PRIVY COUNCIL.

P. C. 1910. *June* 7, 8; *July* 15.

DEBI BAKHSH SINGH (DEFENDANT) *v.* CHANDRABHAN SINGH, (PLAINTIFF).

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

Act No. I of 1869 *(Oudh Estates Act), sections* 8 *and* 22, *sub-section* (11)—*Succession to estate of taluqdar dying intestate whose name is entered in lists* 1 *and* 5—*Impartible estate*—"*Primogeniture*," *meaning of in sanad granted by British Government in* 1860—*Effect of passing of Act No. I of* 1869—*Lineal primogeniture and not nearness of degree.*

A sanad granted to a taluqdar in 1860 contained the condition that "in the event of your dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture." After the passing of the Oudh Estates Act (I of 1869) his name was entered as a "taluqdar" in list 1, and in list 5, which was a list "of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of the list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture."

Held that the meaning of the word "primogeniture" in the sanad was the ordinary meaning of the same word in the Law of England. On the death of the taluqdar's widow the succession to his estate was contested by his cousin the respondent, who would be the heir if the succession was governed by the rule of lineal primogeniture, and his uncle, who would succeed if it was regulated by nearness of degree.

Held that the question whether the estates of taluqdars for the purposes of intestate succession must be treated as impartible is settled by authority in the affirmative—*Rao Bijai Bahadur Singh* v. *Jugatpal Singh* (1) and *Jagdish Bahadur* v. *Sheo Partab Singh* (2). The succession therefore to a taluq must be to an impartible estate whether the estate "ordinarily devolved upon a single heir" as in list 2 of section 3, or whether the succession was to be regulated by the rule of primogeniture as in lists 3 and 5 of section 8.

Section 22, in so far as it describes in the first ten of its sub-sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession set forth in the sanad. Where sub-section 11 of section 22, coming as it does at the close of the long list of specific stages of prescribed succession, sets up the rule that in default of any one taking under the previous sub-sections there should be preferred "such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar &c., are subject," it must be construed as being a general relegation

Present:—Lord ATHINSON, Lord SHAW, Sir ARTHUR WILSON and Mr. AMEER ALI.

(1) (1890) I. L. R., 18 Calc., 111; L. R., 17 I. A., 173.

(2) (1901) I. L. R., 23 All., 369 L. R., 28 I. A., 100.

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of parties to the situation in which they would have been found apart from the Act.

In the present case that situation was found in the sanad itself, and was also contained, either by way of affirmance, or at least by way of narrative in list 5 of section 8 of the Act. While the specific rules of succession in Act I of 1869 must be held to displace this, the general reference to what is not covered by those specific rules must include a reference to the rights of parties ascertained in the sanad which was the original title to the property.

On these principles and this construction. *Held* (affirming the decision of the Court of the Judicial Commissioner) that the succession should be regulated by the rule of lineal primogeniture and not by nearness of degree and that the respondent was entitled to succeed.

APPEAL from a judgement and decree (5th July 1907) of the court of the Judicial Commissioner of Oudh, which partly reversed a decree (13th September 1906) of the Subordinate Judge of tahsil Biswan in the district of Sitapur.

The questions for determination in this appeal were questions of law mainly relating to the proper construction of certain sections of the Oudh Estates Act (I of 1869). A question of fact was in dispute between the parties in the courts in India, namely, the question whether the plaintiff, as he alleged, was entitled to the property in suit by a family and tribal custom of primogeniture; but both courts below concurred in finding as a fact that no such custom had been proved.

The suit out of which the appeal arose was brought by the respondent as heir of his cousin Raghuraj Singh, against the appellant, his uncle, who had on the death of the widow of Raghuraj Singh taken possession of the property in dispute.

A pedigree in which the relationship of the parties to the suit is sufficiently shown will be found set out in the judgement of their Lordships of the Judicial Committee.

