

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lal Achal Ram v. Raja Kazim Husain Khan, from the Court of the Judicial Commissioner of Oudh ; delivered the 9th February 1905.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from a Judgment and Decree of the Court of the Judicial Commissioner of Oudh, reversing the decision of the Court below, and awarding to the Respondent Raja Kazim Husain Khan possession of one half of the taluq Birwa Mehnon.

The taluq was granted to one Pirthi Pal after the confiscation. It was placed in Classes 1 and 2, but not in Class 3 of Act I. of 1869. The taluq, therefore, is one that devolves upon a single heir, though not descending according to the rules of lineal primogeniture.

Pirthi Pal died in the year 1859. He left a widow and a daughter, but no male issue. He was succeeded by his widow. She died in 1870, and then the daughter inherited the estate. Upon her death on the 23rd of February 1879, the succession opened to collaterals of Pirthi Pal.

The Appellant Achal Ram was the husband of Pirthi Pal's daughter. On his wife's death he

took possession. He was beset by litigation. But with the exception of a short interval following his dispossession by a claimant who succeeded in the Court of the Judicial Commissioner, but failed before this tribunal, he managed to hold sole possession against all comers until the Decree now under Appeal was pronounced.

The Respondent Raja Kazim Husain Khan claims to be entitled to one moiety of the estate under a purchase from Ardawan Singh, who has been held to be the heir of the nearest collateral of Pirthi Pal living at the daughter's death.

The present suit was brought by Ardawan and the Raja suing as co-Plaintiffs. Ardawan afterwards withdrew from the case. He is said to have been bought off by Achal Ram. At any rate, at his own request and on the allegation that he was satisfied his case was baseless, his name was struck off the Record. Then arose the question whether the Raja could sue alone, and it was held that he could.

A great number of objections were raised by Achal Ram by way of defence. All but two are disposed of, either by decisions of this Board or by concurrent findings which the Appellant is not in a position to contest. The two remaining objections are these:—In the first place it is contended that the sale to the Raja was void as being champertous and a "gambling in litigation" contrary to public policy. Then it is objected that there is a branch of the family senior to that to which Ardawan belongs, and that in it there are to be found collaterals nearer than Ardawan. This branch traces descent from a remote ancestor, Azmat Singh, the younger son of a powerful chieftain called Dutt Singh, from whose brother Ardawan is descended. The sole question on this part of the case is whether Azmat passed out of the family by adoption.