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defendants to have taken place in March 1902. It was found, however, that the defendants had refused to allow him to exercise his right and denied that he had any such right in 1893. The suit was brought on the 10th of April 1903. It is therefore eleven years since the right of the plaintiff was denied by the defendants. The Court of first instance applied article 113 of the second schedule to the Limitation Act to the case and dismissed the suit. The Court of first appeal reversed the decision of the Court of first instance and held that article 142 or 144 would apply. We have to consider each of the articles with reference to the relief claimed by the plaintiff. In his plaint we find the relief asked for to be an injunction against the defendants restraining them from interfering with his right. For such invasion of right there is no article in the second schedule of the Limitation Act. Therefore the article which we hold to apply is article 120, which gives the plaintiff a period of six years from the time the right to sue accrues. For this proposition we have the support of the Madras Court in the case of *Kanakasabai* v. *Muttu* (1). We therefore decree the appeal, set aside the order of the Court below, and restore the decree of the Court of first instance dismissing the plaintiff's case, with costs in all Courts.

Appeal decreed.

PRIVY COUNCIL.

P. C.
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April 22, 26.
May 14.

BALRAJ KUNWAR AND ANOTHER (DEFENDANTS) *v.* JAGATPAL SINGH (PLAINTIFF).

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

Act No. I of 1869 *(Oudh Estates Act), sections* 13, 14, 15 *and* 22—*Transfer to person not in line of succession—Effect of transfer in changing rules of succession—Brother—Half-brother—Marginal notes to sections of Act—Person acquiring taluqa by bequest taking effect before passing of Act No. I of* 1869—"*Legatee*" *definition of.*

The expression "would have succeeded" in section 14 of the Oudh Estates Act (I of 1869) must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the

Present:—Lord MACNAGHTEN, Lord LINDLEY and SIR ARTHUR WILSON.

(1) (1890) I. L. R., 13 Mad., 445.

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transfer, or (in the case of a gift by will) at the time when the succession opened. In other words, the expression "a person who would have succeeded according to the provisions of this Act" is equivalent to "the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of section 22 applicable to the particular case."

The younger son of a taluqdar whose name was entered in lists I and II of the lists mentioned in section 8 of Act No. I of 1869, acquired the taluqa from his father by transfer or bequest, and died intestate. In a suit by his eldest brother's son, who claimed the estate against the widows as the eldest male lineal descendant of the original taluqdar. *Held* that the younger son not being, on the above construction of section 14, in the prescribed line of succession, the estate devolved, on his death, under section 15 of the Act as if it had been acquired "from a person not a taluqdar," and the rules of succession by which it had been originally governed no longer applied to it. Under the changed rules of succession (the ordinary Hindu Law), the widows were the preferable heirs.

The word "brother" in clause 6 of section 22 of Act No. I of 1869 includes a half-brother.

Marginal notes to the sections of an Indian Act cannot be referred to for the purpose of construing the Act.

Where a person acquired a taluqa by a bequest which took effect before the passing of Act No. I of 1869, he is not a "legatee" within the definition of that term in section 2, and cannot therefore be considered as a person to whom property was bequeathed under the special provisions of the Act.

APPEAL from a judgment and decree (March 6th, 1900) of the Court of the Judicial Commissioner of Oudh, which modified a decree (December 24th, 1898) of the Subordinate Judge of Partabgarh, by which the respondent's suit had been dismissed.

The matter in dispute in this appeal was the right to succeed to a nine-twentieth share of the taluqa Raepur Bichore, which portion was specified in list A attached to the plaint, and there called "taluqa *hissa* 9." Of taluqa Raepur Bichore Pirthipal Singh was the owner, it having been settled with him after the confiscation of Oudh in 1858 and a sanad for the taluqa granted to him by the Government. His name was entered in lists I and II prepared under section 8 of the Oudh Estates' Act, I of 1869. He died in June 1866.