The property in suit consisted of two estates, named Rajpur Keotana and Thangaon, and other property. The Rajpur estate was conferred upon Raghuraj Singh by Government in 1860 under a sanad which contained the following provision:—"It is another condition of this grant that, in the event of your dying intestate, or any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture." And the name of Raghuraj Singh was entered in lists 1 and 5 prepared under section 8 of Act I of 1869.

The estate of Thangaon was given to Hanuman Bakhsh Singh, a cousin of Raghuraj Singh, and eventually became the property of the latter, who also acquired the other property in suit, and died childless and intestate on 15th January, 1892, all the disputed property then passing into the possession of his widow Rani Brijnath Kunwar. She died on 5th August, 1904, and after her death mutation of names was effected by the Revenue Court in favour of the present appellant in respect of all the property in suit, his claim thereto being that he was the nearest reversioner and as such was entitled to it according to the ordinary law of inheritance under the Mitakshara.

The respondent thereupon, on 14th November, 1905, instituted the present suit against the appellant, the younger brother of the respondent's father, who had predeceased the widow Brijnath Kunwar. The plaintiff claimed to be entitled to succeed in preference to the defendant under the rule of lineal primogeniture, which was, he contended, applicable to the taluq of Rajpur under the sanad and the Oudh Estates Act, 1869, and to the rest of the property under the family custom above mentioned.

The defendant put in a written statement in which he denied that the succession to the property in suit, or any part of it, was governed by the rule of lineal primogeniture whether by custom or otherwise. Issues were framed, of which the 5th only is now material, namely :—"Whether the plaintiff is entitled to the property in dispute under the Hindu Law and Act I of 1869 and also under the family and tribal custom as pleaded by the plaintiff."

The courts in India, however, both agreed in holding that the plaintiff was not entitled to any of the property left by Raghuraj Singh other than the taluq of Rajpur. This appeal therefore relates to that estate alone.

The Subordinate Judge held that the plaintiff was not entitled to any part of the property, and dismissed the suit. In doing so, he summed up his findings with regard to the plaintiff's claim under Act I of 1869 as follows :—

"*Firstly*, that the plaintiff cannot claim the estate under the terms of the sanad granted to Raghuraj Singh, because it was superseded by Act I of 1869 and was not revived by the Crown Grants Act, 1895;

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Secondly, that, even assuming that the plaintiff's claim under the terms of the sanad is admissible, the language of the sanad fails to show that succession according to lineal primogeniture was intended.

Thirdly, that when clause (11) of section 22 is reached, the estate does not descend as an impartible property and that therefore the rule of primogeniture—much less lineal primogeniture—does not apply;

Fourthly, that even if it descends as an impartible property, in the present case, succession will not be governed by the rule of lineal primogeniture; and

Fifthly, that the succession to the estate shall be regulated by the Hindu Law, and that the estate will devolve upon the nearest male heir, *i. e.*, the defendant, who was alive when the widow Rani Brijnath Kunwar died.

"The result is that the suit fails and is dismissed with costs."

An appeal by the plaintiff was heard by the court of the Judicial Commissioner (MR. E. CHAMIER, Judicial Commissioner, and MR. J. SAUNDERS, officiating 1st additional Judicial Commissioner) and the court delivered judgements the material portions of which were as follows :—

MR. CHAMIER, (after expressing agreement with the court below that the custom set up by the plaintiff had not been proved and that therefore his claim to the property other than the Rajpur taluq had been rightly dismissed) continued :—

"The question whether the plaintiff is entitled to the Rajpur Keotana estate is one of some difficulty and importance"

and after referring to the respective contentions of the parties and the authorities cited in support of them he proceeded :—

"The question is whether the words 'rule of primogeniture' in section 8 of the Act denote the succession of the eldest or first born among several claimants equally entitled under the ordinary law, or the succession of the representative of the senior line, however remote he may be, *i.e.*, lineal primogeniture. It is common ground that the words do not denote the succession of the first-born or eldest collateral regardless of line and degree. It is only by establishing lineal primogeniture as the rule of succession applicable to estates in List 3 that the plaintiff can succeed, for the defendant is older than the plaintiff and is nearer in degree to Raghuraj Singh. * * * * *

"The plaintiff has in my opinion, failed to show that there is any rule of Hindu Law by which impartible estates which are not the property of a joint family descend by the rule of lineal primogeniture. Therefore the plaintiff in order to succeed must show that the word 'primogeniture' in section 8 of the Act denotes lineal primogeniture. It was contended on his behalf that it has been held twice by the Privy Council that the word is used there in this sense.

