

(1904) 10 AHC CK 0002
In the Allahabad High Court

Richard Ross Skinner

APPELLANT

Vs

Durga Prasad and Another
Thomas William Skinner Vs
Richard Ross Skinner and Durga Prasad

RESPONDENT

Date of Decision : 17-10-1904

Acts Referred:

Citation : 3 Ind. Cas. 66

Hon'ble Judges : John Stanley, C.J.;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These three appeals arise out of two suits which were brought in the Court of the Subordinate Judge of Meerut, one by Richard Ross Skinner against one Durga Prasad and Thomas William Skinner and the other by Thomas William Skinner against Durga Prasad to recover possession of the village of Sherpur in the District of Bulandshahr and for mesne profits, both of which suits were dismissed. Appeal No. 106 is an appeal by Thomas William Skinner in the suit brought by Richard Ross Skinner against the finding of the lower Court that he is not a legitimate son of the late Thomas Brown Skinner, who was the father of himself and brother of Richard Ross Skinner. Appeal No. 107 is an appeal by the same appellant in the suit which was instituted by him against the same finding, and also against the decision of the lower Court upon the construction of the will of the late Thomas Skinner, grandfather of the appellant. Appeal No. 123 is an appeal by Richard Ross Skinner in the suit instituted by him against the decision of the Court below holding that Thomas Brown Skinner took an absolute estate in the zamindari property of the testator, Thomas Skinner. The three appeals have been heard together, and one judgment will govern all.

2. Two questions, and two questions only, arise in the case. One is as to the true construction of the will of the late Thomas Skinner, dated the 22nd of October 1864; and the other is the question of the legitimacy of Thomas William Skinner.

3. The founder of the family was Colonel James Skinner, O.B., an Indian soldier of fortune, who had for military services obtained from the East India Company in the beginning of the last century a grant of a large estate situate in the Bulandshahr District in the North-Western Provinces, The origin of the family is obscure. It appears from a suit which was instituted over thirty years ago to establish the will of Major James Skinner, an (sic) son of Colonel Skinner, that it was then alleged, and thorn was some proof, that Colonel Skinner was illegitimate, being probably the child of a native woman by a European father. That case went on appeal to their Lordships of the Privy Council, and it is to be found reported in *Musammat Fanny Barlow v. Sophia Eveline Orde* 13 M.I.A. 277 : 13 W.R. 41 : 5 B.L.R. 1 . In the course of his judgment in that appeal Lord Westbury observes of the origin of Colonel Skinner as follows: "His origin is unknown; being illegitimate he belonged to no family, and all that can be collected is that he was probably a soldier of fortune who rose by his courage and military skill to some distinction in the service of the East India Company." The testator in the present case, Thomas Skinner, is a son of Colonel James Skinner. He was a resident of Bilaspur in the Bulandshahr District, and at the time of his death, which occurred on the 9th of November 1864, was possessed of immovable property of considerable extent and value. The testator had three sons and four daughters by his wife Eliza Ann Skinner, of whom Thomas Brown Skinner was the eldest son and Richard Ross Skinner the second son. It appears that Thomas Brown Skinner was born before the marriage of his parents, and so was illegitimate. By his will, which is divided into seven paragraphs, Thomas Skinner provided for the payment of his debts and an annuity for his wife, and also allowances for his children, and then as to his zamindari ho gave the following directions in the fourth and fifth paragraphs, namely: "That my private zamindari, presented to me by Government as a reward for services rendered during the rebellion of 1857, as well as all villages, houses and other property added by me from time to time to the original grant, may, at my demise, descend to my eldest son, Thomas Brown Skinner and to his lawful male children according to the law of inheritance. In the event of ray eldest son Thomas Brown Skinner, dying without lawful male children, the above-mentioned private zamindari et cetera, shall descend to my next male heir, and should all my sons die without lawful male children, the zamindari, et cetera, shall descend to my female-children, or, in the event of their death, to the female children born in wedlock of my sons in succession." The will was executed on the 22nd of October 1864, that is, 18 days before the testator's death. After his death his son, Thomas Brown Skinner, succeeded to the property, but he did not enjoy it long. He appears to have been of extravagant tastes and soon became immersed in debt. In execution of a simple money-decree obtained against him by Durga Prasad his interest in the property in dispute in these appeals was sold and purchased by Durga Prasad. It is contended on behalf of the latter that upon the true construction of the will of Thomas Skinner, his son, Thomas Brown Skinner, acquired an absolute estate in the property, and that ha (Durga Prasad) is entitled now by virtue of his purchase to an absolute estate. Thomas William

Skinner, alleging that he is the legitimate son of Thomas Brown Skinner, contends that his father had merely a life-estate in the property and that upon his death the property devolved upon him. Richard Ross Skinner also supports the contention of: Thomas William Skinner that his father had only a life-estate, but he alleges that Thomas Brown Skinner is illegitimate, and consequently is not entitled to the estate, and he claims it as being the oldest legitimate son.