The respondent plaintiff was the son of Jagmohan Singh (who died in 1886) the elder of the two sons of Pirthipal Singh by his first wife; the other son by that wife was Dirgbijai

Singh. By his second wife Pirthipal had two sons Randhir Singh (who was adopted into another family and had no concern with this litigation) and Bisheshar Bakhsh Singh. The appellants (defendants) were the widows of Bisheshar Bakhsh Singh.

Pirthipal Singh left a will dated the 22nd of January 1866 by which he devised eleven-twentieths of taluqa Raepur Bichore to the wife of Jagmohan Singh, his eldest son, for the benefit of her husband, who was mentally infirm: the remaining nine-twentieths (taluqa *hissa* 9) (the portion now in dispute) he devised to his son Bisheshar Bakhsh Singh, who on the death of his father took it (as the plaintiff asserted) as legatee under the will. Bisheshar Bakhsh Singh died without leaving male issue and intestate on the 31st of August 1890. On his death the plaintiff and the defendants both claimed to succeed. On the 12th of December 1890 the Revenue Courts decided in favour of the defendants and placed them in possession of the property; and on the 31st of October 1893 the plaintiff, who was then a minor, instituted, through his mother as his next friend, the suit out of which this appeal arose, claiming to be as the son of the half-brother of Bisheshar Bakhsh Singh, the next heir under the provisions of Act No. I of 1869, section 22, clause 6, and asking for possession of the property.

The defendants admitted the execution of the document alleged to be Pirthipal's will, but denied that it took effect as a will. They asserted that soon after the execution of the document Pirthipal made a family settlement under which in April 1866 Bisheshar Bakhsh Singh obtained proprietary possession of "taluqa *hissa* 9" subject only to a life interest in certain villages which Pirthipal Singh reserved to himself. They also submitted that Act No. I of 1869 had no application to the succession, which was governed by the ordinary Hindu Law.

The issues now material were—

12. (*a*) Did Bisheshar Bakhsh succeed to the estate of Raepur Bichore, *hissa* 9, as legatee under the will dated 22nd January 1866? or

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(*b*) Did he get the said estate during the life-time of his father under the family settlement alleged by the defendants to have been made in or about April 1866?

16. (*a*) Does Act No. I of 1869 affect the property in suit, or any part of it, and is the succession to it governed by the said Act? or

(*b*) Is the succession to the property in suit subject to the ordinary Hindu Law?

17. In case Act No. I of 1869 applies to the property in suit or any part of it, does the plaintiff fall among the heirs enumerated in section 22 of the said Act?

The Subordinate Judge was of opinion that Bisheshar Bakhsh Singh succeeded as a legatee under the will of the 22nd of January 1866, after the death of his father Pirthipal, and not in his life-time under a family settlement as alleged by the defendants; that he was not a legatee under section 14 of Act No. I of 1869, but that he was "a legatee falling under section 15 of that Act, that consequently neither the property in suit which he got under a bequest from his deceased father, or any part thereof, is anyhow affected by the provisions of Act No. I of 1869, nor is the succession thereto governed by the said Act, and that the said property, on the whole as well as in part, and the successor to it is undoubtedly subject to the ordinary Hindu Law." The Subordinate Judge was also of opinion that the word "brother" in section 22, clause 6, Act No. I of 1869, included "half-brother."

On these findings the Subordinate Judge dismissed the suit, and from his decree the plaintiff appealed to the Court of the Judicial Commissioner of Oudh.

The material portion of the judgment of that Court was as follows:—

"The only questions we are called on to decide are: (1) Was Bisheshar Bakhsh Singh the legatee of Pirthipal Singh? (2) If so, was he his legatee within the meaning of section 22, Act I of 1869? (3) If he was the legatee of Pirthipal Singh, but not his legatee within the meaning of section 22, is the succession to '*hissa 9*' governed by the provisions of section 14 or those of section 15 of the Act? and (4) was Jagmohan Singh, as half-brother

of Bisheshar Bakhsh Singh, his 'brother' within the meaning of clause (6), section 22 of the Act?

