Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharajah Pertab Narain Singh v. *Maharanee Subhao Kooer, and others, from the Court of the Commissioner of Fyzabad, Oudh; delivered 19th July,* 1877.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

THE question raised by this Appeal is the right of succession to the Taluq of the late Maharajah Sir Man Singh, one of the most considerable, if not the most considerable, of the great landholders of Oudh, whose status and rights are the subject of Act I of 1869.

The Maharajah died on the 11th October, 1870. He had no male issue. His nearest surviving relatives were his widow, the Maharanee Subhao Kooer, a daughter by a deceased wife, and the Appellant, the son of that daughter. The Maharajah had also brothers, and brothers' sons, of whom some survived him. His grandson, the Appellant, was known in the family as "Dadwa Sahib," by which name he will be generally designated in this Judgment.

The property which is the subject of this litigation belonged to Man Singh before the annexation of Oudh. He was one of the first who made their peace with Government on the restoration of the British Power in 1858, and his title as Taluqdar was duly confirmed by Sunnud. The estate is said to have been originally one which, according to the

custom of the family, was descendible to a single heir, not necessarily determined by the strict rule of primogeniture. It had certainly passed from Buktowar Singh, the preceding proprietor, to his nephew, Man Singh, though the youngest of three brothers. Accordingly, when the lists prescribed by Section 1 of Art. I of 1869 were made up, the name of Man Singh, as Taluqdar, was inserted in the first and second of those lists.

Some years before the passing of this Act, and on the 22nd April, 1864, Man Singh, under the circumstances which will be afterwards considered, executed and delivered to the Commissioner of the district the document at p. 8 of the Record, which is in these words:—

"I, Maharajah Man Singh, &c., Taluqdar of Shahgunge, Gonda, &c., do hereby declare that, as I have not yet come to any determination as to what boy is to become my successor, I, for the present, declare my wife to become my successor, and inherit the whole of my property, whether moveable or immoveable. She will, until she nominates a successor, have the same power over the property as myself, except that she will not be authorized to make a transfer. There is no partner of mine in my moveable or immoveable property. I have, therefore, executed this will, and deposited it in a public office, that it may serve as a document, and prove of use when required."

Mr. Simson, the then Commissioner, made the following indorsement on the will:—"April 22, 1864. Maharajah Man Singh this day in person signed this document in my presence, and then delivered it to me as his last will and testament;" and wrote on the envelope within which it was inclosed, "Within this sealed envelope is Maharajah Man Singh's will. I forward the envelope to the Deputy Commissioner of Fyzabad, with instructions to lodge it, sealed as it is, in the Treasury; and each Treasury officer will note it in his receipt on giving or receiving charge. Of course the Maharajah may reclaim this on a written application properly authenticated at any time."

After the death of the Maharajah, and in November 1870, this will was opened, and under it the Maharanee was put into possession of the Taluq. She afterwards, by a document dated August 16,

1872, exercised the power which the will gave her of "nominating a successor" in favour of the Respondent Triloki Nath, who was a son, then under age, of one of the late Maharajah's brothers, and had married her own niece.

Shortly after this transaction, the Appellant, Dadwa Sahib, instituted this suit, praying for a declaration of his title to the succession to the Maharajah's estate, and for the cancellation of the document of April 22, 1864 (the will); that of August 16, 1872 (the appointment); and the order of the revenue authorities of November 11, whereby the Maharanee was put in possession.

It is now admitted on all sides, if it were ever seriously disputed, that the Appellant can only succeed in his suit by establishing both the following propositions:—

1. That the testamentary disposition which the Maharajah unquestionably had power to make, and did make in April 1864, was revoked or became inoperative in his lifetime.

2. That the Appellant is entitled to succeed to the Taluq as the son of a daughter of the Maharajah, who had "been treated by him in all respects as his own son" within the meaning of the 4th Clause of Section 22 of Act I of 1869; it being clear that as a mere grandson by a daughter he would not be the heir *ab intestato* to the Taluq under the special canon of succession to intestate Taluqdars established by that section of the Statute.

