Privy Council Appeal No. 59 *of* 1947

Oudh Appeal No. 9 *of* 1946

Pandit Chandra Kishore Tewari and others – – – *Appellants*

v.

Deputy Commissioner of Lucknow in charge Court of Wards Sissendi Estate and another – – – – *Respondents*

FROM

THE CHIEF COURT OF OUDH

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (PART 1), DELIVERED THE 28TH JULY, 1948

Present at the Hearing :

LORD THANKERTON

LORD du PARCQ

LORD MORTON OF HENRYTON

SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

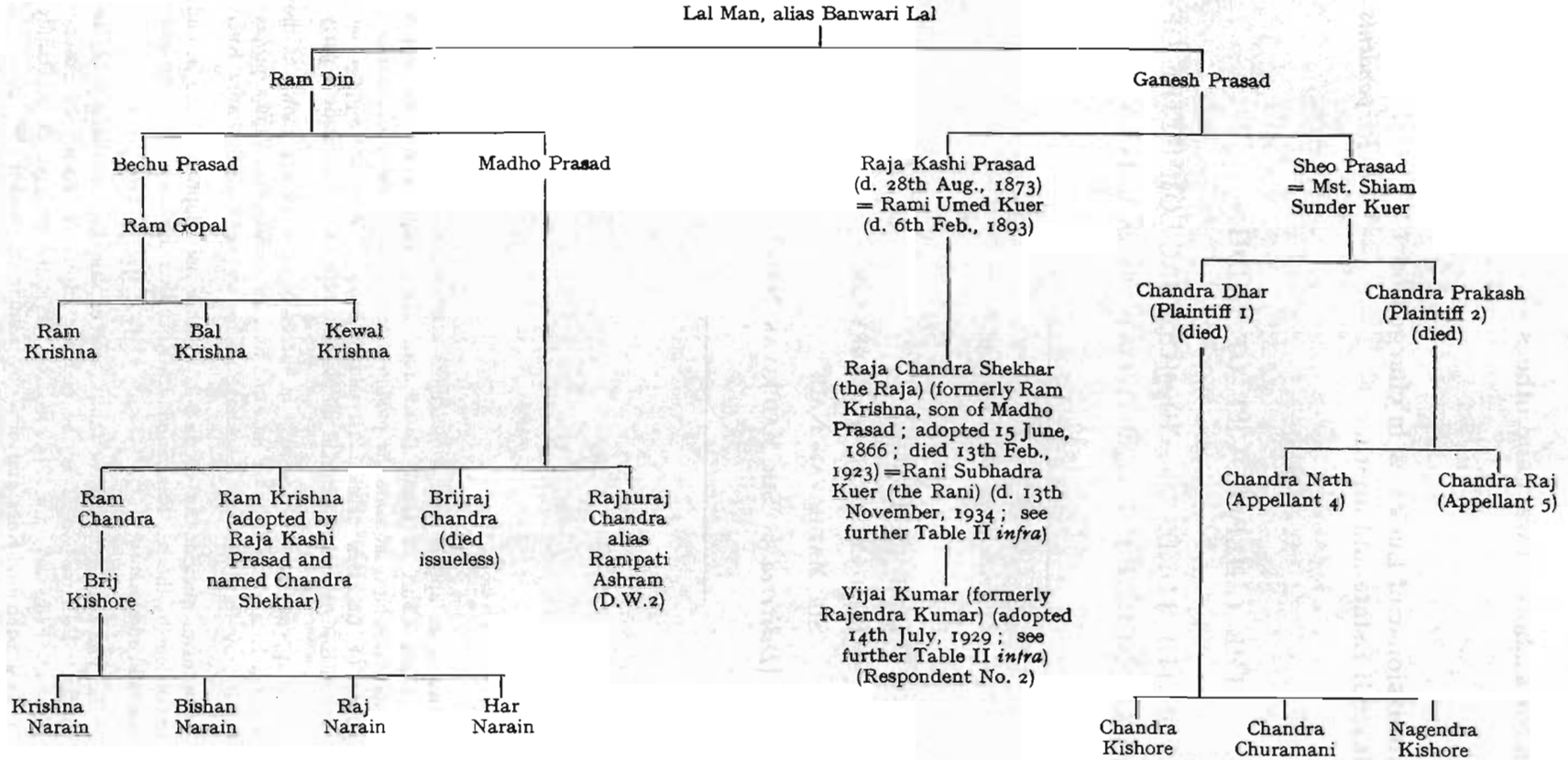
This is an appeal from a judgment and decree of the Full Bench of the Chief Court of Oudh dated 10th May, 1946, which, on appeal by the defendant, set aside the judgment and decree of the Additional Civil Judge of Lucknow dated 21st March, 1940. After the appeal had been filed in the Privy Council the second respondent was made a party.

The appeal relates to the right of succession to a Taluqa known as the Sissendi Estate and to other movable and immovable non-Taluqa properties left by Raja Chandra Shekhar and his widow Rani Subhadra Kuer.

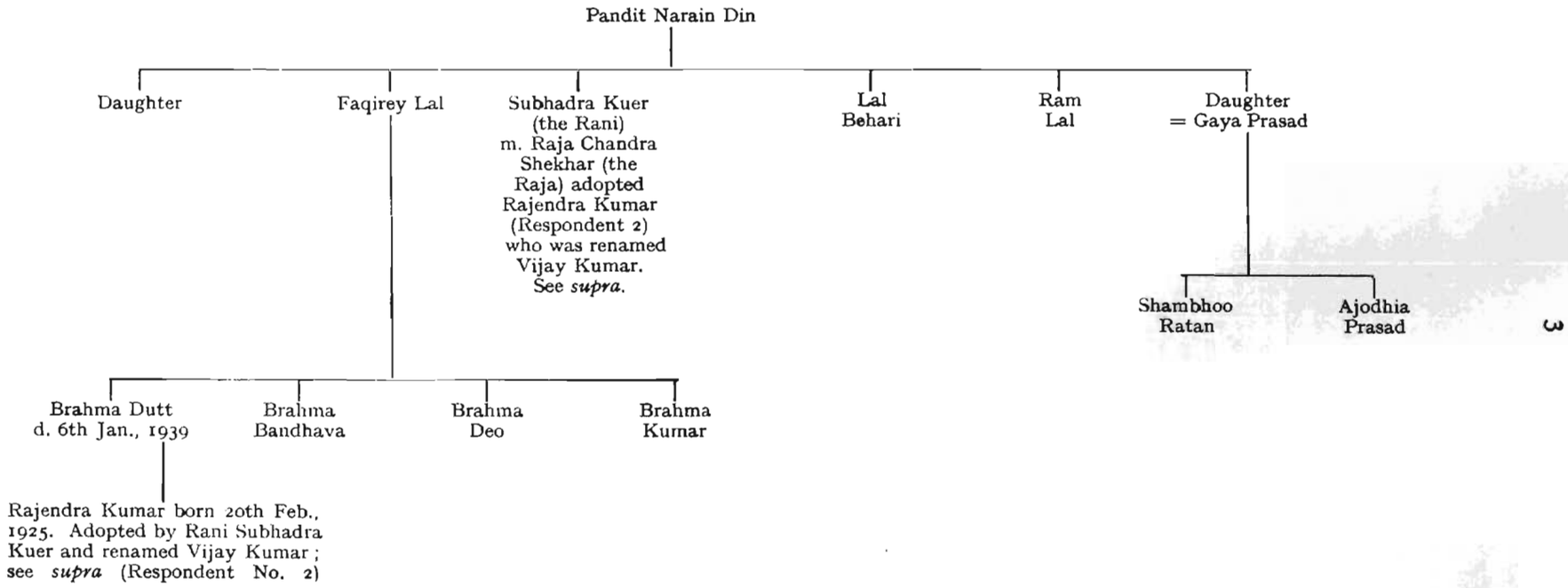
The main question for decision is whether the adoption of the second respondent by the late Rani Subhadra Kuer after the death of her husband is a valid adoption.

The following genealogical tables will explain the relationship of the parties. Pedigree No. I is the pedigree of the Taluqdars of Sissendi (Sissendi Pedigree), and Pedigree No. II is the pedigree of the family of Rani Subhadra Kuer and of Vijoy Kumar (respondent No. 2).

I. THE SISSENDI PEDIGREE



II. PEDIGREE OF THE FAMILY OF RANI SUBHADRA KUER AND OF VIJAY KUMAR (RESPONDENT (No. 2))



The Sissendi Estate is one of the Taluqas which were exempt from confiscation after the mutiny of 1857. Raja Kashi Prasad was the first Taluqdar of Sissendi. The Estate was settled with him during the second summary settlement after the annexation of Oudh and his name was entered in lists 1, 3, and 5 prepared under section 8 of the Oudh Estates Act (I of 1869).

In 1866, Raja Kashi Prasad adopted one Ram Krishna, the second son of his cousin Madho Prasad, when he was about five or six years old and renamed him Chandra Shekhar. On the death of Raja Kashi Prasad in 1873, Chandra Shekhar succeeded to the Taluqa and other properties left by him. Sometime between the years 1875 and 1880, the date is uncertain, Raja Chandra Shekhar married Rani Subhadra Kuer who was a year older than himself. Rani Umed Kuer, the adoptive mother of Raja Chandra Shekhar, died on 6th February, 1893. After certain proceedings in court to which reference will be made later, Raja Chandra Shekhar was found to be of unsound mind in 1897, whereupon the Court of Wards took charge of the Estate. The Raja died intestate and childless on 13th February, 1923. Subsequent to his death the Estate was released in favour of the Rani who succeeded him as his widow. On 14th July, 1929, under a " consent in writing " alleged to have been given by Raja Chandra Shekhar in 1889 contained in three letters exhibits 189-191, dated 20th April, 1889, 7th August, 1889, and 16th November, 1889, respectively, the Rani publicly adopted as a son to her deceased husband, Vijoy Kumar (minor) grandson of her brother Faqirey Lal. He is the second respondent in the appeal. Rani Subhadra Kuer died on 13th November, 1934, and on her death the Court of Wards took possession of the Taluqa and other properties left by the Rani on behalf of the minor adopted son, and represented him as defendant in the suit.

The suit out of which the appeal arises was instituted on 7th October, 1937, by the plaintiffs 1 and 2, the sons of Sheo Prasad, the brother of Raja Kashi Prasad, the adoptive father of Raja Chandra Shekhar. They are now dead and are represented by their sons, appellants 1 to 5. The third plaintiff is the legal representative of one Parbati Devi, to whom, in consideration of an agreement to finance the litigation, the plaintiffs transferred a portion of the properties. He is the 6th appellant before the Board.

The claimants to the properties are governed by the Benares School of Hindu law. The plaintiffs 1 and 2 claimed the properties on the ground that on the death of the last Taluqdar, Raja Chandra Shekhar who died childless, his widow, Rani Subhadra Kuer, succeeded to the Taluqa properties under the Oudh Estates Act, 1869 and to non-Taluqa properties as the Hindu widow and that on her death they, as reversioners, are entitled to succeed to all the properties in the suit. It is not denied that the plaintiffs 1 and 2 are the heirs of Raja Chandra Shekhar as his immediate reversioners, and would be entitled to succeed to the properties on the death of Rani Subhadra Kuer, unless the adoption of the 2nd respondent by her is valid. The plaintiffs admitted the factum of adoption but impugned its validity on the ground that the letters which are alleged to contain the " consent in writing of her deceased husband " required to make the adoption valid under the Oudh Estates Act are not genuine, that even if genuine, the authority can be of no legal effect as the Raja was of unsound mind when it is said to have been given by him, that the alleged consent contained in the letters is invalid for want of registration and on account of not being stamped as required by law. The objection based on stamp law was not persisted in before the Board.

Nearly a year after the institution of the suit, and sometime after the filing of the written statement by the defendant on 15th August, 1938, the plaintiffs asked for an amendment of paragraph 6 of the plaint on 20th September, 1938, by inserting in it the sentence:

> " In fact the relations between the late Raja and his wife were so bitter that they had nothing to do with each other from about the year 1884."

The application for amendment was granted. After amendment the paragraph reads as follows:

> " That as a matter of fact Raja Chandra Sekhar had given no such authority for the alleged adoption and if any has been manufactured it is spurious and void. In fact the relations between the late Raja and his wife Subhadra Kuer were so bitter and inimical that they had nothing to do with each other from about year 1884. The Raja was of unsound mind and could not in law confer any valid authority to adopt. The authority, if any be proved, is also legally void."

It may be stated here that the allegation of unsoundness of mind was abandoned by the plaintiffs at a very early stage. The implication contained in the paragraph is obvious, i.e., the letters had never been written by the Raja and they are forgeries.

On behalf of the second respondent the suit was resisted by the Court of Wards on the ground that Vijoy Kumar was validly adopted by Rani Subhadra Kuer with her husband's consent in writing. The Raja's unsoundness of mind was denied and it was alleged that the " consent " to adopt did not require any stamp or registration to make it valid. In reply to the amendment, the Court of Wards in an additional Written Statement averred that:

> " The relations between the late Raja and his wife Rani Subhadra Kuer were cordial till shortly before the lunacy proceedings were started. At and about the time when the consent to adopt, relied upon by the defendant, was given the Raja and the Rani were on good terms."

The questions raised for determination by the Board are covered by the following issues. These are:

> " 1 (*a*). Did Raja Chandra Shekhar authorise in writing Subhadra Kuer to adopt a son after his death?
>
> 1 (*c*). Is his authorisation invalid because it was not . . . registered?
>
> 2 (*a*). Are items 23 to 26, and 29 List B (1) attached to the defendant's written statement Taluqdari or non-Taluqdari property? "

The trial judge held on issues 1 (*a*) and (*c*) that the Raja did not authorise in writing the Rani to adopt, he being of opinion that the letters are not genuine, and that even if they are genuine, the authority to adopt is ineffectual for want of registration. On issue 2 (*a*) he held that all the items, except the last (item 29) are non-Taluqdari properties; and item 29 is Taluqdari property. He decreed the suit.

The appeal from the trial judge was heard in the first instance by Ghulam Hasan and Walford JJ. The learned judges differed. Ghulam Hasan J. agreed with the opinion of the trial judge on all the issues. Walford J. differed in regard to issues 1 (*a*) and (*c*) and though he agreed with regard to issue 2 (*a*) he held that the second respondent is entitled to the non-Taluqdari villages also. As the learned judges differed, the appeal was laid before a Full Bench composed of the learned Chief Justice Sir G. Thomas, Ghulam Hasan, and Walford JJ. The two latter reasserted their opinions and the Chief Justice agreeing with Walford J., the appeal was allowed and the suit was dismissed.

Before proceeding further, it will be convenient to notice the three letters which are alleged to contain the " consent in writing," and also another letter, exhibit A-188, dated 22nd February, 1885, which it is said had been manufactured to lay the foundation for the grant of authority which was subsequently given in the three letters of 1889.

