January, 1895. This paragraph has been put forward and treated as a general rule made by the Railway Company under section 47 of Act No. IX of 1890, clause *(b)*. All that we have to see is, whether it is a rule consistent with Act No. IX of 1890. Presumably it has received the sanction of the Governor-General in Council and been printed in the *Gazette of India*. No question upon these points has been raised. Indeed it is not alleged, except in a side way, that it is inconsistent with the Act. The learned vakil who appeared for the appellants referred us to section 42, sub-section (1), and contended that in making the rule the Railway Administration was not, according to its powers, affording all reasonable facilities for the receiving, forwarding, and delivering of traffic. One obvious answer to this is, that the rule in question, or one similar to it, appears to have found place in rules made by other railway companies. The only point taken in the memorandum of appeal is based upon an expression of opinion given by the lower appellate Court to the effect that the rule is inequitable. We have not to see whether a rule is or is not inequitable if it is found to be a rule made consistently with the Act, and duly sanctioned and published as required by the Act. The decision of the case is in accordance with the principle laid down in *Slim* v. *The Great Northern Railway Company* (1). We think the plaintiffs' suit was properly dismissed. The pleas taken in appeal fail, and the appeal is dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

P. C.
J. C.
1901
February 15.
March 23.

JAGDISH BAHADUR, PLAINTIFF *v.* SHEO PARTAB SINGH, DEFENDANT.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Act No. I of 1869 *(Oudh Estates Act), section* 22, *sub-section* (11)—*Succession—Impartible taluqdari—Succession of elder son by a junior wife excluding younger son by a first wife—Hindu law.*

A taluqdari estate, entered in the lists 1 and 2 prepared under section 8 of the Oudh Estates' Act, 1869, descended by section 22, sub-section (11) of that Act

Present:—LORDS HOBHOUSE, DAVEY, and LINDLEY, and SIR RICHARD COUCH.

(1) (1854) 14 C. B., 647.

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to a person "who would have been entitled to succeed to the estate under the ordinary law by which persons of the religion and tribe of the taluqdar would have been entitled."

This was established as to the property now in dispute in *Brij Indar Bahadur Singh* v. *Ranee Janki Koer* (1). And that a taluqdari estate which has so descended under section 22, sub-section (11), is still subject to the provisions of the Act, and descends as impartible estate, was decided in *Dewan Ran Bijai Bahadur Singh* v. *Rae Jagatpal Singh* (2), which was referred to and followed.

According to Hindu law, the elder son of a wife married at a later date, succeeds to impartible estate in priority over the son later born of a senior wife, and over the son later born of a wife first married.

APPEAL from a decree (21st March 1895) of the Court of the Judicial Commissioner, affirming a decree (23rd March, 1891) of the Additional District Judge of Rae Bareli which had dismissed the plaintiff's suit.

In this suit, filed on the 27th January 1890, Sitla Bakhsh, the younger of two sons of Raghunath Singh deceased, born of different mothers, claimed, in virtue of his mother's seniority in the order of her husband's marriages, to inherit the impartible taluqdari estate of Pawansi in the Partabgarh district as sole heir. The wife afterwards married was the first to give birth to a son, Shankar Bakhsh; whose son, Sheo Partab Singh, was the defendant respondent, alleging title as such heir through his father, the first born son of Raghunath Singh. Shankar Bakhsh died before this suit was instituted.

This estate, according to a decision in 1877 of the Judicial Committee, in *Brij Indar Bahadur Singh* v. *Ranee Janki Koer* (1), having been created by sanad, had vested absolutely in the Thakurain Kublas Kunwar, widow of Mahpal Singh, as her *stridhan*, and on her death descended to her daughter, Rani Janki Kunwar, under section 22, sub-section (11), of the Oudh Estates' Act, 1869. Kublas Kunwar's name was entered in 1 and 2 of the lists prepared under section 8 of that Act. Janki Kunwar died without any offspring on the 16th December, 1888. The Pawansi taluqdari estate then devolved upon the nearest collateral relation, under the same enactment in regard to inheritance, of Mahpal Singh. The successor was to be either one,

(1) (1877) L. R., 5 I. A., 1.

(2) (1890) L. R., 17 I. A., 178; I. L. R., 18 Calc., 111.

but not both, of the sons of Raghunath Singh, between whom was raised the question of priority of right.

An alternative claim was that the estate, with reference to the meaning of sub-section (11), had descended as an estate divisible "under the ordinary law," referred to in that enactment, and was not impartible. If it should be decided to be partible, the plaintiff claimed his share. He relied, however, on his alleged title as the son of Raghunath's senior, or first married, wife, "according to the custom of the clan and by law."