4. The learned Subordinate Judge has found that Thomas William Skinner was illegitimate, but he has decided that, according to the true construction of the will of Thomas Skinner, Thomas Brown Skinner took an absolute estate; and consequently Durga Prasad is now entitled to the property absolutely. He, therefore, dismissed both suits. Hence the present appeals.

5. There are two questions, therefore, now before us. The first is as to the true construction of the will of Thomas Skinner in regard to the devise of his immovable property, and the second is as to the legitimacy of Thomas William Skinner. We shall first deal with the will. The testator died before the passing of the Indian Succession Act of 1865, so that that Act does not aid us in the matter. His domicile was in the North-Western Provinces of India, and there is no particular law of that domicile applicable to this case. The Privy Council held in the case of *Musammat Barlow v. Eveline Orde* 13 M.I.A. 277 : 13 W.R. 41 : 5 B.L.R. 1 to which we have made allusion, and which, had to do with the will of Colonel James Skinner, son of the founder of the family, that having regard to the circumstances of the family it was impossible to affirm that any particular law is applicable to the construction of the Colonel's will or the regulation of his succession "and that any question that may arise respecting them must, therefore, be determined by the principles of natural justice." That case, their Lordships held, fell to be decided, as directed by the Regulations, by the principles of natural justice, equity and good conscience. There was nothing before their Lordships in that case to indicate the religious belief or profession of Colonel Skinner or of his family. In the case of the testator Thomas Skinner and his family the evidence shows that they were Christians, but we do not think that this fact would justify us in interpreting his will upon any other principles than those which were applied in the case of *Musammat Barlow v. Eveline Orde* 13 M.I.A. 277 : 13 W.R. 41 : 5 B.L.R. 1. We do not think that we should apply to its interpretation any technical rules of construction such as are applicable to English wills. The territorial law of British India is not strictly speaking English law but a modified form of English law *Secretary of State v. Administrator General of Bengal* 1 B.L.R. 87 ; *Abraham v. Abraham* 9 M.I.A. 195 : 1 W.R. 1 and *Broughton v. Pogasc* 12 B.L.R. 74 : 19 W.R. 181. It was contended before us by the learned Counsel for the respondent Durga Prasad that the will should be construed according to English law, and that according to that law, under the rule in *Wild's* case, 6 Coke 17, Thomas Brown Skinner took an estate tail, and that, as we understand the argument, such an estate, must be regarded as an absolute estate in these Provinces, where estates tail are unknown. The qualified estate known as an estate tail had its origin in the ancient feudal system, the

foundation of English, jurisprudence as regards landed property. That system finds no place in the territorial law of these Provinces. In Western India a land tenure is to be found closely resembling it, as, for example, the jaghirs of the Mahratta country, but in these Provinces no such tenure exists. If it had been possible to create an estate tail in the land and the estate so created vested in Thomas Brown Skinner was such an estate, the case of the respondent Durga Prasad would not, as it appears to us, be advanced, for that estate was never barred, if there existed a means of barring it, and consequently on the death of Thomas Brown Skinner it passed on to the next heir. The learned Counsel for Durga Prasad recognized this difficulty, he was obliged to call in aid of his argument the provisions of Section 54 of the Indian Succession Act of 1865, asking us to hold that words which in a devise of land in England would confer an estate tail would in this country pass the whole interest of the testator. He asked us to apply this section as if the Act had retroactive operation. Under that section, unless a contrary intention appear by a will, the whole interest of a testator will pass under a gift to a man and the heirs male of his body, words which in England are appropriate to confer an estate tail. We cannot accede to this argument. The Succession Act is not retroactive, and even if it were, the section in question is only applicable if a contrary intention does not appear by the will. Now the rule in *Wild's case* 6 Coke 17 is based upon the presumed intention of the deviser that the children of the devisee should take the property, and that, inasmuch as they cannot take as immediate devisees, inasmuch as they are not in existence, and by way of, remainder they cannot take, for that was not the deviser's intent, the gift being immediate, therefore, the word "children" shall be taken as a word of limitation. The rule is only a construction, but it is a rule which in England will not be departed from in cases properly falling within its scope—*Clifford v. Koe* (1880) 5 A.C. 447 but it has been frequently criticised as a rule which in many instances has defeated the intention of testators. That eminent lawyer Sir Edward Sugden, when Lord Chancellor of Ireland, in the case of *Heron v. Stokes* (1842) Dr. and War. 89 : S.C. 59 R.R. 652 suggested that the more natural construction of a gift to a man and his children, there being no children in case at the time, and that which he would have adopted in the absence of authority the other way would be to hold it to be a good gift to the parent for life with remainder to the children. Now the primary object in construing a will is to ascertain the intention of the testator. In order to gather what the intention of the testator was in regard to the disposition of his zamindari we must read the fourth and fifth paragraphs of his will together. In the fourth paragraph he directs that it shall descend to his eldest son Thomas Brown Skinner and to his lawful male children according to the law of inheritance. The words according to the law of inheritance" must not be overlooked. They seem to indicate that the children of Thomas Brown Skinner were objects of the testator's bounty, and that the words lawful male children "were not used merely as words of limitation; that the testator's intention was that they should enjoy the property after the death of their father according to the law of inheritance; that is, that the eldest son living at the father's death