Exhibit A-188 runs as follows:

> " Respected Rani Sahiba—Greetings—I am told by Ganga Prasad that aunt intends to adopt Chandra Dhar. You live with the aunt in the house. Enquire about it and write to me. Miti Phagun 8. Shukla Sambat 1941 (=22.2.1885)."

Exhibit A-189 runs as follows:

" Respected Rani Sahiba—Greetings—Aunt has sent a letter. But it is no use now as what was destined to happen has happened. Aunt was aware of my nature. Still she treated me badly. Aunt may adopt Chandra Dhar or when I cease to live, you may adopt anybody you please. Even now you may suppose that I am not living. Miti Baisakh Krishna 5. Saturday Sambat 1946 (=20.4.1889)."

Exhibit A-190 runs as follows:

" Respected Rani Sahiba—Greetings—Received your letter. If God wishes your desire will be fulfilled. If it does not happen I shall set everything right by adopting somebody. Do not worry. If I do not make an adoption during my life time, you are permitted after my death to make an adoption and enjoy the pleasure of having a son, and perpetuate the line of descent. On account of the treatment meted out by the Aunt, whatever I had in mind could not be fulfilled. Loss and gain, life and death, honour and dishonour rest with the Almighty. Sawan Shukla 11th, Wednesday Sambat 1946 (=7.8.1889)."

Exhibit A-191 runs as follows:—

" Respected Rani Sahiba—Greetings—You repeatedly wrote to me asking me to live in Sissendi with you. You know everything. I have ceased to have any interest in wordly affairs and have now turned towards God. Now I shall live at the banks of the Ganges. I have already given you permission for perpetuating the line and I write to you again that you should by making an adoption enjoy the pleasures of the world. Why do you worry so much. Do as I have written. To me this world is transient. If Guru Maharaj wishes I shall leave everything and devote myself to the worship of God. There is no use vexing me any more. Miti Aghan Krishna 8th Saturday Sambat 1946 (= 16.11.1889)."

All the letters are signed in the same manner, i.e. Tripathi Raja Chandra Shekhar ba Khud (i.e. in autograph). They are written and signed in the Nagari character.

" Consent in writing " to adopt is sought to be proved by the contents of the three above-mentioned letters (exhibits 189, 190 and 191). It is admitted that if the signatures in the letters are proved to be in the handwriting of the Raja then the letters would constitute the required consent.

The most important question for decision in the appeal is whether the three letters containing the consent are genuine. Their Lordships will take up this question first, and then deal with the questions relating to registration, and the disputed items of property.

On the question of the genuineness of the letters both parties gave oral and documentary evidence.

The evidence produced by the respondent to establish their genuineness was considered by the trial judge under the following heads:—

(*a*) evidence to show the existence of an initial probability in favour of the grant of an authority to adopt by Raja Chandra Shekhar;

(*b*) evidence to show that the disputed letters existed during the life time of the Raja long before any suggestion that they were forged was made;

(*c*) evidence of the persons familiar with the hand-writing of the Raja;

(*d*) evidence of an expert in the examination of questioned documents.

The appellants adduced evidence in rebuttal to show that:—

(*a*) at the time that the questioned letters are said to have been written the relations of the Raja and the Rani were so " bitter and hostile " that it is in the highest degree improbable that he would have written the letters giving his wife authority to adopt;

(*b*) that the conduct of the Rani in reference to these letters both during the life time of the Raja as also after his death was wholly inconsistent with the existence of the letters and negatives the theory that she had them in her possession.

They also called witnesses claiming familiarity with the Raja's handwriting, and also a handwriting expert to show that the signatures are not genuine.

Besides, inferences drawn from the internal evidence contained in the disputed letters such as their " language and content ", the delay of six years in making the adoption, and probabilities in general, inconsistent with the existence of authority to adopt, were also relied upon by the appellants to strengthen their case.

The chief oral evidence on the side of the respondents consists of Raghuraj Chandra (D.W.2) a natural brother of Raja Chandra Shekhar, one of the plaintiffs in what is referred to as the first Sissendi case to which reference will be made later; Daya Shankar (D.W.4) who was a clerk in the service of the Raja; and Mr. Satish Chandra Chaudhri (D.W.22) a handwriting expert. D.W.2 had become a Sadhu some months before he gave evidence and is known as Ramapati Ashram. Respondents gave evidence also to show that these letters existed during the life time of the Raja. Ajodhia Prasad (D.W.18) and Sidh Nath (D.W.10) spoke to having seen them in 1910, and 1918 or 1919, respectively. The trial court disregarded the evidence of these witnesses. On the side of the appellants, Chandra Kishore and Chandra Dhar (P.W.'s 5 and 7)—appellant No. 1 and his father the first plaintiff, and Jagan Nath Prasad (P.W.1) were called as persons familiar with the handwriting of the Raja to show that the letters are not in his handwriting, and also Mr. Nomani (P.W.8), a handwriting expert, aged 27. The trial Court rejected the evidence of P.W.'s 1, 5 and 7, and also of P.W.8, about whose evidence the learned judge said " I am unable to base my finding as to the genuine or spurious character of the disputed letters on his opinion ", qualifying this, however, with the statement " This does not however imply that I disagree with him in all or even most of the dissimilarities in the disputed letters (A-189 to A-191) and the admitted or proved exemplars deposed to by him ".

On appeal, Walford J. and the learned Chief Justice—generally stated —accepted the evidence of the respondents' witnesses, while Ghulam Hasan J. rejected their evidence. As a considerable portion of the evidence relied upon by both parties to prove the existence or otherwise respectively of the initial probability in favour of the grant of authority to adopt relates to the marital relationship between the Raja and the Rani, and the conduct of both, specially of the latter in relation to the disputed letters, it becomes necessary in considering whether the letters are genuine or not to review the relations between the Raja and his wife, and also her conduct at some length.

Their Lordships have already drawn attention to certain salient facts in the history of the family. The evidence of the witnesses who speak about the life of the Raja and the Rani during the relevant period have all been fairly summarised in the various judgments. Their early married life was uneventful. The Raja began to manage his Estate which was released to him by the Court of Wards in 1881. Being young, he was possibly assisted in its management by Rani Umed Kuer. From the evidence it appears that the Raja was of a very religious turn of mind. After marriage, the Raja and the Rani lived at various places from 1882 to about 1884 or 1885, and then settled down at Sissendi. At Sissendi, they lived on the second floor of the family residential house for some time. Thereafter, the Raja gave up living with his wife, and came down to live on the ground floor in a room known as the " baradari " where the Rani and his adoptive mother used to visit him during the day. At about this time the Raja is said to have given up spending nights with his wife. After some time he left the " baradari " and took up his residence in Chhoti Bagh (Garden House) situated at a short distance from the Zenana residence. There is evidence that at this period he developed strong interest in religious matters and spent his time studying Sanskrit. In about 1884, or 1885, he left Sissendi altogether and went to Benares and there became a disciple of Swami Vishuddhanand. While staying at Benares he visited

Sissendi only twice—according to the Trial Judge and Ghulam Hasan J.—but more frequently according to Walford J. and the Chief Justice. The evidence supports the latter view. The Raja lived at Benares for about two years, then went to live at Bithoor on the banks of the Ganges where he remained for another year or two. His life at this place was intensely religious. He built various temples. Then he went to live in Cawnpore and finally went to live in Allahabad. Their Lordships need hardly state that Benares, Bithoor and Allahabad are all places held as very sacred by the Hindus.

On 25th January, 1889, Rani Umed Kuer executed a deed of trust in which she appointed the Raja trustee of certain property which she had constituted wakf as she found herself, as stated in the document, too old to manage it. This year 1889—it is needless to mention—is important in the history of this case as all the four letters above referred to, are said to have come into existence in that year.

Rani Umed Kuer died in February, 1893. The Raja then returned to Sissendi in 1894, accompanied by his brothers and his manager. His behaviour to his wife was now hostile. The two quarrelled. He sent word to her to leave the main house and when she refused to do so she was forcibly removed to the adjoining house by the Raja's brothers and was kept there under guard to prevent her escape.

On 17th August, 1894, the Rani filed a complaint of wrongful confinement against the Raja and his brothers. The complaint was dismissed. In his judgment the City Magistrate expressed the opinion that he was totally unfit to manage the Estate. The executive authorities did not take any action on the opinion expressed by the City Magistrate.

On 13th February, 1895, the Rani filed a petition in the Court of the District Judge, Lucknow, to have the Raja declared a lunatic under Act XXXV of 1858. Though the District Judge decided in favour of the Rani the Judicial Commissioners reversed the decision but on review they altered their opinion and the Estate was taken by the Court of Wards for management in 1897.

From 1897, till his death in 1923, the Raja lived with a guardian at Cawnpore and Allahabad; and the Estate remained under the management of the Court of Wards.

During the above proceedings, on 30th August, 1895, the Raja made a complaint before the Deputy Commissioner of Lucknow against the Rani under section 145 of the Criminal Procedure Code in respect of certain villages in which Rani Umed Kuer had a life estate. These villages had been in the possession of Rani Umed Kuer for her maintenance and had been given to her for life by Raja Kashi Prasad. After her death Rani Subhadra Kuer obtained possession of them and kept them for her maintenance. The Deputy Commissioner held that she was entitled to keep possession of the villages until ousted by law.

In 1889, the question of the Rani's maintenance arose and the Court of Wards offered her Rs. 6,000 per annum in lieu of the villages which were in her possession if she would surrender them and was prepared not to adopt. It appears that she was at first willing to comply with the requirements of the Court of Wards but afterwards her counsel, Mr. Leslie De Gruyther, interviewed the Deputy Commissioner and a deed was executed in which there was no mention of adoption.

In about 1918 or 1919, the Government Authorities were concerned regarding the future succession to the Estate as the Raja had no son to succeed him, and correspondence passed between Mr. Jopling, the Commissioner of Lucknow Division, and Mr. Walton, Secretary to the Board of Revenue, regarding the ascertainment of the heir to the Estate.

After the death of the Raja in 1923, the Rani presented a petition (Exh. 46) to the Board of Revenue for the release of the Estate in her favour. The petition is in English and was signed by the Rani in Hindi. It was drafted by Mr. Srivastava, an eminent lawyer afterwards Chief Justice of the Court of Oudh. After a strenuous opposition from the authorities concerned, the Rani succeeded in obtaining possession of the Estate.

On 23rd May, 1925, the natural brothers and nephews of Raja Chandra Shekhar instituted against the Rani and the fathers of the present appellants (plaintiffs 1 and 2) a suit for the possession of the Estate. This suit is known as the first Sissendi case. The natural brothers claimed to be the heirs of the deceased Raja and said they were entitled to succeed to the Estate in preference to the widow under the Oudh Estates Act I of 1869 section 22, cl. 5, as amended by the U.P. Act III of 1910. Of the two natural brothers one was dead at the time of the present suit and the other has given evidence as D.W.2. The claim made by the plaintiffs in the suit was disallowed by the Chief Court and this decision was confirmed by the Privy Council in *Raghuraj Chandra* v. *Subhadra Kunwar* (see L.R. 55 I.A. p. 139) in which it was held that the natural brothers of the adopted son are not entitled to claim his Estate under the Oudh Estates Act, (1 of 1869).

The letters in question were not disclosed by the Rani either in 1899, in connection with the correspondence that took place between her and the Revenue Authorities, or in 1918 or 1919, when certain letters—as already mentioned—passed between the officials of the Board of Revenue and the Court of Wards in regard to the future succession to the Estate, or in 1923, after the death of the Raja when she memorialised the government for the restoration of the Estate to her, or in 1925, when the first Sissendi suit was instituted against her by the Raja's natural brothers. It is said that as the letters were not produced on these occasions when it would have been natural to produce them if she had them in her possession, their non-disclosure negatives their existence.

Before filing the written statement in the Sissendi suit on 18th November, 1925, the Rani sent the disputed letters along with some admitted writings of the Raja to Mr. Brewster, the government examiner of questioned documents in Simla for his opinion. Mr. Brewster pronounced them to be genuine and sent them to the Rani's agent, Sidh Nath, with a covering letter dated 16th September, 1925 (Ex. A-223), after impressing these documents with his seal. As Mr. Brewster had died before evidence was recorded he could not be examined as a witness.

On 14th July, 1929, after the termination of the Sissendi suit, the Rani adopted publicly Vijoy Kumar (2nd respondent) then aged about five years. By a registered deed executed on that date it was stated that: " Raja Chandra Shekhar deceased has given me written permission to make an adoption." (Exhibit A-92.)

On 19th November, 1931, at the request of the Rani Mr. Munro, Deputy Commissioner of Lucknow, took charge of five documents sent to him by the Rani and placed them under double lock. These documents were the adoption deed and four letters purported to have been written by the late Raja to the Rani in 1889. Of these four, only the three letters purporting to give authority to the Rani to adopt have been produced. Along with these letters two affidavits were deposited, sworn before the Deputy Commissioner by Raghuraj Chandra one of the plaintiffs in the first Sissendi case (D.W.2) and Daya Shankar (D.W.4).

As already stated, on 13th November, 1934, the Rani died and the Estate was taken under the management of the Court of Wards on behalf of the second respondent.

On a review of the evidence outlined above the learned Trial Judge held (1) that the initial probability of the existence of the letters was not made out; and after reaching that conclusion he held on an examination of the direct evidence bearing on the point (2) that the disputed letters are not genuine.

Shortly stated, the finding that the initial probability of the existence of the disputed letters was not made out was based on various grounds, the chief amongst them being that the relations between the Raja and the Rani became " bitter and hostile " sometime between 1881 and 1884, that in view of such strained relations it was highly improbable that the Raja could have written the letters conferring authority on the wife to

adopt, and that the conduct of the Rani in not disclosing the letters in 1889 and subsequent years shows that she did not have them in her possession in those years. The learned Trial Judge also relied on the internal evidence afforded by the letters. In appeal Ghulam Hasan J. also came to the same conclusion. As stated before, this opinion was dissented from by Walford J. and the learned Chief Justice.

The learned Trial Judge's conclusions under heads 1 and 2 may be stated in his own words:—

> " To sum up, the conclusions arrived at by me are that the estrangement between Raja Chandra Shekhar and his wife Rani Subhadra Kuer, began only two or three years after their marriage some time in 1881 to 1884. This estrangement continued throughout the Raja's life. Though the real reason for this estrangement could not be ascertained definitely, there can be no doubt that the relations between the Raja and his wife were exceedingly bitter and hostile. In view of such strained relations it was highly improbable that the Raja should in 1889 have written the letters (A-189 to A-191) conferring on his wife an authority to adopt a son to him after his death. The defendant entirely failed to establish the existence of an initial probability in favour of grant of such authority. Nor is it probable that even if the Raja had given such authority to adopt in 1889, he would have allowed it to remain uncancelled before the Rani's application for getting him declared a lunatic was made. The conduct of the Rani in 1889 and 1923 was wholly inconsistent with her being in possession of these letters and the weight of evidence leading to that conclusion is not displaced by the doubtful testimony of Siddhnath and Ajodhia Prasad. The evidence of D.W.2 and D.W.4 in proof of the letters is unreliable and that of Mr. Chaudhri the handwriting expert would not bear examination. Even if it deserved that more weight should be attached to it it would at best be inconclusive."