Among other issues fixed was one raising the question of the impartibility of taluq Pawansi, with all the property appurtenant to it. Another issue related to the alleged "custom and law" giving priority to a son of a senior wife in the order of marriage, over the elder son of a junior wife. These were the main issues throughout, and on this appeal the questions argued and decided were to the same effect.

The judgment of the Additional District Judge was to the effect, (1) that taluq Pawansi, which was entered in list 2, of those required by section 8 of Act I of 1869, was impartible: and (2) that Shankar Bakhsh, as the senior surviving son of Raghunath at the death of his father, was entitled to inherit the taluqdari estate as sole heir, so that his son, Sheo Partab Singh, was entitled to the succession.

Sitla Bakhsh appealed from this on the 22nd June 1891. Pending the appeal he died. His great grandson, Jagdish Bahadur, was entered on the record.

The Judicial Commissioners, forming the appellate Court, affirmed the judgment of the first Court. The material part of their judgment, given by Mr. J. Deas, with the concurrence of Mr. Spankie was the following:—

"The appellant urges that the Lower Court has erred in "holding that the estate in suit is an impartible estate, and the "first question is whether it is an estate of this character.

"The name of Thakurain Kublas Kunwar, the taluqdar "and predecessor of Rani Janki Kunwar, was entered in lists "Nos. 1 and 2 of the lists mentioned in section 8 of Act I of 1869. "It was decided by their Lordships in *Brij Indar Bahadur "Singh* v. *Rani Janki Kunwar; Shankar Baksh Singh* v.

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"*Rani Janki Kunwar*, and *Sitla Baksh Singh* v. *Rani Janki* "*Kunwar* (1), that Thakurain Kublas Kunwar held the estate "in full proprietary right, that as regarded succession the "rights of the parties claiming descent must be governed by "section 22 of Act I of 1869; and that, under clause 11 of "section 22, the taluq, which was the separate property of the "widow, descended, in the absence of a proved custom of her "tribe to the contrary, to her daughter Rani Janki Kunwar in "preference to the remote male heirs of her deceased husband, "Mahpal Singh.

"It was contended for the appellant that Thakurain Janki "Kunwar having succeeded to the estate under clause 11, that is "to say, under the ordinary Hindu law, did not take the estate "under the special provisions of the Act, and was not, therefore, "an heir of the taluqdar within the meaning of section 2 of Act "I of 1869; and that the estate in her hands was not subject to "the provisions of the Act, and did not on her death descend as "an impartible estate by virtue of the provisions of sections 8, "10, and 22. This question appears to have been conclusively "settled by the decision in *Ran Bijai Bahadur Singh* v. *Jagat-*"*pal Singh* (2)." Following this, the Judicial Commissioners were of opinion that on the death of Janki Kunwar the Pawansi estate decended as an impartible estate to a single heir. They found also that the admitted custom was that one successor "alone should succeed.

In the next place, on the question whether according to Hindu law the son of the first married wife had precedence of the elder son, born of the junior wife, the principle decided in *Pedda Ramappa Nayanivaru* v. *Bangari Seshamma Nayanivaru* (3) was considered applicable. Although it was now an established correction not to attribute the use of the words "but of a lower class," in the text of Manu IX, v. 128, to the insertion of these words by Kalluka Bhatta, but to an interpolation by a commentator of less authority, the Judicial Commissioners were of opinion "that the appellant failed to establish satisfactorily by the text "quoted, his contention that in the case of sons by several wives of

(1) (1877) L. R., 5 I. A., 1. (2) (1890) L. R. 17, I. A., 173; I. L. R., 18 Calc., 111.
(3) (1880) L. R., 8 I. A., 1; I. L. R., 2 Mad., 286.

"the same class the ordinary rule which confers seniority upon "the first born is departed from in favour of the son of the "senior wife, should such first-born son be born of a junior "wife." They stated that the decision of the Judicial Committee in the case last mentioned was binding upon the Court; but having heard the arguments of the advocates, they proceeded to give their opinion as to whether or not the appellant had failed to establish his contention by the texts, as if the question were open. It was decided that the contention had not been borne out and that the ordinary rule prevailed, which conferred the right by seniority on the first-born son.