should succeed to the estate. If the words to his lawful male children "are treated as words of limitation merely, that if, as marking out the estate which Thomas Brown Skinner was to enjoy, the words according to the law of inheritance " are unnecessary and out of place. The learned Subordinate Judge does not appear to us to have attached due weight to these words, or to have properly interpreted them. He says;--Now he (the testator) does not say that his eldest son, Thomas Brown Skinner, should only have a life-interest, and we have no right to import into the will those words. Then, again, when he says clearly that the property should descend to his eldest son Thomas Brown Skinner and to his lawful male children according to the law of inheritance, we all know that according to the law of inheritance the eldest son of Thomas Brown Skinner does not take only a life-interest." The answer to this is that the testator did not give the estate to Thomas Brown Skinner according to the law of inheritance, but he gave it to Thomas Brown and to his lawful male children according to that law. The words " according to the law of inheritance" are not so much applicable to and explanatory of the gift to Thomas Brown Skinner as they are of the gift to his lawful male children. If the testator had intended to give the property absolutely to Thomas Brown Skinner, the introduction of the words and to his lawful male children" was quite unnecessary and inappropriate. The succeeding paragraph makes this more clear. By it the testator provides that if Thomas Brown Skinner should die without lawful male children his property should descend to the testator's next male heir, i.e., to his second, or other son who should be living at the death of Thomas-Brown Skinner. Then follows the provision that if all his sons should die without lawful male children, the zamindari should descend to his female children, and in default of such children, then to the female children of his sons in succession. Reading these two paragraphs together, it appears to us that it was clearly not the intention of the testator to give an absolute estate in his zamindari to Thomas Brown Skinner. The testator indicates his wish that his sons who shall acquire the property shall have a life? estate only and that the absolute estate shall devolve upon the eldest son of the son of the testator who shall be entitled to the property for life and shall leave a son surviving him.

6. In order to gather the intentions of the testator we must place ourselves in his position and see what were the circumstances of the family. The will was made shortly before his death. He had a wife, Eliza Ann Skinner, and six children, namely, three sons and three daughters. Of these children the two eldest, Thomas Brown and a daughter Jane Sophia were not born in wedlock, the testator having been married to their mother after their birth. It seems highly improbable that, if the intention of the testator was to give his eldest son an absolute estate, he should have introduced into his will elaborate provisions for the devolution of the property such as are contained in paragraphs 4 and 5 of the will. If such was his intention he would not, we think, have gone on to provide for the devolution of the property, not merely in the event of the death of Thomas Brown Skinner in his (the testator's) life-time, but for the succession of daughters in the event of his dying without male issue. It is evident that the

testator was desirous that his zamindari should be retained in the family, and this was not unnatural seeing that it had been given to him. as a reward for public services. In the 6th paragraph of his will, in which he makes provision for the payment of his debts, he directs that" on no account shall my private zamindari, et cetera, be sold to pay such debts." Reading the will as a whole and taking into consideration the circumstances, we have no hesitation in holding that Thomas Brown Skinner took merely a life-estate and not an absolute estate in the property.

