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Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed, and the appellant will pay the costs.

Appeal dismissed.

Solicitors for the appellant :—*T. L. Summerhays & Son.*

Solicitors for the respondents :—*Ronken Ford, Ford & Chester*

J. V. W.

P. C. 1911. *February* 15, 17, 28.

UMRAO SINGH AND ANOTHER (PLAINTIFFS) *v.* LACHMAN SINGH AND ANOTHER (DEFENDANTS).

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

Act No. 1 of 1869 (*Oudh Estates Act*)—*Will of taluqdar—Sanad executed by Taluqdar through the mediation of family friends—Whether document was testamentary or non-testamentary—Registration of document—Act No. III of* 1877 (*Indian Registration Act*), *sections* 17 *and* 49—*Instrument affecting immovable property—Ground not specifically taken in argument in courts below—Costs.*

A taluqdar in 1862, in compliance with the directions issued by the Government, made a declaration that, "I wish and file this application, that after my death Umrao Singh the eldest son (*sic*) my estate should continue in my family undivided in accordance with the custom of the *raj-gaddi*, and that the younger brothers shall be entitled to get maintenance from the *gaddi-nashin*."

Held (affirming the decision of the Courts in India) that it was a valid testamentary disposition by the taluqdar of his estate in favour of his eldest son.

The same taluqdar, having three sons, with one of whom he was on bad terms, executed in 1881 the following document, which he called a sanad :—"For Prithipal Singh, who is my son, I fix Rs. 300 annually, so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons, except provisions, which they may take from my godown (*kothar*). The marriage and *gauna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property movable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihat, and Thakur Ratan Singh of Rojah."

Held (reversing the decision of the Judicial Commissioner's Court) that it was a non-testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, friends of the family and interested in its honour, and it was plainly intended to be operative immediately and to be final and irrevocable.

Held also that it required to be registered under section 17 of the Registration Act (III of 1877) in order to make it effective as regards immovable property, and, being unregistered, was, so far, void.

Present :—Lord MACNAGHTEN, Lord ROBSON, Sir ARTHUR WILSON, and Mr. AMEER ALI.

On an objection that it was not open to the appellants to contend that the document was not a will the fact that they had, throughout the proceedings in the Courts below, taken conflicting views as to the nature of the document, was held not to preclude their Lordships from considering and determining the real question in the case, and that they were bound to give effect to the real character of the document. Neither party had pursued a consistent course in the matter. Their Lordships permitted the appellants, therefore, to raise that contention, but in allowing the appeal on that ground they did so without costs to the appellants on this appeal or in the Courts below.

APPEAL from a judgement and decree (19th August, 1907) of the Court of the Judicial Commissioner of Oudh, which reversed a judgement and decree (8th September, 1906) of the Subordinate Judge of Sitapur.

The principal question for determination on this appeal was the right of succession to the estates of Ramkote and Hadipur, the last owner of which was one Kalka Bakhsh Singh; and to determine that it was necessary to decide which of several documents put forward was his last will and testament regulating the succession.

The Ramkote estate was settled with Kalka Bakhsh Singh at the second summary settlement after the confiscation of all proprietary rights in Oudh, and a sanad was subsequently granted him by Government, who also conferred upon him two villages forming the Hadipur estate in recognition of loyal services. On the passing of the Oudh Estates Act (1 of 1869) Kalka Bakhsh Singh's name was entered in lists 1, 4 and 6 prepared under section 8 of that Act, and he consequently became the absolute owner of the property in suit until his death.

Kalka Bakhsh Singh died on the 14th of October, 1893, leaving his eldest son Umrao Singh, his third son Baldeo Bakhsh Singh (the present appellants) and two grandsons, Lachman Singh and Bharat Singh now respondents, the sons of his second son Prithipal Singh, who died on the 10th of November, 1892.