The Judicial Commissioner said—

"In the present case it was not contended that the wives of "Raghunath Singh were not of equal class, or that Shankar "Bakhsh Singh was not the first-born son of his father. The "learned advocate for the appellant urged that the interpolation "of the words 'but born of a lower class,' in Sir William Jones' "translation of section 122, does not rest on the authority of "the commentary of Kalluka Bhatta, and that their Lordships "were misled by this mistake.

"The decision of their Lordships on the question of Hindu Law "raised by the appellant is, however, binding on this Court. "Further, having heard the arguments of the learned advocates "of the parties, both acquainted with Sanskrit, I am of opinion "that if the question were open to us for determination, the ap- "pellant has failed to establish satisfactorily by the texts quoted "by him his contention that in the case of sons by several wives "of the same class the ordinary rule which confers seniority on "the first-born is departed from in favour of the son of the "senior wife, should such first-born son be born of a junior "wife.

"The argument of the learned advocate for the appellant "is based on the texts of Manu, which were considered by their "Lordships. He points out that the interpolation of the words "'but of a lower class,' made by Sir William Jones in his trans- "lation of section 122, is not authorized by the commentary of "Kalluka Bhatta; and that that commentator endeavoured to "reconcile section 122 with section 125 by making a distinction

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"between virtuous and vicious sons, and not by the addition of "the words 'but of a lower class' in section 122 (see Cole- "brooke's Digest of Hindu Law, B. K. V. I. 57).

"The learned advocate for the respondent admits that sec- "tion 122 was not explained by Kalluka Bhatta in the manner "adopted by Sir William Jones.

"He says that that explanation has the authority of the com- "mentator Prakash. While, however, it appears to be the case "that the addition of the words 'but of a lower class' in Sir "William Jones' translation cannot be supported by the commen- "tary of Kalluka Bhatta, it is clear that the translation of the "original text itself is not free from doubt. Sir William Jones, "Colebrooke, Max Müller, and Loiseleur Des Longchamps trans- "late the word 'pârvaja' in section 122 'as the elder son,' and "in section 125 as 'the son born of the elder wife.' Max Müller "gives the following note on section 125:—

"As this verse and the following one contradict the rules "given in verses 123 and 124, the commentators try to reconcile "them in various ways.

"Medh thinks that verses 123-124 are an artharada and have "no legal force, and Ragh inclines to the same opinion. Nar "and Nand hold that the seniority, according to the mother's "marriage, is of importance for the law of inheritance (verses "123-124), but that it has no value with respect to salutations "and the like, or to prerogatives at sacrifices (verses 125-126). "Kull finally, relying on Gov's opinion, thinks that the rules "leave an option, and that their application depends on the "existence of good qualities and the want of such.

'It is, however, probable that according to the custom of "Hindu writers, the two conflicting opinions are placed side "by side, and that it is intended that the learned should find "their way out of the difficulty as they can.

"Burnell and Hopkins, on the other hand, give the same "meaning, *viz.* 'the first-born,' to the word 'pârvaja' in both "sections 122 and 123 ('Ordinances of Manu, 1884').—Their "translation of sections 122, 123, and 124 is as follows:—

"'122. (Suppose) the youngest son is born by the eldest wife, "and the first-born (son is born) by the youngest wife, how

"should the division be between them? If a doubt should arise "expressed in these words.

"'123. (We answer it thus): The first-born should receive "one bull as his portion to be taken out (of the general inherit- "ance); after this, the other bulls, not the best, (belong), accord- "ing to their mothers, to his brothers, who are inferior to him "[in point of age].

"'124. But when the eldest (son) is born of the first wife, "he should take 15 cows and a bull; then the rest may divide, "according to their mothers, with these words the rule is fixed.'

"Their note on verse 123 is as follows:—'Madhatithi and "Kulluka define 'parvaja' as the 'son born of the first wife, "even if he is the youngest,' and render 'Swa matritas,' 'in "consequence of their mothers' as explaining 'inferior:' but "Gautama, XXVIII-14, shows that the eldest son is intended, "even when born by other than the first wife. This verse gives "the rules for the eldest son, irrespective of his mother; the next "allots him a better portion if his mother is the first eldest "wife.'

"Jolly in his 'Hindu Law of Partition, Inheritance, and "Adoption' (Tagore Law Lectures, 1883, p. 178,) says:—

"'Manu has discussed the same question, and as far as his "meaning can be made out he proposes two answers to it: either "the son of the first-married wife, though younger, shall get an "excellent bull as his additional share; or the right of primogeni- "ture shall follow the date of birth alone, just as in the case of "twins the first-born is considered as the elder of the two. The "latter view, say the commentators Madhatithi and Ragharanan- "da, represents Manu's own opinion.'