The Court of First Instance and the Appellate Court in Oudh have concurred in determining the first of these issues against the Appellant. The second of them was found in his favour by the Court of First instance; but that decision was reversed by the Appellate Court.

In dealing with this appeal, their Lordships propose to consider, in the first instance, whether the Appellant has established that he was treated by the late Maharajah "in all respects as his own son," within the meaning of the enactment in question, and is consequently the person entitled to inherit the Taluq, if the Maharajah died intestate.

The clause is perhaps not very clearly or happily expressed, and considerable doubt appears to prevai in Oudh as to the construction to be put upon it. One passage in the Commissioner's (Mr. Capper's)

judgment almost implies that, inasmuch as the actual treatment of a son by his father varies in all countries according to the characters of the parent and the child, it is impossible to say what the Legislature meant by the treatment of a grandson "in all respects as a son." Other passages of the same judgment seem to assume that the treatment must in some way be tantamount to an adoption under the Hindoo Law, involving the legal consequences of such an adoption as, *e.g.*, the subjection of the grandson to prohibitions as to marriage which would not otherwise attach to him. And the Appellant's own plaint affords some colour to such a construction, by describing his mother and guardian as his "sister."

Their Lordships are disposed to think that the clause must be construed irrespectively of the spiritual and legal consequences of an adoption under the Hindoo Law. They apprehend that a Hindoo grandfather could not in the ordinary and proper sense of the term adopt his grandson as a son. Nor do they suppose that, in passing the clause in question, the Legislature intended to point to the practice (almost, if not wholly, obsolete) of constituting, in the person of a daughter's son, a "patricá-puttra," or son of an *appointed* daughter. Such an act, if it can now be done, would be strong evidence of an intention to bring the grandson within the 4th clause, but is not, therefore, essential n order to do so. Moreover, it is to be observed that the 4th, like every other clause in the 22nd section, applies to all the Taluqdars whose names are included in the second or third of the lists prepared under the Act, whether they are Hindoos, Mahommedans, or of any other religion; and it is not until all the heirs defined by the ten first clauses are exhausted that, under the 11th clause, the person entitled to succeed becomes determinable by the law of his religion and tribe.

It is necessary then to put a general as well as a rational construction upon the provision advisedly introduced by the Legislature into this statutory law of succession. And, taking the whole section together, their Lordships are of opinion that wherever it is shown by sufficient evidence that a Taluqdar, not having male issue, has so exceptionally treated the son of a daughter as to give him in the

family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment in question.

Their Lordships will now proceed to consider the effect of the evidence as to the treatment of the Appellant by the Maharajah.

It is unquestionable that the Appellant was from the first brought up in the house of his grandfather, and not in that of his father. This circumstance, of itself, does not go far to prove his case. It may be accounted for by the fact that the social position of the father, though respectable, was very inferior to that of the Maharajah. But, whatever may be its value as evidence, this is a circumstance in the treatment of the boy which involved a departure from the ordinary usages of Hindoos.

On the other hand, it must be admitted on the evidence that the Maharajah had not, in 1864, formed a clear intention that Dadwa Sahib, who was then between 7 and 8 years old, should be his successor.

It has been said that the making of his will was the result of pressure on the part of the authorities. However that may be, the act was a natural one. At that time nothing was definitively fixed as to the course of succession to the newly-constituted Taluqs, except that the Taluqdars had an absolute power of disposition over them. The family custom which had previously regulated the succession to the Maharajah's Taluq was one which implied selection. It was, therefore, in every way desirable that the Maharajah should make some provision as to his successor. The will, which was clearly his own act, indicates that he intended his successor to be a male, though he had not yet made up his mind at to the person. His words are: "As I have not yet come to a determination as to what *boy* is to become my successor." He, therefore, made his wife provisionally his heir, delegating to her the power of selection, which, in his then state of mind, he did not feel able to exercise himself.

