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April 3.

APPELLATE CIVIL.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

ISHRI PRASAD SINGH (PLAINTIFF) *v.* LALLI JAS KUNWAR AND ANOTHER (DEFENDANTS).*

LALLI JAS KUNWAR AND ANOTHER (DEFENDANTS) *v.* ISHRI PRASAD SINGH (PLAINTIFF) *

Act No. 1 of 1872 *(Indian Evidence Act,) sections* 65 *and* 90—*Presumption as to ancient documents—Destruction of original—Presumption applied to certified copy—Regulation No. LII of* 1803, *section* 37—*Disqualified proprietor—Procedure preliminary to taking estate under the Court of Wards—Procedure prescribed by the regulation to be strictly followed.*

Held that the presumption allowed by section 90 of the Indian Evidence Act, 1872, may be applied where the original of a document sought to be proved has been destroyed and only secondary evidence of its contents in the shape of a certified copy is available. *Khetter Chunder Mookerjee* v. *Khetter Paul Sreeterutno* (1) followed.

The procedure prescribed by Regulation No. LII of 1803 for disqualifying proprietors and taking their estates under the Court of Wards must be strictly followed in order that the disabilities incident to the status of a disqualified proprietor may ensue. *Mohummud Zahoor Ali Khan* v. *Mussumat Thakoorani Rutta Koer* (2) referred to. It is incumbent therefore upon one seeking to dispute an adoption on the ground that the person making it was a "disqualified proprietor" to show that all the procedure necessary to make such person a disqualified proprietor was carried out according to law.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Pandit *Moti Lal*, for the appellant in No. 127, respondent in No. 129.

Mr. *D. N. Banerji*, Pandit *Sundar Lal* and Babu *Jogindro Nath Chaudhri*, for the respondents in No. 127, appellants in No. 129.

STRACHEY, C. J., and BANERJI, J.—The plaintiff in this case claiming to be the nearest reversioner to the estate of Thakur Chaturbhuj Singh, deceased, sues for declaratory relief in respect of certain acts done by Thakurain Mahtab Kunwar, widow of

*First Appeal Nos. 129 and 127 of 1898 from a decree of Maulvi Muhammad Mazhar Hasan, Subordinate Judge of Mainpuri, dated the 21st February 1898.

(1) (1879) I. L. R., 5 Calc., 886; S. C. 6 C. L. R., 199.

(2) (1867) 11 Moo., I. A., 46 8.

Chaturbhuj, by Lalli Jas Kunwar, his daughter, and by the second defendant Thakur Umrao Singh. The acts complained of are:—

(1) a transfer made about the year 1850 by the widow Mahtab Kunwar of two villages belonging to the Kotla estate left by Chaturbhuj, namely, Ajaibpur Rakhauli and Ahmadpur Madha, in favour of her daughter, the defendant Lalli Jas Kunwar;

(2) a transfer made by Lalli Jas Kunwar on the 18th February, 1876, during the lifetime of Mahtab Kunwar, of the same two villages, in favour of Mohinder Kunwar, the deceased wife of the second defendant, who is in possession of them by inheritance from her;

(3) an entry obtained by Lalli Jas Kunwar after Mahtab Kunwar's death in April, 1889, of her name in the revenue records in respect of two other villages of the Kotla estate, namely, Khairgarh and Noner, upon the allegation that they formed part of her *stridhan*;

(4) a denial by the defendants in their written statements filed on the 23rd August, 1892, in a suit brought by the present plaintiff in the Court of the Subordinate Judge of Agra, of the plaintiff's title as next reversionary heir of Chaturbhuj to succeed to the Kotla estate as absolute owner after the death of Lalli Jas Kunwar.

The reliefs claimed by the plaintiff are:—

(1) A declaration that he is the next reversionary heir of Chaturbhuj Singh in respect of the whole Kotla estate.

(2) A declaration that the transfer by Mahtab Kunwar in favour of Lalli Jas Kunwar of Ajaibpur Rakhauli and Ahmadpur Madha was void and inoperative as against the plaintiff beyond the life-time of Lalli Jas Kunwar.

(3) A declaration that the four villages named in the plaint are not the *stridhan* of Lalli Jas Kunwar, and that she has no right to make a transfer of them beyond her life-interest.

