Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jagatpal Singh v. *Raja Jageshar Bakhsh Singh and another, from the Court of the Judicial Commissioner of Oudh; delivered the 3rd December* 1902.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*Delivered by Lord Robertson.*]

The subject of the present dispute is Dasrathpur, a talook in Oudh, which was granted by the British Government in 1858 to a certain Thakur Hanuman Singh. His name was entered in lists 1 and 2, prepared under the provisions of The Oudh Estates Act (I. of 1869). It results that the succession is regulated by Section 22 of that Act; and, as the first ten sub-sections of Section 22 do not apply, the rule is to be found in the 11th sub-section; the estate goes to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such Talukdar are subject. On the death of Hanuman, his grandson Ruder Narain succeeded; and, on Ruder's death in 1869, his mother took the estate of a Hindu mother. She died in July 1879; and the question in this Appeal is as to the descent of the estate upon her death. The

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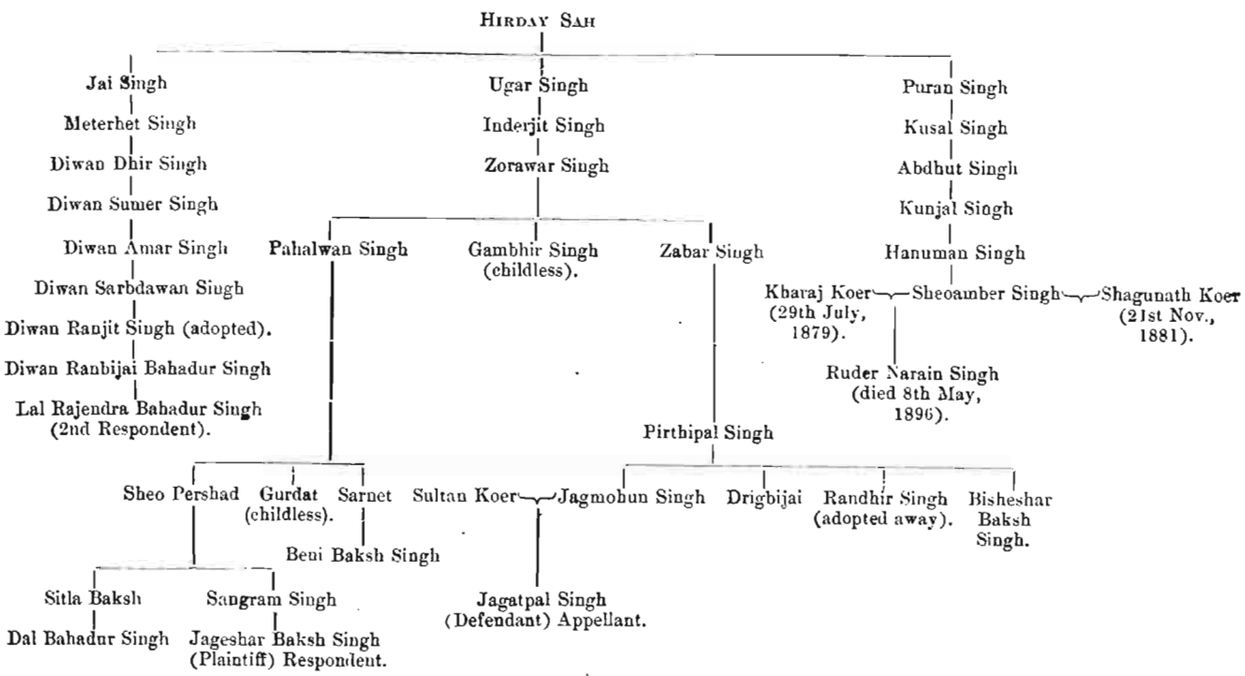
interval however between her death and the institution of the present suit on 23rd July 1891 yielded important events bearing on the present dispute. On her death, possession was taken by the stepmother of Ruder Narain, who admittedly had no good right and on her death in 1881 by Bijai Bahadur who again was a pretender, claiming under a will of the stepmother. He was ultimately dispossessed in favour of the present Appellant's father, under an Order of Her late Majesty Queen Victoria in Council made on 1st May 1890. The fact has been fairly commented on that this same Bijai Bahadur, who is proved by deed produced to be the true promoter of the present suit, never raised in this former proceeding the genealogical theory now advanced. But for present purposes it is more important to observe that the decision of the Judicial Committee in 1890 was that this estate was impartible and followed the line of primogeniture; and in their Lordships' judgment this must be held to be one of the conditions governing the present controversy.

The present suit was instituted on 23rd July 1891; and the present Appellant being *de facto* in possession it seeks possession. The action is therefore one of ejectment and it was for the Respondents to establish their title.