On the 9th of January, 1862, Kalka Bakhsh Singh, in reply to a letter from the Deputy Commissioner of Oudh asking him to declare the custom of succession obtaining in his estate, and saying that if the custom of *gaddi-nashini* did not obtain in his family, "it is necessary that you should write a will and enter

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therein the name of your heir and register it," executed the following document :—

"As the British Government has conferred upon me, generation after generation, the proprietary rights in Ramkote estate, therefore I wish and file this application that after my death Umrao Singh, the eldest son, (*sic*) my estate should continue in my family undivided in accordance with the custom of *raj-gaddi*, and that the younger brothers shall be entitled to get maintenance from the *gaddi-nashin*."

and presented it with a petition in which it was stated that his wish was that his eldest son Umrao Singh should succeed him.

Prithipal Singh was on very bad terms with his father, so much so that in May, 1884, Kalka Bakhsh complained to the Deputy Commissioner of the conduct of Prithipal, and subsequently lodged a formal complaint against him in the Criminal Court under sections 352, 448 and 506 of the Penal Code. Matters however, were settled between them by two of Kalka Bakhsh, Singh's friends, Jote Singh and Ratan Singh, who eventually drew up the following document, which they induced Kalka Bakhsh Singh to sign on the 23rd of May, 1854 :—

"This *sanad* is executed by me, Thakur Kalka Bakhsh, taluqdar of Ramkote. For Prithipal Singh, who is my son, I fix Rs. 300 annually so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons, except provisions, which they may take from my godown (*kothar*). He may take six annas in *Kharif* (crop) and ten annas in *Rabi* (crop) out of my treasury (*tahwil*). The marriage and *gauna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property, movable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihat and Thakur Ratan Singh of Rojah."

Though Kalka Bakhsh Singh was induced to sign that document in order to settle the quarrel with his son, he did not act upon it; and on the 15th of February, 1886, Prithipal Singh instituted a suit in the court of the Subordinate Judge of Sitapur to recover arrears of maintenance, and a sum of money equal to the amount alleged to have been given by Kalka Bakhsh Singh to his youngest son Baldeo Bakhsh Singh. That suit was dismissed on the 25th of August, 1886, on the ground that the document of the 23rd of May, 1884, which contained the agreement to pay maintenance had not been registered.

On the 3rd of May, 1892, Kalka Bakhsh Singh brought a suit in the court of the Subordinate Judge of Sitapur for cancellation of the document of the 23rd of May, 1884; but Prithipal Singh died

before the first hearing of the suit, which was consequently withdrawn.

On the 4th of October, 1893, Kalka Bakhsh Singh executed a will by which he gave his estate to his two surviving sons, Umrao Singh and Baldeo Bakhsh Singh, and died ten days afterwards.

After his death there were disputes to obtain mutation of names in the Revenue Registers; and on the 14th of May, 1894, the Deputy Commissioner of Sitapur made an order directing the name of Umrao Singh to be entered for one-third of the estate, the name of Baldeo Bakhsh Singh for another third; and the names of Lachman Singh and Bharat Singh, the sons of Prithipal Singh, for the remaining third.

On the 20th of June, 1894, Umrao Singh transferred his interest in the estate to his brother Baldeo Bakhsh Singh.

On the 30th of September, 1905, Umrao Singh and Baldeo Bakhsh Singh brought the present suit against Lachman Singh and Bharat Singh to recover possession from them of the one-third share of the estate which they had obtained under the order of the 14th of May, 1894: basing their claim either on the will of the 9th of January, 1862, or on that executed by Kalka Bakhsh Singh on the 4th of October, 1893. The plaintiffs alleged that the will executed by their father on the 23rd of May, 1884, was obtained by coercion and undue influence; and that it had been, moreover, revoked by their father in his lifetime.

The defence was *inter alia* that the document, dated the 9th of January, 1862, was not a will, and even if it was a will it was cancelled by the document, dated the 23rd of May, 1884, which they called a *sanad* and which they alleged was not executed under undue influence; and that Kalka Bakhsh Singh never duly executed the alleged will of the 4th of October, 1893, as he was on that day not of sound disposing mind, and incapable of executing such a will.

