Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Debi Bakhsh Singh, since deceased (now represented by Suraj Bikram Singh) v. *Chandrabhan Singh, from the Court of the Judicial Commissioner of Oudh; delivered the 15th July, 1910.*

Present at the Hearing:

LORD ATKINSON.
LORD SHAW.
SIR ARTHUR WILSON.
MR. AMEER ALI.

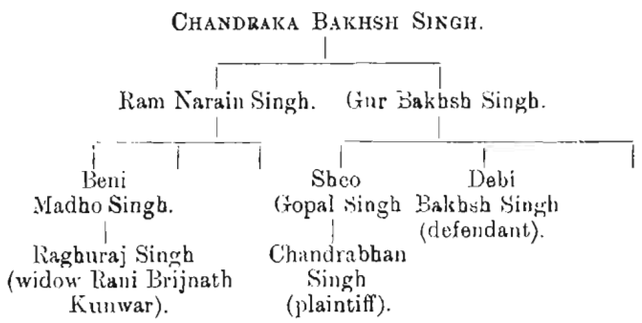
[*Delivered by Lord Shaw.*]

This Suit had reference to the succession to more than one estate, but the issue which remains contested on this Appeal has regard solely to the Taluq of Rajpur Keotana and other lands of which the Defendant (Appellant) had obtained possession on the death of the widow of one Raghuraj Singh.

The Respondent as Plaintiff brought a Suit against the Appellant to obtain possession from him of that Taluq. The Subordinate Judge, on the 13th September, 1906, dismissed the Suit. On the 5th July, 1907, this Judgment was reversed by a Decree of the Judicial Commissioner of Oudh, and against that Decree the present Appeal is made.

[33] P.C.J. 290.—L. & M.—125—16/6/10.

The situation of the parties is thus briefly described :—The Rajpur Keotana estate was conferred upon Raghuraj Singh by a Government Sanad in the year 1860. Raghuraj Singh's name was entered in Lists 1 and 5, mentioned in the Oudh Estates Act, 1869, Section 8. Raghuraj Singh died intestate and without issue in 1892. His estate passed into the possession of his widow, and her death occurred in 1904. The succession in the Taluq to Raghuraj Singh is contested as between Debi Bakhsh Singh, Defendant, and Chandrabhan Singh, Plaintiff. Excluding therefrom the items which are irrelevant to the issue raised in this case, one may adapt the Table of Relationship from the Appellant's case thus :—



It is thus seen that the Plaintiff would be entitled to succeed to Raghuraj Singh under the rule of lineal primogeniture, but that the Defendant (his uncle) would be entitled to succeed were the rule adopted not that of lineal primogeniture but of nearness in degree. The issue in this case is which of these rules governs the rights of the parties.

The case was treated by the Courts below and in argument as one of great general importance as determining the rules of intestate succession to the Taluqdars of Oudh; and it is no doubt true that, while both parties appeal to the provisions of the Oudh Estates Act, 1869, an apparently serious repugnancy arises on a contrast

of the provisions of Section 8 and Section 22 of that Statute.

By the 8th Section it is provided that :—

> " Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely :— "

and then follow the lists in their order.

It is an admitted fact in the present case that Raghuraj Singh, whose succession is in question, had in 1860 the Rajpur Keotana Estate conferred upon him, and that his name was entered in List 5 as well as List 1. List 1 was of a general character, namely :—

> " 1st. A list of all persons who are to be considered Taluqdars within the meaning of this Act."

List 5 was as follows :—

> " 5th. A list of the Grantees to whom Sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such Sanads or grants shall thereafter be regulated by the rule of primogeniture."

Up to that point their Lordships do not think that any substantial difficulty would arise in the case. What appears to be contended for is that some other rule of primogeniture than the rule of lineal primogeniture should be applied. In the first Court a certain custom was appealed to, to make clear or illustrate what variation from lineal primogeniture was meant, but no success attended that plea and it was not maintained at their Lordships' Bar. In their opinion, the language of the Sanad emanating from the British Authority was simply language conveying the ordinary meaning of the word " primogeniture " in the Law of England.

A much more serious difficulty arises on the

construction of Section 22. That section provides :—

> "If any Taluqdar or Grantee whose name shall be inserted in the second, third or fifth of the Lists mentioned in Section 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows :"—

There are then inserted ten specific rules of succession, beginning, of course, with the right of succession of the eldest son. These need not be stated in detail, but two observations occur to their Lordships as important with regard to them. First, it is entirely clear that the estate the succession to which was there being dealt with was from beginning to end of these sections dealt with as an impartible estate ; and secondly, the preservation of the estate as impartible appears to their Lordships to be in entire accord with the language and policy of the Legislation. The social and historical reasons for this have been the subject of frequent exposition and need not be entered upon, the matter being concluded by authority as after referred to.

After these ten rules of descent have, however, been given in Section 22, there occurs the following subsection, namely :—

> "(11) or, in default of any such descendants then 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 Taluqdar or Grantee, heir, or legatee, are subject."