The defendants raised various pleas, for the most part of a technical character, and to two of which it is unnecessary to refer. Their main pleas were (1) that the plaintiff was not the nearest reversionary heir of Chaturbhuj Singh, and was therefore not entitled to bring the suit; (2) that, in any event, the first prayer of the plaint for declaration of his reversionary title was

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not maintainable; (3) that the suit was barred by limitation; and (4) that the four villages named in the plaint formed part of the defendant Lalli Jas Kunwar's *stridhan*.

The Court below has held, first, that the first prayer of the plaint must be refused on the ground that no suit would lie for such a declaration as prayed therein; secondly, that the second prayer of the plaint was barred by Art. 125 of the second schedule of the Limitation Act, 1877; thirdly, that the villages Ajaibpur Rakhauli and Ahmadpur Madha were given to Lalli Jas Kunwar on her marriage as dowry, and therefore constitute her *stridhan* fourthly, that as regards all the properties left by Chaturbhuj Singh other than Ahmadpur Madha and Ajaibpur Rakhauli, the plaintiff was entitled to the declaration claimed in the third prayer of the plaint, namely, that Lalli Jas Kunwar had only a life-interest and not any alienable absolute interest. The rest of the claim was dismissed. From this decision both parties have appealed, and we have heard the two appeals together. First appeal No. 127 of 1898 is the appeal of the plaintiff. First appeal No. 129 of 1898 is the appeal of the defendants. Both appeals may be disposed of in one judgment.

As regards the first point, the Court below apparently holds that the plaintiff has, during the lifetime of Lalli Jas Kunwar, only a contingent interest as reversioner, and not a vested interest sufficient to support a suit for a declaration under section 42 of the Specific Relief Act, 1877. In support of this view the Subordinate Judge refers to *Hunsbutti Kerain* v. *Ishri Dut Koer* (1) and *Greeman Singh* v. *Wahari Lall Singh* (2). In the view which we take of the case, it is not necessary for us to decide or discuss this point. It is difficult to say upon what grounds the Subordinate Judge has made the declaration contained in the decree as to the villages left by Chaturbhuj Singh other than those mentioned in the plaint. It is clear from the plaint that those other villages were only included in the suit in reference to the first prayer which the Court below has disallowed. No cause of action is disclosed by the plaint in reference to those other villages either as regards the alienations mentioned in

(1) (1879) I. L. R., 5 Calc., 512; S. C. 4 C. L. R., 511.

(2) (1881) I. L. R., 8 Calc., 12.

paragraphs (4) and (6) (as to which the suit has been dismissed as time-barred), or as regards the allegation as to *stridhan*, the plaintiff not alleging that Lalli Jas Kunwar ever claimed as her *stridhan* any villages besides the villages named in the plaint or in paragraph (18) of the written statement. Upon the view taken by the Subordinate Judge it appears to us that he ought to have dismissed the suit, except to the extent of a declaration that the villages Khairgarh and Noner were not the *stridhan* of Lalli Jas Kunwar.

In the argument of these appeals, as in the Court below, the main question discussed has been whether the plaintiff is the nearest reversioner to the estate of Chaturbhuj Singh so as to entitle him to maintain a declaratory suit impeaching the acts of the widow and the daughter. There can be no question, having regard to the rulings of their Lordships of the Privy Council, that if he cannot show this the whole suit must fail. In the plaint he claims that he stands in that relation to Chaturbhuj Singh by virtue of two adoptions,—first, an adoption of his father Har Narain Singh, secondly, an adoption of Chaturbhuj Singh himself. He further contends that, even if neither of those adoptions is held proved, he is still, with reference to the genealogical table annexed to the plaint, the nearest reversioner to the estate of Chaturbhuj Singh.

In reply to the suit, the defendants in their written statements deny both adoptions, deny the genealogical table asserted by the plaintiff, and set up a different genealogical table of their own. It is, of course, for the plaintiff to prove the adoptions and the genealogical table upon which his title to sue as nearest reversioner is based.