7. We now come to the question of the legitimacy of Thomas William Skinner. The allegation of Richard "Ross Skinner is that Thomas Brown Skinner, who died on the 3rd July 1900, left no lawful male issue, and that he, as the second son of Thomas Skinner, is entitled to the property under his will. The testator Thomas Skinner was a Christian and all his children were baptized Christians. He shows by his will his desire that they should continue in that faith, for we find that he declares towards the end of his will that his sole object in leaving his family to the care of the Court of Wards, as he directed, in an earlier part of his will, was that their education might be properly carried, out, and they be brought up in the Christian faith. Shortly after his death Thomas Brown Skinner was sent to La Martiniere College, Luck now, which is a Christian College, and there he remained until the 15th day of December 1866". He returned to Bilaspur on this date, and there he seems at once to have given himself up to a life of indulgence and dissipation. In the family was a, young Muhammadan girl named Ahmadi Begam, who was the daughter or protegee of an old servant of Mrs. Eliza Ann Skinner He appears to have been attracted by her charms, and to have promptly begun to co-habit with her. it is said that he was not content with her alone, but kept two other mistresses at the same time, named Ladli and Khurshcd. The result of his intimacy with Ahmadi Begam was the birth of Thomas William Skinner on the 27th of December 1867, that is, about a year after Thomas Brown Skinner left school. He was baptized as a Christian on the 18th of February 1868, the date of his birth being given as the 27th of December 1867, and his mother's name being given in the baptismal certificate as Fanny Skinner. On the 12th of February 1869 Ahmadi Begam was baptized as a Christian under the name of Fanny, and on the following day Thomas Brown Skinner was married to her by the Revd. T. H. Crawford in the Church of St. Stephen the Martyr, Delhi. In the marriage certificate Thomas Brown Skinner is described as a bachelor and Fanny is described as a spinster. Meantime, as we have said, Thomas William Skinner was born. His case now is that before their Christian marriage Thomas Brown Skinner adopted the Muhammadan faith and went through the form of a nikah marriage with Ahmadi Begam before his birth, and that this was a valid marriage, and, therefore, he is legitimate. The alleged Muhammadan marriage is said to have taken place at Tilbegampur, which is distant about 6 miles from the family residence at Bilaspur, in a half-built house belonging to the estate. The story is that shortly after Thomas Brown Skinner had returned from school on the 15th of December 1866, he went through the form of a nikah marriage with

Ahmadi Begam, who was then a Muhammadan, and who was either the daughter or protegee of a servant of his mother, and this marriage took place, it is said, with the approval of his mother and in the presence of a large number of people of the neighbourhood. Several witnesses were examined, who say that they were present at the marriage, and, if their evidence be reliable, they establish the fact that a form of marriage was gone through. There is no evidence to show that Thomas Brown Skinner ever became a Muhammadan, but the Court is asked to presume that if he went through the form of a nikah marriage with a Muhammadan girl, he must be taken to have previously adopted the faith of Islam. We are not prepared to admit that in the circumstances of this case at all events any such presumption arises. Thomas William Skinner was born, on the 27th of December 1867, so that if the alleged marriage took place before his father and mother co-habited it must have been not later than March 1867. The suggestion is that his mother was at heart a Muhammadan, and that she was anxious that her son should marry a Muhammadan, and so induced him to marry this girl. No doubt Mrs. Skinner had Muhammadan proclivities, for we find that soon after the death of her husband she married a Muhammadan and went on a pilgrimage to Mecca and has never returned.; but even if this be so it would not account for a desire on her part that her son, who was heir to a large property, should marry a girl of no position, a mere waif and stray.

8. Let us now examine the evidence which has been given in support of this alleged marriage. A person, who is described as Mrs. Harriett Everett, was examined by commission. Her English name is misleading, as she is not an Englishwoman. The learned Subordinate Judge says of her "she is called Mrs. Everett, but she is a native woman. She does not know a word of English and she lives in parda. She was examined by commission." This woman gave her evidence in the vernacular, and admitted that she did not know English. She says that she was acquainted with Thomas Skinner and his wife, whose name she gives as Lado Begum, and that she used to visit Lado Begam regularly. Lado Begam, she says, invited her to the marriage ceremony of her son at Tilbegampur, and she attended the marriage and Thomas Brown Skinner wore Hindustani dress at the marriage. In cross-examination she says that Thomas Brown Skinner was sent for from school for marriage." The witness states that she is a Christian, but that she does not appear in public. Now, if her evidence is true, not merely was the marriage arranged before Thomas Brown Skinner left school, but his conversion to Muhammadan must also have been prearranged. Up to the date of the marriage he was undoubtedly a Christian, and as a Christian he was received as a pupil at the Martiniere College. His estate was under the Court of Wards. It is difficult to believe that the conversion of this youth was pre-arranged, as also his marriage to a poor Muhammadan girl of no position, and that he was brought from school for the marriage. The story is highly improbable on the face of it, and we should be slow to attach credit to it. The question suggests itself how it came that Mrs. Everett, a Christian, took part in a Muhammadan marriage. The presence of a Christian at a Muhammadan