That state of mind is the more conceivable if we suppose that he had then begun to entertain the

notion that Dadwa Sahib should ultimately succeed him. Had he then resolved that the successor should be taken from his male relations *ex parte paternâ*, it would have been comparatively easy to nominate a brother or brother's son. In that case his only reason for delaying his choice would have been the desire to be more fully assured of the fitness of the person selected. But a predilection for his grandson would introduce fresh and more serious grounds for hesitation and delay. Independently of his affection for the boy, he might feel that the estate, being separate property, would, according to the *Shasters*, devolve upon him in preference to collaterals, though in the male line. On the other hand, he may have felt reluctant to depart from the family custom and offend his relations by allowing the estate to pass out of his own "Gotra." And if, as is stated on the record, he were a man apt to prefer an indirect to a direct course, he might well determine to shift the responsibility of selection to his widow, to whom he might confide his real and final intentions, trusting to her for the performance of them. That the above was really the state of mind and feeling of the Maharajah when he made his will, appears in some measure from the evidence of Anunt Ram, his Dewan, whom the Deputy Commissioner considered to be a trustworthy witness.

In 1867, the ceremony of the Janeo, or investiture of the Appellant with the Brahminical thread, took place. That this was done with considerable pomp in the Maharajah's house, that the Maharajah took that part in the ceremony which, in the ordinary course of things, would be assumed by the boy's natural father, seems to be established. That what was done operated either in law or in fact as a transfer of the boy from his own into the Maharajah's *gotra*, their Lordships, upon the conflicting evidence in the cause, and against the opinion of Mr. Capper, are unable to affirm.

The next important event in Dadwa Sahib's history was his marriage in 1868 to the daughter of Darogha Ramdan. It seems to be clearly established that on that occasion the Maharajah wrote the two following letters to the father of the bride. The first is in these words:—

"Lallah Tulsiram came to me and verbally men-

tioned to me all the facts. I have, in my former letter, already stated what I wished to communicate to you, and you should attach great weight to that statement. I had fully weighed all the ups and downs before I embarked in this affair. In short, when I have candidly declared Dadwa to be my heir, and am about to celebrate his marriage, with a view that he may stop here, you can have no cause to entertain any apprehension.

"The will contains no such derogatory clause as you have heard. Every sentence in it has a peculiar meaning. Moreover, I have made my intentions known to Colonel Barrow, which you should consider quite correct; you should be quite satisfied."

The other letter is as follows:—

"I have received your letter and become acquainted with its contents. You have some doubt regarding the marriage of Dadwa, but you know very well that I have declared no one to be my heir except Dadwa, and this is known to the authorities. This is the reason that my brothers are displeased with me. You are entirely in fault. As I have made him my heir, and am about to celebrate his marriage here, how is it possible that any other person can become my successor? Dadwa has no reason to go to his native place. You should rest satisfied, and consider what I write to you to be of great weight. I have fully made my views known to my wife, so you should be satisfied, and make preparations for the marriage."

These letters no doubt are no legal revocation of the will. They seem rather to recognize the continued existence of a will. But they are pregnant evidence to show that the Maharajah's inclinations in favour of his grandson had then ripened into a confirmed intention to make him his successor. They are consistent with the hypothesis that the Maharajah at that time either thought that he had named Dadwa Sahib in the will as his successor, or had instructed his wife to exercise her power of appointment in Dadwa's favour. They are inconsistent with the hypothesis that at that time he was in doubt as to the person who should succeed him; or intended to leave to the Maharanee a discretionary power to name any other successor.

There remains, no doubt, the possibility that these letters, written to remove the apprehensions of his

correspondent, and in order to bring about the proposed marriage, were written with a dishonest intention to deceive. But nobody has sought to cast upon the Maharajah's character the imputation which such a supposition implies.

These letters hardly require the confirmation supposed to be afforded by what has been called the "red letter," being the invitation to attend the marriage, which was addressed by the Maharajah to the late Nowring Singh, and contains the words :— "Do not regard this as a customary invitation. Dadwa Sahib is the light of my eyes, and heir to my property." Their Lordships, however, think it right to state that they see no reasons to doubt the genuineness of that document. The original is produced by the widow of the person to whom it was addressed, and it corresponds with a copy of it in the Maharajah's letter-book.

The documentary evidence which has just been considered is far more important, as direct evidence of this intention of the Maharajah, than any parol testimony touching the manner in which the marriage ceremony was conducted. It also goes far to corroborate the testimony of the Plaintiff's witnesses on this point, when that is in conflict with the testimony adduced by the Defendants.