"As to the first question, the answer to which depends on the decision of issues 12*a* and 12*b* these issues have been fully and carefully tried by the Subordinate Judge. I agree in his conclusions and in the reasons he gives for such conclusions, and am of opinion that Bisheshar Bakhsh Singh acquired '*hissa* 9' under the will of his father, dated 22nd January 1866, and that he was therefore the legatee of Pirthipal Singh, a talukdar within the meaning of the term 'talukdar' as used in Act I of 1869.

"The expression 'legatee' is defined in section 2 of Act I of 1869; section 2 enacts that 'heir' means 'a person who inherits property otherwise than as a widow under the special provisions of this Act;' and 'legatee' means 'a person to whom property is bequeathed under the same provisions.' The expression 'same provisions' appears to mean 'the special provisions of this Act.' I think that a person to whom property is bequeathed by a talukdar cannot be deemed to be a legatee within the meaning of section 22 of the Act unless the bequest was made after the passing of the Act and in the exercise of the powers conferred by section 11 of the Act. "*Hissa* 9" was bequeathed to Bisheshar Bakhsh Singh before the passing of the Act and not in the exercise of the powers conferred by section 11 of the Act. I am, therefore, of opinion that Bisheshar Bakhsh Singh, although the legatee of Pirthipal Singh, was not his legatee within the meaning of section 22.

"Section 14 of Act I of 1869 provides that 'if any talukdar . . . . shall heretofore have transferred or bequeathed, or 'if any talukdar . . . . or his heir or legatee shall hereafter transfer or bequeath the whole or any portion of his estate . . . to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer, and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.' Section 15 of the Act provides that 'if any talukdar . . . shall heretofore have transferred or bequeathed or if any talukdar . . . or his heir or legatee shall hereafter transfer or bequeath to any person not being a talukdar or grantee the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without making the transfer and intestate, the transfer of, and succession to, the property so transferred or bequeathed shall be regulated by the rules which would govern the transfer of, and succession to, such property, if the transferee or legatee had bought the same from a person not being a talukdar.' The point in dispute is whether Bisheshar Bakhsh Singh was or was not within the meaning of sections 14 and 15 a person who could have succeeded according to the provisions of the Act to the taluka of Raepur Bichore if Pirthipal Singh had died intestate. If he were, the succession to *hissa* 9 will be governed by the provisions of

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section 14; if he were not, it will be governed by those of section 15. In the first case the special rules of succession enacted in section 22 will regulate the succession to the property; in the second they will not.

"It is contended for the appellant that the words in section 14, 'a person who would have succeeded according to the provisions of this Act . . . if the testator had died intestate' mean a person who would under section 22 have a right of succession to the estate in the case of an intestacy. It is contended for the respondents that those words mean a person who would succeed to the estate if at the time at which the bequest was made the testator had died intestate. Both sides cite cases decided by their Lordships of the Privy Council in support of their respective contentions. The appellant says that the Court can look at the marginal notes to sections 14 and 15 as an aid in interpreting them. The respondents say that the Court cannot do so."

After citing authorities and holding that the Court could look at the marginal notes to sections 14 and 15 of Act No. I of 1869 for assistance in construing them, the judgment continued:—