"He adds in a note—

"'Doctor Mayr thinks that the two rules (Manu 9, 123, and "125) do not contradict one another, as 'parvaja' in 123 may "denote the eldest son of all sons, and 'taduraram' the eldest son "of each wife. This interpretation is supported by one MS., "which reads 'Sarvapurvaja' the eldest son of all. But all the "other MSS. read 'Sa purvaja.'

"Narayana tries to remove the contradiction between 123 and "125 by referring the latter rule to questions of etiquette only,

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"such as formal salutations." Kalluka brings in the difference "between 'virtuous and vicious sons.'

"If Burnell's translation is accepted, the supposed contradic- "tion between sections 123 and 125 disappears; and, according "to Manu, amongst sons born of different mothers of equal class "the first-born son is the senior.

"The learned advocate for the respondent relies on Burnell's "translation as being the correct one, inasmuch as it gives the "same meaning to the word 'parvaja' in both the verses 122 "and 123.

"As the correct translation of verse 123 is doubtful, and as "Manu's own answer to the question propounded by him in verse "123 cannot be clearly ascertained, it appears to me that the "appellant has failed to establish satisfactorily his contention "by the texts quoted by him.

"I find therefore that by Hindu law Sitla Bakhsh did not "by virtue of being born of the first-married wife acquire "seniority over his elder brother Shankar Bakhsh the first-born "son of his father, and that accordingly he was not under that "law entitled to succeed to the impartible Pawansi estate in pre- "ference to his elder brother, the first-born son."

On the plaintiff's appeal—

Mr. *J. H. A. Branson*, for the appellant, argued that it ought to have been held in the Court below that, as Janki Kunwar had succeeded to the Pawansi taluqdari under the enactment in clause 11 of section 22 of Act I of 1869, the results of that enactment must be the following in regard to the two brothers, the sons of Raghunath Singh. That clause was to the effect, in the course of providing special rules of succession, that in default of male lineal descendants, the estate should devolve upon such persons as would have been entitled to succeed under the ordinary law to which persons of the religion and tribe of the last taluqdar were subject, thus bringing in the ordinary Hindu law. The estate was not in the hands of Janki Kunwar as subject to the provisions of the Oudh Estates Act (I of 1869), and it descended from her as an estate under, and governed by, the ordinary Hindu law to which she was subject. The estate was, therefore, not impartible when it descended

to her and from her. It was therefore partible between the two brothers.

Reference was made to *Deivan Ran Bijai Bahadur Singh* v. *Rae Jagalpal Singh* (1).

Upon the next question,—as to the right of the appellant's predecessor in title in consequence of his having been born of the senior wife, the sentence in the text of the institutes of Manu, Chap. IX, said in recent years to have been interpolated, and not to have been put forward under the authority of Kalluka Bhatta, (as it appeared to be, in Sir William Jones' translation of verse 122 in that Chapter,) the argument was that the correction had been established. The words "but of a lower class," being now rightly attributed to a commentator of less weight, had lost their force; and the sentence was no longer to be considered as of binding effect, the gloss not having the authority of the author, formerly supposed to have added it, the appellate Court below ought, therefore, to have held that the rights of sons born of mothers married at different times were correctly viewed in verse 123, and that preference had to be given to the son of the earliest, or first married wife.

Reference was made to the Tagore Law lectures for 1880 by Rajkumar Sarvadhikari, the Principles of the Hindu Law of Inheritance; lecture V, at pp. 224, 239, and 240.

It was also contended that the Court below ought to have placed the burden on the plaintiff to prove that by custom the non-taluqdari property was impartible, and that it accompanied the impartible taluq. No such proof had been given of a custom to that effect. Therefore the property should have been held divisible between the parties. Also was cited, as showing that impartibility is not extended to personal property of a zamindar, *Rajah Rajeswara Gajapaty* v. *Sri Virapratapah Gajapaty* (2). And reference was made to *Ramasami Kamaya Naik* v. *Sundaralingasami Kamaya Naik* (3), where the custom was found by two Courts in concurrence in favour of the son of the wife first married.

(1) (1890) L. R., 17 I. A., 173; I. L. R. 18 Calc., 111.
(2) (1869) 5 Mad., H. C. 31.
(3) (1893) I. L. R., 17 Mad., 422, 444.