As the arguments advanced before the Board proceeded on the lines indicated generally in the above summing-up of the Trial Judge, except as regards the nature of the relationship between the Raja and the Rani during the relevant period which was modified by the learned counsel for the appellants as mentioned below, the arguments need not be restated for the purposes of this appeal.

Their Lordships will deal first with the question of the " initial probability ". In this connection it must be remembered that the case of the appellants has changed a good deal during the progress of the litigation. In the plaint the validity of the letters was at first challenged, not on the ground of bitter hostility between the Raja and the Rani, but only on the ground that the letters were alleged to have been written by the Raja when he was in an unsound state of mind. As already observed, it was not till nearly a year after the institution of the suit and sometime after the filing of the written statement that the appellants alleged bitter hostility and ill-feeling between the Raja and the Rani. The ground of unsoundness of mind was abandoned at a very early stage and before the Board, Mr. Page, the learned counsel for the appellants, stated that till 1894, there was no ill-feeling between the parties but only want of affection and that bitter ill-feelings began only thereafter. Strained relationship between the Raja and the Rani after 1893 is admitted by the respondents also, but the question is whether the relations between them previous to that year, that is in or about the crucial year 1889, were so hostile that it was highly improbable that the Raja should in that year have written letters conferring on his wife the authority to adopt. Important evidence bearing on the question had been overlooked by the learned Trial Judge. Considering this and other evidence bearing on it Walford J. came to the conclusion that " Apart from the coldness inevitable in a man towards a wife, who was only a wife in name, there was no hatred or animosity, and therefore any inference that he had hated her or had entertained such feelings of hostility as render it improbable

for him to have written the letters, which are the sheet-anchor of the defendant's case, is unwarranted." The learned Chief Justice expressed his opinion thus:—

> " I am, therefore, in complete agreement with Mr. Justice Walford on this point and hold that not only is there a complete lack of evidence to lend colour to the suggestion that the Raja and the Rani were on such inimical terms as to make it impossible for the Raja to write the disputed letters but there is ample evidence to support the defendant-appellant's suggestion that the Raja and Rani were on cordial terms till shortly after the death of Rani Umed Kuer in 1893."

Their Lordships have been taken through the evidence. As it is now conceded that before 1894 there was no hostility between the parties they do not think that any detailed examination of the evidence bearing on the point is called for. They are satisfied after considering the evidence that it has not been established that the relationship between the parties was so bitter and hostile as to make it improbable for the Raja to have written the disputed letters in 1889.

The next question to be considered on this part of the case is whether an inference against the genuineness of the letters can fairly be drawn from the Rani's omission to disclose them on the occasions previously mentioned.

The first occasion alleged was in 1889, after the Court of Wards had assumed superintendence of the Estate. Reference in this connection may be made to letters exhibits 48-51, A-224 to A-226. These have been considered in detail by all the learned judges. It will be remembered that the Rani had taken possession of the seven villages which were in the possession of Rani Umed Kuer at the time of her death. The Court of Wards, when they took charge of the Estate, wanted to get these villages from the hands of the Rani giving her an allowance of Rs. 6,000 for her maintenance. She was required to execute a deed containing a statement amongst other things that she would not make any adoption. It would appear that at first she agreed to do so. Afterwards she desired of the Deputy Commissioner, Lucknow to permit her legal adviser, Mr. De Gruyther, to interview him. This request was granted. After the interview between the Deputy Commissioner and Mr. De Gruyther the former sent a letter (exhibit 51) to the Commissioner. The passage in paragraph four of this letter given below is relied on as negativing the existence of an authority to adopt at the time of the negotiations, particularly the words " if she survives the Raja she must obtain his express permission ".

> " . . . You will observe that in the terms and conditions of the agreement proposed on behalf of the Rani, there is no mention of the question of adoption. Mr. De Gruyther explains the omission by saying that the Rani has no power to adopt during the Raja's life-time (the Raja of course is incapacitated from adopting) and if she survives the Raja she must obtain his express permission to adopt. If she survives the Raja she will succeed to the whole Estate and any valid adoption she then made or could make would provide a successor to the Taluqa."

It is urged that the above paragraph proves an admission on the part of Mr. De Gruyther that at the time of the negotiations the Rani had no power to adopt. The language of the paragraph is sought to be construed as follows:

> " . . . The Rani has no power to adopt during the Raja's life-time. The Raja cannot adopt as he is incapacitated from doing so and as regards the Rani's power to adopt after his death she can do so only if she obtains (hereafter) express permission from the Raja in his life-time."

In construing the language of the paragraph it must be remembered that it does not contain the precise language used by Mr. De Gruyther, and that the Deputy Commissioner merely reports in his own words what he understood from the conversation he had with Mr. De Gruyther. It may well be that the Rani did not disclose to Mr. De Gruyther the existence of the power to adopt or if she disclosed to him the fact of its existence

she might have asked him not to mention it to the Court of Wards for various reasons of her own. It is consistent with the terms of the Deputy Commissioner's letter that Mr. De Gruyther had merely stated the law (with complete accuracy) using words to the effect that the Rani could not adopt after the Raja's death unless she had his express authority to do so. In the circumstances, their Lordships think it impossible to treat the statement in the Deputy Commissioner's letter as evidence of an admission by the Rani that she had not at that date been given authority to adopt. Their Lordships accept the opinion of the Chief Justice and Walford J. as containing the correct interpretation of the language of the letter.

The next occasion when it is said that the existence of the letters might have been expected to be disclosed if they had existed was in 1918-1919 when an enquiry was made by the Board of Revenue as to the ascertainment of the heir of the Sissendi Estate after the death of the Raja. In the correspondence between the officials concerned in the enquiry reference was made to the genealogical tables which were said to be correct by Faqirey Lal, brother of the Rani. It is said that Faqirey Lal would have consulted the Rani, and that if she had the power to adopt, she would have mentioned it to Faqirey Lal and he would have conveyed the information to the authorities. These are pure assumptions. There is no evidence to show that the Rani was even aware that correspondence was passing between the officials regarding the ascertainment of an heir or that Faqirey Lal had any consultation with her. It is clear that no enquiry was made from the Rani; if she had been consulted the fact would have been mentioned in the correspondence. It is therefore clear to their Lordships that no inference against the Rani can be drawn from the correspondence which passed behind her back between the officials on this occasion.

Their Lordships may also point out that no inference against the Rani can be drawn from the circumstances relating to the memorial (exhibit 46) which the Rani addressed to the Board of Revenue sometime in 1923. It is true that there is no reference to authority to adopt in the memorial, but it is clear that any reference to it was not necessary having regard to the fact that the memorial was intended only to obtain the release of the Estate.

The last occasion on which it is said that she might have been expected to disclose the existence of power to adopt was in connection with the Sissendi suit of 1925. Though this was relied on in Courts in India as an occcasion when the Rani should have disclosed the letters if she had them in her possession Mr. Page has not relied on it before the Board and the arguments based on it need not be considered. Their Lordships are satisfied that there was no reason why the Rani should have disclosed the existence of the letters on that occasion.

For the above reasons the argument that the disputed letters could not have existed in 1889 on account of the bitter and hostile feelings of the Raja and the Rani towards each other or on the ground that the letters were not disclosed on the occasions mentioned above must be rejected.

Their Lordships will now examine the disputed letters with reference to what is stated as the internal evidence derivable from their contents and the other circumstances of a general character relied on by the appellant to show that the letters could not be genuine.

In the above connection, it will be convenient to consider first what could have induced the Raja to leave Sissendi and live away from the Rani. The appellants alleged in their evidence that the Raja left Sissendi because the Rani was unchaste, but that case was rejected as worthless by the Trial Judge and Ghulam Hasan J. and has not been relied on before the Board. The respondents alleged that the Raja was impotent. This hypothesis has found favour with Walford J. and the learned Chief Justice. If true, this would readily account for the permission to adopt granted in the letters; but there is no direct evidence on the point. It is mentioned that he was treated by a hakim of Lucknow for some months. In the Lunacy proceedings the Raja stated:

> " . . . There was some talk of an incident in which something as poison or aphrodisiac was mixed with water. This was 22 years ago."

No reliable inference can be drawn from this statement. When questioned why he was separated from his wife he said:

> " The reasons for the estrangement are of a private nature and of a character which I do not wish to disclose."

These reasons may well refer to the rigorous religious life which he began to lead and which he followed with increasing austerity as years went on. It is common ground that the Raja was of an intensely religious turn of mind. Their Lordships think that his desire to devote himself exclusively to religious practices must have urged him to give up the company of his wife and the normal life of a married man, as such life would obviously stand in the way of a man who has devoted his life to religion. There is considerable evidence that after leaving Sissendi the Raja lived on the banks of the Ganges devoting himself to religious austerities and practices with a zeal which at times approached religious dementia. One of the plaintiffs' witnesses, Jagannath Prasad (P.W.1) whose father was in the service of the Raja and who was himself in the service of the Court of Wards and the Rani afterwards, was for a short time in the service of the Raja at Benares, Bithoor and Cawnpore in 1884. He had gone to Benares for study. He denied the genuineness of the Raja's signature but as regards the Raja's life he says that he " led the life of a Bramachari " (celibate) and that " no woman was allowed to enter the Raja's residence in Bithoor or Cawnpore ". It seems to their Lordships that the true explanation for the Raja's conduct and his separate living may be found in the letter of the Civil Surgeon of Cawnpore, Lt.-Col. J. Armstrong, dated 15th November, 1894 (exhibit A-58) which was obtained as to his mental state. The letter is long but may be quoted in full as it throws considerable light on the life and doings of the Raja, and makes specific reference at its end to " his asceticism which has never allowed of his living with his wife as her husband ". It is as follows:—

> " I received your letter of the 10th a couple of days ago, and am very pleased to tell you what I know of the Sissendi Raja. I am not at all surprised that there should be conflict of opinion as to his mental condition and some times I have myself been puzzled in regard to him. The fact is the man presents two very different conditions; when in good health and interviewing his friends he is intelligent, a very agreeable conversationalist and to all appearances in full enjoyment of ordinary mental powers. He is, however, a devotee and an ascetic, he lives in Old Cawnpore on the Bank of the Ganges where he has built several little temples, passes long periods in contemplation with the image of some deity in front of him, and during this period he eats little or nothing, and bathes in the river at different watches of the night, with the natural result that illness ensues. I am then called in to see him, and I find him physically and mentally depressed, and his usual cheerful demeanour changed into a morbidly morose one, and with a silly insane expression of countenance. On these occasions he refuses to take my hand or to let me touch him, and my examination of him has to be purely ocular. Nevertheless, he replies quite rationally to any question asked, though for the time being his desire is to exclude from his mind all mundane matters, and to be entirely wrapt in the contemplation of things divine. This condition might no doubt run into one of religious dementia, though at present I could not conscientiously say that there is any one unmistakable symptom of such a condition existing. How far his neglecting his duties as a zamindar to follow the habits of a religious ascetic makes him unfit to manage his property is a matter to be decided by the Civil authorities; but if he attended to his duties as he ought to do and gave up his ascetic practices, I do not think there is any mental impediment at present to prevent his being able to do so. I have been told on good authority that though he has been married some twenty years, yet his asceticism has never yet allowed of his living with his wife as her husband and this very probably embitters her against him.
>
> Yours truly,
>
> J. Armstrong ".

Making some allowance for overstatement, there is evidence to show that what is described in this letter is not an untrue picture of the religious life that was being led by the Raja. It may appear as shown by the accounts of his expenses—the documents were filed only in connection with the handwriting—that he had not abandoned the worldly life altogether and that he lived in comfort and ease; but this does not affect the view that the life of a married man must have been intensely distasteful to him, and that he felt no desire to live with his wife any longer as he had decided to dedicate his life to religion. In their Lordships' view the Raja's desire to live an intensely religious life away from his wife affords the true reason why he left Sissendi, and renders likely the grant to the Rani of authority to adopt, in order to make some amends to her, if possible, for the unnatural life which she was constrained to lead through no fault of her own, but owing exclusively to his conduct towards her. There is nothing to show that at the time when he ceased to live with her and left Sissendi his relations with her were not friendly.

In appreciating the arguments based on the disputed letters it appears to their Lordships that the above described background of the Raja's life should be kept in mind. The Rani was young, she would naturally have liked to live the life of a married woman of her class and station in life and would also have desired to have children. Though there is no direct evidence—apart from the disputed letters—it is not unnatural to think that she would have pressed him to live with her in Sissendi. There is evidence that they used to correspond with each other, though not regularly and often. Their Lordships think that the disputed letters must have come into existence in such a situation as the one which they have outlined above. They do not at the moment express any opinion about the genuineness or otherwise of the letters. That question will be considered later. At this stage they are concerned only in examining the arguments based on the contents of the letters for and against the initial probability of the grant of permission to adopt.

Ex. A-189—letter from the Raja to the Rani already quoted says:—

> " . . . Aunt may adopt Chandra Dnar or when I cease to live, you may adopt anybody you please. Even now you may suppose that I am not living."

The Aunt referred to in the letter is Rani Umer Kuer, the adoptive mother of the Raja. To persuade him to return to her the Rani must nave written to him that rumours were afloat that Rani Umed Kuer was going to adopt and that everything could be put right if only he answered her prayer to return to Sissendi; but the Raja's answer as mentioned in the letter is definite and clear. Coming from one who was living as the Raja did at the time, the reply to her request does not sound strange. Apparently he had made up his mind to devote the rest of his life to the practice of religion and he therefore desires her to treat him as one not living; but he is prepared to compensate her in the only way in which he can in the circumstances, that is by permitting her to adopt after his death anyone she pleased. The subject is followed up in the next letter, exhibit A-190 which says:—

> " . . . If God wishes your desire will be fulfilled. If it does not happen I shall set everything right by adopting somebody. Do not worry. If I do not make an adoption during my life time, you are permitted after my death to make an adoption and enjoy the pleasure of having a son, and perpetuate the line of descent. . . . Loss and gain, life and death, honour and dishonour rest with the Almighty."

In the absence of her letters it is difficult to make out what " your desire " exactly refers to. It may well refer to desire on her part that he should return to her, and live with her so that they may have children. If her desire is not fulfilled he consoles her by repeating the permission he had already given her to adopt in case he did not himself make any adoption.