"It seems to me that any person mentioned in section 22 as a possible heir may be said to be 'a person who would have succeeded according to the provisions of the Act to the estate if the testator had died intestate' within the meaning of section 14. The disputed words in section 14 can admit only of such a meaning or of the meaning contended for by the respondents for this reason. The testator ought to be in a position to know whether or not his legatee will hold the estate subject to the same rules of succession as himself, because he may wish that his legatee should hold the estate subject to those rules of succession. He cannot give effect to such wish unless the words refer to a legatee who may possibly succeed to his estate if he were to die intestate, or unless they refer to a legatee, who, if he, the testator, were to die at the time of the bequest intestate, would succeed to the estate. The construction contended for by the respondents involves the addition of the words 'at the time at which the bequest was made.' That on which the appellant relies does not necessitate the insertion of any words in the section. That construction is reasonable, while the contention for the respondents is not. Take the case of a talukdar whose name is entered say, in the second list mentioned in section 8, who has two sons, the elder of whom is an idiot, without male issue. The talukdar desires to make the younger son the legatee of his estate, at the same time desiring that the legatee should hold it subject to the same rules of succession as himself. He cannot give effect to the latter desire on the construction contended for by the respondents, for if he were to die intestate at the time at which he made the bequest the younger son would not succeed to his estate. On the other hand, on the construction contended for by the appellant, the younger son is a person who may possibly succeed according to section 22 in the case of his father dying intestate. The marginal notes to sections 14 and 15 seem to me to favour the construction contended for by the appellant. The

word 'heirs' in the marginal note to section 14 I think refers to the heirs enumerated in section 22, *i.e.* persons in the line of succession. The marginal note to section 15 refers to persons 'out of the line of succession,' *i.e.* persons not enumerated as heirs in section 22. For these reasons I hold that the succession to '*hissa* 9' is governed by the provisions of section 14 and not those of section 15.

"Under clause (6), section 22, read with section 14, in default of the heirs enumerated in the previous clauses, the appellant, as the male lineal descendant of Jagmohan Singh, would, had Jagmohan Singh and Bisheshar Bakhsh Singh been brothers of the full blood, be the heir to the estate of Bisheshar Bakhsh Singh. But Jagmohan Singh and Bisheshar Bakhsh Singh were brothers of the half-blood, that is to say, Pirthipal Singh was their father, but they had different mothers. In general, the term 'brother' would include a brother of the half-blood. There appears to be nothing in section 22 or elsewhere in the Act which indicates that the term 'brother' as used in section 22, only means a brother of the full blood. I therefore think that Jagmohan Singh, as brother of the half-blood of Bisheshar Bakhsh Singh, was his 'brother' within the meaning of clause 6 of section 22."

The decree of the Judicial Commissioner's Court was in favour of the plaintiff for possession of the property specified in list A attached to the plaint.

On this appeal,

Mr. *Haldane*, K. C., Mr. *W. C. Bonnerjee*, and Mr. *G. E. A. Ross* for the appellants contended that Bisheshar Bakhsh Singh was not a legatee of Pirthipal Singh within the meaning of the word in section 14 of Act No. I of 1869. The words "a person who would have succeeded according to the provisions of this Act, if the testator had died intestate," meant a person who would have succeeded if, at the time the bequest was made the testator had died intestate. Bisheshar Bakhsh Singh did not come within those words so construed for he would not have succeeded Pirthipal Singh on an intestacy. The words "a person who would have succeeded" should be construed in the same way in sections 13, 14 and 15. On the construction contended for by the respondent section 13 would be superfluous. The Court of the Judicial Commissioner had interpreted those sections wrongly in holding that the words referred to above meant any person who would under section 22 have a possible right of succession in case of an intestacy: the words did not apply to a class of persons. Reference was made to *Muhammad Abdussamad* v. *Kurban Hossein* (1), *Bhaya*

(1) (1903) L. R., 31 I. A. 30: I. L. R., 26 All., 119.

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Tribhandan Dat Ram v. *Bhaya Shambhu Dat Ram* (1) and *Itraj Kuar* v. *Bacha Mahadeo Kuar* (2).

It was submitted that section 15 of Act No. I of 1869 governed the case, and that the succession to the estate was therefore regulated by the ordinary rules of Hindu Law and not by the special rules enacted in section 22. In that view the proper persons to succeed were the appellants.

The document referred to as a will was not a will, but a warasat-namah, a document declaring what the law was as to the succession.

It was also contended that the word "brother" in clause 6 of section 22 meant a brother of the full blood.