It is maintained by the Appellant that he is entitled to the succession because, by the ordinary law to which it must be supposed reference is here made, nearness in degree is preferable to lineal descent; and the contention accordingly comes to this, that Subsection 11 amounts to a revocation or an abrogation of the rule of succession laid down in the Sanad under which the Taluqdar received his property, and that

Section 8 of the Statute did not really amount to a declaration that the succession "shall thereafter be regulated by the rule of primogeniture," but only used that phrase in the course of a narrative identifying the fifth list of grantees. It is fairly clear, however, that, if a repugnancy does not arise within the Statute itself, at least something which would have the same effect has been produced, namely, an inconsistency between the order of succession specified in the Sanad and some other law of succession under the ordinary law of the Taluqdar's religion and tribe; and it is maintained that in these circumstances the Statute, and the Statute alone must govern.

The main authority for this proposition is the case of *Brij Indar Bahadur Singh* v. *Ranee Janki Koer*; *Lal Shunkur Bux* v. *Ranee Janki Koer*; and *Lal Seetla Bux* v. *Ranee Janki Koer* (L.R. 5 Ind. Ap. 1.) in which Sir Barnes Peacock said:—

> "As regards the succession their Lordships are of opinion that the limitation in the Sanad was wholly superseded by Act I. of 1869, and that the rights of the parties claiming by descent must be governed by the provisions of Section 22 of that Act. By that section it was enacted that, if any such Taluqdar whose name should be inserted in the second, third or fifth of the lists mentioned in Section 8, or his heir or legatee, should die intestate, such estate should descend in manner therein described."

Now, it has to be observed that, with reference to all the authorities cited, no one of them has decided the question now submitted on this Appeal or any question as to Lists 3 or 5. The case just referred to was a case in which the name of the Taluqdar was entered upon Lists 1 and 2.

On the point of whether the estates of Taluqdars must, for the purposes of intestate

succession, be treated as impartible, their Lordships hold that that matter is definitely settled by decision. In the Appeal of *Dewan Ran Bijai Bahadur Singh* v. *Rae Jagatpal Singh* and *Rae Bisheshar Baksh Singh* v. *Dewan Ran Bijai Bahadur Singh* and *Rae Jagatpal Singh* (L.R. 17 Ind. Ap. 173), Sir Barnes Peacock, delivering the Judgment of the Privy Council, said :—

> "A question might arise upon the construction of Clause 11 of Section 22 whether the estate descended as an impartible estate. Their Lordships are of opinion, looking to the provisions of Act I. of 1869, List 2, Section 8 and Section 22, that it was the intention of the Legislature that the estate should descend as an impartible estate."

Again, in *Jagdish Bahadur* v. *Sheo Partab Singh* (L.R. 28 Ind. Ap. 100), the same law was affirmed in terms in the Judgment of Lord Davey and the point taken to be concluded by authority.

It cannot, accordingly, in the first place be denied that, giving full effect to Act I. of 1869, the succession to a Taluq must be to an impartible estate, and that whether the estate "ordinarily devolved upon a single heir," to quote the language of List 2 of Section 8, or whether the succession was to be regulated by the rule of primogeniture, to quote Lists 3 and 5 of Section 8.

In the second place, it can hardly be doubted that Section 22, in so far as it describes in the first ten of its sub-sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession which might have been set forth in the Sanad.

In the third place, when Sub-section 11—a sub-section which comes at the close of the long

list of specific stages of prescribed succession—sets up the rule that, in default of any one taking under the previous sub-sections, there should be preferred

> "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 Taluqdar or Grantee, heir or legatee are subject."

Their Lordships do not see their way to hold that this is anything else than a general relegation of parties to the situation in which they would have been found apart from the Statute. But that situation is found in the Sanad itself; and it is also contained, either by way of affirmance or at least by way of narrative, in the fifth list of Section 8 of the Statute. So far as the Sanad was concerned, the provision was as follows :—

> "It is another condition of this grant that, in the event of your dying intestate, or any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture."

While, as has been said, the specific rules of succession in Act I. of 1869 must be held to displace this, the general reference to what is not covered by those specific rules must include a reference to the rights of parties as contained in the Sanad, which was the original title to the property.

By this simple construction the alleged repugnancy disappears.

It must be added, with reference to the body of decisions cited in the Judgments of the Court below and at their Lordships' Bar, that, as these decisions refer to the property descending, in the language of List 2, to "a single heir," there was therefore necessitated the search for that heir according to the law of the religion and tribe as

referred to in Section 22, Subsection 11. But it does not appear that the ordinary law of the religion and tribe would have fixed upon any different person as entitled to succeed where the "rule of primogeniture" had been the acknowledged rule of the succession—any different person from the Respondent and Plaintiff in this Suit, who has succeeded under the Judgment of the Judicial Commissioner.

If reference be made to Section 23, the result reached is the same. That section provides that

> "Except in the cases provided for by Section 22, the succession to all property left by Taluqdars and Grantees, and their heirs and legatees dying intestate, shall be regulated by the ordinary law to which members of the intestate's religion and tribe are subject."

This expression, viz., that

> "the succession shall be regulated by"

is the same form of words as that employed in the List 5 of Section 8 which declared of *inter alia* the present succession that it

> "should be regulated by the rule of primogeniture."

This declaration and condition of the Sanad being part of the original title to the property is an essential part of that regulation of the ordinary law of the religion and tribe and would have been respected accordingly.

For these reasons their Lordships will humbly advise His Majesty that the Judgment passed by the Court of the Judicial Commissioner of Oudh dated the 5th July, 1907, is correct and that the Appeal should be dismissed with costs.

In the Privy Council.

DEBI BAKHSH SINGH
(SINCE DECEASED)
(now represented by Suraj Bikram Singh)

v.

CHANDRABHAN SINGH.

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