The last letter, Ex. A-191, gives a full picture of the situation. It needs no comment. It says that the Rani had been repeatedly writing to him to live in Sissendi but he tells her that he has ceased to have interest in worldly affairs and has now turned to his God. " I have already given you permission for perpetuating the line. . . . Why do you worry so much. . . . If Guru Maharaj wishes I shall leave everything and devote myself to the worship of God. There is no use vexing me any more." If genuine, this letter describes fully and vividly the circumstances in which the letters came to be written.

The above three letters complete the picture. Insistent demands to return and live a normal life with the Rani are met with the grant of permission to adopt, because the Raja desired to live the life of a Sanyasi, spending his time in contemplation and religious practices. Ex. A-188 (already referred to), which is said to have been manufactured to lay the foundation for the grant of authority to adopt which was given in subsequent letters, does not refer to adoption but mentions that Rani Umed Kuer was intending to adopt Chandra Dhar and asks the Rani to enquire about it.

It is argued that the letters supply evidence to show that they cannot be genuine because of the statements contained in them to the effect: (1) that Rani Umed Kuer had treated the Raja badly; and (2) that she intended to adopt Chandra Dhar, both of which are stated to be unfounded in fact, and the second impossible in law, as well.

Their Lordships think that the above statements should be examined in the light of the surrounding circumstances and not as isolated statements made by the Raja. It is true that there is no evidence that Rani Umed Kuer meted out ill treatment to the Raja, understanding the term ill treatment in the ordinary sense. She had confidence in him as she made him trustee when she executed a deed of trust in 1889; but there is evidence that she brought pressure on him to return home and was displeased with him as he neglected the estate affairs, devoting his time more to religious matters and worship, which the Raja, having regard to his mental state and desire to be left alone, might well have looked upon as conduct amounting to ill treatment. She wanted to wean him from his religious life. Raja Chandra Shekhar was not a normal man and his conduct and opinions should not be judged by standards applicable in the case of ordinary persons. The statement in question is vague and ambiguous and their Lordships think that in the circumstances it is not surprising that the Raja should have made it, though it may well be an overstatement.

It was next argued that Rani Umed Kuer could not make a legal adoption, as she had no authority from her husband, and that as the Raja had already been adopted, the reference to a threatened adoption by the Rani contained in the letters showed that the letters cannot be treated as genuine. It is important to notice that the letters do not in any manner suggest that Rani Umed Kuer could adopt. As stated before, the Rani was anxious that the Raja should return to Sissendi to look after the estate affairs. To exert pressure on the Raja she may have held out a threat, as pointed out by the learned Chief Justice in his judgment, that she was going to adopt, " not because she ever intended to carry out this threat but to bring some sort of pressure upon the Raja to return home ". The Rani was in possession of certain villages granted to her under the will of Raja Kashi Prasad which were to revert to Raja Chandra Shekhar on her death. If she adopted—what would be the position? Would the adoption be valid, would it affect the properties in her possession which were to go to him eventually? Considerations of this nature might well have created apprehension in the mind of the Raja. There is evidence that Raghuraj Chandra (D.W.2)—a blood relation of Raja Kashi Prasad—was sent by the Raja to Sissendi to make enquiries about the rumour. This evidence has been disbelieved by the Trial Court. Their Lordships will refer to the evidence of this witness when they begin the consideration of the direct evidence as to the genuineness of the letters. In the circumstances, as explained above, it is not improbable that the witness was sent by the Raja to make enquiries. However that may be, their Lordships are not

impressed with the argument that doubts should be thrown on the genuineness of the letters on the ground that they refer to adoption by Rani Umed Kuer which is not legally possible.

The nature of the language used in the letters was relied on to show that the letters could not be genuine. It was said that the letters looked like business letters, they were devoid of human and personal touch and were couched in language very unnatural as between a young husband and his wife. Not much emphasis was placed on the argument before the Board. Though the letters are short and somewhat formal the language used in them does not seem to their Lordships to be unnatural, having regard to the abnormal relations between the spouses.

Apart from the language and contents of the letters, certain other circumstances were referred to as being incompatible with the existence of the letters.

The conduct of the Raja was relied on to show that the letters could not be genuine. It was argued that since the feelings between the Raja and the Rani had admittedly become embittered from 1894 onwards, if the Raja had written the letters he would have revoked them, and since he had not done so, no such letters could have been written by him. This argument has been sufficiently answered by Walford J. and the learned Chief Justice in their judgments. A long time had elapsed since the writing of the letters. The Raja had been declared a person of unsound mind. He may have forgotten that he had written these letters to the Rani. When the letter, Ex. A-54, written by the Rani to him in 1893, in which she had acknowledged the receipt of two letters written by him to her, was shown to him in the course of the Lunacy proceedings before the Judicial Commissioner the Raja said " . . . I cannot remember whether I had sent the two letters to the Rani before I received the letter I have just read " (Ex. 75). His failure to revoke the letters if they had existed does not necessarily imply that they did not exist. The question, why did not the Raja himself adopt? was asked by the learned counsel to show that the conduct of the Raja was inconsistent with the existence of the letters. The question may be answered in different ways without casting doubts on the existence of the letters. The Raja could have made an adoption himself, but having given permission to the Rani to adopt there was no reason for him to make an adoption. Subsequent to 1897 he was incapacitated from making an adoption by reason of his being declared a lunatic and becoming a Ward of the Court, though he might have sought the permission of the Court to make an adoption. Evidently he did not do so; if he had not been declared a lunatic it is impossible to say what he might have done.

Inconsistencies in conduct of the nature suggested do not necessarily mean that the letters could not be genuine; nor does the fact that he was only 24 or 25 when he gave the consent to adopt show, having regard to the circumstances already mentioned, that he would not have given the permission.

The conduct of the Rani was then referred to, to show that the letters could not be genuine. It will be remembered that before filing the written statement in the Sissendi suit on 18th November, 1925, the Rani had sent the disputed letters to Mr. Brewster, the Government Examiner of questioned documents in Simla for his opinion. Evidence shows that she sent them to other experts and had them also photographed. It was urged that if these letters were genuine there was no necessity to submit them to the opinion of Mr. Brewster or other experts, the suggestion being that she did so as she wanted to see whether the letters would pass as genuine. Their Lordships do not think the conduct of the Rani lends any support to the suggestion. A suit had just been instituted by the Raja's relations against her. She may well have thought that if she made an adoption it would probably be questioned later. She evidently wanted to do everything in her lifetime to safeguard the interests of her adopted son in case the adoption—if she made it—happened to be questioned. As we now know, what she feared did happen. Their Lordships do not think that the conduct of the Rani in sending

the documents for the opinion of Mr. Brewster and the other experts to whom she showed them, can be invoked in support of the plea that the letters are not genuine. On the contrary, it is to say the least improbable that she would have submitted letters which she knew to be forgeries to such a test.

Referring to the Rani's conduct, two further arguments were advanced to throw doubts on the genuineness of the letters. It was urged that if she had the letters in her possession she would not have provoked the Raja by taking proceedings to get him adjudged a lunatic. As pointed out by the learned Chief Justice in his judgment she was compelled to take the steps she took in order to preserve the Estate, for the Raja had executed leases disadvantageous to the Estate (see Exs. A-168 and A-171) and she must have feared that the Estate would suffer if he was not restrained. In her own interests, as well as in the interests of the adopted son if she adopted one, it was highly necessary to control the Raja. Their relationship had become strained and she was prepared to take risks. Their Lordships do not think that the conduct of the Rani in launching proceedings against the Raja, necessarily implies that the letters did not exist at that time. In this connection it was strongly urged that the Rani was a woman " who would do anything to gain her ends " and to benefit her family, and that she would not have hesitated to forge letters if necessary to serve her purpose. The Rani was no doubt an able and strong willed woman, but their Lordships are not prepared to draw the suggested inference from the Lunacy proceedings on which this argument is based.

In further support of the argument it was urged that the disputed letters never saw the light of day during the lifetime of the Raja. In reply, the respondent produced two witnesses, D.W.'s 18 and 10, whose testimony if believed, would show that the allegation cannot be true. As the decision of this question involves consideration of the oral evidence, their Lordships will deal with it along with the oral evidence directly bearing on the question of the genuineness of the letters. Here, they would only say that they are prepared to accept their evidence.

Thus far their Lordships have discussed the various alleged improbabilities brought to their notice against the genuineness of the letters; they find that those improbabilities do not exist and that on that account doubts need not be thrown on their genuineness. In the course of the discussion they have indicated their view that it is probable in the circumstances of the case, having regard to the life the parties were leading, the Raja by choice and the Rani by compulsion, that there is nothing unnatural in the Raja granting to the Rani permission to adopt to silence her insistent demands that he should return to Sissendi and live a normal married life with her which his intense asceticism would not permit him to comply with. They have also found that the relationship of the Raja and the Rani was friendly and not hostile. In their view there is no justification for holding that Ex. A-188 was brought into existence to prepare the way for the grant of authority found in the subsequent letters.

The view sketched above must necessarily affect the consideration of the evidence adduced in proof and disproof of the genuineness of the disputed letters which has been considered by the Trial Judge and by Ghulam Hasan J., from the standpoint, that in their view the relationship of the Raja and Rani subsequent to 1884 was " exceedingly bitter and hostile," and that the initial probability of the permission to adopt has not been made out.

As stated already, it has now been conceded—as their Lordships think, rightly—that in the period prior to 1893, which will cover 1889, when the letters are said to have come into existence, there was no bitter hostility between the parties and this is amply supported by the evidence also. It follows, that the evidence bearing on the genuineness of the letters should be examined freed from the view that the relationship of the parties during the period was " exceedingly bitter and hostile," and that the initial probability of the permission to adopt has not been made out.

Their Lordships have shown that it is probable that the Raja may well have given the Rani permission to adopt. The evidence should be examined from this standpoint.

Before examining the evidence their Lordships may refer to two connected points. The first relates to the question, on whom does the burden of proof lie? It is not denied that the plaintiffs 1 and 2 are the heirs of Raja Chandra Shekhar and would be entitled to succeed to the properties on the death of Rani Subhadra Kuer but for the adoption of the second respondent by her, if the adoption is valid. It follows therefore, that the burden lay upon the respondent to prove that the disputed letters containing " the consent to adopt " necessary to make the adoption valid, purporting to be in the handwriting of the Raja, are genuine. In this case, however, the question is not of any practical importance since both parties have given ample evidence in proof and disproof of the genuineness of the letters and the Courts are called upon only to draw their conclusion on the question after consideration of the entire evidence and the fair probabilities of the case irrespective of technical considerations affecting the burden of proof.

The second point relates to the nature of the burden of proof that rests upon a person who seeks to establish adoption. This does not require any long discussion. In *Dalbahadur Sing* v. *Bijai Bahadur Sing* (57 I.A. 14 at p. 19) it was observed by Lord Buckmaster that a " very grave and serious onus " rests upon the person who seeks to displace the natural succession of property by reason of adoption. It is not disputed that the onus necessitates a strict scrutiny of the evidence that has been adduced in proof of the consent given by the Raja to adopt.

Their Lordships will now examine the evidence of witnesses bearing directly on the Raja's handwriting in the light of the principles referred to, and the conclusions reached above.

It will be convenient first to refer to the exemplars bearing the Raja's signature that were produced for comparing them with the signature contained in the disputed letters. These are divided into nine groups (see the learned trial judge's judgment, Vol. I, pp. 318-319) according to the years when they were written and they range from the years 1894 to 1912. These exemplars consist of exhibits A-168 and A-171, two leases of the year 1894 executed by the Raja, exhibit A-174, a bond of the year 1895 executed by the Raja for his personal appearance, exhibits A-175-A-182, statements of accounts of the years 1902-1904 submitted by the Raja to the Court of Wards, exhibits A-183-A-187, accounts of the expenditure incurred by the Raja on pilgrimage to Gaya on the death of Rani Umed Kuer and other expenses, 1906-1908, and exhibits A-193-A-222 of the years 1910 and 1912. Of these, exhibits A-183-187, group No. 6, purport to bear the Raja's verification in addition to the signatures. About these exemplars the learned trial judge says:

> " Of the 46 documents produced by the defence to serve as exemplars, all except A-168 have been either admitted or presumed genuine."

Their Lordships do not agree that A-168 is not genuine. It is a lease executed by the Raja and was filed in court in connection with the lunacy proceedings of 1896 about forty years ago. It was called for from the court where it had remained all these years. The Raja's initials found in the document which are in English are admitted, but it is said that his Hindi signature, which it may be mentioned resembles most the alleged signature of the Raja contained in the letters, has been forged because there is a tear in the middle of the signature and a white spot therein not inked. How this happened may reasonably be explained as has been done by Walford J. in his judgment, but it is unnecessary to consider the explanations as it is difficult to imagine how a forger could have got access to the court records to commit the forgery. In the circumstances exhibit A-168 also must be presumed to be genuine. Indeed, the observation of the respondents that the attitude of the appellants in relation to the genuineness of this unquestionably genuine document shows to what extent they are prepared to go in order to discredit the genuineness of the disputed letters, is not without force.

Turning now to the witnesses, direct evidence of persons who actually saw the Raja write the letters cannot be expected. The evidence given by the respondent, as already mentioned, consists of two witnesses Raghuraj Chandra *alias* Ramapati Ashram (D.W.2), and Daya Shankar (D.W.4) who have been put forward as persons familiar with the handwriting of the Raja, and of the opinion of the handwriting expert Mr. Chaudhry (D.W.22). There cannot be any doubt that Raghuraj Chandra and Daya Shankar are competent witnesses to depose to the handwriting of the Raja and that if their evidence is reliable the handwriting of the Raja must be held to be proved. In this connection it is important to notice that it is not alleged that there are other persons more competent than those two witnesses who could have given evidence and have not been produced. It follows that the respondent has produced in proof of the Raja's handwriting all the available witnesses who were acquainted with his handwriting.

Raghuraj Chandra is a natural brother of Raja Chandra Shekhar. He used to live with the Raja off and on, after his marriage, in various places. He gave a detailed history of the marital life of the Raja and the Rani. Reference has already been made to the fact that he instituted the Sissendi suit against the Rani which began in 1925 and ended in 1928. In 1931, when the Rani deposited the disputed letters with Mr. Munro for safety, this witness and D.W.4. swore two affidavits testifying to their genuineness after reading them. It is suggested that they must have been bribed to swear to those affidavits. There is no evidence to support this suggestion. Their Lordships cannot believe that Gopinath, a retired deputy collector—now dead—and Mr. Munro, a high civil official, would conspire with the Rani to create false evidence. It may be conceded that the witness's own opinion as to why he was made to swear an affidavit cannot be accepted. Mr. Munro had retired before the suit was filed. In the mutation proceedings which followed after the Rani's death he was examined as a witness. Owing to the difficulty of getting his evidence created by the outbreak of war his evidence given in the mutation proceedings (Ex. A-109) was brought on record. Though he was asked under what law he took charge of the papers he was not asked any question as to why he thought an affidavit was necesary.