To explain the plaintiff's case as to the relation in which he stands to Chaturbhuj Singh, we may for the present assume the correctness of the genealogical table found to be correct by the Subordinate Judge, and printed in his judgment at page 45 of the paper book, and which does not entirely adopt either the pedigree set up by the plaintiff or that set up by the defendants. According to the plaintiff, Chaturbhuj Singh, who was the son of Bhup Singh in Harkishen Das' branch of the family, was adopted to Sundar Singh in the branch of Raja Ram, brother of

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Harkishen Das, by Sundar Singh's widow, At Kunwar, about the year 1831. He further alleges that his own father, Har Narain Singh, also in the branch of Harkishen Das, was adopted to Bhagwan Singh, a member of Raja Ram's branch, by Bhagwan Singh's widow, Dhan Kunwar, in 1829. If both these adoptions are proved, the result would be to make Chaturbhuj Singh and Har Narain Singh, the grandson and great-grandson respectively of two brothers Kishen Singh and Jawahir Singh, grandsons of Raja Ram, brother of Harkishen Das. As there are admittedly no other persons living who are descended from Kishen Singh or Jawahir Singh it follows that the plaintiff, as the son of Har Narain Singh, would be the nearest reversioner to Chaturbhuj Singh, whose widow, Mahtab Kunwar, made the alienation first complained of in the plaint, and whose daughter, the first defendant, Lalli Jas Kunwar, is in possession of the bulk of the estate. As already stated, however, the plaintiff further contends that even if neither adoption is proved, there would still be no nearer reversioner than himself to Chaturbhuj Singh, and that, therefore, his declaratory suit would still be maintainable. He seeks to prove this by the genealogical table annexed to the plaint. One of the respects in which that table differs from the table accepted as correct by the Subordinate Judge is that the plaintiff denies that Pahar Singh was a son of Harkishen Das, and consequently denies the relationship of Chaturbhuj Singh of all the descendants of Pahar Singh. If, as the defendants contend, and as the Subordinate Judge finds, Pahar Singh was a son of Harkishen Das, then admittedly there are several persons who would be nearer reversioners than the plaintiff to Chaturbhuj Singh; for instance, the grandsons of Arjun Singh, son of Pahar Singh, and the second defendant Umrao Singh, who is the great-grandson of Pahar Singh's son Madho Singh.

The defendants contend that Har Narain was descended, not as alleged by the plaintiff, from Mandhata, a son of Harkishen Das, but from Sartaj Singh, an uncle of Harkishen Das, and that Mandhata died childless. The result of that would be that the plaintiff would be much more distantly related to Chaturbhuj Singh than several other persons. We need only say that the Court below has found that Har Narain was, as the plaintiff

asserts, descended from Mandhata, and that as to this we see no reason to disagree with the decision which has hardly been disputed in the appeal before us. The defendants also contend that Harkishen Das had a brother Hansram, whose descendants would also be nearer to Chaturbhuj Singh than the plaintiff. In the view which we take of the case, it is not necessary for us to decide that point.

The result of these opposing contentions may be shortly stated thus. If the plaintiff succeeds in proving both the adoptions alleged by him, he establishes his position as the nearest reversioner to Chaturbhuj Singh. If he proves the adoption of Har Narain Singh only, the suit must fail, as in that case the plaintiff, having passed by reason of the adoption out of Harkishen's branch into that of Raja Ram, would not be the nearest reversioner to Chaturbhuj Singh in the presence of other persons admittedly living in the branch of Harkishen Das himself to which Chaturbhuj belonged. If the plaintiff proves the adoption of Chaturbhuj only, he can only succeed if Pahar Singh was not a son of Harkishen Das, for, if he was, then, as stated above, several of the descendants of Pahar Singh would be nearer to Chaturbhuj Singh than the plaintiff. If the plaintiff proves neither of the adoptions, then he can only succeed by proving that Pahar Singh was not a son of Harkishen Das.