"The first case referred to was that of *Achal Ram* v. *Udai Partab Addiya Dat Singh* (1). That case related to an estate entered against the name of Pirthipal

(1) (1883) I. L. R., 10 Calc., 511; L. R., 11 I. A., 51.

Singh in Lists 1 and 2 which on the death of Pirthipal Singh before 1869 had devolved on his widow and after her death on their daughter. On the death of the daughter her husband Achal Ram, who had no right whatever, had taken possession of the estate. The plaintiff was a collateral relative of Pirthipal, but not the nearest collateral. In order to succeed he had to establish a rule of descent by lineal primogeniture. There was no evidence that the estate had ever descended according to such a rule. The argument of the plaintiff before their Lordships was that as Pirthipal Singh's name was in List 2 it should be presumed that the heir was to be ascertained by the rule of lineal primogeniture. Their Lordships repelled this contention, saying that they were of opinion that '*when a taluqdar's name is entered in the second list and not in the third list, the estate, although it is to descend to a single heir, is not to be considered as an estate passing according to the rules of lineal primogeniture.*'

"The other case relied on was that of *Bhai Narindar Bahadur Singh* v. *Achal Ram* (1), in which Lord Hobhouse said :—'The estate is in Oudh, and was granted by the Crown to one Pirthipal Singh after the confiscation, and it is placed in Class 2 of Act I of 1869, and not in Class 3. The effect of that is that the estate is labelled as one which, according to the custom of the family, descends to a single heir, but not necessarily by the rule of lineal primogeniture. It may be, and it has so happened in this case, that the heir according to lineal primogeniture is more remote in degree from the ancestor than other collaterals or other persons in the line of heirship. If so, the degree prevails over the line according to the classification under the Act ; though if two collaterals, or persons in the line of heirship, are equal in degree, then as the property can only go to one, recourse must be had to the seniority of line to find out which that one is."

"It must be admitted that it was not necessary for their Lordships in either case to decide the question whether an estate in List 3 devolves under clause 11 of section 22 according to the rule of lineal primogeniture, but they had to consider incidentally the effect of the entry of an estate in List 3, and the language used by both Sir Barnes Peacock and Lord Hobhouse suggests strongly that they were of opinion that degree prevailed over line in the case of an estate in List 2, but that line prevailed over degree in the case of an estate in List 3.

"It must be borne in mind that the application of the rule of primogeniture prescribed by section 8 is limited to cases of succession by ascendants and somewhat remote collaterals of the deceased, and it is obvious and also admitted that the words 'rule of primogeniture' do not import the succession of the first-born or eldest ascendant or collateral regardless of line and degree. It appears, therefore, that if primogeniture implies no more than the succession of the first-born of persons standing in the same degree of relationship to the deceased, the rule of succession is the same for estates in Lists 3 and 5 as for estates in List 2 if the personal law is the same and no custom is proved. When the Legislature used the words 'rule of primogeniture' they must have intended some known rule of succession the details of which in its application to collateral succession could be ascertained. There was no such rule known to the Hindu or Muhammadan Law, apart from special customs the details of which are scarcely ever

(1) (1893) I. L. R., 20 Calc., 649 ; L. R., 20 I. A., 77.