On the issues raised in accordance with the pleadings the Subordinate Judge held that the document of the 9th of January, 1862, was a will in favour of the first plaintiff, Umrao Singh; that the document of the 23rd of May, 1884, was not proved to have been executed by Kalka Bakhsh Singh "with his free will and consent", and that Kalka Bakhsh Singh was not shown to have

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been capable of making a will on the 4th of October, 1893. He made a decree, therefore, in favour of the plaintiff.

The defendants appealed to the Court of the Judicial Commissioner, and the appeal was heard by Mr. E. CHAMIER, Judicial Commissioner, and Mr. J. SANDERS, Additional Judicial Commissioner, who agreed with the findings of the Subordinate Judge that the document of the 9th of January, 1862, was a will in favour of Umrao Singh; and that Kalka Bakhsh was not capable of making a will on the 4th of October, 1893; but they dissented from his finding as regarded the document of the 23rd of May, 1884. They were of opinion that its execution was not obtained by threats or undue influence; that it was testamentary in its nature; had not been revoked, and that it operated as a valid devise to Prithipal Singh, the benefit of which passed on his death to his sons, the defendants.

As to the nature and effect of the document of the 23rd of May, 1884, the following was the material portion of the judgement of the Court which was delivered by Mr. CHAMIER :—

"The point was not taken in the arguments before us, but it occurred to me afterwards that there might be room for doubt, whether the signature of Kalka Bakhsh is so placed on the document as to make it appear that it was intended thereby to give effect to the document as a will (see section 50 of the Succession Act, which is applied to the wills of taluqdars by section 19 of Act I of 1869) and we decided to hear counsel further on the question. The writing is on a strip of paper 18 inches long and 5¼ inches wide and the lines are about 4½ inches long leaving a very narrow margin on each side. The signature of Kalka Bakhsh, which is very large, is in the blank space at the top and is written at right angles to the body of the document. The signatures of the witnesses are in the space at the bottom and are close to the date. In some parts of India it appears to be the custom to sign all documents at the top and old *sanads* (grants) in this province are invariably found to have been signed at the top. In the case of documents written on stamped paper it is customary for the executant and the witnesses to sign at the right hand side where a large margin is left for the purpose. It would not have been possible to leave such a margin on the paper used for the document in question. The executant must have signed either at the top or at the bottom. Petitions are signed at the bottom; but a *sanad*, such as this purports to be, could not possibly have been signed at the bottom. I think it is clear that the signature is so placed as to make it appear that Kalka Bakhsh intended to give effect to the document, and as there is no rule requiring the signature of the executant of a will to be at the foot or end of the document, I think it must be held that the signature was intended to give effect to the document as a will if and so far as it is of a testamentary character,

Counsel for the plaintiffs took advantage of the opportunity offered by a further hearing to argue that the document could not operate as a will at all, because the executant calls it a *sanad* and because, in part, at least it is not of a testamentary character. The first part of this argument is met by the case of *Thakur Ishri Singh* v. *Thakur Baldeo Singh* (1) where a document called a *tamlíknama* was held to operate as a will. The second part is met by the decision in *Lali* v. *Murlidhar* (2) and other like cases, in which it has been held that a part of *wajib-ul-arz* may operate as a will. Both parties throughout this case until the further hearing in this Court admitted that so much of this document as is of a testamentary character should take effect as a will if the document is not invalid on the ground of undue influence.

