Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lal Bahadur and others v. *Kanhaia Lal, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 8th February* 1907.

Present at the Hearing:

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

[*Delivered by Sir Andrew Scoble.*]

The litigation in this case began between three brothers, sons of one Durga Parshad, two of whom, named Lal Bahadur and Jagdamba Parshad, brought a suit against their elder brother Kanhaia Lal, the present Respondent, to set aside a will made by their father, which they contended was invalid and void according to Hindu law. Jagdamba Parshad has died since the institution of the suit, and his minor sons represent his interest in this Appeal.

Durga Parshad was one of the three sons of one Gobind Ram, and it is admitted that he separated from his two brothers, Jwala Parshad and Hazari Lal, in 1866. Up to that time the three brothers had formed a joint Hindu family; but a complete partition of the family property, whatever it was, was then made between them. At the date of the partition, two of Durga Parshad's sons, Kanhaia Lal and Lal Bahadur, were living; the third son, Jagdamba Parshad, was born subsequently.

The most important question which their Lordships have had to consider, has been, how much (if any) of the property then partitioned was ancestral; and this depends upon how much property was left by Gobind Ram at the time of his death in 1849. For the Respondent it was at one time contended that "he left no "funds or immoveable property"; but that contention has since been abandoned. In the High Court, Banerji J. found that the only immoveable property left by him was a grove in Salehnagar, which is valued at Rs. 666 in the Plaint, and a dewankhana, which it is admitted was awarded to Durga Parshad at the time of the partition. But Aikman J., while concurring generally with the judgment of Banerji J., held that certain estates known as Fatehpur and Sagalpur must also be treated as having descended from Gobind Ram. And at the hearing before their Lordships, the learned Counsel for the Respondent admitted that a third estate, named Abhairajpur, must be taken as standing on the same footing as the two awarded by Aikman J. There is therefore no doubt that these five properties at least were inherited from Gobind Ram.

There is evidence that he had other properties also. A witness called on behalf of the Respondent, named Bhairon Parshad, who is quite unconnected with the family, but a relative of the banking firm by which Gobind Ram was employed, says that he used to see Gobind Ram. "He was a *patwari* (of several villages), and a "*karinda* (agent) of Chaudhari Naubat Ram," the witness's uncle. "He used to come to Chau- "dhari Saheb's house." "He was worth twenty or "twenty-four thousand rupees." As this witness was 21 years of age at the time of Gobind Ram's death, and was in the habit of sitting daily at his uncle's place of business, he would have

the means of knowing something about the persons employed in his uncle's firm, though he might not be minutely acquainted with their affairs, and their Lordships see no reason for discrediting his testimony. It tends to confirm the evidence of Hazari Lal, who values his father's estate at forty-thousand rupees, and says that besides immoveable property he had mortgages and monetary dealings which, after his death, were gradually realized in cash by his sons. Hazari Lal's evidence was disbelieved on some points by Banerji J., but after making every allowance for exaggeration on his part, their Lordships cannot but come to the conclusion that Gobind Ram left considerable property both in land and securities for money.

This conclusion is supported by the circumstances of his family at and immediately after his death. It is conceded that he and his three sons constituted a joint Hindu family. When he died in 1849, his son, Durga Parshad, was about 20 years of age and a student at Bareilly College; Jwala Parshad was 17 or 18 years of age; and Hazari Lal 10 or 11. All three were maintained and educated at their father's expense. No one of them was in any employment until October 1852, when Durga Parshad, then a first-class student at the Bareilly College, was appointed Officiating Visitor of the Bareilly District, on a pay of Rs. 70 per month. For about three years therefore the three brothers had been living on funds which they had not earned; and as they had also, in 1851, purchased the two estates of Fatehpur and Sagalpur, to which reference has already been made, for Rs. 1,605 and Rs. 1,550 respectively, it is tolerably clear that the money for these purchases must have been provided from funds left by their father. Abhairajpur was still more valuable, as in 1870 it was leased, together

with Fatehpur and a fraction of Sagalpur, at a jumma of Rs. 1,300 per annum. There is evidence also that Gobind Ram had lands in Kunja and other villages; and it is certain that besides the dewankhana already mentioned he left several houses in Bareilly, which are still in possession of members of the family. There were also debts due to, and mortgages held by, him.