We will consider in turn each of the two alleged adoptions—and first that of Har Narain Singh. The Subordinate Judge, after a very full statement of the evidence bearing on that adoption, came to the conclusion that it was proved to have taken place in fact, and also that it was a valid adoption in law. So far as the fact of the adoption is concerned, we have arrived at the conclusion that we ought not to dissent from the Subordinate Judge's finding, which is confirmed by materials which were not before the Court below. The earliest documents bearing on the question are a group of three purporting to date from about the time of adoption itself. The first is an agreement purporting to be executed by Dhan Kunwar, and bearing her seal, on the 2nd December, 1829. It states that she has for the preservation of the estate adopted as her son Har Narain, son of Sarup Singh, and adds that the document has been written by way of an

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agreement and of a deed of adoption. The second is a document, dated 3rd December, 1829, by which Sarup Singh, the natural father of Har Narain Singh, states that he has of his own accord given his son Har Narain Singh to Dhan Kunwar, and that she of her own free will adopted the said son as her own, and made him a substitute for a real son in connection with the estate of her deceased husband. The third is an agreement, dated the 11th December, 1829, purporting to be executed by Ganga Kunwar, widow of a cousin of Bhagwan Singh, the husband of Dhan Kunwar, setting forth the adoption of Har Narain Singh, and stating in substance that she also has put Har Narain Singh in possession of the entire estate in her possession and made him owner thereof. The two first documents bear the seal of a Kazi, and the attestations of numerous witnesses, zamindars and others. All three documents obviously are of great age, and it has not been disputed that they were produced from proper custody. Apart from the general evidence contesting the adoption of Har Narain Singh, no serious argument was addressed to us to show that these document were not genuine. We agree with the Subordinate Judge in accepting them as genuine, and we base this conclusion partly on the absence of suspicious circumstances in the documents themselves, and partly on the corroboration which, in our opinion, they derive from other documents to which we shall presently refer. The first piece of corroborative evidence is an order passed by the Collector of the Shahabad District, on the 3rd December, 1829, that is, on the day following that on which the instrument executed by Dhan Kunwar purports to have been made. The order recites that Dhan Kunwar, widow of Thakur Bhagwan Singh, intends to adopt the son of Thakur Sarup Singh, and that as the ilaka is, by sanction of the Commissioner, under the Court of Wards, she had, under section 37 of Regulation No. LII of 1803, no authority to make the adoption without the sanction of the Court of Wards. The order goes on to direct that a copy of the proceedings should be sent to the Magistrate of the Etawah District, in which the lady lived, asking him to "prevent the said Musammat from adopting "the son of the Thakur aforesaid; that a parwana be sent to the "Thakurain aforesaid containing the aforesaid particulars; and

"that a parwana be sent also to Maulvi Muhammad Azam, Kazi of "pargana Ferozabad, preventing him from affixing the seal to the "*hibanama* (deed of gift, &c.), at the request of the aforesaid "Musammat." At the hearing of the appeal we admitted this document in evidence on the application of the defendants, under section 568 of the Code for the reasons stated in our order of admission. What authority the Collector had to ask the Magistrate to prevent the adoption, or to forbid the Kazi to affix the seal, it would be difficult to say, and it is unnecessary to discuss. The Collector, as an Officer of the Court of Wards, would no doubt consider it his official duty to warn Dhan Kunwar against making an adoption without the sanction of the Court of Wards, which he believed to be required. The document is of importance as showing that the Collector then treated Dhan Kunwar as contemplating the immediate adoption of Har Narain Singh. There is on the record a document, dated 13th December, 1829, described as "application of Jugul Kishore, "Sazawal, tahsil Narkhi, etc.", upon which there is an order dated the 17th December, 1829, by the Collector, directing that a letter be written to the members of the Court of Wards. The report sets forth, upon hearsay information, that Dhan Kunwar had adopted a boy whose description obviously answers to Har Narain Singh, but we have discarded the document as evidence of the facts therein stated, partly because the information is merely hearsay and partly because there is nothing to show that the report was made by the Sazawal in the execution of any official duty, but we think it may be referred to as explaining the official order of the Collector, which shows that the Collector on the 17th December, 1829, reported to the Court of Wards, who would be interested in any such adoption, information to the effect that it had actually taken place. At the hearing of the appeals we also admitted in evidence, for reasons stated in our order of admission, an order of the Collector, dated 3rd July, 1830. This is described as a "Precept to Thakur Sarup Singh, "ancestor of Har Narain Singh, adopted son of Musammat Dhan "Kunwar, zamindar of Katgi, pargana Ferozabad." The order reminds Sarup Singh (who, it will be remembered, was the natural father of Har Narain Singh), that at the time when Dhan

