Before Mr. Justice Mitter and Mr. Justice Tottenham.

1879 *May* 8.

NILMONY SINGH DEO (DEFENDANT) *v.* HINGOO LALL SINGH DEO (PLAINTIFF).*

Impartible Raj—Maintenance, Right to—Grandson or other more remote Descendant of a Raja not entitled to Maintenance.

In the case of the impartible *raj* of Pachete there is no law or custom under which any one, not being a son or daughter of a deceased *raja*, can claim of right either maintenance or a grant in lieu of maintenance, from the person in possession for the time being of the *raj*.

Baboo *Cally Mohun Ghose*, Baboo *Bhowany Churn Dutt*, and Baboo *Omesh Chunder Bose* for the appellant.

Baboo *Kali Kanta Sen* for the respondent.

THE facts of this case sufficiently appear from the judgment, which was delivered by

TOTTENHAM, J.—These two suits were disposed of in the lower Court by one judgment; and as they are precisely similar, they have been laid before us together in appeal, and our decision of one will apply to them both. The suits were brought to obtain maintenance from the defendant, who is commonly known as the Raja of Pachete, by virtue of an alleged *kulachar*, or family custom, prevailing in that family.

It is an undisputed fact that the *zemindari* or *raj* is not subject to the ordinary rules of Hindu law as regards devolution by inheritance, but is impartible, and is held exclusively by the eldest son of each successive raja, or in default of a son by the member of the family next entitled to succeed. It is also undisputed that certain members of the family, who are by this custom excluded from the actual inheritance, are entitled to maintenance from the raja for the time being, and this maintenance may be either by a direct money allowance, or it may be provided by the grant of landed

* Appeals from Original Decrees, Nos. 322 and 323 of 1877, against the decree of Lieut.-Col. B. W. Morton, Deputy Commissioner of Manbhoom, dated the 12th of September 1877.

property; such grant being resumable on the death of the grantor by his successor, and also by the grantor himself on the death of the grantee. The question for decision in this suit, and which the lower Court has decided in the plaintiff's favor, is, whether members of the family other than the son or sons of a raja are of right entitled to such maintenance.

The correctness of this decision of the lower Court is denied by the defendant appellant. An objection was taken in the memorandum of appeal, that limitation bars the suits, but that objection was not pressed, and the cases have been argued on the merits.

The plaintiffs are two brothers, the sons of the late Saji Lall Juggo Mohun Singh Deo, who was third brother of the late raja, and therefore uncle of the present raja, the defendant. Juggo Mohun Singh had a maintenance grant of a pargana yielding, it is said, an income of Rs. 15,000 per annum. On his death in 1280 (1873) the defendant is said to have withdrawn the grant, and have refused to make any allowance to the plaintiffs.

The defendant alleges that Juggo Mohun's maintenance was not more than Rs. 3,000 per annum, and that he was entitled to it as being son of a raja. He contends, that the plaintiffs, not being sons, but only grandsons, of a raja are entitled to nothing more than the raja for the time being chooses to give them, and that it is at his option to give or to withhold any allowance at all. He says,—"That had the plaintiffs conducted themselves submissively towards him, he would have made them some allowance, but as they have not done so, he declines to grant them anything, and maintains that he cannot legally be compelled to do it."

The plaintiffs base their claims upon the custom of the family; and their pleader in this Court expressly stated that he did not contend that the ordinary rules of Hindu law would avail them.

The evidence in the cases upon the question at issue consists of the testimony of three witnesses on each side; and reference has been made to a former suit in which the right of the Raja of Pachete to resume a maintenance grant made

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by his predecessor was determined. That case was appealed to England, and a report of it is to be found in Vol. V, Moore's Indian Appeals, p. 82. The family custom as to the maintenance by the raja of various relatives, who were by the custom excluded from inheritance, was discussed in that case. The lower Court has relied upon that case, assuming to lay down clearly, that other members of the family, besides the brothers of the existing Raja of Pachete, are entitled to maintenance. An instance is cited in which a predecessor of the present raja admitted that Kunchun Lall (his uncle) was entitled to have a reasonable and equitable allowance for his subsistence.

But the raja's uncle stands on the same footing in regard to the right to maintenance as the existing raja's own brothers; the uncle too being the son of a raja. It is undisputed that the eldest son being by the family custom entitled to exclusive possession of the *raj*, all his brothers are entitled to be maintained out of the estate, and, of course, they are so entitled during their whole lifetime, though the *raj* may in the meantime devolve upon a new raja who would also have to maintain his own brother as well as those of his predecessor.

But we do not find in the oral evidence, or in the history of the family, so far as it is recorded in the case reported in Vol. V, Moore's Indian Appeals, p. 82, anything to show that members of the family, not being sons of one or other of the rajas, are entitled, as of right, to claim maintenance. The evidence shows, and the defendant is ready to admit, that in fact the sons of those, who were entitled to maintenance, have generally been supported at the raja's expense after the death of their fathers. But this support appears rather to have been recognized as a moral duty on the raja's part or as an act of grace, than as a legal obligation. And we are not prepared to hold that any legal liability exists. As regards the amount of maintenance allowed to such members of the family as the present plaintiffs, it is quite clear from the evidence of their own witnesses that that amount is entirely at the raja's discretion. This seems to show, too, that there can be no legal obligation upon him.

The lower Court was of opinion that, both according to law

and to the established usage, the plaintiffs are entitled to maintenance. It laid some stress upon the fact that, had it not been for the custom of Pachete, the father of the plaintiffs would have had a share of the estate. And under these circumstances the Court held that by Hindu law the plaintiffs themselves were entitled to maintenance. It probably so held under the idea that the plaintiffs had been excluded from inheritance. If the lower Court's argument holds good, it will equally hold good in favor of every member of the family who can claim descent from any common ancestor of himself and the existing raja. The *raj* has endured for about seventy generations of men. Had it not been, therefore, for the custom of Pachete, there would be very little of the estate left in the possession of any single branch of the family. But if the custom of Pachete is to be held to entitle all descendants of those who were by it originally excluded from inheritance to claim maintenance from the raja at rates to be fixed by themselves or by the Court, there will be still less left for the raja himself; and in a few generations the raja for the time being would find himself ruined by these compulsory maintenances. We can find no invariable or certain custom that any below the first generation from the last raja can claim maintenance as of right. We, therefore, set aside the decrees of the lower Court, and order the suits to be dismissed with costs.

Appeal allowed.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

HARBUNS SAHAI AND OTHERS (PURCHASERS) *v.* BHAIRO PERSHAD SINGH AND OTHERS (JUDGMENT-DEBTORS).*

1879
Feb. 19.

Act X of 1877, *s.* 290—*Lapse of Time between Proclamation and Actual Sale—Postponement of Sale—Decree under Act VIII of* 1859—*Order made setting aside Execution Proceedings under Act X of* 1877—*General Clauses Act* (*I of* 1868), *s.* 6.

An application made on the day of sale by the judgment-debtor that a part only of his property may be sold instead of the entirety, cannot be

* Appeal from Original Order, No. 236 of 1878, against the order of Moulvi Mahomed Norul Hossein, Subordinate Judge of Shahabad, dated 12th July 1878.