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alike. They were providing a rule of succession which would be applicable to Hindus, Muhammadans and Christians alike, and in the circumstances I do not think it is an extravagant assumption that they had in mind the rule of primogeniture as applied to the succession of real estate in England. It has been part of that rule since the time of Edward I, if not that of Henry III, that all the lineal descendants of any person deceased represent their ancestor, i.e., stand in the same place as the person himself would have done had he been living: (see Hale on the Common Law, edition of 1794, volume I, chapter II; Pollock and Maitland's History of the English Law, volume 2, page 257, and authorities there cited).

I gather from the language used by their Lordships in the two cases last mentioned that they consider that this rule of representation applied to the succession of estates in List 3. If so the rule applies to estates in List 5 also. For these reasons I would hold that the Rajpur Keotana estate devolved upon the plaintiff on the death of Brijnath Kunwar. I would allow the appeal in part and give the plaintiff a decree for possession of that estate with mesne profits from 25th October, 1904, the amount to be determined in execution of decree. In other respects I would dismiss the appeal and order the parties to pay and receive proportionate costs in both Courts."

MR. SAUNDERS said:—

"I concur with my learned colleague. When in clauses (1), (2), (3), (4), (6), and (10) of section 22 of the Oudh Estates Act, the rule of succession by lineal descent is prescribed, it does not appear too far-fetched an assumption that the Legislature intended that, on clause (11) of the same section being reached, the person entitled to succeed in the case of estates in Lists 3 and 5 should be ascertained according to the rule of lineal primogeniture."

On this appeal,

Ross and *B. Dube*, for the appellant, contended that the Court of the Judicial Commissioner had erred in deciding that under clause 11 of section 22 of the Oudh Estates Act (I of 1869) succession to the estates of a taluqdar entered in Lists 1 and 5 prepared under section 8 of the Act is governed by the rule of lineal primogeniture. If the succession is governed by the rule of primogeniture there was nothing in the terms of the sanad, nor on the construction of section 8 as regarded List 5, to show that "lineal" primogeniture was intended. On the true construction of clause 11 of section 22 of the Act, which, it was submitted, governed this case, it was contended that the estate did not descend as impartible property and that therefore the rule of primogeniture did not apply: but that the succession was governed by the "ordinary law to which persons of the religion and tribe of the taluqdar, &c., are subject," in this case the Hindu law of the Mitakshara school, by which it devolved (at the time of the

death of the widow of Raghuraj Singh) on the nearest male heir, who was the appellant. Reference was made to the Oudh Estates Act as amended by Act X of 1885, sections 8, 10 and 22, clauses (5) and (11); the Oudh Settled Estates Act (II of 1900) Edition of 1903, Lucknow, by R. G. F. Jacob, p. 103: Sykes' Compendium o Taluqdari Law, pages 80 (bottom of page), 81, 101 (bottom of page) and 103; *Achal Ram* v. *Udai Partab Addiya Dat Singh* (1), *Bhaie Narindar Bahadur Singh* v. *Achal Ram* (2), *Balbhaddar Singh* v. *Sheo Narain Singh* (3), *Brij Indar Bahadur Singh* v. *Rans Janki Koer* (4), *Ran Bijai Bahadur Singh* v. *Jagatpal Singh* (5) and *Jagdish Bahadur*, v. *Sheo Partab Singh* (6).

DeGruyther, K. C. and *Kenworthy Brown* for the respondent contended that the judgement appealed from had rightly decided that the succession to the property in suit was governed by the rule of lineal primogeniture. Reference was made to Sykes' Compendium of Taluqdari Law, pages 385, 386, 389, 391; *Sheo Singh* v. *Raghubans Kunwar* (7), *Ran Bijai Bahadur Singh* v. *Jagatpal Singh* (8), *Jagdish Bahadur* v. *Sheo Partab Singh* (9), clause (11) of section 22 of Act I of 1869, *Maharajah Pertab Narain Singh* v. *Maharanee Subhao Koer* (10), *Haidar Ali* v. *Tasadduk Rasul Khan* (11), *Bhai Narindar Bahadur Singh* v. *Achal Ram* (12) and *Brij Indar Bahadur Singh* v. *Jagatpal Singh* (13) in which the same estate was in question as in *Jagdish Bahadur* v. *Sheo Partab Singh* (14).