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Kunwar adopted Har Narain Singh and made a gift of her zamindari property in his favour, an agreement had been made with Sarup Singh for the satisfaction of debts due to creditors. It calls upon him to submit an explanation showing why he had not performed the promise on which he had given his son in adoption to the said Musammat. We have also admitted in evidence, under section 568 of the Code, an official letter addressed by the Commissioner of the Agra Division to the Sadr Board of Revenue, dated the 16th of February, 1831, to which we shall more fully refer presently. In that report Har Narain is referred to as the boy "whom the Thakurain had adopted "without authority and consequently illegally, after the estate "had been taken under the Court of Wards." Lastly, there is a petition by Dhan Kunwar to the Collector of Pharah, dated the 28th September, 1831, dealing principally with her disputes with Sumer Singh—disputes to which we need not at present more particularly refer. In that petition Musammat Dhan Kunwar sets forth that she had adopted Har Narain Singh from Sarup Singh "in 1829 by going through the adoption ceremonies "according to Hindu law". To this extent we think that the statements in the petition may be accepted as true, more especially as the petition refers to official applications and proceedings in which the adoption was asserted, which, owing to lapse of time and destruction of records during the Mutiny, are not now forthcoming, but which Dhan Kunwar in 1829 would hardly have ventured to refer to if they had not been in existence. On behalf of the defendants it was objected that this document was not properly proved to have been executed by Dhan Kunwar. The document is a certified copy purporting to be a copy of an original petition of Dhan Kunwar, dated the 28th September, 1831. The copy purports to have been granted on the 20th October, 1831. It was filed in the Court below on behalf of the plaintiff. It is common knowledge, of which we are entitled to take notice, that the original records of the Agra Division were destroyed during the mutiny of 1857, and therefore under section 56, cl. (*c*) of the Indian Evidence Act, the copy is admissible as secondary evidence of the original. Under section 90 we may presume that the document was duly executed by Musammat

Dhan Kunwar. To this it has been objected that section 90 does not apply so as to warrant the presumption in question, where the original document is not produced in Court, and in support of this argument great stress is laid upon the word "produced" in the section. In *Khetter Chunder Mookerjee* v. *Khetter Paul Sreeterutno* (1) Mr. Justice Wilson applied the presumption of section 90 to a copy of a document which had been lost and was more than 30 years old, and in reference to the argument based on the words "is produced," said, "I do not think the use of these words limits the operation "of the section to cases in which the document is actually "produced in Court". Although the matter is not free from doubt, we think that we should follow this ruling, and under section 90 of the Evidence Act, presume the genuineness of the petition of Musammat Dhan Kunwar. We have excluded from consideration a document referred to by the Subordinate Judge, which purports to be a written statement, dated the 9th of November, 1885, filed by Har Narain Singh as defendant in a suit brought in the Court of the Munsif of Agra, by one Parasram Singh against Mahtab Kunwar, Har Narain Singh and others. That written statement has not been proved to our satisfaction as a written statement made by the Har Narain Singh whose adoption is in question in this case.

The documents which we have just considered strongly corroborate the documents of 1829 in regard to the adoption of Har Narain Singh, and satisfy us that he was in fact adopted by Dhan Kunwar in December, 1829. The next question to be considered is whether that adoption was a valid adoption in law. This question has been discussed from two different points of view. In the first place, it was contended on behalf of the defendants that at the time of the alleged adoption, the estate left by Bhagwan Singh was under the management of the Court of Wards; that by section 37 of Regulation No. LII of 1803, it was enacted that "no adoption by disqualified landholders shall "be deemed valid without the previous consent of the Court of "Wards, on application made to them through the Collector"; and that inasmuch as there is no evidence of any sanction having

(1) (1879) I. L. R., 5 Calc., 1886; S. C. 6 C. L. R., 199.