The Succession Act (X of 1865) section 23 was referred to, the strict meaning of the word must be adhered to, and "brother" did not include a half-brother, so that, even if the provisions of section 22, clause 6, were applicable, the respondent, being the son of Jagmohan Singh, who was only a half-brother of Bisheshar Bakhsh Singh, had no right of succession.

Mr. *L. DeGruyther* for the respondent referred to the circumstances under which Act No. I of 1869 was passed to show the object of the Act as a guide to its construction and to the remarks of Lord Westbury, L. C., in the case of *In re Mew and Thorne* (3) that "in the interpretation of a Statute it is desirable first to consider the state of the law existing at the time of its introduction and then the complaints and evils that existed or were supposed to exist in that state of the law." Reference was also made to the history and status of the taluqdars, and to the care taken as to the class of persons who were to hold that position under the Act. Taluqdars were absolute proprietors, other land owners only subordinate holders; and instructions were issued and carried out that middlemen and such persons were not to be taluqdars. Sykes' Taluqdari Law, pages 13, 29, 55, 378, 379, and 389; The Oudh Blue Book, Volume I, pages 5 and 6 and 259, paragraph 15, Volume II, Part D, page 17; letter of 10th October 1859 (forming Schedule I to Act I of 1869) paragraphs 2 and 5; and the Government letter of

(1) (1892) Select Cases decided by Judicial Commissioner's Court, Oudh, Dec. 23rd, 1892.

(2) (1902) 5 Oudh Cases, 345 (351).

(3) (1862) 31 L. J. Bank. 87 (89).

January 18th, 1860, given at page 391 of Sykes' Taluqdari Law, were referred to. Power was given to the taluqdars to dispose of their estates, but they had no greater power than they would have had if there had been no confiscation. On the death of a taluqdar intestate his estates descended to the nearest male heir in the line of primogeniture. Reference was made to *Ran Bijai Bahadur Singh* v. *Jagatpal Singh* (1), *Jagatpal Singh* v. *Jageshar Bakhsh Singh* (2), *Achal Ram* v. *Udai Pertab Addiya Dat Singh* (3) and *Bhai Narindar Bahadur Singh* v. *Achal Ram* (4), and to sections 13, 14 and 15 of Act I of 1869; section 13 restricted section 11 and prevented improper alienations; the second clause was immaterial and need not be considered. By section 14 the persons only were referred to whom the Government intended to be taluqdars. Bisheshar Bakhsh Singh was a person who came within the words "person who would have succeeded" Pirthipal Singh if the latter had died intestate and not having made a transfer of his estates. Those words, it was submitted, had not the limited meaning put upon them by the appellants, but they included any person who might under section 22 have a right of succession to the estates in case of an intestacy of the taluqdar. Such person need not be the preferential heir; that he is a possible heir was sufficient. The "legatee" might be a person different from an "heir," otherwise the word "legatee" would be superfluous. Circumstances might arise in which a taluqdar would wish to bequeath his estates to some one who would not at the time of the bequest be his heir if he died intestate, but who was yet in the line of succession under section 22, and in such a case he would probably wish that his legatee should hold the estates under the same rules of succession as himself. This wish the testator could carry out on the construction contended for by the respondent, but it would be impracticable under the interpretation the appellants desired to put on the words above referred to. Section 15 was to be read in connection with sections 13 and 14. Under section 14 and on the construction contended for Bisheshar

(1) (1890) L. R., 17 I. A., 173: I. L. R., 18 Calc., 111.
(2) (1902) L. R., 30 I. A., 27: I. L. R., 25 All., 143.
(3) (1886) L. R., 11 I. A., 51: I. L. R., 10 Calc., 511.
(4) (1893) L. R., 20 I. A., 77: I. L. R., 20 Calc., 649.