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Mr. *J. D. Mayne* and Mr. *H. Cowell* for the respondent, were heard only as to whether the non-taluqdari property followed the same course of descent as the taluqdari. They argued that on the plaint, on the other pleadings, and on the issues, the non-taluqdari property was treated as belonging to the same hereditary estate as the impartible taluq. The claim was one and entire as to all the estate. So dealt with by both parties and by both Courts below. They referred to *Sundaralingasami* v. *Ramasami* (1), which was the last cited case on appeal to England.

The judgment of their Lordships was delivered by LORD DAVEY:—

The present appellant is the great-grandson and heir of Sitla Bakhsh, the original plaintiff, and was substituted for the latter on his death after the commencement of the suit. The respondent is the son and heir of Shankar Bakhsh. Sitla Bakhsh was the son of Raghunath by his first wife, Bish Nath Kunwar. Shankar Bakhsh was also the son of Raghunath, but by his junior wife, Raj Kunwar. Shankar Bakhsh was born before his half-brother Sitla Bakhsh and was therefore the elder born son of Raghunath.

The suit relates to the succession of the taluq of Pawansi, which, after the annexation of Oudh, was by a sanad granted to a lady named Kablas Kunwar, the widow of Mahpal Singh. Her name was entered in the first and second lists mentioned in section 8 of the Oudh Estates Act, 1869. In the case of *Brij Indar Bahadur Singh* v. *Ranee Janki Koer* (2) the succession of the taluq on the death of Kablas Kunwar was determined by this Board. Their Lordships there held that the sanad conferred and was intended to confer a full proprietary and transferable right in the estate upon Kablas and her heirs male according to the law of primogeniture, and as regards the succession they considered that the rights of the parties claiming by descent must be governed by the provisions of section 22 of Act I of 1869. This Board therefore held that under clause 11 of section 22 the estate descended to Janki Kunwar, the daughter and only child of Kablas Kunwar, as the person entitled under the ordinary

(1) (1899) L. R., 22 I. A., 55, 57; I. L. R., 22 Mad., 515.

(2) (1877) I. R., 5 I. A., 1.

law to which persons of her mother's religion and tribe were subject.

Janki Kunwar died childless on the 16th December 1888. It is not disputed that the succession must be to the heirs of her father and both or one or other of the sons of Raghunath if living would be entitled to succeed to the taluq on her death.

The plaintiff by his plaint claimed to be entitled to the entire taluq together with all other movable and immovable property of Janki on the ground that being born of the first wife he was entitled to inherit the entire taluq and other property according to the custom obtaining among his clan and by law. Alternatively he contended that the taluq was or had become partible and claimed to be entitled to a 9 annas share as son of the first wife of Raghunath or at any rate to an 8 annas share. The latter claim was maintained on the ground that, Janki having succeeded under the provisions of clause 11 of section 22, the estate was no longer subject to the provisions of the Act of 1869, but descended from her as an estate under the ordinary Hindu law, and not as an impartible estate, and was therefore partible between thetwo brothers. By his defence the defendant contended that the estate was impartible by custom. A vast amount of evidence was taken upon this question, but in the opinion of their Lordships unnecessarily. The point is concluded by authority. In the case of *Dewan Ran Bijai Bahadur Singh* v. *Rae Jagatpal Singh* (1) their Lordships said :—

"A question might arise upon the construction of clause 11 "of section 22 whether the estate descended as an impartible "estate. Their Lordships are of opinion, looking to the provi- "sions of Act I of 1869, list 2, section 8 and section 22, that it "was the intention of the Legislature that the estate should "descend as an impartible estate."

The only question which remains as regards the succession therefore is whether the original plaintiff as son of the first wife of his father was either by custom or by the common law entitled to succeed in preference to his elder brother born of a junior wife. Evidence was taken by the District Judge on the claim by custom, and that learned Judge, after an exhaustive

(1) (1890) L. R., 17 I. A., 173.

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review of the evidence, came to the conclusion that the alleged custom was not proved, and that decision was affirmed in the Court of the Judicial Commissioner. There being thus two concurrent judgments on a question of fact, their Lordships are relieved from examining the evidence, and were not asked by counsel to do so.