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been given by the Court of Wards to the adoption of Har Narain Singh by Dhan Kunwar (who, it is contended, was a "disqualified landholder" within the meaning of the Regulation), that adoption, if it took place, was invalid. The Court of Wards spoken of in section 37 is shown by section 2 to be the Board of Revenue. Now in regard to this argument, we are satisfied that at the time of the adoption the estate then held by Dhan Kunwar was, as a matter of fact, in the possession of the Court of Wards. We think this is the only possible inference from the Collector, Mr. Deeds' orders of the 3rd and 17th December, 1829, from his precept to Sarup Singh of the 3rd July, 1830, and from the Commissioner's letter to the Board of Revenue of the 16th February, 1831. The same official documents further show, in our opinion, that the adoption was not sanctioned by the Board of Revenue. But the further question arises whether the possession and management of the estate was not only in fact, but also in accordance with law, assumed by the Court of Wards. Unless that question is answered in the affirmative, section 37 of the Regulation would not apply, and the adoption would not be invalidated by the absence of such sanction. Now the legal requisites of an assumption by the Court of Wards of the possession and management of an estate are set forth in the Regulation. The landholder must be a "disqualified landholder" within the meaning of section 3, and under sections 8 and 9, where the landholder is a female, the procedure prescribed is for the Board of Revenue, upon the report of the Collector, to take the estate under their care, and to report the circumstance to the Governor-General in Council, to whom the power is reserved of exempting any female proprietor from the operation of the Regulation. In *Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer* (1) decided under the Regulation, their Lordships of the Privy Council held that "the provisions of such a law "should be strictly pursued in order to effect the disqualification "of any particular person," and that it must not be assumed that a female proprietor was necessarily a disqualified person from the estate being in fact under the charge of the Court of Wards. They added, "under this Regulation the Collector is to report a

(1) (1867) 11 Moo., I. A., 468.

"female proprietor as disqualified to the Board of Revenue, and "the Board of Revenue, in their capacity of a Court of Wards, "are to report that they have taken the estate under their charge "to the Governor-General in Council, so as to enable him to "exercise his discretion of exempting her from the operation of "the Regulation. Nor are these mere forms. They are necessary "preliminaries to the disqualification of a female". Their Lordships comment on the fact that the decisions of the Courts below were based exclusively on the ground that the estate was in the custody of the Court of Wards, and that "the question whether "any formal report was ever made of Rattan Koer being a dis-"qualified female was left wholly unnoticed." In that case their Lordships agreed with the Courts below in finding that, except for the period of the Mutiny, the Court of Wards was continuously in the actual possession of the estate from the year 1811 to August, 1862. We think that it follows from this decision that it rests upon one seeking to invalidate an adoption by reason of the provisions of section 37 to give strict proof, not only that the estate was in the actual possession of the Court of Wards, but that the necessary legal preliminaries to the disqualification of the female proprietor had regularly taken place. Now upon this point the letter of the Board of Revenue to the Commissioner of the Agra Division, dated the 1st March, 1831, is of the utmost importance. In that letter the Board state, "as the property has been managed for 10 years by the "Thakurain, and it was not proposed to place it under the Court "of Wards until her affairs had fallen into such a state of confu-"sion as to render it improbable that the interference of the Court "could be productive of any good effect, the Board consider the "order passed by the late Commissioner, under date the 25th June, "1829, to have been both injudicious and irregular,—injudicious "for the reasons above stated, and irregular inasmuch as the Com-"missioner was not competent of his own authority to place the "estate under the management of the Court of Wards." Again: "Under all circumstances it appears to the Board that any fur-"ther interference in the affairs of the estate by the officers of "Government ought to be carefully avoided, and that the orders of "the late Commissioner should be considered of no effect, as having