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Bakhsh Singh was a person who "would have succeeded according to the provisions of the Act" if Pirthipal Singh had died intestate. If so, on Bisheshar's death the respondent was entitled to succeed under the special rules of succession enacted in section 22, clause 6, of Act No. I of 1869. Reference was made to *Indar Kunwar* v. *Jaipal Kunwar* (1), *Pertab Narain Singh* v. *Subhao Koer* (2) and *Muhammad Imam Ali Khan* v. *Sardar Husain Khan* (3). His claim, moreover, was not displaced by the fact that his father Jagmohan Singh was only a half-brother of Bisheshar, for the word "brother" in clause 6 of section 22 included, it was submitted, a half-brother.

It was also contended that although Bisheshar was the legatee of Pirthipal, he was not his legatee under Act No. I of 1869 because at the time the bequest took effect that Act had not been passed. That word and the word "heir" referred only to persons who succeeded as legatees or as heirs after the Act came into operation. *Muhammad Abdussamad* v. *Kurban Husain* (4). As to whether the document made by Pirthipal was a will or not, *Haidar Ali* v. *Tasaduk Rasul Khan* (5) and *Hurpurshad* v. *Sheo Dyal* (6) were referred to, and it was contended it was a will.

Mr. *Bonnerjee* replied.

1904, *May 14th.*—The judgment of their Lordships was delivered by LORD MACNAGHTEN:—

This appeal raises a question under the Oudh Estates Act, 1869, as to the succession to property which formerly belonged to Rai Pirthipal Singh, who died in June 1866, and whose name was entered after his death in List I and List II of the lists mentioned in section 8 of the Act. List I is a list of all persons who were to be considered Taluqdars within the meaning of the Act. List II is a "list of the Taluqdars whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir."

(1) (1888) L. R., 15 I. A., 127 (147, 148): I. L. R., 15 Calc., 725.
(2) (1877) L. R., 4 I. A., 228 (233): I. L. R., 3 Calc., 626.
(3) (1898) L. R., 25 I. A., 161: I. L. R., 26 Calc., 81.
(4) (1903) L. R., 31 I. A., 30: I. L. R., 26 All., 119.
(5) (1890) L. R., 17 I. A., 82: I. L. R., 18 Calc., 1.
(6) (1876) L. R., 3 I. A., 259.

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The property in question was made over by Pirthipal Singh by will (as both the Courts below have held) or by transfer under a family arrangement (as the appellants contend) to his younger son Bisheshar Bakhsh. Bisheshar died in August 1890 intestate, leaving two widows but no male issue.

The rival claimants to the property are (1) the son of Bisheshar's elder brother, the eldest male lineal descendant of Pirthipal Singh, who was plaintiff in the suit and is respondent to this appeal, and (2) the two widows of Bisheshar, who are appellants. They were defendants in the suit, and succeeded in the Court of the Subordinate Judge.

The sections of the Act which have the most direct bearing on the question in dispute are the following:—

"13. 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 being either—

"(1) A person who, under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof, or to an interest therein, if such taluqdar or grantee, heir or legatee, had died intestate; or

"(2) A younger son of the taluqdar or grantee, heir or legatee, in case the name of such taluqdar or grantee appears in the third or fifth of the lists mentioned in section 8,

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.

"V.—*Transfers and Bequests.*

"14. If any taluqdar or grantee shall heretofore have transferred or bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdar or grantee or to such younger son as is referred to in section 13, clause 2, or to a person who would have succeeded, according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.

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"15. If any taluqdar or grantee shall heretofore have transferred or bequeathed, or if any taluqdar or grantee or his heir or legatee shall hereafter transfer or bequeath to any person not being a taluqdar or grantee the whole or any portion of his estate, and such person would not have succeeded, according to the provisions of this Act, to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdar or grantee."

