

Privy Council Appeal No. 32 of 1916.

Oudh Appeal No. 3 of 1915.

**The Deputy Commissioner of Kheri for
Mahewa Estate** - - - - *Appellant,*
v.
Rani Bijai Raj Koer - - - - *Respondent.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1917.

Present at the Hearing:

LORD DUNEDIN.
LORD SHAW.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

The late Rajindra Bahadur Singh was Taluqdar of Mahewa in the District of Kheri. He died on the 18th October, 1912. He had executed a will in 1907 disposing of his whole estate (in the event of his leaving no son, which was what happened) in favour of the present Taluqdar, who is a minor, and whose interests are represented by the Court of Wards for the District of Kheri. By this will he *inter alia* bequeathed to his widow a monthly sum of 500 rupees "from the estate," and he further said that the aforesaid allowance should "create a charge upon the estate which the person in possession of the taluqa shall be bound to discharge." A fortnight before his death, being very ill, he sent for Mr. Campbell, the Deputy Commissioner, and gave him instructions for a codicil to his will. Mr. Campbell, who was examined as a witness in this suit, explained that he took the Rajah's instructions in Hindustani, wrote them down in English, and then translated the English

into Hindustani. Upon the Rajah's approving what had been written the document was signed by the Rajah and by Mr. Campbell. It was as follows :—

Will of 1906.

(a.) In this 500 rupees given to Rani Bijai Raj Koer. In place of this wants to give 1,000 rupees per month.

The thirty-one villages in dispute, if obtained, to be given to her also for her lifetime without right of transfer.

(b.) The eldest daughter (Munni) to be given 300 rupees per month; the younger (Lallan) 200 rupees a month; Hundi, *Paharin* servant, to be given 30 rupees a month, for life.

Read over—

(A.) From this date to be given 1,000 rupees.

(B.) Whether married or unmarried, family or no family.

(Signed) J. CAMPBELL,
Deputy Commissioner.

(Signed) RAJINDRA BAHADUR SINGH.

October 4, 1912.

Signed before me, explained fully, and admitted as correct.

Handed over to the Rani's brother, Jang Bahadur Singh, by me personally.

(Signed) J. CAMPBELL,
Deputy Commissioner.

October 29, 1912.

The present suit is brought by the widow to declare her right to a monthly provision of 1,000 rupees, and is resisted by the Commissioner, in the interests of the minor, on the contention that only 500 rupees per mensem are payable.

The Taluqdars of Oudh and their estates are the subjects of special legislation contained in the Oudh Estates Acts. In terms of these Acts, a will, to affect taluqdari property, must be executed in a certain manner. This will was so executed; the codicil was not. Further, if a bequest is made to anyone other than the heir entitled to succeed to the taluqdari property *ab intestato*, it must, to be good, be made by a will or codicil executed at least three months before death. It is therefore common ground between the parties that the provision of 500 rupees made by the will does affect the taluqdari property, but that the provision of 500 rupees in the codicil does not. The late Rajah, however, left property which was not taluqdari property, and the real controversy in the case is whether the additional 500 rupees fall to be satisfied out of this. For it is admitted that *quoad* non-taluqdari property the late Rajah was under the ordinary Hindu law, which in Oudh is unaffected by statute, and by that law no formalities for the execution of a will are required. Upon this ground the Court of the Judicial Commissioner on appeal held that the additional 500 rupees, though not chargeable against the taluqa, were recoverable out of the non-taluqdari property, and made a declaration to that effect.

The Subordinate Judge held that the so-called codicil was not a document of a testamentary nature. He arrived at this

conclusion because of the words of the note (A): "From this date." The Appeal Court did not agree upon what their Lordships think were very sufficient reasons. The words are amply satisfied by construing them as a wish that the allowance should begin to run at once after death, and the idea that the Rajah was creating an annuity during his own lifetime by *inter vivos* conveyance is opposed to the whole circumstances surrounding the execution of the document. The learned Counsel for the Commissioner indeed scarcely pressed this point. His argument really turned on this: He said that the codicil was intended to be a mere alteration of the will, not a new testamentary bequest. Its effect therefore was merely to read 500+500 into the will instead of 500. He then said that, upon a just construction of the will, the 500 was made a charge upon the taluqa and the taluqa alone. Accordingly, he argued, the codicil, not being executed according to taluqa formality and not being dated more than three months previous to death, was powerless to further burden the taluqdari property and did not apply to the non-taluqdari property. Their Lordships consider that this is much too technical a view of the codicil. The document must be construed in the light of the surrounding circumstances. The Rajah was nearing his end, and had sent for Mr. Campbell in order to make some final testamentary arrangements. Their Lordships think that the words used clearly mean that he provided his widow with 500 rupees more than she would get under the existing will, and that he did not signify the source from which that additional provision was to come. The reference to the will is not meant as the expression of a wish that the bequest in it should be textually altered so as to leave the altered figure to be governed grammatically by the words of the original context, but is merely historically mentioned to show what total provision he wished his widow to take. The result follows that the whole estate so far as burdenable is burdened with the provision then made. This view makes it quite unnecessary to consider whether the 500 rupees in the will are imposed on all estate or on taluqdari estate alone.

It follows that the judgment of the Court of Appeal is right. The respondent's Counsel expressed a fear that the declaration granted was insufficient. It does not so seem to their Lordships. It is a corollary of the declaration granted that any income which has since the death been received from the non-taluqdari estate will be liable, as well as the future income, to pay the extra 500 rupees, including arrears, from the death up to the date of the declaration. The petition for special leave to cross-appeal upon this point by the respondent should therefore be dismissed.

Their Lordships will humbly advise His Majesty to dismiss the appeal.

The appellant will pay the respondent's costs of the appeal.

In the Privy Council.

THE DEPUTY COMMISSIONER OF
KHERI FOR MAHEWA ESTATE

v.

RANI BIJAI RAJ KOER.

DELIVERED BY LORD DUNEDIN.