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"been issued without due authority." That statement made by the Board of Revenue—the Court of Wards itself—shows that the estate was taken under the management of the Court of Wards irregularly and without proper authority, and in disregard of the provisions of the Regulation which the Privy Council held must be strictly pursued. Against this it has been contended on behalf of the defendants that notwithstanding this statement, the Commissioner had, independently of the Board of Revenue, authority to take the estate under the management of the Court of Wards. That contention is based upon the provisions of Regulation I of 1829, constituting Commissioners of Revenue in certain specified divisions, including Shahabad, and upon section 4, which provides that "the said "Commissioners shall, until otherwise specifically provided by "law, possess and exercise within the several districts comprised "in their respective divisions, the powers and authority now "vested in the Board of Revenue and Court of Wards, subject "to the control and direction of a Sadr or Head Board to be "ordinarily stationed at the Presidency, unless otherwise directed "by the Governor-General in Council, and to such restrictions and "provisions as the Governor-General in Council or the said Board "with his authority or sanction may prescribe." That section expressly reserves the control and direction of the Board of Revenue as Court of Wards, and subjects the action of the Commissioners to restrictions and provisions prescribed by the Board of Revenue. The letter of the Board to which we have just referred is an explicit statement by the controlling authority that the Commissioner ought not to have taken the estate under management without reference to them, and that such taking over was in fact contrary to their intention. It is impossible after the lapse of so many years to ascertain what were the directions prescribed by the Sadr Board of Revenue to its subordinate in connection with estates under the Court of Wards. But it must, we think, be presumed that the Board, in 1831, correctly interpreted the relation in which it stood to the Commissioner, and had sufficient grounds for condemning as it did the assumption of the management of Dhan Kunwar's estate as unauthorized and illegal. At all events so much doubt is thrown

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upon the matter that, particularly in the absence of further evidence as to the circumstances in which the Commissioner acted, we think it impossible to hold that the proof required by the Privy Council in such matters has been given in this case. That being so, the defendants have, in our opinion, failed to establish that the adoption of Har Narain Singh was invalid by reason of the provisions of section 37 of Regulation LII of 1803, and it is unnecessary for us to consider the argument addressed to us by Pandit Moti Lal as to the construction and effect of that section assuming it to apply. So far therefore as the Court of Wards is concerned, we see no reason to doubt the validity of the adoption of Har Narain Singh by Dhan Kunwar in 1829.

[Only so much of the judgment is here printed as deals with the points referred to in the head note. After discussing several other questions raised in the appeal, their Lordships finally dismissed the plaintiff's suit, holding that he had failed to establish the position necessary for his success.—Ed.]

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Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

MUHAMMAD ASKARI (PLAINTIFF) *v.* RADHE RAM SINGH AND OTHERS (DEFENDANTS).*

Act No. IX of 1872 *(Indian Contract Act), section* 43—*Joint contract—Right of promisee to sue any or all of the joint promisors—Right of joint promisors to be joined as defendants—Decree against some only of several joint promisors—Effects of such decree—Civil Procedure Code, section* 29—*Hindu law—Joint Hindu family—Position of managing member—Suit against managing member—Subsequent suit against other members.*

The effect of section 43 of the Indian Contract Act, 1872, being to exclude the right of a joint contractor to be sued along with his co-contractors, the rule laid down in the cases of *King* v. *Hoare* (1), and *Kendall* v. *Hamilton* (2) is no longer applicable to cases arising in India, at all events in the Mufassil, since the passing of that Act, and a judgment obtained against some only of the joint contractors and remaining unsatisfied is no bar to a second suit on the contract against the other joint contractors. *King* v. *Hoare* (1), *Kendall* v. *Hamilton* (2), *In re Hodgson* (3), *Hammond* v. *Schofield* (4), *Nuthoo Lall Chowdhry* v. *Shoukee Lall* (5), *Hemendro Coomar Mullick* v. *Rajendrolall Moonshee* (6), *Gurusami Chetti* v. *Samurti Chinna Mannar Chetti* (7), *Lukmidas Khimji* v. *Purshotam Haridas* (8), *Rahmubhoy Hubibbhoy* v. *Turner*

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* First Appeal No. 177 of 1897 from a decree of Babu Nilmadhab Ray, Subordinate Judge of Benares, dated the 20th of May 1897.

(1) ( ) 13 M. and W., 494.
(2) ( ) L. R., 4 A. C., 504.
(3) ( ) L. R., 31 Ch. D., 177.
(4) (1891) I. Q. B., 453.
(5) (1872) 10 B. L. R., 200; S. C. 18 W. R., 468.
(6) (1878) I. L. R., 3 Calc., 353.
(7) (1881) I. L. R., 5 Mad., 37.
(8) (1882) I. L. R., 6 Bom., 700.