Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Rani Lekraj Kuar v. *Baboo Mahpal Singh, and Rani Rughubuns Kuar* v. *Baboo Mahpal Singh (two Consolidated Appeals), from the Courts of the Commissioner of Lucknow and the Judicial Commissioner of Oudh respectively; delivered 25th November* 1879.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE question in this Appeal is whether the Plaintiff Baboo Mahpal Singh, or one of the Defendants, Rani Rughubuns Kuar, is entitled as the next heir to Udit Pertab Singh, one of the talookdars of Oudh, to the talook of Surajpur, and another talook of which Udit Pertab Singh died possessed. Udit died without male issue, leaving a widow, since deceased, and an only daughter, the Defendant Rughubuns. The Plaintiff is the nearest male relation of the deceased talookdar, standing in the position of first cousin once removed. On the death of Udit Pertab Singh, his widow Subhraj was put into possession of the talooks in dispute; but under a compromise with Rani Lekhraj Kuar, the step-mother of the deceased talookdar, the possession was given up to Rani Lekhraj. That was the state of things when the present plaint was brought, and Rani Lekhraj Kuar was alone made the Defendant. The first judgment in the case was given by the Deputy Commissioner when the Record was in this state. On an appeal from his judgment, the Commis-

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sioner directed that the daughter, Rani Rughubuns Kuar, should be joined as a Defendant, and remanded the case to the Deputy Commissioner, directing a new issue which was necessary in consequence of her being brought into the suit. That issue in substance was whether the Plaintiff or the daughter was the next heir to Udit Pertab Singh, and entitled to succeed to his estate. There can be no doubt that by the general Hindoo law, which would prevail in the absence of any special custom, the daughter would have been entitled to the inheritance of her sonless father. The question which is raised in the cause, and by the issue which was joined after Rughubuns had become a Defendant on the Record, is whether in the Bahrulia clan, to which this family belongs, a custom exists to exclude daughters from succeeding to the inheritance of their fathers' estate.

Other questions were raised in the suit, but the only question which remains to be determined is whether the evidence which was given by the Plaintiff to support that custom was properly admissible? This evidence consists of a number of wajibularz, or village administration papers, which state, in a manner which will be hereafter adverted to, a custom to the effect that daughters are excluded from inheritance in the Bahrulia clan. There is no doubt that if those papers are properly admissible in evidence as proof of the custom, Rughubuns, the daughter, would be excluded by the custom stated in them. These wajibularz, or village papers, are regarded as of great importance by the Government. They were directed to be made by Regulation VII. of 1822, and it may be as well to read the language of it before adverting to the objections which have been taken to the reception of the papers in the present suit. The 9th section is, "It shall be "the duty of Collectors, and other persons exer-

" cising the powers of Collectors, on the occasion " of making or revising settlements of the land " revenue, to unite with the adjustment of the " assessment and the investigation of the extent " and produce of the lands, the object of ascer- " taining and recording the fullest possible " information in regard to landed tenures, the " rights, interests, and privileges of the various " classes of the agricultural community. For " this purpose their proceedings shall embrace " the formation of as accurate a record as " possible of all local usages connected with landed " tenures, as full as practicable a specification of " all persons enjoying the possession and " property of the soil, or vested with any " heritable or transferable interest in the land;" and other purposes are referred to in this section. Then in the latter part of it there occurs this passage: " The information collected on the above " points shall be so arranged and recorded as to " admit of immediate reference hereafter by the " Courts of Judicature." It is stated by the Judicial Commissioner that officers in administering the Province of Oude were directed to be guided by the spirit of this amongst other resolutions.

The papers which are objected to were offered in evidence and received by the Courts under the 35th section of the Indian Evidence Act, 1872. The section is this: " An entry " in any public or other official book, register, " or record stating a fact in issue or relevant " fact, and made by a public servant in the " discharge of his official duty, or by any " other person in performance of a duty specially " enjoined by the law of the country in which " such book, register, or record is kept, is itself " a relevant fact."