D.W.2. became a sanyasi a few months before he gave evidence. He was aged 72. He was blind in one eye and with the other eye he was not able to read except with a magnifying glass. The evidence of this witness has not been accepted by the trial judge mainly because having brought a suit against the Rani (the Sissendi suit) he could not be expected in the ordinary course to give evidence in her favour; because he made some statements that cannot be true; and his evidence is not of a character which will inspire confidence. All these reasons have been considered in detail by Walford J. and the learned Chief Justice and for reasons which their Lordships consider valid, have been rejected by them as untenable. Ghulam Hasan J. has accepted the trial judge's view. Their Lordships do not think it necessary to discuss these reasons as they do not bear directly on the knowledge which this witness admittedly has of the Raja's handwriting and of his competency to detect its genuineness. The particular reasons given by the trial judge for rejecting his evidence as to the Raja's handwriting, as will be shown presently, are not such as would justify its rejection.

In his evidence the witness said:

> " . . . I have seen the Raja write on many occasions. I can identify his handwriting. He used to write in Hindi and used to sign in Hindi and occasionally in English also. But I will not be able to identify the Raja's English signature. I can identify his Hindi signature and handwriting."

The witness was shown exhibits A-188, A-189, A-190 and A-191 (the disputed letters [The learned judge notes that the witness examines these with a magnifying glass, as he cannot, being weak of sight, see them clearly otherwise,] and says:

> " All these letters are in Raja Chandra Shekhar's handwriting and are signed by him."

At this stage some exemplars were shown to the witness and he experienced no difficulty in picking out the Raja's signatures and verification on those documents.

The witness then mentioned that he had seen exhibits A-188 to A-191 (the disputed letters) about seven or eight years ago:

> " . . . Babu Gopinath the Manager of Rani Subhadra Kuer showed me these letters for verification of their genuineness in presence of the Deputy Commissioner of Lucknow and I filed an affidavit concerning this matter, at the instance of Babu Gopinath. I swore the affidavit before the Deputy Commissioner. I was shown six letters and 8 or 9 accounts. I was asked to file an affidavit because I was old and might not live and if an affidavit was filed it might prove useful. So far as I can recall this was after the adoption made by the Rani. I was asked to file an affidavit on a stamp paper. I was shown in all 19 documents at that time. Babu Gopinath was a retired Deputy Collector. He was Rani Subhadra Kuer's manager."

Their Lordships have already dealt with the above statement.

Further on, the witness stated:

> " I cannot see clearly since four years. I instituted a suit for the taluqa against the Rani after the death of Raja Chandra Shekhar."

In the course of his cross-examination the witness stated:

> " The Raja did not write any letters to his *Ahelkars* servants with his own hand while he was in Bithur, Cawnpore or Allahabad. I did not see the Raja note any orders on the estate papers with his own hand. The orders were written by Sohanlal or other person and the Raja used to sign them. . . ."

Further on he stated:—

> " Raja Chandra Shekhar did not use any table or chair whenever he wrote. Formerly the Raja used a *kilk* pen for writing but later on he had begun to use pens with steel nibs. But this was done very seldom—use of steel nibs. He used to write very slowly. It is not correct to say that he often omitted the *matras* over his letters.
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> . . . . . .
>
> I read through the entire writing of the Raja on papers shown to me by the defendants' counsel before I identified his handwriting."

The closing part of his evidence regarding the Raja's handwriting is as follows:—

> " I cannot describe any special characteristic of the Raja's handwriting. I cannot identify the Raja's signature by seeing the signature only without reading the document to which the signature is appended.
>
> Shown P.W.2/1. This is not in the Raja's handwriting. One or two letters in this document resemble Raja's—but not others. The style and way of writing is not the Raja's. . . .
>
> One of my eyes is totally blind. I can see only with the left eye. I used a magnifying glass to read the documents shown to me.
>
> I can see these documents with the aid of my magnifying glass at a distance of about 8 inches.
>
> Shown P.W.2/5. I cannot make this out. The letters are too dim."

Their Lordships have extracted above what they consider to be the material portion of the evidence given by the witness relating to the Raja's handwriting.

The learned Trial Judge's criticism on the evidence of this witness as well as of the next witness (which will be referred to presently) is as follows:—

> " As to the next point, whether these two witnesses were acquainted with the handwriting and signature of Raja Chandra Shekhar there

can be no doubt that they had ample opportunities to see the Raja write and thus became acquainted with his handwriting. It should not, however, be forgotten that both these witnesses had not seen the Raja's signature since his death 17 years before they were called to give evidence. So far as Raguraj Chandra is concerned, I doubt his present capacity to identify the Raja's handwriting. He is 72 years of age. One of his eyes is totally blind and even with the other he could not see the letters in the questioned documents except with the aid of a magnifying glass. Even with the magnifying glass he could not see them at a distance longer than 8 inches. It is extremely doubtful if the opinion of a person, though he be acquainted with the handwriting of any individual, but is, on account of defective vision, unable to see the handwriting except with the aid of a magnifying glass, can be at all reliable.

It is further significant that this witness expressed his inability to identify the handwriting of the Raja on A-189 to A-191 unless he had read the individual documents in their entirety. It was suggested that this precaution was taken by the witness to guard himself against identifying as genuine any documents except those which he was instructed to identify. He admitted that he was unable to mention any special characteristics of the Raja's handwriting.

But independent of these considerations admittedly there is enmity between him and Chandra Dhar.

Like Raghuraj Chandra, Daya Shanker could not give any special characteristics of the Raja's handwriting. Considering however that they are not independent and reliable witnesses, even if I were fully satisfied of their ability to identify the handwriting of the Raja in 1939 I would not act on their evidence."

This witness is old and his eye-sight is impaired. Their Lordships do not think there is anything wrong in an old man of feeble eye-sight carefully reading a document which he has to prove on oath. No special characteristics of the document were brought to his notice for him to affirm or deny. The appellants' handwriting expert—though he was examined only later—was aware of certain special features which he detected in the Raja's signature. The appellants, if they wanted to do so, could well have with his help examined this witness with reference to these characteristics. D.W.2. was not examined as a handwriting expert. He was called to give evidence because of his extreme familiarity with the Raja's handwriting. The witness had no difficulty in identifying the Raja's signature and exemplars shown to him. There was no cross-examination worth the name to test the correctness of his identification. There is no inherent improbability, inconsistency, or contradiction in the evidence of this witness bearing on the Raja's handwriting. His previous enmity with the Rani which he says does not now exist, because he has apologised to her and has been pardoned by her, and the fact that he swore to an affidavit as to the genuineness of the letters before Mr. Munro can hardly be sufficient reasons for rejecting the witness's evidence as regards his acquaintanceship with the Raja's handwriting. It is undoubted, as the learned Trial Judge himself remarked, that the witness had abundant opportunities to see the Raja write and thus become acquainted with his handwriting. It appears to their Lordships that the learned trial judge's criticism of this witness in so far as it relates to the genuineness of the Raja's handwriting is unwarranted and that more convincing grounds are required for the rejection of that part of his evidence.

The next witness who speaks to the handwriting of the Raja is Daya Shankar (D.W.4). He is aged 74. He is a tenant of the estate and holds land given to him by the Rani. His father, brother, uncles and he himself were all in the service of the Raja. He stated:

"I have seen the Raja write and sign on hundreds of occasions and could identify his handwriting and signature."

and said that all the disputed letters were in the handwriting of the Raja. He said in cross-examination:

> " My sight has grown weak for the last two or three years. I have been using spectacles for the last 18 or 20 years. . . . I can read and see well in good light, but if the light is not good I cannot see clearly. My glasses serve me well for all practical purposes."

He said that he had seen the Raja write letters to the Rani some of which he had delivered. To the questions put by the court he said:

> " I read the entire writing of the Raja in all the documents about which I was questioned before saying whether the writing was that of the Raja or not. I did this with regard to all the documents shown to me by the counsel on either side. . . I cannot give the peculiarities of the Raja's handwriting, but I can distinguish between his genuine and forged signature."

The witness identified the signature of the Raja in all the documents shown to him.

The witness mentioned that he had seen the disputed letters when he, like D.W.2, filed an affidavit as to their genuineness before Mr. Munro.

The learned trial judge refused to act on his evidence because he said that he was in the service of the Raja since 1881, while he had said on a previous occasion that he was in service since 1892; because he had sworn an affidavit, like D.W.2, before Mr. Munro; and he denied having written a letter, exhibit 74, to Chandra Dhar (1st plaintiff). Nothing turns on this letter, and Chandra Dhar is the only person who was called to prove it. As most of the members of his family were in the service of the Raja, the witness may have worked in the family though not as a regular servant until 1892. Their Lordships do not accept the view that this witness must have been persuaded to swear a false affidavit before Mr. Munro. It is true that the witness is not quite independent but it is not alleged, as already stated, that better and more independent persons could have been procured to support the defence as regards the Raja's handwriting, and have not been produced. The grounds stated by the learned trial judge for his refusal to act on the evidence of the previous witness D.W.2. applies as he has stated also to the evidence of this witness. Most of their Lordships' comments on the criticism of the learned trial judge on the evidence of D.W.2 would apply to the evidence of this witness also.

For the reasons mentioned above their Lordships have no hesitation in accepting the evidence of Ramapati Ashram and Daya Shankar (D.W. 2, and 4) as to the genuineness of the Raja's signature in the disputed letters.

It is contended that the conclusion on a question of fact arrived at by the trial judge, who had the advantage of hearing and seeing the witness, should not be lightly set aside. The application of this principle depends upon the special circumstances of each case. That it was not absent from the mind of the appellate tribunal in this case is clear from the following observations of the learned Chief Justice with which their Lordships agree:

> " It does not appear that the learned Judge rejected the evidence of the above two witnesses on the ground that the evidence they gave was so inherently improbable or that there were such contradictions and discrepancies as to render their statements unacceptable, but it seems mainly for the reason, that having come to the conclusion that because there was violent hatred between the Raja and the Rani it was impossible for the Raja to have written the letters and therefore any evidence to the contrary was unacceptable. As a rule great weight is to be attached to the opinion of a trial Judge who has had the advantage of seeing the witnesses and observing their demeanour but where a Judge rejects an evidence not because he is dissatisfied with the manner in which it has been given but because he has made certain assumptions or drawn inferences from circumstances not directly connected with the evidence of that witness, it is incumbent upon the

> Court of appeal to strictly scrutinize the evidence for itself and attach such value as the evidence warrants. Upon my finding that it has not been established that there was ill-feeling or hatred between the Raja and the Rani at the time when the disputed letters were said to have been written, I find nothing in the evidence of the two witnesses which will warrant its rejection. I am not prepared to hold that their testimony is based on inferences or is of inconclusive character."

The last witness examined by the defendant in support of the genuineness of the Raja's handwriting is Mr. Chaudri (D.W.22), a handwriting expert. This witness is a graduate of the Calcutta University. When he was employed in the Criminal Investigation Department in Bengal as a photographic expert he began the study of the examination of questioned documents, and after a six years' study of the subject was appointed as a handwriting expert by the government of Bengal in 1918 and remained in service until 1930 when he retired on a pension. Comparing the writing of the disputed documents with the exemplars this witness expressed the opinion that the handwriting of the disputed documents tallied with that on the exemplars and was therefore in the handwriting of one and the same person. Mr. Chaudhri stated that the proved signatures of the Raja and the disputed writings corresponded in various respects and he described the similarities. He said also that he noticed certain dissimilarities. The learned trial Judge was not satisfied with the evidence of this witness. Ghulam Hasan J. also did not think it was safe to act on his evidence. Walford J. accepted his evidence. The learned Chief Justice in considering the evidence at the outset said:

> " Had the evidence of the handwriting expert in proof of these disputed documents stood alone, I would have had great hesitation in accepting it." But he added, " In the present case the evidence of the handwriting expert is supported by the evidence of two witnesses who are thoroughly conversant with the Raja's handwriting and having regard to the detailed reasons given by D.W.22 for his opinion as to the genuineness of the handwriting, I see no reason for its rejection."

It is generally recognized that the opinion of a handwriting expert must be approached with great caution. Mr. Chaudhri's evidence does not deal with all the peculiarities of the Raja's handwriting which were brought to their Lordships' notice but he was not sufficiently examined with respect to those peculiarities. As far as it goes, it cannot be said that his evidence does not support the respondent's case. Their Lordships were taken through his evidence. As in the arguments before the Board Mr. Pullan the learned junior counsel who argued this part of the case laid more emphasis on the idiosyncrasies in the Raja's signature appearing in the exemplars when compared with the signature in the disputed letters, their Lordships do not think a detailed examination of Mr. Chaudhri's evidence is called for. They will examine the evidence with respect to those idiosyncrasies.

Mr. Pullan drew their Lordships' attention to two idiosyncrasies appearing in the Raja's signatures in the exemplars which are not found in his signatures in the disputed letters, and as satisfactory explanation has not been given for these dissimilarities the learned Counsel argued that the disputed letters should not be declared genuine. The idiosyncrasies relate to the horizontal " guide lines " over the tops of the letters in the signatures in the exemplars, which really form parts of the letters composing the signatures, and to the " dot " seen below the letter in the Nagari script in the signatures which corresponds to the letters " Kh ". (The dot appears thus, Kh.) In signing his name, the Raja always added after his name words in Nagari " baqualamkhud " shortened into " ba khud ", which means " by his own hand." The dot appears below " Kh ".

It was pointed out that the " guide lines " in the exemplars were more or less continuous, proceeding in a series of jerks; while, in the disputed letters the guide lines are separate, and correspond more or less with the

separate words or separate syllables. It was also pointed out that while in the exemplars wherever " ba khud " was written the Raja had always put a " dot " under the letter corresponding to kh, no such dot appears in the disputed letters under the Nagari letter corresponding to Kh. In Ex.A-191, the " dot " has been put over the top of these letters and the only document containing " ba Khud " in which a dot does not appear is Ex.A-201 (see Judgment of Ghulam Hasan J.). The statement may be taken to be generally true. Mr. Pritt referred to two other documents also as doubtful cases. Their Lordships were taken through the relevant documents. The question is, has the non-occurrence of these two idiosyncrasies in the signatures of the Raja in the disputed letters been satisfactorily explained?

The " Guide Line idiosyncrasy " has been referred to and commented upon adversely to the respondent by the trial Judge, and in his favour by Walford J. and the learned Chief Justice. Ghulam Hasan J. does not refer to it in his judgment. The idiosyncrasy referable to the " dots " is mentioned only in the judgment of Ghulam Hasan J. Nomani (P.W.8), whose evidence for very good reasons has been rejected by the trial Judge who has also rejected, it will be remembered, all the appellants' other evidence relating to handwriting, curiously enough points out the absence of dots in the disputed letters under " Kh." He was not cross-examined with reference to the dots. Mr. Chaudhri was not asked any questions about them. It may be mentioned here that P.W.5 (Chandra Kishore), whose evidence as to handwriting was rejected by the Trial Court, refers to both the above-mentioned idiosyncrasies.