There is, again, some conflict of evidence as to the fact whether the Appellant bore the title of Kowar. There is, however, some evidence that the title was often conceded to him, though he is not uniformly so designated in the Maharajah's own letters. He is so designated in the "red letter." There is also evidence, which their Lordships see no reason to doubt, as to his having on important occasions sat on the Gudder with the Maharajah; of his having been introduced by the Maharajah's desire to European officers high in authority; of his having been taken to the Durbar of the Governor-General and put prominently forward there; and it cannot be doubted that the effect of the Maharajah's treatment of him was to produce a strong impression on the minds of the officials that he was the intended successor.

So matters stood when the Maharajah, as one of the leading members of the British Indian Association of Taluqdars, went down to Calcutta in order to take part in the discussions and negotiations

which resulted in the passing of Act I of 1869. This must have been in the latter half of 1868.

Imtiaz Ali, the Vakil concerned in the drafting and preparation of this Act on the part of the Taluqdars, has sworn that clause 4 of the 22nd section originated with the Maharajah; that it was opposed by some of the Taluqdars, but finally approved of by the Select Committee of the Governor-General's Legislative Council on the Bill, and passed into law. He also says that he was told by the Maharajah that his object in pressing this clause was to provide for the Dadwa Sahib.

There is some contradictory evidence on this point on the part of the Defendants. One of their witnesses, however, Chowdree Niamut Khan, at page 63 of the Record, seems to admit that the Maharajah was the author of the clause in question, though he represents that it was inserted for the benefit of Mahommedan rather than for that of the Hindoo Taluqdars. He says, "I asked Maharajah Man Singh what the object was of the clause in question, and he informed me that in the absence of a near relation, grandsons on the daughter's side can have no claim under the Hindoo law, but under the Mahommedan law they have; and that the clause in question was inserted with the view that the followers of neither religion might suffer, and that the provisions of the Hindoo law might not be contravened." It is not easy to see why the Maharajah should have been thus anxious to originate a clause that was to enure only for the benefit of Mussulman Taluqdars.

The scale, however, is conclusively turned in favour of the testimony of Imtiaz Ali on this point by the evidence of Mr. Carnegy.

Mr. Carnegy, whatever may be the effect of his evidence upon the questions of revocation, which will be hereafter considered, cannot, their Lordships think, be disbelieved as to the fact that a conversation did take place between him and the Maharajah in January 1870, and that in the course of that conversation the Maharajah did make a statement to the effect that he had had a clause inserted in Act I of 1869 to suit the identical case of the Dadwa. That statement is very material, inasmuch as it shows that the Maharajah considered that he had treated his grandson in all respects as a son.

The Deputy Commissioner (Mr. King), speaking possibly in some measure from personal knowledge, says:—"It is not saying too much, the Court believes, to say that if the Plaintiff had not existed, the clause as it stands would never have been enacted." Their Lordships, weighing the evidence in the cause, and proceeding on that alone, would come to the same conclusion.

It appears, then, to their Lordships that, however uncertain it may be when the notion of making the Dadwa Sahib his successor was first conceived, or when that notion first became a fixed intention, it is established that the Maharajah had that intention as early as the date of the Dadwa Sahib's marriage; that, with that intention, he continually treated his grandson, in fact, as the son of the house would be treated, and not as a mere grandson by a daughter; and that, in order to effectuate his intention by operation of law, rather than by will, he caused the clause in question to be inserted in the Statute.

They are further satisfied that the treatment, in point of fact, was such as the words of the clause, upon the true construction of it, must be held to contemplate; and that, in the events that have happened, the Appellant was the statutory heir to the Taluq, if the Maharajah is to be held to have died intestate.

They now approach the more difficult question, whether there was a revocation of the will.