The property left by Gobind Ram, with its accretions, was held jointly by his three sons from the time of his death in 1849 until 1866. In that year a partition of the joint estate was made between the three brothers, and there is no suggestion that, at that time, any of them had any separate estate. The share then taken by Durga Parshad was undoubtedly ancestral property, as between him and his sons, who from the moment of their birth acquired an interest in it. And as after the partition he and his sons lived together as a joint Hindu family until the time of his death in 1894, it is clear that he had no right to dispose by will of, at all events, this part of his property.

But it was contended that any property acquired by Durga Parshad after the partition was acquired by him "without the aid of "ancestral funds, and with his own separate "earnings," and that he therefore had the right to dispose of it as self-acquired property. This argument derives support from the fact that, after entering the service of Government in 1852, Durga Parshad held various offices in the Education Department. In 1858 he was a Head Clerk in the English Office, with a salary of Rs. 150 per month; in 1862 he was a head-master on a salary of Rs. 200 per month; in 1866 he was appointed a Junior Inspector of Schools on Rs. 300 per month, and eventually he became an Inspector of Schools on a salary of Rs. 750 per month. In 1885, he retired

on a pension of Rs. 4,000 a year. During the latter years of his life, therefore, he was in a position to save a fair portion of his income. But what are the circumstances of the case? It is admitted that Durga Parshad and his sons lived together as a joint Hindu family, and it is established that there was a considerable nucleus of ancestral property in his hands after the partition. The onus was therefore on the Respondent to prove that his subsequently acquired property was his separate estate. How has the onus been discharged? The most reliable evidence on the point is that contained in the books of Lachhmi Narain, a native banker of Bareilly, with whose firm Durga Parshad kept an account from 1866, the year of the partition, until 1884, when it was closed. These books were produced on behalf of the Appellant, and the clerk who produced them, said: "I "knew Durga Parshad. He had an account "with the firm. The income from villages and "pay used to be deposited. There was but one "account." So far as their Lordships are able to form an opinion, this appears to be a correct description, and it was not controverted by the learned Counsel for the Respondent. The entries show that properties of considerable value were from time to time purchased by Durga Parshad, and that he did not in any way discriminate between the sources of his income, but blended them all in one general account. There is oral evidence, also, that his sons when they became of age to earn their own living, gave the pay which they received to their father, with whom they lived and by whom they were supported. This is strong evidence that there was but one common stock of the whole family, into which each voluntarily threw what he might otherwise have claimed as self-acquired; and that the property purchased by, or with the

assistance of, the joint funds, was joint property of the family, and not of any particular member of it.

In the last year of his life Durga Parshad became dissatisfied with the conduct of his two younger sons, and made and registered a will, dated 3rd April 1893, by which, in effect, he divided the family property, which he treated as having been "exclusively acquired" by himself, in unequal shares between his three sons. By a subsequent will, dated 11th December 1893, which practically revoked the former will, and the execution of which is not now contested, he gave an allowance of Rs. 35 per month, and a dwelling house to each of his two younger sons, and left the whole of his remaining property to his eldest son, the present Respondent. In this will, no particulars of his property are given, but it purports to deal with "all the moveable "and immoveable properties which will con- "stitute my estate on my death and which are "my self-acquired properties."

In the view which their Lordships take of this case, there were no properties of Durga Parshad at the time of his death which, according to Hindu, law could be classified as self-acquired, and the will is therefore inoperative to defeat the claim of the younger sons to a share in the family estate. They will therefore humbly advise His Majesty that the Appeal ought to be allowed and the Judgment of the High Court reversed with costs, and that the Decree of the Subordinate Judge of Bareilly, dated 30th March 1898, ought to be confirmed. The Respondent must pay the costs of this Appeal.