The exemplar documents nearest in date to the disputed letters (A-168, A-171, A-174), dated 1894-95, are separated from them by a period of about five years. Mr. Chaudhri ascribed the " guide line dissimilarity " to loss of control over the pen in later years of life. This explanation was not accepted by the trial Judge as the characteristic was found in the exhibits written when the Raja was still young. Walford J. did not attach any importance to this dissimilarity. He said " It would therefore not be surprising that the writing of a man like the Raja, who admittedly had not received a sound education and consequently had not developed a matured handwriting, should have changed to some extent during a period of five years which elapsed between the year 1889 and 1894. It is a well known fact that the handwriting of a man, though retaining few of its particular characteristics, changes from time to time. There is therefore, no substance in this argument." The learned Chief Justice was also of the same opinion. He said " It is therefore possible that while retaining the general characteristics, slight deviation might have occcurred in the course of so many years." Despite the dissimilarity he found a remarkable resemblance between the signatures in the nearest writings to Ex. A188 to Ex. 191 i.e. in A-168, A-171, and A-174 and those on the disputed letters. Too much importance should not be attached to this dissimilarity. Deviations in the manner of writing may take place even though the writer is young at the time when they begin to appear. The guidelines appear to be more or less continuous and the deviations pointed out seem to be natural. Their Lordships do not attach importance to the absence of this characteristic in the disputed signatures.

The non-occurrence of the " dot " below the letter in the Nagari Script corresponding to " kh " has not been satisfactorily explained. Since Nomani's evidence was discarded by him, the learned trial Judge might have thought that the point was not of any significance, though he says that he does not disagree with him in all or most of the dissimilarities in the disputed letters. Ghulam Hasan J. is the only Judge who deals with the " dots ". However, it is only one of the circumstances which have to be considered in regard to the genuineness of the disputed letters, and their Lordships do not think that it outweighs the facts and circumstances relied on in support of the genuineness of the letters.

It will be convenient here to consider an argument of the appellants based upon the non-production of what was referred to as the " missing letter ". It will be remembered that in 1931 the Rani deposited with Mr. Munro, the Deputy Commissioner of Lucknow, five documents for safe custody. The first was the deed of adoption, the second was a letter " from Raja Chadra Sekhar to Rani Subadhra Kunwar dated Mite Sawan Krishna 2 Kahibar Sambat 1946," which admittedly corresponds to 14th July, 1889. This letter has not been produced. The last three are the disputed letters granting authority to adopt. These being of the year 1889, it was argued that the best exemplar for the purpose of comparing the signatures of the Raja would have been the letter of 14th July, 1889, which has not been produced—that letter being of the very year 1889, and since that was not produced a very strong presumption should be made that the questioned letters are not genuine. It is clear from the evidence that the appellants had an opportunity to see the letter. It appears from the deposition of Mr. Munro (Ex. A-109) and his correspondence with Mr. Naqvi that this letter along with the other documents were summoned to be produced before the Court in the Mutation Case No. 23/72 Zaryat Warasat Village Sissendi—*Pt. Chandra Dhar* v. *Rani Subhadra Kunwar*, brought by plaintiff No. 1 against the Rani after the death of the Raja, and was produced by him. Both Chandra Kishore and Jagannath Prasad (P.W.1) were present at the mutation proceedings (see the evidence of P.W.5-Chandra Kishore). No point seems to have been made in the Courts in India of the omission to produce the letters though there is a statement that it has been suppressed in the written argument filed in Court on behalf of the plaintiff. It does not appear that any demand was made for the document either before or during trial, though reference has been made to it by the Trial Judge and Ghulam Hasan J. Their Lordships cannot easily believe that a responsible official body like the Court of Wards which was in charge of the 2nd respondent's case would have deliberately suppressed the document. The Court must have thought that it was not material to the case. However, as the appellants must have had an opportunity to see the letter in question and did not raise the question of its non-production specifically before the Courts in India, their Lordships can attach no importance to the fact that it was not produced.

One more question remains to be considered in connection with the genuineness of the disputed letters, viz., whether they were disclosed to anyone during the lifetime of the Raja. That they were sent to Mr. Brewster in 1925 cannot be denied. The appellants' argument is that between the years 1893 and 1925 the letters never saw the light of the day. Two witnesses, Ajodhia Prasad (D.W. 18) and Sidh Nath (D.W.10) were produced by the respondent to show that the documents were seen by them in 1910 and 1918 or 1919 respectively.

Ajodhia Prasad states that the Rani heard a rumour that the Raja wanted his estate to be released so that he might make an adoption. She then sent for Mr. Jackson (who was a junior of Mr. De Gruyther) to consult him as to what steps she should take to prevent the release of the estate. The witness was present at the interview between Mr. Jackson and the Rani. There was talk about adoption when Mr. Jackson wanted to see the letters. The witness was asked by the Rani to fetch the German silver box which contained them from an almirah. These letters were in an envelope marked in Nagri script " letters of adoption ". The Rani took out the letters and the witness handed them to Mr. Jackson. Faqirey Lal, who was also present, was asked by Mr. Jackson to read the letters. The witness read them before they were put back into the box. He was then about 17 or 18 years of age. He identified the letters.

The evidence of this witness is attacked as he is the Rani's nephew, and when he gave evidence he was the personal servant of the adopted boy. The witness was the Rani's sister's son and was brought up by her. He resided with her till her death. There was nothing unnatural in the Rani asking him to fetch the box. It is undoubted that the Rani wrote to Mr. De Gruyther asking him to advise her about the release of the estate.

In his letter to the Rani dated the 14th April, 1910, Mr. De Gruyther said it was not possible for him to go to India to advise her. What is more important is a postscript to the letter in which he says:

" I think the old file is with Mr. Jackson."

In the circumstances the Rani may well have consulted Mr. Jackson and shown him the letters. Both Faquirey Lal and Mr. Jackson are dead and only this witness can speak to what took place at the interview.

The second occasion was in 1918 or 1919. Sidh Nath (D.W.10) is 54 years of age and is a schoolmaster. He came to know Faqirey Lal, and since 1917 he was employed by him as a private tutor to one of his sons. At the time of the suit he was in the service of the family and was teaching the natural brothers of the second respondent. He stated that about 1919 or 1920, at the Rani's request, he had transliterated the disputed letters into Urdu, and that he again saw these letters some four or five years later when he was asked to take them to Mr. Brewster at Simla. Later he received them back from Mr. Brewster together with the letter, exhibit A-223. There cannot be any dispute with regard to this witness's visit with these letters to Simla. When he was asked the reason why copies were made of them he replied that they were for the use of the Rani's lawyer, Babu Bisheshwar Nath Srivastava. It was said that this occasion was invented " for airing the disputed letters " as he, Bisheshwar Nath Srivastava, was acquainted with Hindi. Walford J., who must have been familiar with the way in which lawyers worked in courts in that Province, did not accept this view. He seems to think there was substance in this explanation. However, he held these letters to be genuine, relying on other circumstances. He said:

> " I see absolutely no reason to disbelieve the witness and to hold that the occasion upon which he is said to have seen the letters has been invented."

Their Lordships are also of the same opinion. These incidents spoken to by these witnesses should not be treated as isolated instances, but have to be considered in relation to the other circumstances in the case which bear on the initial probability of the grant of permission to adopt. Viewed in this light the evidence of this witness may be accepted.

A few other circumstances were also pointed out as throwing doubts on the genuineness of the disputed letters. To mention two—the existence of letters, as many as four, while one would have equally well served the purpose, and the delay in making the adoption. It was suggested that as many as four letters were forged in order to make the grant of permission look more natural, forgetting the fact that a forger will hardly undertake the more onerous task of forging four letters while one would suffice and of forging, as in this case, entire letters instead of adding signatures alone to letters written by others. If, in fact, only one letter had been available, the criticism would probably have been put the other way—why only one letter and not more? The delay in carrying out the adoption was not emphasised before the Board so much as before the Courts in India. The delay cannot be described as unduly long. Their Lordships have come across genuine cases where adoption had taken place after the lapse of far longer periods of time than in the present case. Naturally, no adoption would be made till a decent period of time had elapsed after the Raja's death which happened in 1923; then came the first Sissendi suit which, beginning on 23rd May, 1925, ended only on 2nd February, 1928; and the adoption followed on 14th July, 1929. Their Lordships do not think the delay was unduly long.

Their Lordships have now considered all the circumstances brought to their notice bearing on the question of the genuineness of the disputed letters. They hold that their genuineness has been established, particularly in view of the evidence of Ramapati Ashram and Daya Shankar (D.W.'s 2 and 4).

In order to succeed, the appellants have to show that the majority decision of the Full Bench is erroneous. As pointed out by Lord Buckmaster in *Fakrunissa* v. *Moulvi-Izarus-Sadik* (1921) 25 C.W.N. 866 at 875.

> " In every appeal it is incumbent on the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered to justify the alteration of the judgment that stands."

On consideration of the evidence on this part of the case their Lordships have not been able to find any such balance in the appellant's favour.

The next question for determination is whether the consent in writing contained in Exhibits A189 to A191 is invalid for want of registration as required by the Indian Registration Act.

The Oudh Estates Act (Act I of 1869) was passed " to define the rights of the taluqdars and others in certain estates in Oudh and to regulate the succession thereto ". This Act was afterwards amended by U.P. Act III of 1910. The Act applicable to the present case is the unamended Act I of 1869 as the consent in writing to adopt given to the Rani was dated 1889. Section 22 consisting of 11 clauses lays down " special rules of succession to intestate taluqdars and grantees ". It will be convenient to reproduce clauses 1 to 8 of the section which are as follows:—

> 22. 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, viz.:—
>
> (1) To the eldest son of such taluqdar or grantee, heir or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased;
>
> (2) Or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his lifetime, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid;
>
> (3) Or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his father's life-time without leaving male lineal descendants, then to the second and every other son of the said taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendant, subject as aforesaid;
>
> (4) Or in default of such son or descendants, then to such son (if any) of a daughter, of such taluqdar or grantee, heir or legatee, as has been treated by him in all respects as his own son, and to the male lineal descendants of such son, subject as aforesaid;
>
> (5) Or in default of such son or descendants, then to such person as the said taluqdar or grantee, heir or legatee, shall have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid;
>
> (6) Or in default of such adopted son, then to the eldest and every other brother of such taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid;
>
> (7) Or in default of any such brother, then to the widow of the deceased taluqdar or grantee, heir or legatee, or, if there be more widows than one, to the widow first married to such taluqdar or grantee, heir or legatee, for her lifetime only;
>
> (8) And upon the death of such widow, then to such sons as the said widow shall, with the consent in writing of her deceased husband, have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid;

It will be observed that clause 8 which speaks of an adoption by a widow of a taluqdar, does not mention that the consent in writing should be registered.

Clauses 4, 5 and 7 of Section 22 of the Act as amended by U.P. Act III of 1910 may also be noticed.

Clause 4 corresponding to Clause 5 of the unamended Act is as follows:—

> (4) Or in default of such son or his male lineal descendants, then to such person as the said taluqdar or grantee, heir or legatee, shall have adopted and his male lineal descendants, subject as aforesaid;

Clause 5 corresponding to clause 6 of the unamended Act is as follows:—

> (5) Or in default of such adopted son, or his male lineal descendants then to the eldest and every other brother of such taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, brothers of the whole blood and their descendants. being preferred to brothers of the half blood and their descendants, subject as aforesaid;

Clause 7 corresponding to Clause 8 of the unamended Act is as follows:—

> (7) And on the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted and his male lineal descendants subject as aforesaid: Provided that, after the expiration of six months from the commencement of this Act such consent shall be expressed by means of a registered instrument or by means of a will or codicil executed and attested in the manner required by this Act.

The first two Indian Registration Acts, viz., Acts XXI of 1864 and XX of 1866, did not apply to Oudh. The first Registration Act which applied to Oudh was Act VIII of 1871 which was brought into force from January, 1872. Before the year 1871, the registration in Oudh was provided for by a set of rules which had been sanctioned by the Government and were made applicable to certain instruments. Before the passing of the Oudh Estates Act I of 1869 the widow of a Hindu taluqdar could adopt with the authority of her husband granted orally or expressed in writing; and if that authority was in writing it was not required to be registered. Clause 8 of the Act made it necessary for the first time that the consent to adopt given by the husband should be in writing, but nothing is said in the Act about the registration of the authority.

It is contended for the appellants that clause 8 of section 22 of Act I of 1869 does not apply to adoption by the widow of a Hindu taluqdar, that the provision applies only to Muhammadans, that Section 17 clause 3 of the Indian Registration Act of 1871 would apply to the adoption in the present case and without registration the written consent to adopt contained in the disputed letters would be invalid. Section 17 (3) of the Indian Registration Act, 1871, says that:

> "Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered."

Written authorities to adopt a son were made compulsorily registrable for the first time by the Indian Registration Act of 1871 which repealed the Act of 1866. The registration of such "authorities to adopt" was optional under the latter Act (Section 18). It is argued that what was optional under the repealed Act having been made compulsory by the Act of 1871, it must be presumed that the policy of that Act when it was made applicable to Oudh is to make the registration of the consent to adopt in writing about which clause 8 of Section 22 is silent also compulsorily registrable. In their Lordships' view, considerations urged with reference to the policy of the Registration Acts lead to no definite conclusions. If Act I of 1869 provides a sufficient answer to the question, there can be no need to have any recourse to the Registration Acts to solve the problem.

The provision contained in Section 17 (3) of the Registration Act of 1871 remained unaltered in the subsequent Registration Acts, viz., Act III of 1877 and Act XVI of 1908, the present Act. If the Registration Act of 1871 applies the authority in the present case should be held to be invalid, for Section 49 of the Act says:—

> " No document required by Section 17 to be registered, shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of this Act."

The respondents contend that the present case is governed by the special provisions of Act I of 1869, that clause 8 applies to adoption by the widows of both Hindu and Muhammadan taluqdars, and that clause does not require that the consent in writing should be registered, that the general Registration Act could not affect the provisions of the special Act, and that if the legislature thought registration of the consent in writing was necessary, it would have made it clear by stating its intention in express language as shown later when the Act was amended by the proviso of clause 7 of Section 22 of the Act as amended by Act III of 1910.

In support of his arguments the learned Counsel for the appellants relied on the observations of Lord Sumner when delivering the judgment of the Board in *Raghuraj Chandra* v. *Subhadra Kunwar* (1927-28) L.R. 55 I.A. 139 to show that Clause 8 of Section 22 of Act I of 1869, applies to Muhammadan Taluqdars only and that adoption by the widow of a Hindu Taluqdar armed with a consent in writing to adopt would therefore under the general law require registration of the consent to validate it. He argued further that if the said clause applies to Hindu Taluqdars also, registration of the consent in writing is necessary in view of the decision in *Thakur Umrao Singh, and Another* v. *Thakur Lachhman Singh and Another* (1910-11) 38 I.A. 104, which he cited as a clear decision to show that the Indian Registration Act would apply to the Oudh Estates Act I of 1869.