ceremony of the kind is contrary to rule. We shall see later on that this evidence is inconsistent with the evidence given by other witnesses. The next witness to whom we would refer is Muhammad Ali. He resides at Tilbegampur, and gives his occupation as that of a tutor and reciter of the nikah formula. He says that Thomas Brown Skinner was at first married according to the nikah form at Tilbegampur, his first nikah being with Ahmadi Begam and the second with Vicco, and that the Muhamniadan name given to him was Abdul Majid. He says that he was present at the first nikah, which was solemnised by his father Ahmad Ali, who was a Qazi. Except the bare statement that the marriage took place and that he was present at it, this witness gives little or no information. The next witness is Rahim Bakhsh. He is a resident of Tilbegampur and sweeps the mosque and also acts as a vakil in nikah marriages. He says that he was present and acted as vakil at the nikah marriage of Thomas Brown Skinner, and that two persons of the name of Manmuna and Wanhu, both of whom are dead, were witnesses to the marriage. He also says that he acted as vakil. The nikah was performed, he says, by one Ahmad Ali. In cross-examination he said that the may have been vakil on the occasion of other marriages the same year, but he did not remember them, nor did he ever remember his having been a vakil in any marriage performed previous to the last ten years. He says that fifty zamindars were invited to the marriage, and were present at it and he mentions the names of one or two persons who, he says, were present. If the marriage was intended to be private, as is suggested, it is not likely, that fifty zamindars of the neighbourhood would have been invited to it. Thomas' William Skinner in his evidence stated that "he had found out that at the time of the nikah it was kept a secret from all the relations and from every body." The next witness, Ali Bakhsh, who is a cultivator residing at Bilaspur, also says that he was present at the marriage between Thomas Brown Skinner, whom he describes as Mr. Brown, and Ahmadi Begam, but he did not go inside the house. In cross-examination he stated that he attended the nikah because he was invited, but that it had been performed when he reached the house. He says twenty persons in all were present at the time of the nikah, and that the Muhammadan name of Mr. Brown was Abdul Majid. He says on no other occasion did he go to Mr. Skinner's house. The next witness is Zahur Ali Khan, who is also a cultivator. He also says that the nikah of Thomas Brown Skinner was performed at Tilbegampur in his presence and that five or six persons were present in the room in which the nikah was performed, besides the vakil and the witnesses and the Qazi, and that fifty or sixty persons of the village were invited and were present on the occasion. The next witness is Rahim-un-nisa, an old woman of eighty years of age, who was a nurse in the service of the Skinner family. She says that she knew Ahmadi Begam after she had been brought to Bilaspur from Delhi by the nurse of Mr. Brown (i.e., Thomas Brown Skinner), and then, to use her own words, "at first there was no connection between Ahmadi Begam and Mr. Brown, but subsequently they had connection and were married. The marriage of Mr. Brown and Ahmadi Begam was performed according to the Muhammadan form of marriage. The nikah was performed at Tilbegampur. I also went to Tilbegampur

with him. The whole of the family went with him. Mr. Brown's paternal grandmother, mother's mother, mother and the four children, namely Dickie, George, Alice and Maggie, were all with him." This is not consistent with the suggestion of Thomas William Skinner that the marriage was kept a secret. In cross-examination she said that Ahmadi Begam was not at Bilaspur when Mr. Brown came from school, that she came about two months after Mr. Brown had come. This last statement is in conflict with the evidence of Mrs. Everett, who said that Thomas Brown Skinner was sent for from school for the marriage. If Ahmadi Begam was not at Bilaspur until some months after the arrival of Thomas Brown Skinner from school, is it not true that he was sent for the purposes of the marriage.

9. These are the witnesses whose evidence has been relied upon in support of the marriage. They are persons of no position, and they merely make a bald statement to the effect that a nikah marriage was gone through between the parties. Not a single member of the family has testified to it. The question then is whether the story is credible or is a pure fabrication. The Court below came to the conclusion that the witnesses were untrustworthy and that no such marriage was ever solemnised. With the exception of the woman Everett and the old nurse, the witnesses to the nikah are residents of Tilbegampur, and the suggestion of the learned advocate for Richard Boss Skinner is that Thomas William Skinner employed his servant Abdul Rahman, who is a resident of Tilbegampur, to procure evidence of the marriage, and that he had no difficulty, for a consideration, in procuring the evidence which we have commented on above. Most of the above mentioned witnesses, it must be remembered, came from Tilbegampur, where some of the Skinner property is situate, and where the appellant Thomas William Skinner would be likely to have much influence. One member of the family-James Skinner-was examined on behalf of Thomas William Skinner, but he was not present at the alleged marriage. He is a son of the late Major Skinner and resides at Delhi. He says that he was employed on the Skinner estate at Hansi and was transferred to Bilaspur, and that he left the service in October or November 1866 and went to Agra, and in the following November or December he returned from Agra to Bilaspur, and then saw Thomas Brown Skinner. He says that he then saw Ahmadi Begam, and that she and Thomas Brown Skinner lived as husband and wife. He says that he "asked Brown Skinner what the matter between him and Ahmadi Begam was," and that he said "that he became a Muhammadan and got the nikah ceremony with Ahmadi Begam performed." Now if Ahmadi Begam was recognised in the family as the wife of Thomas Brown Skinner, what was the necessity for the witness asking him "what the matter between him and Ahmadi Begam was?" The question rather suggests clandestine relations between the parties. In cross-examination he admitted that Thomas Brown Skinner always appeared to him a Christian and lived as a Christian and he also stated that at this time Thomas Brown Skinner was addicted to habits of dissipation. He says: "When I saw Brown Skinner in 1866 he used to drink wine, was of a bad character and used to keep women."

