Dhondirám, we think such decree should be without costs. If the Judge decide the question of the alleged remarriage of Bhikú in the negative, there should be a decree in her favour for a moiety of the property of Dhondirám, which has come to the hands of Párvatí, with costs; and the Judge should ascertain, as accurately as he can, the value of that property. So far as we can gather from the judgment of the late Judge, he arrived by simple conjecture at the value of certain gold ornaments, part of the property.

WARDEN, J., concurred.

Decree reversed, and suit remanded.

Special Appeal No. 164 *of* 1867.

June 24.

HARJI'VAN ANANDRA'M .....*Appellant.*
NA'RAN HARIBHA'I.....*Respondent.*

Hindú law—Gift of Land—Possession.

Held that a gift of land is not complete, by Hindú law, without possession or receipt of rent, by the donee.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge of the Súrat District at Broach, in Appeal Suit No. 72 of 1865, reversing the decree of the Munsif of Hansot.

The facts sufficiently appear in the following judgment, recorded in appeal:—

"This action was instituted by Harjívan Anandrám to recover possession of two bighás of land in the village of Asthá, Pargaṇá Hansot, from Náran Haribhái, who held the land as tenant.

"Náran Haribhái's defence was that he had cultivated the land for more than thirty years; and that, if the deed of gift produced by the plaintiff in support of his title be true, he could not account for his (defendant's) having paid the rent of the land, since the date of the deed, to the donor.

"The Munsif decreed for the plaintiff, with costs, on the

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grounds that the proprietary right over the land was proved to belong to him, and that the defendant was only a tenant at will.

"Náran Haribhái appeals on the grounds:—(1) That he was not a party to the deed of gift, and that it, therefore, cannot affect him; (2) that, according to the terms of the deed, the plaintiff ought to have brought his claim against Bápu, the alleged executant of the deed; (3) that it is proved that he has had possession of the land for more than twenty years as a sort of *japti khedát* (permanent cultivator); (4) that the deed is false and void.

"The issues for decision are:—(1) Is respondent the owner of the land; (2) if so, is he entitled to recover possession from appellant.

"My finding upon the issues is:—(1) That respondent is not the owner of the land; (2) no decision is necessary. No further issue was sought by the parties.

"It appears that in this case the land in dispute was given to the plaintiff, now respondent, in Samvat 1918 (A. D. 1862) by one Bápu; but that the gift has never been completed by a transfer or delivery of the property; and the donor, Bápu, now denies the gift altogether. It is clear, therefore, that in point of law the gift is a *nudum pactum;* the gift never having been completed, the promise to give is null and void. As a matter of conscience Bápu is, of course, morally bound to fulfil his promise, but he cannot be compelled to do so by law, especially when, as it appears, there was no consideration whatever for the promise, except the very questionable one mentioned by Bápu, viz., that respondent being village pátel, he might some day be useful. Even supposing that the gift had been completed, I very much doubt whether it would not be invalid, on account of its being founded upon an apparently immoral consideration. As it is, however, no perfect gift has taken place; and the respondent had no right whatever over the land, and, therefore, no right to sue for its possession. I reverse the Munsif's decree. All costs on respondent."

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The special appeal was heard by COUCH, C.J., NEWTON and WARDEN, JJ.

Dhirajlál Mathurádás for the appellant.

Nánábhái Haridás for the respondent.

Cur. adv. vult.

COUCH, C.J.:—The question which we have to determine is, whether the Judge was right in holding that the gift was not complete without delivery; and we are of opinion that he was. We must, however, observe that, although he has come to the right conclusion, he does not give any satisfactory reason for his decision. He does not appear to have bestowed much thought upon the question, whether by the Hindú law a gift of land is complete without delivery to, or possession by, the donee. He appears to have confounded a gift, which does not require any consideration, with a contract or promise, which requires a consideration, to support it.

The instrument in this case was in the terms of a present gift, and was not a mere promise to give; and it is necessary to consider, whether such an instrument, unaccompanied by possession, is sufficient to pass the property to the donee.

The following authorities show what must be considered to be the Hindú law upon this point:—

In Macnaghten's Principles of Hindú Law (*a*) the following passage from the *Mitákshará* is cited:—"The acceptance of gold cloths &c., being completed by the ceremony of bestowing water, and falling, therefore, under either of the means, may be designated as a three-fold acceptance; but in the case of land, as there can be no corporeal acceptance without enjoyment of the produce, it must be accompanied by some little possession: otherwise the gift, sale, or other transfer is not complete."

In the *Vyavahár Mayúkha*, chap. 9, paragraph 6, we find *Nárad* thus propounds the distinctions of gifts valid and void: "Valid gifts are declared to be of seven sorts; void gifts assume sixteen forms." "They, who know the

(*a*) Madras Ed. of 1865, p. 218.

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law of gifts, declare, that things once delivered, as the price of goods sold; as wages; for [the] pleasure [of hearing poets, musicians, or the like]; from natural affection; as an acknowledgment to a benefactor; as a nuptial gift to a bride [or her family]; and through regard, cannot be resumed" (*b*).

In the Digest it is said: "The term used by *Manú* (Chap. I., v. II., i.) denotes payment or delivery; non-delivery of what has been given is retraction of it. Delivery here intends a perfect gift: its converse is an imperfect gift, and is a title of law, namely, subtraction of what has been given. Given denotes the intention of the giver expressed in this form 'let this be thine:' the word interpreted subtraction, may signify imperfect or undue donation; where that exists there is imperfection of gift" (*c*).

"Of houses and of land, acquired by any of the seven modes of acquisition, whatever is given away, should be delivered, distinguishing land as it was left by the father, or gained by the occupier himself:" *Vrihaspati* (*d*). "Let the acceptance be public, especially of immoveable property; and, delivering what may be given and has been promised, let not a wise man resume the donation:" *Yadnavalkya* (*e*).

Again it is said:—"If some person, having no issue, tell any man related or not related to him, 'I give thee all my property, and thou shalt perform the last duties for me;' but the land or the like be afterwards occupied by the donor; what is the rule in regard to the validity of the gift? Without occupancy the donation cannot be valid: but if the donee reply, 'I give this to preserve the aged giver from poverty;' not 'I relinquish this;' then the gift is valid, on proof of occupancy" (*f*).

Without possession or receipt of rent by the donee (the special appellant) the gift in this case was not complete; and the decree of the appellate court below, in favour of the defendant, is right, and must be affirmed with costs.

Decree affirmed.

(*b*) Stokes, II. L. Bks., p. 134. (*c*) Commentary on Bk. II., chap. IV., ii.
(*d*) Dig. Bk. II., chap. IV., xviii. (*e*) *Ibid.* xxxii.
(*f*) Dig. Bk. II., ch. II., lvi., Madras Ed. of 1865, Vol. I., p. 460.