"The next question is as to the construction of this document. The plaintiffs urged that Kalka Bakhsh intended thereby to leave his estate to his three sons as joint tenants, and that as Pirthipal died in the life-time of his father the whole estate passed to the plaintiffs, the surviving sons, under this document. But it appears to me to be quite clear that Kalka Bakhsh did not intend to make his sons joint tenants. Prithipal was living apart from his father and his brothers, and nothing could have been farther from the intention of Kalka Bakhsh than that his three sons should be joint tenants. He evidently contemplated a division of the estate between them, for he said :—'After my death my three sons will (or let my three sons) divide (*taqsim*) my movable and immovable property.' In my opinion, the devise was to the three sons as tenants in common. Under section 96 of the Indian Succession Act, which is applied to the wills of taluqdars by section 19 of the Oudh Estates Act, the devise to Prithipal takes effect in favour of his sons, the defendants. The word used in section 96 of the Succession Act is 'bequest,' but the words 'bequest,' 'bequeath,' &c, are used in the Oudh Estates Act, in the sense of devise and under the latter part of section 19 of the Oudh Estates Act, the word 'bequest' in section 19 of the Succession Act must be given the same meaning as is attached to it by the Oudh Estates Act.

"The next question is whether the will, as it may now be called, of May, 1884, was revoked by the testator's written statement in Prithipal's suit of 1880 (Exhibit 4) or by his plaint in a suit of 1892 (Exhibit 5). According to section 57 of the Succession Act, which is applied to wills of taluqdars by section 19 of the Oudh Estates Act, no unprivileged will or codicil nor any part thereof can be revoked otherwise than by marriage or by any will or codicil or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is required by the Succession Act to be executed, or by burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. It is admitted that if this section applies to the will of 1884, that will was not revoked either by the written statement of 1880, or the plaint of 1892, but it is contended by counsel for the defendants that section 57 of the Succession Act applies only to wills made by taluqdars or grantees in favour of

(1) (1884) I L. R., 10 Calc., 792; L. R., 11 I. A., 140. (2) (1906) I. L. R., 28 All., 488; L. R., 33 I. A., 112.

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persons who do not come within the second and third paragraphs of section 13 of the Oudh Estates Act. If this contention is correct then the sections of the Succession Act mentioned in section 19 of the Oudh Estates Act do not apply to the wills of taluqdars generally, but only to wills made in favour of persons who do not come within the second and third paragraphs of section 13 of the Oudh Estates Act. It seems to me to be impossible to accept this contention. Section 19 of the Act says that certain sections of the Succession Act shall apply to *all* wills and codicils made by any taluqdar or grantee *under the provisions of the Act*. It appears to me to be impossible to hold that these words apply only to one class of wills. In my opinion they apply to all wills made by taluqdars under the powers conferred upon them by section 11 of the Act. I hold therefore that the will of May, 1884, was not revoked either by the written statement of 1886 or by the plaint of 1892 (1)."

On this appeal—

DeGruyther, *K. C.*, and *S. A. Kyffin*, for the appellants, contended that the document of the 9th of January, 1862, was a valid will, and as such was an effective devise of the whole estate in favour of the first appellant Umrao Singh: that had been found by both Courts below [Sir *R. Finlay*, *K. C.* It is not disputed that that holding is a good decision in law]. It was then contended that the document, dated the 23rd of May, 1884, was not in fact or in law a testamentary disposition of the estate. It was not executed by Kalka Baksh Singh as a will, and was never intended by him to operate as a will. It was intended to, and did, come into operation immediately on its execution. Reference was made to *In the goods of Robinson* (2) where probate of such a document was refused and it was doubted whether the Court could treat as being a will a document which was only partly testamentary. [Sir *R. Finlay*, *K. C.* objected that it was not now open to the appellants to argue that the document was not a will. It had been all along treated as a will without any objection to that course being raised by the appellants]. There was always a question whether it was a will or not. Reference was made to the case of *Tagore* v. *Tagore* (3). The circumstances of the making of the document were discussed, and it was submitted that as it was shown that Prithipal Singh was at enmity with his father, and that the latter was obliged to bring charges against him in the Criminal Court, of assault or using criminal force, house trespass, and criminal

(1) This judgement is reported in 11 Oudh Cases, 102.

(2) (1864) L. R., 1 P. and D. 384.