If the finding of their Lordships upon the question of "treatment" is correct, it follows that the Maharajah, from the time of his return from Calcutta, would presumably have, with regard to his will, the *animus revocandi*. It is unreasonable to suppose that, having been at so much pains to make Dadwa Sahib his heir *ab intestato*, he would wish to leave that arrangement liable to be defeated at the will, and by the act, of the Maharanee. Moreover, his conduct, and what we are told of his character, make it probable that, even if he thought the succession of Dadwa was secured either by the terms of the will or by further instructions given to the Maharanee, he would now desire it to be effected by operation of law rather than by a voluntary disposition, certain to offend his relatives in the male line, likely to provoke criticism and censure, and not unlikely to cause dissension and litigation in the family.

Nor have we, in this instance, as in ordinary cases of revocation, to account for a change in the testator's intentions, whereby his bounty is diverted from one object to another. The disposition by this will was, on the face of the instrument, only provisional. It argued no fixed intention to benefit the Maharanee, for it provided for the substitution of a male successor in her place. The Maharajah had since made up his mind who that successor should be, and believed that he had provided for effecting his intention by operation of law. In these circumstances, the provisional disposition by this will, if not an obstacle to the carrying out of his wishes, had at least become useless and superfluous. These considerations render it highly probable that the conversation to which Mr. Carnegy has deposed did pass between him and the Maharajah. Their Lordships will now consider that gentleman's testimony and the objections that have been taken to it.

The passages material to the question of revocation in Mr. Carnegy's deposition are the following :—

"He spoke to me about having it (the will) withdrawn from the Treasury on the eve of my departure on tour across the Gogra (Mr. Sparks' evidence fixes the date of this as some time in January 1870), and expressed a wish that I should examine the deed and see what provisions he had made for the adoption of an heir. He said he had authorized the Maharanee to name an heir, and it was his wish that the power to adopt or name an heir should be limited to the Dadwa Sahib ; that he was apprehensive that he had given her a personal power to adopt any one of the lads of the family; and that if, on examination of the document, I found that his apprehensions were just, he wished me to destroy it, because his intention was, and always had been, that the Dadwa should succeed him; and he had had a special clause inserted in Act I of 1869 to suit the identical case of the Dadwa; so his wishes would be fully met by the document being destroyed and the law being allowed to take its course. Next morning I crossed the Gogra on tour, and was absent several weeks. I wrote demi-officially to Mr. Sparks, the Deputy Commissioner, to get out the will and send it to me, and I also discussed the subject with the Chief Commissioner, Mr. Davies,

who, I remember, said that if the will was sealed up and deposited by the Commissioner, I, as officiating Commissioner, might open it; but, if sealed and deposited under orders of the Chief Commissioner, I had better not open it myself. Mr. Sparks unfortunately overlooked the matter, and it escaped my memory during the rest of my tour, and when I returned to Fyzabad I found the Maharajah's health, physical and mental, to be such that I deemed it expedient to take no further steps in the matter, and there it remained. This was in the cold weather of 1869-70."

And in cross-examination he said: "The Maharajah wished his will to be destroyed that the Dadwa Sahib might get the benefit of the 22nd section of Act I of 1869. He said there was no need of the document, as the clause secured his wishes."

The first objection to Mr. Carnegy's evidence is that it is not corroborated by that of Mr. Sparks, which is also given in the cause. He says, touching this point, "To the best of my recollection, Mr. Carnegy never wrote to me to send him the will. Mr. Carnegy, either verbally or by note, asked me to get out the will and see by whom it was deposited. I requested the Treasury Office to get out the will and see by whom it was deposited, which copy I dispatched to Mr. Carnegy. I did not receive any letter, official or demi-official, to return the will to the Maharajah. I did not receive any letter from Mr. Carnegy asking me to return the will, nor did I receive any khutt from the Maharajah. I don't remember receiving any."