Ross replied citing Maine's Hindu law, 7th edition, pages 742, 743, paragraphs 545, 546; and *Lal Sitla Bakhsh Singh* v. *Janki Kuar* (15) and *Abdul Karim Khan* v. *Hari Singh* (16) from the Select Cases in the Judicial Commissioner's court, 2nd edition by

(1) (1883) I. L. R., 10 Calc., 511; L. R., 11 I. A., 51.
(2) (1893) I. L. R., 20 Calc., 649 (652); L. R., 20 I. A., 77 (79).
(3) (1899) I. L. R., 27 Calc., 344; L. R., 26 I. A., 194.
(4) (1877) L. R., 5 I. A., 1.
(5) (1890) I. L. R., 18 Calc., 111 (114); I. L. R., 17 I. A., 173 (174).
(6) (1901) I. L. R., 23 All., 369; L. R., 28 I. A., 100.
(7) (1905) I. L. R., 27 All., 634 (650); L. R., 32 I. A., 203 (213).
(8) (1890) I. L. R., 18 Calc., 111; L. R., 17 I. A., 173.
(9) (1901) I. L. R., 23 All., 369 (381); L. R., 28 I. A., 100 (107).
(10) (1877) I. L. R., 3 Calc., 626; L. R., 4 I. A., 222 (234).
(11) (1890) I. L. R., 18 Calc., 1 (9); L. R., 17 I. A., 82 (87, 88).
(12) (1893) I. L. R., 20 Calc., 649 L. R., 20, I. A., 77.
(13) (1877) L. R., 5 I. A., 1.
(14) (1901) I. L. R., 23 All., 369; L. R., 28 I. A., 100.
(15) (1874) Case No. 10, page 7.
(16) (1890) Case No. 171, page 126.

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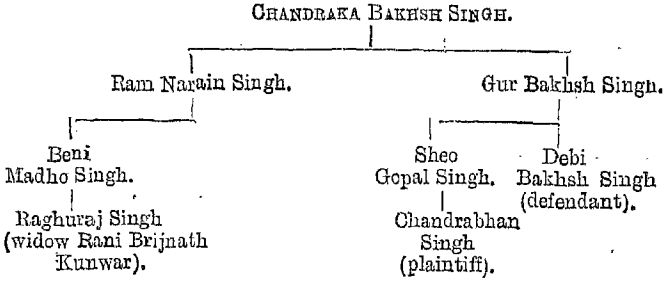
Munshi Jwala Prasad, as to the estate of taluqdar entered in List 5 not being impartible.

1910, *July 15th.*—The judgement of their Lordships was delivered by LORD SHAW:—

This suit had reference to the succession to more than one estate, but the issue which remains contested on this appeal has regard solely to the Taluq of Rajpur Keotana and other lands of which the defendant (appellant) had obtained possession on the death of the widow of one Raghuraj Singh.

The respondent as plaintiff brought a suit against the appellant to obtain possession from him of that taluq. The Subordinate Judge, on the 13th September, 1906, dismissed the suit. On the 5th July, 1907, this judgement was reversed by a decree of the Judicial Commissioner of Oudh, and against that decree the present appeal is made.

The situation of the parties is thus briefly described:—The Rajpur Keotana estate was conferred upon Raghuraj Singh by a Government sanad in the year 1860. Raghuraj Singh's name was entered in Lists 1 and 5, mentioned in the Oudh Estates Act, 1869, section 8. Raghuraj Singh died intestate and without issue in 1892. His estate passed into the possession of his widow, and her death occurred in 1904. The succession in the taluq to Raghuraj Singh is contested as between Debi Bakhsh Singh, defendant, and Chandrabhan Singh, plaintiff. Excluding therefrom the items which are irrelevant to the issue raised in this case, one may adapt the table of relationship from the appellant's case thus:—



It is thus seen that the plaintiff would be entitled to succeed to Raghuraj Singh under the rule of lineal primogeniture, but that the defendant (his uncle) would be entitled to

succeed were the rule adopted not that of lineal primogeniture but of nearness in degree. The issue in this case is which of these rules governs the rights of the parties.