The manner in which these village papers were made up with respect to the custom appears to be,

that the officer recorded the statements of persons who were connected with the villages in the pergunnah in which this talook is situate. Some of the persons whose statements were taken were the proprietors of villages in the talook; others appear to be the proprietors of villages not in the talook, but in the pergunnah. The Record contains translations of the wajibularz, but not of the whole contents of the papers. Extracts from them only are printed, and these extracts show that the persons giving the information made statements, which are contained in paragraph 4, declaring the existence of the custom in question. These documents are entered of record in the office, and they must be taken upon the evidence to have been regularly entered and kept there as authentic wajibularz papers. The objections which were taken to their reception are stated in the judgment of the Judicial Commissioner, and are these: "Exception was taken to these "documents on the part of the daughter on "the ground that they were not prepared or "attested by the Settlement Officer in person "as required by Regulation VII., 1822, and "that they relate to matters which the Settle-"ment Officer had no jurisdiction to include "in them." Those are the only objections which are stated by the Judicial Commissioner to have been made. A further objection which was relied on by Mr. Cowie appears also to have been taken by the daughter in the course of the proceedings, viz., that she was not bound by the statements in question, inasmuch as she was no party to the making up of the wajibularz. Before dealing with these objections, it will be convenient to refer to what the Commissioner says of the documents. He says: "These are official records of admitted customs "all properly attested." It must therefore be

taken that they are official records kept in the Archives of the Office, and that they are authenticated by the signatures of the officers who made them, that being what their Lordships understand from the statement of the Commissioner that they are all properly attested.

The first objection, and the one most relied upon, is that these papers were not prepared or attested by the Settlement Officer in person. We have no precise information of the manner in which the Regulations were directed to be of force in Oudh, but the Judicial Commissioner, as already mentioned, says: "Officers in adminis- "tering the Province were directed to be guided "by the spirit of this amongst other Regulations, "but they were not tied down to its exact text." It is plain that they could not be so tied down, because the Regulation in question refers to Collectors, and there are no Collectors in the Province of Oudh. Therefore in applying this Regulation in its spirit, we must substitute for Collectors and their subordinates the persons who were performing the duties which would have fallen upon Collectors in the parts of India to which the Regulation originally applied. These would be the Settlement Officers, or those subordinate to the Settlement Officers, who were employed in making or revising the settlements. The words of the Regulation are:—"It shall "be the duty of Collectors and other officers "exercising the powers of Collectors, on the "occasion of making or revising settlements of "the land revenue," to make up the papers. When documents are found to be recorded as being properly made up, and when they are found to be acted upon as authentic records, the rule of law is to presume that everything had been rightly done in their preparation unless the contrary appears. Upon this objection the Judicial Commissioner makes the following ob-

servation: "The mere fact then that the Settle-
" ment Records of this Province were prepared
" and attested by officers subordinate to the
" Settlement Officer, and not by the Settlement
" Officer in person, cannot be accepted as in
" any way invalidating the records themselves."
He was of opinion that the officers who obtained this information, and who attested the record of what they had obtained, were officers subordinate to the Settlement Officer, and this being so, their Lordships think that the Judicial Commissioner was right in holding that the wajibularz were prepared by the proper officers, and that this first objection ought not to prevail.

If then these documents were made by proper officers, is there any valid objection to receiving in evidence the information which they record? The objection taken and referred to by the Judicial Commissioner does not very precisely hit the point which has been argued at the bar. He says, "The objection was that they"—that is, the administration papers—"relate to matters which
" the Settlement Officer had no jurisdiction to
" include in them." That objection seems to their Lordships to be unfounded. The officers who were to make the inquiries were directed to ascertain and record "the fullest possible infor-
" mation in regard to landed tenures, the rights,
" interests, and privilege of the various classes of
" the agricultural community. For this purpose
" their proceedings shall embrace the formation
" of as accurate a record as possible of all local
" usages connected with landed tenures." This custom of the Bahrulia clan relating to the mode of inheritance in the clan seems clearly to be a usage of the kind which the Regulation requires the officer to ascertain and record.