Upon this testimony, it is to be remarked, that it confirms that of Mr. Carnegy as to the fact that at the time in question he made some communication to Mr. Sparks touching the Maharajah's will, though there is a material discrepancy between the two depositions as to the precise terms and nature of that communication. To that extent then it corroborates Mr. Carnegy's general statement that he had had a conversation with, and some instructions from, the Maharajah about the will, for otherwise there would be no apparent reason for any correspondence between the two officers on the subject. Mr. Carnegy was examined on the 19th April, 1873, when on the eve of his departure for Europe. Mr. Sparks was examined on the 2nd of

the following July, and there was no opportunity of recalling Mr. Carnegy, and getting him to explain, if he could, the before-mentioned discrepancy. It is conceivable that the deposition of each officer may be partially accurate and partially defective; that Mr. Carnegy, after the discussion with Mr. Davies to which he deposes, may have written to Mr. Sparks to the effect deposed to by the latter, and may on another and possibly subsequent occasion have written to the effect to which he himself deposes. The letter or letters (if any) that did pass are not in evidence, and the question of what really passed rests on the accuracy of the recollection of the two witnesses. It may further be observed, as bearing on the general credibility of Mr. Carnegy, that he has expressly sworn to a discussion on this subject with the Chief Commissioner, Mr. Davies. He has, therefore, vouched that gentleman, who might have been called to contradict him, and the discussion, if it took place, presupposes that Mr. Carnegy had some instructions from the Maharajah concerning the will.

Other objections to the testimony of Mr. Carnegy are founded on his conduct. It has been asked why, if he had this alleged authority to destroy the will, he did not exercise it; why, after his return from his official tour, he did not even inform the Maharajah (who lived until the following October, and, notwithstanding frequent attacks of epilepsy, was occasionally equal to the transaction of business) that the will was still in existence; and, above all, why, after the death of the Maharajah, he allowed the widow to be put into possession of the Taluq, under the will, upon the assumption that the disposition made by it was still in force.

It is impossible to deny that these objections have more or less weight. The following is the explanation which may be set against them. It is clear that the will, from one cause or another, did not reach Mr. Carnegy whilst on his tour; that, according to his own account, he allowed the matter, though of such great importance, to escape his memory, and omitted to press for the dispatch of the document; that after his return he found the Maharajah on the occasion of his visit to him in a deplorable state of health, and wholly unfit for business. So far Mr. Carnegy is confirmed by

Mr. Sparks. Mr. Carnegy seems then to have jumped to the conclusion that the Maharajah's health, physical and mental, was such as to make it inexpedient to take further action in the matter. If this were Mr. Carnegy's sincere conviction, it may well account for his not acting after his return, on the antecedent authority by destroying the will. To destroy a will on the parol authority of the testator would in any case be an extremely delicate matter. A man who would have done the act, if assured that it would be confirmed, if necessary, by a person in the full possession of his faculties, would naturally abstain from doing it, if he felt that the confirmation (if obtained) might be questioned as proceeding from one of enfeebled capacity, if not of absolute incapacity for business. His conviction of the Maharajah's continuous incapacity for business, though erroneous in point of fact, might also account for his omission to renew the subject, or to inform the Maharajah that the will was still in existence. His conduct after the Maharajah's death seems to be explicable only on the assumption that he may have thought the actual destruction of the instrument was essential to its legal revocation; and that, if he objected to the Maharanee's title on the ground of what had passed between himself and her late husband, he would expose himself to criticism and censure without benefiting the Dadwa Sahib, whose interests he may have supposed, in common with other officials, and many of the dependents of the family, would be secured by the Maharanee's exercise of her power in accordance with her husband's intentions.

Their Lordships do not say that this explanation is wholly satisfactory. But the question which they have to determine is not whether Mr. Carnegy's conduct can be completely explained, but whether it be such as renders his evidence untrustworthy. Their Lordships, considering the position and general character of the witness, are of opinion that this is not the case. Upon his general truthfulness neither the Commissioner nor the Deputy Commissioner has cast any suspicion. The former was of opinion that, considering all the circumstances, he could not depend on the accuracy of Mr. Carnegy's recollections of the conversation with the Maharajah. The other Judge says expressly "that