Little value, as it appears to us, can be attached to the evidence of this witness. John Everett, who is a pensioner and the husband of the witness Mrs. Everett, says that he learnt of the marriage, and congratulated Thomas Brown Skinner when he was told by him that he was married to a Muhammadan girl according to Muhammadan law at Tilbegampur and introduced his wife to him. Thomas William Skinner gives the following account of how the evidence of the marriage was procured. He says: I sent my servant Abdul Rahman after filing my "suit to make inquiries at Tilbegampur as to who performed the nikah ceremony. I do not exactly remember whether I sent Abdul Rahman before or after filing the suit. I think it was before filing the suit. It may have been about a week before the suit. He came back and told me that the whole village could give evidence about the nikah. Abdul Rahman is a resident of that village. He is not a man of much influence there. One of the witnesses to the nikah, I forgot his name, told me the names of the vakils to the nikah. He told me after Abdul Rahman's inquiries. I saw the witnesses at the village of Tilbegam-pur when I went there after filing the suit. I saw there Madad Ali and Azim Bakhsh amongst my witnesses. Azim Bakhsh was in my father's service. I told Abdul Rahman to find out witnesses. I do not know the names of all my witnesses, and I do not know who were the witnesses to the nikah. I have found out that at the time of the nikah it was kept a secret from all the relations and from everybody."

10. This is the evidence in support of the marriage, and it is not a little remarkable. The case which is sought to be established by it is that a youth of 17 years, who was born of Christian parents, who had been educated at a Christian College, and who had succeeded to considerable estates suddenly developed the notion of becoming a Muhammadan and entering into a marriage with a Muhammadan girl of no parentage or position, and that, in order to keep the marriage private, he and his friends left the family residence at Bilaspur, went off to a half-built house at Tilbegampur 6 miles distant, and there went through the form of a nikah marriage in the presence of a great number of zamindars of the locality. In connection with this evidence we must not lose sight of the following admitted facts, namely, that Thomas Brown Skinner was the son of Christian parents and was himself baptized a Christian and educated as such at a Christian College, that he left school on the 15th of December 1866, as is proved by the Principal of the College, Mr. Sykes, and that on the following 27th of December 1867 Thomas William Skinner was born, and on the 24th of February 1868 was baptized a Christian at the Church of St. James, Delhi, that on the 12th of February 1869 his mother Ahmadi Begam was baptized a Christian under the name of Fanny, and on the following day she and Thomas Brown Skinner were, as Christians, married at the Church of St Stephen the Martyr at Delhi, and that in the marriage certificate Thomas Brown Skinner is described as a bechelor and his wife as a spinster. We are asked to believe that shortly after leaving school Thomas Brown Skinner embraced Muhammadanism in order that he might be validly married to Ahmadi Begam, while we find that the offspring of the marriage (Thomas William Skinner) was baptized a Christian in 1868, and that

within a year thereafter Ahmadi Begam embraced Christianity and was baptized a Christian, and on the following day went through the form of a Christian marriage, she and her husband being respectively described as spinster and bachelor. Further, if the appellant Thomas William Skinner ever did become a Muhammadan, there is nothing to show when or under what circumstances he again became a Christian and renounced Islam. In the face of these facts the alleged Muhammadan marriage is in the highest degree improbable. There is not a title of evidence to indicate that Thomas Brown Skinner received any instruction in the Muhammadan faith or that he ever practised the observances of Muhammadans. On the contrary, the evidence is that he was always regarded as a Christian.