The case was treated by the Courts below and in argument at one of great general importance as determining the rules of intestate succession to the Taluqdars of Oudh; and it is no doubt true that, while both parties appeal to the provisions of the Oudh Estates Act, 1869, an apparently serious repugnancy arises on a contrast of the provisions of section 8 and section 22 of that Statute.

By the 8th section it is provided that:—

"Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely:—"

and then follow the lists in their order.

It is an admitted fact in the present case that Raghuraj Singh, whose succession is in question, had in 1860 the Rajpur Keotana Estate conferred upon him, and that his name was entered in List 5 as well as List 1. List 1 was of a general character, namely:—

"1st. A list of all persons who are to be considered taluqdars within the meaning of this Act,"

List 5 was as follows:—

"5th. A list of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture."

Up to that point their Lordships do not think that any substantial difficulty would arise in the case. What appears to be contended for is that some other rule of primogeniture than the rule of lineal primogeniture should be applied. In the first Court a certain custom was appealed to, to make clear or illustrate what variation from lineal primogeniture was meant, but no success attended that plea and it was not maintained at their Lordship's Bar. In their opinion, the language of the sanad emanating from the British Authority was simply language conveying the ordinary meaning of the word "primogeniture" n the Law of England.

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A much more serious difficulty arises on the construction of section 22. That section provides :—

"If any taluqdar or grantee whose name shall be inserted in the second, third or fifth of the Lists mentioned in section 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows :"—

There are then inserted ten specific rules of succession, beginning, of course, with the right of succession of the eldest son. These need not be stated in detail, but two observations occur to their Lordships as important with regard to them. First, it is entirely clear that the estate the succession to which was there being dealt with was from beginning to end of these sections dealt with as an impartible estate; and secondly, the preservation of the estate as impartible appears to their Lordships to be in entire accord with the language and policy of the Legislation. The social and historical reasons for this have been the subject of frequent exposition and need not be entered upon, the matter being concluded by authority as after referred to.

After these ten rules of descent have, however, been given in section 22, there occurs the following sub-section, namely :—

"(11) or, in default of any such descendants then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir, or legatee, are subject."

It is maintained by the appellant that he is entitled to the succession because, by the ordinary law to which it must be supposed reference is here made, nearness in degree is preferable to lineal descent; and the contention accordingly comes to this, that sub-section (11) amounts to a revocation or an abrogation of the rule of succession laid down in the sanad under which the taluqdar received his property, and that section 8 of the Statute did not really amount to a declaration that the succession "shall thereafter be regulated by the rule of primogeniture," but only used that phrase in the course of a narrative identifying the fifth list of grantees. It is fairly clear, however, that, if a repugnancy does not arise within the Statute itself, at least something which would have the same effect has been produced, namely, an inconsistency between the order of succession specified in the sanad and some other law of succession under the ordinary law

of the taluqdar's religion and tribe; and it is maintained that in these circumstances the Statute, and the Statute alone must govern.

The main authority for this proposition is the case of *Brij Indar Bahadur Singh* v. *Ranee Janki Koer*, *Lal Shunkur Bux* v. *Ranee Janki Koer* and *Lal Seetla Bux* v. *Ranee Janki Koer* (1) in which Sir Barnes Peacock said :—

"As regards the succession their Lordships are of opinion that the limitation in the sanad was wholly superseded by Act I of 1869, and that the rights of the parties claiming by descent must be governed by the provisions of section 22 of that Act. By that section it was enacted that, if any such taluqdar whose name should be inserted in the second, third or fifth of the lists mentioned in section 8, or his heir or legatee, should die intestate, such estate should descent in manner therein described."