The decision in *Raghuraj Chandra* v. *Subhadra Kunwar* (supra) is the first " Sissendi " case, the facts of which have already been stated. It will be remembered that the controversy in that case was whether a natural brother of an adopted Hindu Taluqdar could succeed to the taluqdari estate on the death of such Taluqdar in preference to his widow. That case arose under Act I of 1869 as amended by the U.P. Act III of 1910 as Raja Chandra Shekhar died in 1923. What was decided in that case is thus summarised in the headnote:—

> " In determining the succession to an Oudh taluqa in lists 2, 3 or 5 on the death intestate of a Hindu holder, the ceremonially adopted son of the preceding holder, his natural brother is not a ' brother ' within the meaning of s. 22 cl. 5 of Act I, of 1869 as amended by s. 14 of U.P. Act III of 1910, since according to Hindu law the adoption operated as a rebirth for all purposes material to the question.
>
> In interpreting the relationships mentioned in s. 22, the personal law of the parties is to be taken into account, save where a contrary intention appears. The word ' son ' in clauses 1, 2 and 3 does not include the adopted son of a Hindu, since a contrary intention appears from clauses 4 and 7, which expressly assign a position to adopted sons, without distinction between Hindu and Mohamedan adoptions. With regard to the word ' brother ' in cl. 5, there is no similar indication."

Their Lordships were considering in that case whether the word " brother " in section 22, clause 5, of the Oudh Estates Act I of 1869 as amended by the United Provinces Act III of 1910 included the natural brother of an adopted Hindu. It was argued that the word " son " as used in the amended Act did not include an adopted son as it did (so the argument ran) in the unamended Act, and that the word " brother " should be understood as meaning blood brother.

Considering the above arguments in detail their Lordships concluded as follows:—

> " The result, however, of the alterations made by the Act of 1910 is that adopted sons, whether in Hindu families or otherwise, being now separately introduced into the succession, ' sons ' in clauses 1, 2 and 3, do not include adopted sons, although a change in the general Hindu law of succession results from the change in the Act. Under the Act of 1869, Hindu adopted sons came in either as sons under the first three clauses or under cl. 11, the latter being barely credible. Under that of 1910, all sons adopted by men come under cl. 4, and by widows under cl. 7. The resultant alterations in general Hindu law are deliberate and are considerable."

It may be mentioned that in the immediately preceding paragraph of the judgment their Lordships indicated the alterations in the new Act. They stated:

> ". . . . In the former Act, cl. 5 simply introduced into the order of succession the Mahomedan adoptions, which by the subsequent s. 29 were brought into existence in a statutory documentary form, without religious or other ceremonies. Clause 4 in the new Act brings into their place in the order of succession adoptions, both Mahomedan and Hindu, for the old s. 29 is amended and enlarged and all adoptions are now required to be completed by written documents subsequently registered. Thus the reference to persons adopted in the amended cl. 4 is general and covers all adopted persons, the definition of the form, which makes them adopted persons, being now relegated to the altered s. 29, except that, in the case of adoption by a widow, a proviso is anomalously attached to cl. 7 of s. 22, prescribing the conditions to be observed by her, which would more regularly have formed a further addition to the altered cl. 29."

After stating the result of the alterations as quoted above the judgment proceeded as follows:—

> " The appellants have thus made good the first step in their argument—namely, that ' son ' used simpliciter, means in this legislation sons by natural generation, and means nothing more. Their second step is that ' brothers ' likewise in cl. 5 means, or it is better to say includes, blood brothers. . . ."

Perusing the judgment it will be found that their Lordships came to the conclusion that the word " brother " does not mean blood brother on considerations based exclusively on Hindu law, particularly on the significance of the term adoption which is spoken of as " new birth " which involved the principle " of a complete severance of the child adopted from the family in which he is born . . . and complete substitution into the adoptive family, as if he were born in it ". That reasoning formed the sole basis of their Lordships' decision which was not based on what was stated with reference to sections 4 and 5 of the amended and unamended Acts. No questions affecting the validity of an adoption arose for decision in the case. In the circumstances their Lordships think the reasoning extracted above was not necessary for the decision of the case and should be considered as *obiter dictum* and should not be used for deciding this case. They are also of opinion that clause 8 of section 22 of Act I of 1869, by making necessary that the consent to adopt should be in writing, does not introduce such a violent deviation from Hindu law as to make it inapplicable to Hindu taluqdars. As pointed out by Walford J., the clause in question

> " does not deviate from the fundamental principles of Hindu Law, relating to adoption; but only provides for the mode in which the inherent right is to be exercised. . . . It is the right to authorise his wife to make an adoption after his death, that is the essence of Hindu Law of adoption and not the manner in which the authority is to be conferred. The Hindu Law is virtually silent as to the latter. Therefore, normally a Hindu can, either orally or in any other manner express his consent or confer an authority on his wife."

By requiring that the consent should be in writing the clause does not introduce any change which may be called fundamental in the Hindu law of adoption. The Act was intended to apply to taluqdars of different communities. If the legislature had intended that clause 8 should apply only to adoptions by the widows of Muhammadan taluqdars it would have stated it in express terms. Their Lordships have not overlooked section 29 of Act I of 1869, which permitted Muhammadan adoptions, but, notwithstanding the dicta in *Raghuraj Chandra's* case which were relied upon by the appellant's counsel, they do not regard this section as affording a sufficient indication of an intention to limit the operation of clause 8 to Muhammadan adoptions.

The decision in *Thakur Umrao Singh* v. *Thakur Lachhman Singh* (supra) also cannot be used in support of the appellants' arguments. The salient facts of the case and decision thereon are stated in the headnote:—

> " Two surviving sons of an Oudh taluqdar sued the sons of their deceased brother to recover one-third of the taluq of which the latter had obtained mutation of names in his favour after the taluqdar's death. The plaintiffs claimed under a will executed by their father in October, 1893, alternatively under a former will dated January 9, 1862. The defendants contended that the earlier document was not a will and that the later was executed when the taluqdar was not of sound disposing mind, and that on May 23, 1884, he had executed an effective family arrangement under which his three sons were to divide the property movable and immovable:—
>
> > *Held*, that the instrument of 1884 was not testamentary but a family arrangement intended to be final and irrevocable and operative immediately, but void as regards immovable property, not having been registered under Act III of 1877."

The document referred to runs as follows:

> " This sanad is executed by me, Thakur Kalka Bakhsh, taluqdar of Ramkote. For Pirthipal Singh, who is my son, I fix Rs.300 annually, so that he may maintain himself. Besides this, whatever I may give I will give equally to the three sons, except provisions, which they may take from my godown (kothar). He may take 6 annas in kharif (crop) and 10 annas in rabi (crop) out of my treasury (tahwil). The marriage and gauna expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property, movable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihat and Thakur Ratan Singh of Rojah."

In the judgment their Lordships do not find any reference to section 16 of the Oudh Estates Act, I of 1869, which was clearly relevant for the decision of the case. Section 16 of the Act is as follows:

> " No transfer of any estate, or of any portion thereof, or of any interest therein made by a Taluqdar or Grantee or by his heir or legatee under the provisions of this Act shall be valid unless made by an instrument in writing signed by the transferor and attested by two or more witnesses."

The only reference to the question of registration in the judgment is to be found in the single sentence " It (the document) fails of effect simply because it was not registered, as required by the Registration Act, III of 1877, s. 17. It is therefore void as regards immovable property." Had section 16 of the Act been brought to their Lordships' notice it is difficult to say that the decision of the Board would have been the same. In these circumstances their Lordships cannot regard the decision as satisfactorily disposing of a point which had not been fully argued before, or submitted to, the Board.

In addition to the argument based on the Act—which their Lordships will consider presently—the respondents, in support of their contention that the disputed letters did not require registration, relied on two decisions of the Board, namely *Maharajah Pertab Narain Singh* v. *Maharanee Subhao*

Kooer ((1876-77) 4 I.A. 228) and *Bhaiya Rabidat Singh* v. *Maharani Indar Kunwar* ((1888-89) 16 I.A. 53), neither of which was considered by the Board in *Raghuraj Chandra* v. *Subhadra Kunwar* (supra).

In *Maharajah Pertab Narain Singh* v. *Maharanee Subhao Kooer* (supra) the Board had to consider whether the appellant in the case was entitled to succeed as the son of a daughter of the deceased Maharajah who had " been treated by him in all respects as his own son within the meaning of clause 4 of section 22 of Act I of 1869 ". Clause 4 has already been quoted. The question was answered in favour of the appellant.

In considering the section their Lordships observed as follows:

> " Their Lordships are disposed to think that the clause must be construed irrespectively of the spiritual and legal consequences of an adoption under the Hindu law. They apprehend that a Hindu grandfather could not, in the ordinary and proper sense of the term adopt his grandson as a son. Nor do they suppose that, in passing the clause in question, the Legislature intended to point to the practice (almost, if not wholly, obsolete) of constituting, in the person of a daughter's son, a ' patricá-puttra,' or son of an *appointed* daughter. Such an act, if it can now be done, would be strong evidence of an intention to bring the grandson within the 4th clause, but is not therefore essential in order to do so. Moreover, it is to be observed that the 4th, like every other clause in the 22nd section, applies to all the talukdars whose names are included in the second or third of the lists prepared under the Act, whether they are Hindus, Mahommedans, or of any other religion; and it is not until all the heirs defined by the ten first clauses are exhausted that, under the 11th clause, the person entitled to succeed becomes determinable by the law of his religion and tribe."

Though the decision does not directly deal with clause 8 of section 22 of the Act it is clear that in their Lordships' opinion clauses 4 and 8 stood on the same footing. For the purpose of comparison section 8 must evidently have been considered by their Lordships. In the circumstances great weight must be given to the opinion which they expressed. Of all the cases cited before the Board this decision comes nearest to the present case in regard to the point under consideration, and it supports the respondents.

In *Bhaiya Rabidat Singh* v. *Maharani Indar Kunwar* (supra), in considering the grounds of objection to the validity of the adoption urged in the case, their Lordships observed as follows:

> " In the first place it was contended that the adoption was invalid, because the authority to adopt was not contained in a registered document. Their Lordships are of opinion that there is no ground for this contention. The Act of 1869 requires the writing by which an authority to adopt a son is exercised to be registered. It also requires the authority to be in writing. But it does not require that writing to be registered. Act III of 1877, sect. 17, which does require authorities to adopt a son to be registered, expressly excepts authorities conferred by will."

This case, when examined, does not appear to be directly in point, as it was unnecessary to the decision to decide what result would have followed if Act III of 1877 had required an authority conferred by will to be registered.

In their Lordships' view clause 8 of section 22 of Act I of 1869 governs the consent in writing contained in the disputed letters. The contention that the operation of that clause is confined to the consents in writing executed by Muhammadan Taluqdars and does not extend to those executed by Hindu Taluqdars is not supported by authority. There is nothing in the language of the clause or in any part of the Act to warrant

the distinction. Under that clause, while a deed of adoption is to be in writing and registered, nothing is said of registration of the consent in writing.

In support of the respondents' contention that the consent in writing does not require registration it was argued by Mr. Pritt that Act I of 1869 is a complete Code with respect to the matters contained in the Act, that it has made registration compulsory with respect to certain specific documents, and that if the legislature desired that the consent in writing should be registered it would definitely have said so instead of leaving it to be decided by the general law of registration contained in the Indian Registration Act. Under the Act certain instruments are compulsorily registrable. To illustrate:—Under section 13 of the Act " no Taluqdar or Grantee and no heir or legatee of a Taluqdar or Grantee shall have power to give or bequeath his estate or any portion thereof or any interest therein to any person " not falling within clauses 1 and 2 of the section

> " except by an instrument of gift or a will executed and attested not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution."

Under section 17 of the Act it was enacted that a gift shall not be valid

> " unless within six months after the execution of instrument of gift, the gift be followed by delivery by the donor, or his representative in interest, of possession of the property comprised therein nor unless the instrument shall have been registered within one month from the date of its execution."

Other instances of " instruments " requiring registration will be found in sections 18, 20, 22, clauses 5 and 8 (" adoption " deeds), 29, 30 and 31.

Thus it would appear that the legislature has provided for registration in cases which it thought should be registered. As it has not done so in respect of the document containing the consent in writing mentioned in Clause 8, the intention of the legislature must have been that such a document need not be registered to make it valid.

The above view is strongly supported by what happened in 1910 when the Act I of 1869 was amended. It will be observed that in the proviso to clause 7 of section 22 of the amended Act (already quoted), which refers to the consent in writing to adopt given by the deceased husband to the widow, it is stated that after the expiration of six months from the commencement of this Act the consent mentioned in the section " shall be expressed by means of a registered instrument or by means of a will or codicil, executed and attested in the manner required by this Act." The inference derivable from this proviso is clear. Had the Registration Act VIII of 1871 or the subsequent Registration Acts been made applicable to the consent in writing mentioned in the clause, the legislature would not have added the proviso. This argument seems to their Lordships to be conclusive and unanswerable. It follows, therefore, that the contention that the consent in writing, not mentioned as required to be registered, under clause 8 of Act I of 1869 becomes compulsorily registrable under the Registration Act of 1871 is clearly untenable. In this connection attention may be drawn to section 16 (already referred to) of the Act I of 1869. In the amended Act, this section was amended by making the instrument of transfer compulsorily registrable. If the legislature had thought that the general law of registration applied to the instrument falling within section 16 of the Act, it would not have taken the trouble to amend it.

For the above reasons, their Lordships hold that under clause 8 of Act I of 1869 which applies to this case, the consent in writing contained in the disputed letters does not require registration for its validity. In their Lordships' view the legislature in Act I of 1869 has made provision

for registration in respect of instruments which it considered should be registered to make them valid, and since it did not do so with respect to a document containing consent in writing, such a document does not require registration to make it valid. In this connection it is noticeable that the same clause, while saying nothing about registration in respect of the consent in writing, states expressly that the instrument exercising the power should be registered. The contrast is striking.

The Oudh Estates Act I of 1869 is a special Act affecting a special class of persons in respect of the properties conferred upon them. The Act is self-contained and complete in regard to the matters contained in it. In this view their Lordships think on the principle *generalia specialibus non derogant* that the subsequent general Registration Act of 1871 cannot affect the provision of the special Act I of 1869.

The third and last question for determination is as regards the nature of the properties items 23, 24, 25, 26, and 29, i.e. whether these are taluqdari or non-taluqdari properties; and who is entitled to them?