11. It appears that he did not give up his profligate habits, at least after Ahmadi's death, according to the evidence of John Richard, who was examined as a witness. He is the brother of Eliza Ann Skinner, the wife of the testator Thomas Skinner, and used to visit Bilaspur. He says that he knew Ahmadi Begam and that she came to Bilaspur with an old woman who was in the service of Mrs. Thomas Skinner (i.e., Eliza Ann Skinner) about 5 or 6 months after Thomas Brown Skinner had come. At that time, he says, Thomas Brown Skinner became intimate with Ahmadi Begam, and had two other girls also, namely, Ladli and Khurshed, in his keeping, who had come about 2 or 1 1/2 months after Ahmadi. He says that the three girls lived in the Mahal Sarai, and that Thomas Brown Skinner was not under his mother's control and did what he liked, and so kept all the three girls. This witness says that he was at Bilaspur with Thomas Brown Skinner as long as Ahmadi was alive, and that there was no nikah marriage between them, but that about two years after the birth of Thomas William Skinner a Christian marriage was performed. He says that after Ahmatli's death Thomas Brown Skinner had in his keeping two women, one Eliza, the wife of Charles Everett, and another, Balakin, a Muhammadan woman : and that about two years after Ahmadi's death he married the witness' daughter Victoria Richard according to Muhammadan rites although Victoria was a Christian. He says that when his daughter was married to Thomas Brown Skinner, the other two women were sent away now. So far as this witness knows, and he had every opportunity of knowing the fact, Thomas Brown Skinner was never a Muhammadan and no nikah marriage between him and Ahmadi ever took place. The evidence of this witness discloses the grossly immoral conditions in which the family lived. Richard Ross Skinner says that his brother Thomas Brown Skinner was never a Muhammadan, and that about two years prior to his death he told the witness that Thomas William Skinner was illegitimate. He says that he had a conversation with his "brother about a letter which his son Thomas William Skinner had written to him asking him to acknowledge him as a legitimate son so that he might raise a loan, and that his brother had refused so to acknowledge him. His words are: "I happened to call on my brother T. B. Skinner, and he just casually mentioned to me about William Skinner's letter, showed it to me and told me that he, William, was not his, T. B. Skinner's,

legitimate son, and so he was not going to acknowledge him or write to him that he was his legitimate son." Thomas William Skinner admitted in his evidence that his father and he were not on good terms before the death of the former. The witness further says that at the same interview Thomas Brown Skinner told him that he was not going to injure him in his rights. He says that there was no nikah marriage solemnized between Thomas Brown Skinner and Ahmadi Begam, but that Ahmadi Begam and two other women, namely, Ladli and Khursbed, lived with him at Bilaspur as his mistresses. He says that Ahmadi Begam and the other two girls Ladli and Khurshed occupied the same room, namely, the room which had been his father's bed room. The house at Tilbegampur was only half built, the witness says, in 1866, and it is still in the same condition. The family never lived there, but used to go and visit the place now and then, and only the drawing room and dining room and three other rooms could be used, which were partly furnished. It appears that owing to his profligacy and extravagance Thomas Brown Skinner became embarrassed, with the result that his property was sold in satisfaction of the debts of his creditors and he was left in sorry plight. His interest in the village in dispute was "Bold at the instance of and purchased by Durga Prasad about the year 1871. In 1895 Thomas William Skinner was also in need of funds, and consulted solicitors in Calcutta with a view to raising a loan on the security of the property. He then, if not before, came to know that in order to raise a loan he must prove his legitimacy. He appears to be doubtful as to when he became aware that he must prove this fact, for in the course of cross-examination he said that he came to know of this after the death of his father. In answer to the question at what time he was aware that it was necessary for him to prove that he was legitimate he said: It was after the death of my father-that I came to know that I must prove my legitimacy before I could succeed in having the sales (i.e., of the property) set aside. It was before filing this suit and when consulting my lawyers and my cousin Sardar Mirza that I came to know that I must prove my legitimacy." Then he corrects, himself, and says that in March 1899 during the life-time of his father he came to know that he must prove his legitimacy. This evidence leads us to the consideration of a not unimportant letter which was written by Thomas William Skinner to his father on the 30th of August 1895. He says that it was in consequence of what Messrs. Gregory and Jones (his solicitors) told him that he wrote that letter to his father. "In 1895," he says, "I wanted to raise some money as I was then in difficulty, and so was my father. I said in the letter: I put the whole of your case in the 19 villages before my solicitors," by that I meant the breaking of the entail and raising money. I was told by Mr. Jones that to break an entail the father and the son both must join." The letter in question is very significant. The important portion of it lies in the postscript which is headed "Private." The earlier portion deals with family and other matters of no importance. The postscript is as follows ; -My dear father, I want to make a proposal to you which if you accept will make both you and myself rich men. I have put the whole of your case, i.e., the 19 villages, before my solicitors Messrs. Gregory and Jones, who are very eminent lawyers here, and they have advised