(3) (1872) L. R., I. A., Sup. Vol. 47.

intimidation under sections 352, 448 and 506 respectively of the Penal Code (Act XLV of 1860) there were good grounds for saying that the document in question was obtained from Kalka Bakhsh Singh by Prithipal by undue influence, if not by actual threats: and *Hall* v. *Hall* (1) was referred to, it being contended that the document was invalid on that ground, as not having been executed by Kalka Bakhsh Singh with his free will and consent, as the Subordinate Judge had held. Moreover, Kalka Bakhsh Singh had never acted upon it. If viewed as a contract too it was invalid for want of consideration under section 25 of the Contract Act (IX of 1872): and it was ineffective as regarded immovable property by the fact that it was not registered; sections 17, 23 and 49 of the Registration Act (III of 1877) were referred to. Reference was also made to section 19 of Act I of 1869 and the Succession Act (X of 1865), section 96, which had been wrongly applied to the case by the Judicial Commissioner's Court.

Sir *R. Finlay, K. C.*, and *Ross*, for the respondents, contended that the document of the 23rd of May, 1884, was not the less operative as a will as to the testamentary portion merely because the rest of it might be of a non-testamentary character; and referred to *Thakur Ishri Singh* v. *Thakur Baldeo Singh* (2) and *Lali* v. *Murlidhar* (3) in which a *tamliknama* and a *wajib-ul-arz* were respectively considered to be effective as wills by the Privy Council. It was not, it was submitted, procured from Kalka Bakhsh Singh by undue influence or threats; and was not void under section 25 of the Contract Act; but was a valid will, under which the respondents were entitled to the one-third share of the property in respect of which mutation of names was effected in their favour after Kalka Bakhsh Singh's death. Registration of a will was optional under the Registration Act, section 18, and it was never legally revoked by Kalka Bakhsh Singh: section 57 of the Succession Act (X of 1865), made applicable to the wills of taluqdars by section 19 of the Oudh Estates Act (I of 1869), and the definition of a "will" in the latter Act were referred to;

(1) (1868) L. R., 1 P. and D. 481. (2) (1881) I. L. R., 10 Calc., 792 (802): L. R., 11 I. A., 135 (140).

(3) (1906) I. L. R., 28 All., 488: L. R., 33 I. A., 97.

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and the case of *Tagore* v. *Tagore* (1) cited for the appellants was distinguished.

To show that the fact of the document being a will was not disputed in the pleadings and in the lower courts it was pointed out that the appellants called it a will in their plaint, paragraph 11, and in paragraphs 33 and 34 of their replication, in which they said (paragraph 33):—"The arrangement on foot during the life-time of Kalka Bakhsh Singh may be called by any name, but whatever was written to take effect after his death is nothing but a will" and paragraph 34:—"At all events Kalka Bakhsh Singh could and did render ineffectual the testamentary portion merely by an expression and course of conduct." No ground was taken that it was not a will either in the petition of objections on the appeal by the respondents to the Judicial Commissioner, nor in the grounds of appeal to the Privy Council; and the document was dealt with as a will throughout the judgements of both the lower courts. The point that it was not a will, not having been raised before, could not be raised now The judgement of the Judicial Commissioner upholding that document as a will should be affirmed. The due execution of the alleged will of 1893 was negatived by the concurrent judgements of the lower courts on the facts.

De Gruyther, K. C., in reply referred to the pleadings to show that there had been a contest between the parties as to whether the document of the 23rd of May, 1884, was a will or not. In the plaint it was called both a "will" and a "deed"; and in the respondents' written statement, paragraphs 8 and 31 to 34 it was called a "deed" and a "*sanad*." It was called a "deed" and a "will" indiscriminately in the judgement of both the courts below, and in fact throughout the proceedings in India. Had the ground been definitely taken, there would have been no evidence necessary; it was a matter of law. The point, it was submitted, was now open. Reference was made to the fact that in the suit by Prithipal against his father the document was rejected as evidence because it was not registered and section 17 and clause *(d)* of section 18 and section 49 of the Registration Act were referred to.

(1) (1872) L. R., I. A., Sup. Vol., 47.

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1911, *February* 28*th*:—The judgement of their Lordships was delivered by Lord MACNAGHTEN:—

This is an appeal from a decree of the Court of the Judicial Commissioner of Oudh reversing the decision of the Subordinate Judge of Sitapur.