Before considering the grounds upon which this claim was based, it is convenient to notice the plea of limitation stated by the Appellant. The plaint having been filed on 23rd July 1891, the Appellant alleged that the death of Kharaq Koer occurred on 20th July 1879, more than twelve years before. To this it was answered that the death occurred on 29th July 1879, and that this date had been stated in a pleading of the father of the Appellant acting (owing to insanity) through the mother of the Appellant, in some former suit.

It appears however that in that suit the exact date was of no materiality and that it had originally been left blank. Against this evidence (for it is not pleaded as an estoppel) is to be set the much more deliberate and intentional statement of the date of this lady's death which is contained in the report regarding mutation of names which is on p. 206, of the record. The report of the Patwari is that she died on Sawan Sudi 5th 1886 Fasli. That day admittedly corresponds to 25th July. It is true that the report adds the words "corresponding to 20th July." But their Lordships agree with the Court below in holding that in a statement thus made by the Patwari the substantive statement is that given in the vernacular and that the rest is a miscalculation.

Turning now to the case of the Respondents on its merits, it may be convenient to set out the pedigree put forward in the Respondents' case. It is as follows :—



The questions raised by the Appellant's written statement were numerous, but it is unnecessary

to enumerate these, as the vital controversy came to be on three points, and ultimately on one point, in the genealogical tree of the Respondents. That point may be thus stated with reference to the central part of the pedigree:—were the Judicial Commissioners right in holding that the Respondents have established that Pahalwan Singh from whom they descend was born before Zabar Singh, from whom the Appellant descends? Unless the Respondents have made this out, the other highly disputable propositions maintained by them never arise.

Now the Subordinate Judge of Partabgarh who tried the case decided this question against the Respondents on 19th December 1895, and in reversing this judgment the Judicial Commissioners largely proceeded on documentary evidence, which the Subordinate Judge rejected as some of it inadmissible and some valueless. At their Lordships' bar neither party attached much importance to the oral evidence; and while the Respondents' Counsel quite properly declined to admit that the disputed documents were indispensable to his success they addressed no separate argument to their Lordships on the assumption that the documents in dispute were disregarded. The questions about these documents are therefore of crucial importance.

1. The first set of documents were filed by the Plaintiffs in the suit and are now founded upon by the Respondents (as proving certain statements to have been made by one Beni Bakhsh Singh, now deceased). But this Beni Bakhsh was alive on 4th July 1892, when the Plaintiff closed his case. He had been summoned as a witness by both parties. After the Appellant had closed his case, the Plaintiffs on 30th September 1893 applied for leave to examine a number of witnesses, among them being Beni Bakhsh. This application was refused, and, their Lordships have no doubt rightly refused. In these

circumstances the question is on what ground can the written statements of a person alive when the party founding on them closed his case be received as evidence. It was attempted to distinguish the case on the ground that the Appellant had himself on 21st July 1894 (after Beni Bakhsh was dead) filed certain other statements of this same man. But those documents, which were doubtless filed in case the Respondents' documents should be admitted, are not evidence; and their production by the Appellant cannot be held to compel the Court to depart from the rules of evidence in the decision of the case. The Subordinate Judge held the documents in question to be inadmissible on the ground that the Plaintiffs had not called Beni Bakhsh as a witness. On appeal the documents were admitted.

It appears to their Lordships that the reception of those documents cannot be supported, their alleged author having been alive down to the closing of the Plaintiffs' case.

The other document stands in a different position. Its alleged author, Rai Gurdat Singh, had died before the trial. But the exhibit in question is merely a genealogical table filed on behalf of Gurdat in a claim made by him for certain villages. The object of Gurdat in this proceeding was to make himself out to be of the eldest branch of his family and this admittedly was untrue. But the fatal objection to the admissibility of the document is that it is in no way brought home to Gurdat except as being an exhibit binding on him for the purposes of that suit. His relation to the document is therefore something entirely different from the personal knowledge and belief which must be found or presumed in any statement of a deceased person which is admissible in evidence. For aught that appears, the genealogical table in question might

never have been seen or heard of by Gurdat personally but have been entirely the work of his pleader.

These questions being decided adversely to the Respondents there remains no substance in their case. The rest of the evidence consists of documents of no importance or authority and oral evidence which their Lordships were not asked to accept. Into such evidence they do not think it necessary to enter. Their Lordships therefore hold that it has not been proved that Pahalwan Singh was older than Zabar Singh and the Respondents' case therefore fails. The burden of proof was on the Respondents and that burden they have failed to discharge.

Their Lordships will humbly advise His Majesty that the Appeal ought to be allowed, the Decree of the Court of the Judicial Commissioner of Oudh reversed with costs, and the Judgment of the Judge of the Small Cause Court Lucknow restored. The Respondents will pay the costs of the Appeal.