The objection which has been argued is that the papers, upon the face of them, do not show that the officers had passed any judgment upon

the information they received, and contain no record of their opinions or findings upon them. It is true that no express statement of the opinion or finding of the officers appears upon the papers, but their Lordships think that the fact that the officers recorded these statements, and attested them by their signature, amounts to an acknowledgment by them that the information they contained was worthy of credit, and gave a true description of the custom. Suppose the papers had had a heading such as the following: "The "usages of the Bahrulia clan appear in the "information recorded below." This would undoubtedly be an expression by the officer of his opinion that the statements contained a correct description of the custom. Then, when we find that the statements are recorded and authenticated in the manner that has been mentioned, and placed in the Government Records, ought it not to be implied that the officer has in effect affirmed that the information embodied in the recorded statements was true, and described an existing custom? Their Lordships think that such an implication may in this case be properly made.

The Indian Evidence Act has repealed all rules of evidence not contained in any Statute or Regulations, and the Plaintiff must therefore show that these papers are admissible under some provision of the Indian Evidence Act. That relied on is the 35th section, which has been already read. It is necessary to look at the precise terms of this section; and for the present purpose it may be read: "An "entry in any official record stating a fact in "issue or relevant fact, and made by a public "servant in the discharge of his official duty, "is itself a relevant fact." There can be no doubt that the entries in question, supposing them to bear the construction already given to them, state a relevant fact, if not the very fact

in issue, viz., the usage of the Bahrulia clan. If so, then the entry having stated that relevant fact, the entry itself becomes by force of the section a relevant fact; that is to say, it may be given in evidence as a relevant fact, because, being made by a public officer, it contains an entry of a fact which is relevant.

There is another ground upon which it is said that these entries would be admissible. Supposing that these papers were not to be treated as records themselves describing the custom, but as recording only the opinions of persons likely to know it, the 48th section would appear in that view of the entries to make them admissible. The 48th section is, "When "the Court has to form an opinion as to the "existence of any general custom or right, "the opinions as to the existence of such custom "or right of persons who would be likely to "know of its existence, if it existed, are rele-"vant." Then if opinions of this nature were relevant, the entry of such opinions in an official record is itself a relevant fact, which makes the entry admissible. There may be doubt whether what for the present purpose are assumed to be opinions would fall under the 48th clause, or the 49th, which is as follows, and refers to family usages: "When the Court has to form "an opinion as to the usages and tenets of any "body of men or family, the opinions of persons "having special means of knowledge therein "are relevant facts." It is enough for their Lordships, without giving an opinion on this last ground, to rest their decision as to the admissibility of the entries on the first ground. Placing the admissibility of the papers on this ground, the Evidence Act does not appear to have altered the law with regard to papers of this description, for it had been decided by the High Court of the North-Western Provinces that

wajibularz papers, being a record of rights made by a public servant, were admissible in evidence and entitled to weight in proof of village customs. That case is found in the 2nd Volume of the North-Western Provinces High Court Reports, page 397.

On the part of the daughter it was objected that being no party to the making up of the papers, she was not bound by the statements in them. She is, no doubt, not bound in the sense of being concluded by them. They do not in any way estop her from asserting her right or disputing the custom which is stated in them. They are only received as evidence, and are open to be answered, and the statements in them may be rebutted. No evidence however was given on the part of either of these Defendants to show that the custom did not exist, and their Lordships cannot but observe that if the custom did not exist, nothing could have been easier than to obtain proof of descents and succession to property, which would negative it. It appears that there are numerous villages in this talook, and more in the pergunnah; the Bahrulia clan is a large one, and if the custom did not exist the Defendants must have had means, to be obtained without difficulty, of disproving it.

Their Lordships therefore think that these administration papers were properly admitted in evidence, that the objections made to their reception have failed; and that being so, it is not disputed that they contain full proof of this custom.

Their Lordships are of opinion that the judgments of the Court below are right, and they will humbly advise Her Majesty to affirm them, and to dismiss the Appeal with costs.