The dispute between the parties relates to the right of succession to one-third of the estate of Ramkote, of which a Hindu gentleman named Kalka Bakhsh Singh was the last owner.

In the course of the discussion before this Board the controversy was reduced to two questions, and two questions only—

(1) Was a certain document executed by Kalka Bakhsh on the 23rd of May, 1884, a testamentary or a non-testamentary instrument?

(2) Is that question now open having regard to the course of the proceedings in the Courts below?

After the confiscation of Oudh the second Summary Settlement of the Ramkote estates was made with Kalka Bakhsh. He obtained a *sanad* from the Government. His name was entered in lists 1, 4, and 6, prepared under the provisions of section 8 of Act I of 1869. And he remained absolute owner of the property until his death.

Kalka Bakhsh died on the 14th of October, 1893. He had three sons, Umrao Singh, Pirthipal Singh, and Baldeo Bakhsh. Pirthipal Singh died in his father's life-time, leaving two sons, who were defendants in the suit and are the respondents to this appeal.

On the 9th of January, 1862, Kalka Bakhsh in compliance with the directions issued by the Government, declared that his wish was that after his death his estate should continue in his family undivided, in accordance with the custom of *raj-gaddi*, and that the younger brothers should be entitled to maintenance.

It is not disputed that this declaration was a valid testamentary disposition by Kalka Bakhsh of his estate in favour of his eldest son.

Kalka Bakhsh and his second son Pirthipal Singh were on bad terms, so much so, that Pirthipal Singh threatened personal violence to his father, and Kalka Bakhsh commenced criminal proceedings against his son. The quarrel, however, was for the

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time composed by the intervention of two friends of the family, Jote Singh of Bihat and Ratan Singh of Rojah. At their instance the following document was drawn up and signed by Kalka Bakhsh in their presence on the 23rd of May, 1884:—

"This *sanad* is executed by me, Thakur Kalka Bakhsh, taluqdar of Ramkote. For Pirthipal Singh, who is my son, I fix Rs. 300 annually, so that he may maintain himself. Besides this, whatever I may give I will give equally to the three sons, except provisions, which they may take from my godown (*kothar*). He may take 6 annas in kharif (crop) and 10 annas in rabi (crop) out of my treasury (*tehwil*). The marriage and *gauna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property, movable and immovable. This has been settled through the mediation of Thakur Jote Singh of Bihat and Thakur Ratan Singh of Rojah."

Kalka Bakhsh, though he executed the document without demur, did not comply with its terms, if, indeed, he ever meant to do so. In February, 1886, Pirthipal Singh, who apparently was then in destitution, brought a suit to recover arrears of maintenance and a sum of money equal to an amount alleged to have been given by Kalka Bakhsh to his youngest son Baldeo Bakhsh. The suit, which was founded on the instrument of May, 1884, was dismissed by the Subordinate Judge, and the dismissal was affirmed on appeal, except as regards arrears of maintenance then due, amounting to Rs. 412-8-0.

In May, 1892, Kalka Bakhsh brought a suit for cancellation of the instrument of May, 1884. Pirthipal, however, died in November, 1892, before the suit could be heard, and it was consequently withdrawn.

After Kalka Bakhsh's death there was the usual quarrel as to registration in the Revenue records. On the 14th of May, 1894, the Deputy Commissioner of Sitapur, without pronouncing any opinion on the questions in dispute, made an order directing the entry of one-third of the estate in the name of Umrao Singh, one-third in the name of Baldeo Bakhsh, and the remaining third in the names of Pirthipal's two sons.

Umrao Singh then transferred his interest in the estate to his brother Baldeo Bakhsh, and they brought this suit as co-plaintiffs to recover the one-third of the estate entered in the names of the sons of Pirthipal Singh. They relied mainly on a will alleged to have been executed on the 4th of October, 1893, up to which date, as they contended, the testamentary instrument of the 9th of

January, 1862, was in force. They asserted too that the instrument of the 23rd of May, 1884, was obtained from Kalka Bakhsh by undue influence, and was wholly inoperative.