Now, it has to be observed that, with reference to all the authorities cited, no one of them has decided the question now submitted on this appeal or any question as to Lists 3 or 5. The case just referred to was a case in which the name of the taluqdar was entered upon Lists 1 and 2.

On the point of whether the estates of taluqdars must, for the purposes of intestate succession, be treated as impartible, their Lorships hold that the matter is definitely settled by decision. In the appeal of *Dewan Ran Bijai Bahadur* v. *Rae Jagatpal Singh* and *Rae Bisheshar Baksh Singh* v. *Dewan Ran Bijai Bahadur Singh* and *Rae Jagatpal Singh* (2), Sir Barnes Peacock, delivering the judgement of the Privy Council, 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 provisions 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."

Again, in *Jagdish Bahadur* v. *Sheo Partab Singh* (3) the same law was affirmed in terms in the judgement of Lord Davey and the point taken to be concluded by authority.

It cannot, accordingly, in the first place be denied that, giving full effect to Act I of 1869, the succession to a taluq must be to an impartible estate, and that, whether the estate "ordinarily devolved upon a single heir," to quote the language

(1) (1877) L. R., 5 I. A., 1. (2) (1890) L. R., 17 I. A., 173; I. L. R., 18 Calc., 111.
(3) (1901) I. L. R., 23 All., 369; L. R., 28 I. A., 100.

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of List 2 of section 8, or whether the succession was to be regulated by the rule of primogeniture, to quote Lists 3 and 5 of section 8.

In the second place, it can hardly be doubted that section 22, in so far as it describes in the first ten of its sub-sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession which might have been set forth in the sanad.

In the third place, when sub-section (11)—a sub-section which comes at the close of the long list of specific stages of prescribed succession—sets up the rule that, in default of any one taken under the previous sub-sections, there should be preferred

"such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee are subject."

Their Lordships do not see their way to hold that this is anything else than a general relegation of parties to the situation in which they would have been found apart from the Statute. But that situation is found in the sanad itself; and it is also contained, either by way of affirmance or at least by way of narrative, in the fifth list of section 8 of the Statute. So far as the sanad was concerned, the provision was as follows:—

"It is another condition of this grant that, in the event of your dying intestate, or any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture."

While, as has been said, the specific rules of succession in Act I of 1869 must be held to displace this, the general reference to what is not covered by those specific rules must include a reference to the rights of parties as contained in the sanad, which was the original title to the property.

By this simple construction the alleged repugnancy disappears.

It must be added, with reference to the body of decisions cited in the judgements of the Court below and at their Lordships' Bar, that, as these decisions refer to the property descending, in the language of List 2, to "a single heir" there was therefore necessitated the search for that heir according to the law of the religion and tribe as referred to in section 22, sub-section (11)

But it does not appear that the ordinary law of the religion and tribe would have fixed upon any different person as entitled to succeed where the "rule of primogeniture" had been acknowledged rule of the succession—any different person from the respondent and plaintiff in the suit, who has succeeded under the judgement of the Judicial Commissioner.

If reference be made to section 23, the result reached is the same. That section provides that

> "Except in the cases provided for by section 22, the succession to all property left by taluqdars and grantees, and their heirs and legatees dying intestate, shall be regulated by the ordinary law to which members of the intestate's religion and tribe are subject."

This expression, viz., that

> "the succession shall be regulated by"

is the same form of words as that employed in the List 5 of section 8 which declared of, *inter alia*, the present succession that it

> "should be regulated by the rule of primogeniture."

This declaration and condition of the sanad being part of the original title to the property is an essential part of that regulation of the ordinary law of the religion and tribe and would have been respected accordingly.

For these reasons their Lordships will humbly advise His Majesty that the judgement passed by the Court of the Judicial Commissioner of Oudh, dated the 5th July, 1907, is correct and that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant:—*Barrow, Rogers & Nevill.*

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

J. V. W.