The question involved in the claim of the plaintiff by law apart from custom has been considered by this Board in two cases. In *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar* (1) this Board decided that the son of a junior wife was entitled to succeed to an impartible zemindari in preference to the later born son of a senior wife. It is true that in that case the mother of the younger son, although married before the mother of the elder son, was not the first wife, and therefore it is said not to be a direct authority. In *Pedda Ramappa Nayanivaru* v. *Bangari Seshamma Nayanivaru* (2) a first-born son, though by the fourth wife, was held to be entitled to succeed in preference to a younger son born of the third and senior wife whose marriage was subsequent to the deaths of the first two wives. The grounds of the judgment are shown very clearly in the passages which are quoted at length by the Judicial Commissioner, and their Lordships will not repeat them. It was laid down that the principles upon which the Board held in the former case that the first-born was entitled to succeed apply equally to a son of a first married wife and sons of other wives, and that being so it lay upon the defendant to show some positive rule of Hindu law supported either by ancient text or modern decision to the contrary effect, which had not been done. The grounds upon which the learned counsel for the appellant endeavoured to escape from the authority of these cases were these. The verses of the Laws of Manu, which were referred to by their Lordships, are those numbered 122 to 125 in Chap. 9. In Sir William Jones' translation, the 122nd and 125th verses are as follows:—"122. A younger son being born of a first married "wife after an elder son had been born of a wife last married "*but of a lower class*, it may be a doubt in that case how the "division shall be made. 125. As between sons born of wives

(1) (1872) 14 Moo. I. A., 570. (2) (1880) L. R., 8 I. A., 1.

"equal in their class and without any other distinction there can "be no seniority in right of the mother, but the seniority "ordained by law is according to the birth." The words printed "in italics were accepted by Sir William Jones as being, and until recently were generally believed to be, the interpolation of an ancient commentator of great eminence, named Kalluka Bhatta. It is said to have been discovered by the research of scholars that the interpolation was not made by Kalluka Bhatta, but by a later and inferior commentator, named Prakash, and that statement seems to have been accepted in the Court of the Judicial Commissioner. It is thereupon argued that verse 122 (with the omission of the interpolated words) and the two following verses are inconsistent with verse 125, which thus loses any binding authority.

Their Lordships assume for the purposes of their judgment that Sir William Jones was mistaken in attributing the words interpolated in verse 122 to Kalluka Bhatta. But they observe that Sir William Jones' version was probably founded on the tradition of the time at which he wrote and has been accepted in the Indian Courts without question. *Communis error facit jus* is a sound maxim. Their Lordships, however, do not rely upon this consideration alone. The Judicial Commissioner has learnedly discussed the various translations which have been proposed by scholars, and the interpretations given by them to the four verses in question and their relation to each other, and he refers to the opinion expressed by Dr. Jolly in his Tagore Lectures, 1883. The Judicial Commissioner concludes :—"As the correct trans-"lation of verse 123 is doubtful and as Manu's own answer to the "question propounded by him in verse 122 cannot be clearly "ascertained, it appears to me that the appellant has failed to "establish satisfactorily his contention by the texts quoted by "him."

Their Lordships think this is firm ground for decision. The language of verse 125 is reasonably free from ambiguity, while the meaning of the previous verses is at the best ambiguous and doubtful. The plain language of the one ought not to be overridden or controlled by the obscure utterances in the other. They therefore think that no sufficient reason is shown why

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they should not follow the two previous decisions of this Board, and that they ought to do so. They therefore hold that according to Hindu law the respondent, who respresents the eldest son of his father, is entitled to succeed in preference to the appellant, who represents the younger son, though born of the first wife. Their Lordships will only add that this decision appears to them as it did to their predecessors to be in accordance with the religious tenets of Hindus. It is by the birth of his first-born son that a Hindu discharges the duty which he owes to his ancestors and obtains spiritual benefits for himself, and therefore it is to that son that pre-eminence should be given.

A subsidiary point was raised by the appellant's counsel, *viz.* whether any difference is to be made in the succession to the movable property of Janki. No such point was raised by the plaint, in which the movable and other immovable property is treated in the same category with the taluq itself, and the same considerations are treated as applicable to the whole property as one corpus. The fifth issue is whether the plaintiff is by law or custom entitled to the whole of the taluqa with other property pertaining to it. And no issue is directed to any distinction between different portions of the property claimed. The District Judge held that the question did not arise, and if it did there was no evidence to show that such property was subject to a different rule of devolution. He also referred to the case of *Thakur Ishri Singh* v. *Baldeo Singh* (1) before this Board.

The Judicial Commissioner took the same view and their Lordships entirely agree.

They will therefore humbly advise His Majesty that the appeal be dismissed and the appellant must pay the costs of it.

Appeal dismissed.

Solicitors for the appellant—Messrs. *Barrow, Rogers and Nevill.*

Solicitors for the respondent—Messrs. *T. L. Wilson and Co.*

(1) (1884) L. R., 11 I. A., 135: at p. 148.