the conversation, such as related by Carnegy, passed between him and the Maharajah I have no doubt." Reviewing, however, Mr. Carnegy's subsequent conduct, he came to the conclusion that "Man Singh only expressed an intention that the Dadwa Sahib should succeed him, and of inspecting his will for the purpose of seeing what he had actually written in it regarding his wife's power to adopt, but did nothing more." He also expresses a doubt "whether, supposing revocation had been clearly proved, it would be proper to let this outweigh the existence of the will," implying that something in the nature of cancellation was necessary. Upon these judgments their Lordships observe that, if Mr. Carnegy be accepted as a truthful witness, the more important portion of his testimony can hardly thus be explained away. His recollection may possibly deceive him as to the terms and nature of his communication with Mr. Sparks; but mere imperfection of memory can hardly account for his imagining that the Maharajah gave him authority to destroy the will if no such authority was given. The authority was in itself a thing so unusual and so important, that the words which conveyed it were likely to stamp themselves on the memory. Nor is it easy to see how such an authority, if not clearly expressed, could be honestly inferred from other words imperfectly remembered. Their Lordships have, therefore, come to the conclusion that Mr. Carnegy's statement of what passed between him and the Maharajah may be accepted as substantially accurate.

If this be so, their Lordships are of opinion that what so passed amounted to a revocation of the will. It cannot, they think, be doubted that the will of a Hindoo may be revoked by parol. The cases cited at the Bar show that this was the law of England before the Statute of Frauds was passed. Their Lordships are very sensible of the danger of acting upon such evidence as is ordinarily produced in the Courts in India in order to establish such a revocation, and they desire to say nothing which may induce those Courts to apply the law in such cases otherwise than with extreme caution. Even in the present case their Lordships have come to the conclusion upon which they are about to act with some hesitation, not because they are not

perfectly satisfied that the Maharajah had the *animus revocandi*, but because the testimony of Mr. Carnegy is open to the objections which have been considered. It was hardly disputed at the Bar that, if definitive authority to destroy the will was given to him by the Maharajah, that would be sufficient in law to constitute a revocation, although the instrument was not in fact destroyed. In truth, the case would then be almost on all fours with that of *Walcott* v. *Ochterlony*, 1 *Curteis*, 580, the only difference being that the authority was given here by words, and there by a writing sufficient to satisfy the Statute of Frauds. In that case, as in this, the authority was not exercised by the actual destruction of the will.

Their Lordships see no grounds for not accepting that part of Mr. Carnegy's testimony which says that the Maharajah gave him authority to destroy the will, if on examination he should find that it contained a certain disposition. Nor do they think that this qualification of an absolute order to destroy is material, because the will, being what it was, the authority would have clearly justified its destruction. And they are disposed to think that even if the direction to destroy were not, as, upon the whole, they think it is, satisfactorily established, the declaration made by the Maharajah to the principal officer of the district in whose custody the will was, of his desire and intention that the Dadwa Sahib should succeed him by virtue of the newly-passed Statute, and in supersession of the will, would have been in law a sufficient parol revocation.

Upon the whole, then, their Lordships are of opinion that the Maharajah died, as he intended to die, intestate; that the Appellant is the person who, under clause 4 of section 22 of Act I of 1869, was entitled to succeed to the Taluq; and that he has made out his claim for a declaratory decree to that effect.

The declaration, however, must, their Lordships think, be limited to the Taluq and what passes with it. If the Maharajah had personal or other property not properly parcel of the Taluqdari estate, that would seem to be descendible according to the ordinary law of succession.

They will, therefore, humbly advise Her Majesty to reverse the Decree of the Commissioner of

Fyzabad dated December 24, 1873, and that of the Deputy Commissioner of Fyzabad dated July 28, 1873; and to declare that the will of the late Maharajah Man Singh of April 22, 1864, was duly revoked by him in his lifetime; and that the Plaintiff, Maharajah Pertab Narain Singh, *alias* Dadwa Sahib, was and is entitled, under clause 4, section 22, of Act 1 of 1869, to succeed, as *ab intestato*, to the Taluqdari estate of the late Maharajah, including whatever is descendible according to the provisions of the said Statute. Their Lordships are of opinion that, under the peculiar circumstances of this case, the Commissioner exercised a sound discretion in making the costs of the litigation payable out of the Taluqdari estate; and that the costs of both parties of this Appeal ought to be taxed as between solicitor and client, and similarly dealt with. And they will advise Her Majesty accordingly.

PRINTED AT THE FOREIGN OFFICE BY T. HARRISON.—20/7/77.