As already stated item 29 has been found to be a taluqdari property by all the learned judges. That finding has not been questioned; if as their Lordships have held the second respondent is the validly adopted son of Raja Chandra Shekhar, then he is entitled to the ownership of that item along with the other taluqdari properties.

The other four items of property have been found by all the learned judges to be non-taluqdari properties. Those items would therefore fall outside the Oudh Estates Act. The Trial Judge and Ghulam Hasan J. therefore held that succession to those properties was invalid inasmuch as the consent in writing had not been registered as required under section 17 (3) of the Indian Registration Act, and the second respondent therefore was not entitled to them. Taken along with their decision with respect to the taluqdari properties, the second respondent was not entitled to any of the suit properties. The other two learned judges took a different view. Though they agreed with the finding that the properties were non-taluqdari, they nevertheless held that the second respondent was entitled to them. Walford J. gave the following reasons for his opinion:

> " . . . To hold that the appellant is a son for the purposes of the taluqdari property and not a son for the purposes of non-taluqdari property would be extremely anomalous and absurd. I am clearly of the opinion that once a person is held to be a son he becomes an heir to all his father's property according to the personal law and no distinction can be drawn in respect of taluqdari and non-taluqdari property. The proposition is so simple and clear that it does not admit of any argument . . . "

The learned Chief Justice stated as follows:

> " . . . On my finding that Vijai Kumar is the validly adopted son of Raja Chandra Shekhar, then it must be held that by implication of clause 1 of section 22 as interpreted by their Lordships of the Privy Council in 55 I.A. 139, Vijai Kumar takes the place of a natural born son and therefore the estate of the deceased Raja Chandra Shekhar whether taluqdari or otherwise must necessarily devolve upon him. Indeed the learned counsel for the plaintiffs-respondents virtually conceded this position."

Mr. Page argues that the reasoning of Walford J. and the learned Chief Justice is plainly unsound for the reason that the second respondent would be a validly adopted son and would take the place of a natural son if adopted under an oral authority given by the deceased taluqdar and yet would not be entitled to the taluqdari properties; and that therefore it does not necessarily follow that once a person is held to be an adopted son he becomes heir to *all* his father's properties. The four items of properties being held to be non-taluqdari properties the learned counsel contends that the appellants should be held to be entitled to them.

Besides supporting the reasoning of Walford J. and the learned Chief Justice, Mr. Pritt put forward two additional grounds in support of his contention that the second respondent is entitled to the non-taluqdari properties also. These are—says the learned counsel—(1) an *implied* oral or written authority to adopt previously given may be inferred from the circumstances of the case and if so, the adoption would be valid, and the second respondent would be entitled to the non-taluqdari properties also, in addition to the taluqdari properties to which he would of course be entitled as the consent in writing does not require registration to make it valid, and (2) the finding of the courts in India that the properties are non-taluqdari is unsustainable in Law.

Their Lordships will deal with these grounds seriatim:

(1) The reasoning of Walford, J. and the learned Chief Justice is plainly unsound for the reason given by Mr. Page and does not require any further elaboration.

(2) The object of the second argument is—it is needless to say—to avoid the application of the Registration Act. The circumstances from which the authority may be implied are stated to be (*a*) the fact that the second respondent is in possession of the entire taluqdari properties by a valid adoption carried out with religious ceremonies and (*b*) the conduct of the Raja which would make the inference of implied adoption permissible. The second ground was considered on its merits and overruled by Ghulam Hasan, J. Though in the defendant's written arguments supplied to the court reference has been made to an implied consent to adopt, their Lordships are firmly of opinion that it is not open to the respondents to raise the question of implied consent. A perusal of the pleadings will clearly show that the only kind of adoption on which the case of the defendant was based was adoption of the second respondent by the Rani validated by the consent in writing of the deceased taluqdar. Reference may be made to paragraphs 6, 17 and 18 of the written statement. Not a trace of the plea of implied consent to adopt is anywhere to be found in the written statement and no issue has been raised on the point. In the circumstances their Lordships decline to consider the question.

The last ground urged is that the finding of the learned judges that the villages in question are non-taluqdari is not sustainable in Law. In this connection it will be advantageous to notice the following provisions of the Oudh Estates Act 1 of 1869:

Section 2:—

" 'Taluqdar ' means any person whose name is entered in the first of the lists mentioned in section eight;

' Grantee ' means any person upon whom the proprietary right in an estate has been conferred by a special grant of the British Government, and whose name is entered in the fifth or sixth of the lists mentioned in section eight;

' Estate ' means the taluqa or immoveable property acquired or held by a Taluqdar or grantee in the manner mentioned in section three, section four or section five, or the immoveable property conferred by a special grant of the British Government upon a grantee; "..

Section 3:—

" Every Taluqdar with whom a summary settlement of the Government revenue was made between the first day of April 1858, and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a taluqdari sanad has been granted,

shall be deemed to have thereby acquired a permanent, heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such Taluqdar when such settlement was made,

or which may have been or may be decreed to him by the Court or an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or if appealed from, having been affirmed,

subject to all the conditions affecting the Taluqdar contained in the orders passed by the Governor-General of India on the tenth and nineteenth days of October, 1859, and re-published in the first schedule hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held."

Section 5:—

" Every Grantee shall possess the same rights and be subject to the same conditions in respect of the estate comprised in his grant as a Taluqdar possesses and is subject to, under section three, in respect of his estate."

Section 8:—

" 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:—

First.—A list of all persons who are to be considered Taluqdars within the meaning of this Act;

. . . . . .

. . . . . .

Third.—A list of the Taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Fifth.—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 therein shall thereafter be regulated by the rule of primogeniture;

Sixth.—A list of the Grantees to whom the provisions of section twenty-three are applicable."

Section 9:—

When the lists mentioned in section eight shall have been approved by the Chief Commissioner of Oudh they shall be published in the *Gazette of India*. After such publication the first and second of the said lists shall not, except in the manner provided by section thirty or section thirty-one as the case may be, be liable to any alteration in respect of any names entered therein.

If at any time after the publication of the said lists it appears to the Governor-General of India in Council that the name of any person has been wrongly omitted from or wrongly entered in any of the said lists, the said Governor-General in Council may order the name to be inserted in the proper list and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

Section 10:—

" No persons shall be considered Taluqdars or Grantees within the meaning of this Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as a conclusive evidence that the persons named therein are such Taluqdars or Grantees."

The Oudh Estates Act (1 of 1869) was afterwards amended by the U.P. Act III of 1910. Relevant to the present appeal are the amendments of the definition of " Grantee ", " Estate " (section 2) and section 3. After amendment, these provisions read as follows:

> " ' Grantee ' means any person whose name is entered in the fifth or sixth of the lists mentioned in section 8."

The words " upon whom the proprietary right in an estate has been conferred by a special grant of the British Government and " which occurred between the words " person " and " whose " in the old definition of the term have been omitted from the above definition with the result that no special grant need now be proved.

> " ' Estate ' means (a) The taluqa or immoveable property acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4, or section 5."

This clause is the same as the old definition except that the concluding words " or the immoveable property conferred by a special grant of the British Government upon a grantee " of the old definition have been omitted.

Section 3. The words " other than those relating to succession " between the words " conditions " and " contained " in the last clause and a new ' explanation ' have been added to the old section.

It should be noted that the above amendments operated retrospectively by section 21 of the Amending Act of 1910.

The reasoning of the Trial Judge and of Ghulam Hasan J., with whose conclusions the other learned judges agreed, may be best expressed in the language of Ghulam Hasan J. who stated as follows:—

> " . . . these villages were not granted to Raja Kashi Prasad under any Sanad nor were decreed to him during the first Regular Settlement, nor was any Summary Settlement made with him between the 1st day of April, 1858,, and the 10th day of October, 1859, as required by Section 3 read with the definition of " estate ". It was purely a grant recommended by the Financial Commissioner and accepted by the Chief Commissioner. There can be no doubt, therefore, that the villages are non-taluqdari property."

To complete the history of the acquisition of these villages referred to above it may be mentioned that they were bestowed on Raja Kashi Prasad on 6th August, 1869, which was subsequent to " the date fixed for the closing " of the list mentioned in clause 5 of section 8 of the Act. Under section 9, Act I of 1869, the lists prepared by the Chief Commissioner of Oudh under section 8 of the Act were published in Gazette of India dated 31st July, 1869.

The learned judge began the discussion of the question by quoting the unamended definitions of the term " Grantee " and " Estate ". It is clear that he has overlooked the retrospective amendment of the definition of a " grantee " in section 2. In view of the retrospective amendment introduced by the Act of 1910 in the definition of a " grantee " Mr. Pritt argues that the second respondent is a " grantee " within the meaning of the Act, his name is entered in list five of section 8 as a " grantee " and he therefore holds the villages in question in the manner mentioned in section 5 of Act I of 1869.

Mr. Page in reply contends that to entitle the second respondent to hold the villages as mentioned in section 5, the " estate comprised in his grant " therein referred to should have been granted to the ' grantee ' before the closing of the list referred to in clause 5 of section 8. That date, 31st July, 1869, being prior to 6th August, 1869, when the villages were granted it would follow—if the argument is correct— that the second respondent would not be entitled to these properties though his name finds a place in clause 5, the latter fact being explicable on the ground that he holds other estates granted to him before 31st July, 1869.

To meet the specific objection raised by learned counsel for the appellants, Mr. Pritt amplified his arguments as follows.

Kashi Prasad was clearly a " taluqdar ", as his name is entered in the first of the lists mentioned in section 8 (see section 2). He was also a " Grantee ", as his name was entered also in the fifth of these lists. *Some* property (not the four villages in question) must have been granted to him by the British Government *prior to* the date fixed for the closing of the lists; otherwise his name could not have appeared in the fifth list. The judges in India have overlooked the retrospective amendment (in 1910) of the definition of a " grantee ". What is the result? On the 31st July, 1869, he held certain lands as a " taluqdar " in the manner mentioned in section 3 and certain other lands (not including the four villages) as a " Grantee " in the manner mentioned in section 5. All these lands were " estates " within the definition in section 2 and therefore became subject to the provisions of section 22.

After the 31st July, 1869, the four villages were granted to him by the British Government. Thereupon they became " estate " " held " by a person who was already a grantee; therefore they must be subject to section 5 (and consequently section 22) unless there is some section which says that lands granted *after* 31st July, 1869, are held upon some different footing. There is no such section. Section 8 (list 5) says nothing about the estates comprised in grants made *after* 31st July, 1869.

The Act is by no means clear on this point, but the lists are lists of *persons,* not of properties; and *if a man comes within the definition of a grantee* all land granted to him by the British Government, whether before or after 31st July, 1869, is governed by section 5 and section 22.

According to the view presented by Mr. Page the phrase in section 5 " the estate comprised in his grant " is linked up with section 8 (fifth list) and only applies to an estate granted prior to 31st July, 1869. Thus properties granted after 31st July, 1869 such as the four villages are subject to the non-taluqdari law of succession.

Their Lordships have to decide which of the above views is right. The arguments require careful consideration. No authority has been cited in support of either view. Their Lordships have not had the benefit of the opinion of courts in India since the question was presented for consideration for the first time before the Board. After a long drawn out discussion extending for about ten years concerning the rights of those landholders who were brought into existence in Oudh as a result of the well-known proclamation of Lord Canning of 1858, Act I of 1869 was specially passed to define the rights of Taluqdars and Grantees in certain estates in Oudh and to regulate the succession to such estates. The Act was first amended by Act X of 1885 and was further amended by the U.P. Act III of 1910. As may be seen from the discussion of even the few cases which have been considered in this judgment, the construction of the provisions of the Act is not free from difficulty. Section 8 (fifth list) contemplated the inclusion within the list of *all* the grantees to whom grants had been made before 31st July, 1869, so that their estate may fall within the operation of the Act. Under section 9, clause 2, provision was made for the publication of supplementary lists of taluqdars and grantees when necessary, making corrections in the original lists and the names of persons appearing in such lists were treated in all respects as if the names had been from the first in the proper list. It appears to be fairly clear that when the Act I of 1869 was passed the government had intended to deal with *all* the grantees and taluqdars and the ' estates ' granted to them so that no trouble might arise thereafter in regard to the devolution of their estates. They may well have decided as a matter of policy not to make any fresh grants of ' estates ' subsequent to 31st July, 1869, actuated by a desire to bring to a close if possible the difficulties which arose in connection with the enforcement of the new land policy in Oudh. To put the matter shortly, it was not in the contemplation of the

Government to grant any more ' estates ' which would come within the operation of the Act. In this view, if new properties came to be granted, they would of course be non-taluqdari properties subject to the ordinary law of intestate succession. However this may be, it appears to their Lordships after careful consideration that sections 5, and 8 (list 5) should be read together and the phrase " estate comprised in his grant " in section 5 would apply only to an estate granted prior to 31st July, 1869. It would therefore follow that the four villages in question (items 23, 24, 25 and 26) should be held to be non-taluqdari properties to which the appellants 1-5 would be entitled. The sixth appellant would be entitled to whatever portion of the suit property he is entitled to under the agreement entered into with his mother by the appellants.

To sum up their Lordships' conclusions: —

> The disputed letters have been proved to be genuine. The consent in writing of the deceased taluqdar (Chandra Shekhar) contained in them is not invalid for want of registration. The adoption of the second respondent is therefore valid under the Oudh Estates Act I of 1869, with respect to all the taluqdari properties. The consent in writing not having been registered, his adoption by the Rani is invalid and cannot take effect with respect to the non-taluqdari properties. If the adoption is invalid, it is not disputed that these would devolve on appellants 1-5.

In the result, their Lordships will humbly advise His Majesty that the decree of the Full Bench of the Chief Court dated 10th May, 1946, ought to be modified (1) by including therein a direction that the 2nd respondent do deliver to the appellants possession of items 23 to 26 inclusive on List B1 attached to the defendant's written statement together with mesne profits thereof from the 13th November, 1934, but without any interest on such mesne profits; (2) by inserting the words " four fifths of " immediately before the words " the appellant's costs " and again immediately before the words " the defendant's costs." In other respects the decree of the Full Bench will stand.

The case will be remitted to the Chief Court for an inquiry as to the amount of the aforesaid mesne profits. After determining the said amount the Chief Court will pass a final decree for payment thereof to the appellants.

The appellants must pay four-fifths of the respondents' costs of this appeal. The respondents must pay the appellant's costs of the said inquiry, in so far as such costs shall have been in the opinion of the Chief Court, properly incurred.

(60381) Wt. 8062—31 190 2/49 D.L.

In the Privy Council

PANDIT CHANDRA KISHORE TEWARI
AND OTHERS

v.

DEPUTY COMMISSIONER OF LUCKNOW
IN CHARGE COURT OF WARDS
SISSENDI ESTATE AND ANOTHER

DELIVERED BY SIR MADHAVAN NAIR

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