me that if you produce Thomas Skinner's will together with my birth certificate, and also a letter from you acknowledging me as your lawful and real son, they can raise at least a quarter of what the property is valued at now, which will be at least 2 or 3 lakhs, and if you are agreeable I am willing to divide with you equally the money so raised. Your share will be at least a lakh of rupees. There is no time left for you to hesitate in this matter as life is short and the future of us all is before us, and we must look to it, as you will find by and by that very few in the family will help you in your time of need. Of course you must not put me on a level with the rest of the family, because I am your son, and it is my bounden duty to always at least have a home ready for you. More when we meet. With love from all to self, mother and baby, I am your affectionate son, T. W. Skinner." In this letter Thomas William Skinner plainly offers a lakh or a lakh and a half to his father if he will acknowledge him as his "lawful and real son." At this time his father was in great need of money, and the offer was undoubtedly a very inviting one, and one which the father would have willingly accepted, and indeed was in duty bound to comply with, if he had been able in truth to comply with it. No favourable reply came. Thomas William Skinner says that he received a reply to his letter, and he would have us believe that in it his father admitted his legitimacy; but that letter is not forthcoming. The witness explains its non-production by saying that he gave it to his broker, Mr. C. L. Mukerji, in order that he might raise a loan for him on the property, but that the loan fell through and that he did not trouble about the letter again. Now if there was any document which a party under similar circumstances would preserve with scrupulous care it was such a letter as the appellant says he received. It is impossible to believe that he gave so important a document to his broker, and took no trouble about it since. His broker, he says, he has heard, is dead, and he appears to have taken no trouble to ascertain whether the letter is forthcoming. He says in his evidence: "I did not try to find that letter." -One thing certain is that a loan on the property never was raised, and the reason assigned for this by Thomas William Skinner is that his father would have been willing to join him in the transaction but for the fact that he was afraid that he might squander the money. In answer to the question: What step did you take from 1895 to 1899 to get your father publicly to recognize you as his legitimate son, be it by an affidavit, registered deed or, otherwise?" his answer was: "When my father refused to break the entail I was in great difficulties, I was almost starving, so I dropped the matter; I do not remember any-other reason. From 1899 up to the death of my father, which happened on 3rd July 1900, I took no steps to obtain any written proof of my legitimacy, as I was then on" bad terms with him." Later on he says: "The reason why I did not ask my father to give any written proof of my legitimacy from March 1899 till his death was because I intended to summon him in Court." The letter of the 30th of August 1895 leaves no doubt on our minds that Thomas William Skinner was aware during his father's life-time that he was not, legitimate, and that that letter was nothing, more or less than a bribe held out by him to his father to acknowledge his legitimacy, he, being aware that his father was then in difficulties and was likely to yield to his tempting offer of a

lakh or a lakh and half of rupees. It is ridiculous under the circumstances to suggest that his father refused to join him in obtaining the loan because he feared that he would squander the money.

12. It is a matter of no great importance, but has been referred to, that in a mortgage-deed dated the 10th of November 1867, that is, a month or so before the birth of Thomas. William Skinner, Thomas Brown Skinner, the mortgagor, describes himself by and executes the document in his Christian name. In the registration endorsement he is described as son of Thomas Skinner, Christian, aged 18 years. If he was at this time a Muhammadan, it is said that he would have described himself as such under his Muhammadan name. We do not attach much weight to this point. After very careful consideration of all the evidence we have come to the conclusion that the decision arrived at by the learned Subordinate Judge upon the question of legitimacy-is correct. There is not a shadow of evidence that Thomas Brown Skinner ever expressed a desire to become a Muhammadan or ever was instructed in the Muhammadan faith or ever conducted himself as a Muhammadan, whilst there is conclusive evidence that he was a Christian, being baptized a Christian, brought up as a Christian and was married as such to his wife Ahmadi Begam. Even if some such ceremony as nikah marriage was performed it could not, we think, be held under the circumstances to be valid, but after weighing the evidence and giving it our best consideration we are satisfied that the story of a nikah marriage is a pure fabrication and that no such marriage ever took place.

13. For these reasons the two appeals, Nos. 106 and 107 of 1902, preferred by Thomas William Skinner fail, and are dismissed with costs.

14. As regards first appeal No. 123 of 1902, upon our finding we would have passed a decree in favour of the appellant Richard Ross Skinner with mesne profits from the 3rd of July 1900, that is, the date of the death of Thomas Brown Skinner, against the defendant Durga Prasad, to be ascertained in the execution department, but it has been pointed out to us by the learned vakil for Durga Prasad that several issues were left untried by the Court below and that his client desires before a final decree is passed that three of these issues should be referred for trial and determined. The issues. are (1) "Is the suit barred by time?" (2) "Is the plaintiff's suit join-maintainable on account of any act of the plaintiff, or his father or his guardian?" and (3) "Is the plaintiff bound to pay the amount alleged by the defendant Durga Prasad and what are the correct amounts?" These are numbered 2, 3, and 9 in the issues fixed for trial by the lower Court. These are the only issues which Durga Prasad now desires to have determined. We, therefore, before passing a final decree in this appeal refer to the lower Court the trial of the three issues which we have specified under the provisions of Section 566 of the Code of Civil Procedure. These issues must be decided upon the evidence already before the Court, no additional evidence being taken. We request, that the lower Court will return to us its finding on these issues without delay. The parties will have the usual ten days for filing

objections.