas, inherit their father's share, in equal portions : 3rd, the share of Kasheeshur's fourth son, Kewulram, on the demise of Kewulram's son, Kishennath, should Kishennath have left no daughter, falls to his mother Rungamunee: 4th, on the demise of Ramshunkur (son of Kasheeshur), his daughter Rajesree inherits her father's portion, and on her death her two sons succeed her: 5th, Kasheeshur's son, Ajodheram, being alive at the decease of his brother Kishenkunkur, should the latter not have left a mother, his full brother Ajodheram receives his portion: 6th, on the death of Kasheeshur's brother Hurdeo, his (Hurdeo's) son Churunjeet inherits his father's portion; and on his decease, should he have left no brother, his father's full brother, Neelkaunt, the only survivor, will be entitled to that share : 7th, on the death of Kasheeshur's brother, Shahdeo, should he (Shahdeo) not have left a mother, his full brother Neelkaunt will inherit his share ; and on the death of Neelkaunt, his daughter Khurgesree will inherit her father's portion."—It appears to have been asserted that Neelkaunt had resigned all concern in the zemindary, and that the three females Rajesree, Rungamunee, and Khurgesree, received a maintenance; the two former in lieu of their shares, which they had resigned. And a further opinion was taken on the point, which was this : "supposing that the male sharers contributed to the maintenance of Rungamunee; if she (Rungamunee) did not renounce her claim, she will, at a division, be entitled to the share of Kishennath, her son. If Rajesree received some lands, and renounced her claim to share, she will not be entitled to her father's share ; but if she reserved her claim, then she will be entitled to her father's share. If Neelkaunt, the father of Khurgesree, relinquished his share on condition of receiving a maintenance, Khurgesree will receive the same." But evidence examined as to the facts, on the supposition of which this opinion was taken, did not prove them ; and there was ground to presume that the contrary was the case. The Sudder Dewanny Adawlut determined (present Sir J. Shore, F. Speke and W. Cowper) that the decree of the Dinapore Adawlut (from which the case came before them in appeal) and which adjudged to Ajodheram, (who sued for a division of the zemin-[10]dary) 3 anas 6 gundas of the 5 anas, should be set aside; that the 5 anas zemindary, in pursuance of the pundit's opinion, should be adjudged to the heirs of the four brothers, Kasheeshur, Shahdeo, Hurdeo and Neelkaunt, in the following proportions; *viz.*, to Khurgesree, as heir to her father Neelkaunt, the shares of Shahdeo, Hurdeo, and Neelkaunt, 3-5ths, or 9-12; and to the heirs of Kasheeshur 2-5ths or 6-8 to be allotted to the heirs of Kasheeshur in the following proportions, *viz.*, to Gudadhur and Kalidas, appellants, 1-5th ; to Ajodheram, the respondent, 2-5ths ; to Rungamunee 1-5th ; and the same to Rajesree. (a)

[10] (a) The law opinion and decision in this case are practical illustrations of a number of points of Hindoo law, neither intricate nor uncommon. 1st, The allotment of a double