Besides these sections it is necessary to refer to section 22, which provides for intestate succession in the case of the death of any taluqdar or grantee whose name is inserted in List II, List III, or List V, or the heir or legatee of such taluqdar or grantee. A number of cases are dealt with separately and in order, beginning with the case where the deceased leaves an eldest son. In that case, clause (1), the estate is to descend "to the eldest son . . . . and his male lineal descendants subject to the same conditions and in the same manner as the estate was held by the deceased." Then after dealing in separate clauses with other cases, including the case of an adopted son, the section provides, in clause (6), that in default of such adopted son the estate is to descend "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."

Now the contention on the part of the respondent is that on Bisheshar's death, intestate, he came in to the property under clause 6 of section 22. The appellants on the other hand maintain that Bisheshar was not legatee of Pirthipal Singh within the meaning of that word in the Act of 1869, and that, whether he was or was not a legatee in the ordinary sense of the word, the case is governed by section 15, and that accordingly, on the death of Bisheshar intestate, the property devolved as it would have devolved if Bisheshar had bought it from a person not being a taluqdar or grantee.

The learned counsel for the respondent argued quite correctly that section 15 must be read in connection with sections 13 and 14. His contention was that Bisheshar was a person

who would have succeeded, within the meaning of section 14, if Pirthipal had died without having made a transfer of the property, and intestate.

The real question is what is the meaning of the words "would have succeeded" in sections 13 and 14. Of course if Bisheshar's case falls within section 14, section 15 can have no application to it.

Their Lordships think that the learned Judges in the Court of the Judicial Commissioner have gone too far in holding as they did "that any person mentioned in section 22 as a possible heir may be said to be 'a person who would have succeeded according to the provisions of the Act to the estate if the testator had died intestate' within the meaning of section 14." They think that the expression "would have succeeded" must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the transfer or, in the case of a gift by will, at the time when the succession opened. In short, they think that the expression "a person who would have succeeded according to the provisions of the Act" is equivalent to "the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of section 22 applicable to the particular case." Their Lordships do not agree with the view of the learned counsel for the respondent that clause 2 of section 13 was introduced by mistake and may be disregarded altogether. On the contrary they think that that clause throws a good deal of light on the words in dispute. A younger son of a taluqdar named in List III or List V is no doubt among the possible heirs of his father, but he is not within the prescribed line of succession if the father leaves an eldest son or a male lineal descendant of an eldest son.

The construction which commends itself to their Lordships gives a meaning to every part of the sections under consideration. If a transfer or bequest is made to a person in the prescribed line of succession, there is reason for placing the transferee or legatee in the same position with regard to succession to the estate as the transferor or testator, but if the prescribed

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line of succession is broken by a transfer or bequest of the entailed estate to a person outside the prescribed line, it seems not unreasonable that the fetter of the entail, such as it is, should no longer apply to the estate.

There are some minor points which were discussed in the judgment of the Judicial Commissioners, or argued before their Lordships, which ought perhaps to be noticed.

Their Lordships have no doubt that Pirthipal's eldest son, though born of a different mother, was a brother of Bisheshar within the meaning of the word "brother" in clause 6 of section 22.

It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian Statute any greater authority than the marginal notes in an English Act of Parliament.

In their Lordships' opinion it is immaterial to inquire whether Bisheshar took under a will or by transfer. Both the lower Courts have held that the title is derived under a will. The question seems to be one of some difficulty. It is not necessary to decide it. It is enough for their Lordships to say that they are not satisfied that the Courts below are wrong.

Their Lordships agree with the Judicial Commissioners in thinking that Bisheshar was not a "legatee" within the definition of that term in the Act of 1869. The bequest in his favour, if it took effect, came into operation before the Act was passed. He cannot, therefore, be considered a person to whom property was bequeathed under the special provisions of this Act.

Their Lordships will humbly advise His Majesty that the decree appealed from should be reversed, with costs, and the decree of the Subordinate Judge restored.

The respondent will pay the costs of the appeal.

Appeal allowed.

Solicitors for the appellants:—Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent:—Messrs. *Young, Jackson, Beard & King.*

J. V. W.