The Subordinate Judge gave effect to the plaintiffs' claim except so far as it was founded on the alleged will of October, 1893. He decided against them on the issue as to the validity of that document, stating that the execution thereof "was not very clear to his mind." The decree was made without costs.

On appeal the Judicial Commissioners affirmed the findings of the Subordinate Judge in regard to the will of 1862 and the alleged will of 1893. But as regards the instrument of 1884 they held that its execution was not procured by undue influence, and that it operated as a valid devise to Pirthipal Singh, the benefit of which passed on his death to his two sons. In the result they reversed the decree of the Subordinate Judge and dismissed the suit with costs.

Their Lordships agree with the Court of the Judicial Commissioner in thinking that the instrument of 1884 was not procured by undue influence. Indeed, there seems to be no ground whatever for such a suggestion. On the other hand, it seems clear that that document is a non-testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, who were old friends of the family, and interested in maintaining its honour. It was plainly intended to be operative immediately, and to be final and irrevocable. It fails of effect simply because it was not registered, as required by the Registration Act, III of 1877, section 17. It is therefore void as regards immovable property.

As regards the second question their Lordships must hold that they are not precluded by what took place in the Courts below from considering and determining the real question in the case. In the Courts below neither party pursued a consistent course. As long as the question of the validity of the alleged will of the 4th of October, 1893, was undetermined, the appellants contended that the instrument of May, 1884, was testamentary, while the defendants contended that it was a settlement and not a will. As soon as the alleged will of 1893 was successfully impeached, the defendants maintained that the instrument of 1884 was a will

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and not a settlement, and the appellants changed their attitude. Their Lordships think that, notwithstanding the conflicting views presented by the appellants in the Courts below, they are bound to give effect to the real character of the instrument. At the same time they consider that the appellants, though successful in the result, ought not to be allowed costs on this appeal or any costs in the Courts below.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be allowed and the decree of the Subordinate Judge restored, and that any costs paid under the order of the Court of the Judicial Commissioner must be returned. There will be no costs of the appeal.

Appeal allowed.

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

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

P. C. 1911 *February* 14, 15; *March*, 23.

KHUNNI LAL (DEFENDANT) v. GOBIND KRISHNA NARAIN AND ANOTHER (PLAINTIFFS) and two other appeals consolidated.

[On appeal from the High Court of Judicature at Allahabad.]

Hindu Law—Change of religion—Converts—Effect of conversion of member of Joint Hindu family to Muhammadanism—Regulation VII of 1832, *section* 9—*Act XXI of* 1850—*Compromise—Effect of compromise entered into by members of family in settlement of disputes as to right to property—Act No. XIV of* 1859 *(Limitation Act), section* 1, *clause* 12—*Act No. IX of* 1871 *(Limitation Act), schedule II, article* 142—*Act XV of* 1877, *(Indian Limitation Act), schedule II, article* 141—*Suit by reversioner.*

By Bengal Regulation VII of 1832, section 9, and Act XXI of 1850 the Legislature virtually set aside the provisions of the Hindu Law which penalize the renunciation of religion, or exclusion from caste.

Where, therefore, in a joint Hindu family consisting of a father and son, the father was converted to Muhammadanism in 1845. *Held* (reversing the decision of the High Court) that by the father's abandonment of Hinduism the son did not acquire any enforceable right to his father's share in the joint family property which he could either assert himself, or transmit to his heirs for enforcement, in a British Court of justice.

Semble whatever right the son acquired under the Hindu law to the share of his father came into existence on the conversion of the latter in 1845; and no suit could have been brought (even if Regulation VII of 1832 and Act XXI of 1850 had permitted it) to enforce that right after the lapse of 12 years from the

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Present:—Lord MACNAGHTEN, Lord ROBSON, Sir ARTHUR WILSON, and Mr. AMEER ALI.