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CALCUTTA VOL. III.

I. L. R. XXXII CALCUTTA.

Vol. 1 (=31 I. A. 239=8 C. W. N. 841=6 Bom. L. R. 763=1 A. L. J. 691).

PRIVY COUNCIL.

*In re* MAHARAJAH MADHAVA SINGH.\*

[*On petition for leave to appeal from an order of the Viceroy.*]  
[26th July, 1904.]

*Report to Privy Council.—Panna, Maharajah of—Order of Viceroy and Governor-General of India deposing Ruler of Native State—Report of Commissioners appointed to inquire into imputation against Native Ruler—"Court."*

No appeal lies to His Majesty the King in Council from an order of the Viceroy and Governor-General of India in Council deposing the Maharaja of the Native State of Panna, such order being an act of State.

An order was made on the report of the Commissioners appointed by the Viceroy and Governor-General of India in Council "for the purpose of inquiring into the truth of an imputation against the Maharajah that he had instigated the death of his uncle, and of reporting to the Viceroy and Governor-General in Council how far the same is true to the best of their judgment and belief."

*Held*, that such a tribunal was not a 'Court' from which an appeal lay to His Majesty in Council.

33 Cal. 219 (P. C.); 36 Mad. 72.]

PETITION by Maharajah Madhava Singh of Panna for Special leave to appeal from an order of the Viceroy and Governor-General of India in Council, dated 21st April 1902, by which the petitioner was deposed from his position as Ruler of Panna, a Native State in Central India.

The petitioner became the Ruling Chief of Panna in 1898 in succession to his father. On 25th June 1901 his uncle, Rao [2] Rajah Khuman died at Panna while on a visit to his nephew. Subsequently a

*Present* : LORD DAVEY, LORD ROBERTSON, and SIR ARTHUR WILSON

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notification of the Government of India was issued stating that the Viceroy and Governor-General of India had temporarily assumed the administration of the Panna State for the purpose of instituting a public inquiry into the case; that on 5th November 1901 the Government of India in the Foreign Department had resolved (i) that the Rao Rajah Khuman Singh had died in circumstances pointing to his death having been caused by poison; (ii) that the offence had been imputed to the petitioner,—that Rao Rajah Khuman Singh was poisoned by persons instigated thereto by the petitioner; and (iii) that to afford the petitioner an opportunity of freeing himself from the grave suspicion which attached to him, two Commissioners had been appointed “for the purpose of inquiring into the truth of the said imputation and of reporting to the Viceroy and Governor-General in Council how far the same is true to the best of their judgment and belief.”

By the Resolution full power was conferred on the Commissioners to fix times and places of meeting, to adjust and arrange the method of procedure, to settle the course which the inquiry should take, to call for and to receive or reject evidence, documentary or other, to hear such persons as they should think fit on behalf of the Viceroy and the petitioner, and generally to guide the whole course of the proceedings of the Commission as from time to time should appear to them to be proper for the purpose thereof. The Commissioners were also invested with like powers to try any person other than the petitioner “on any charge which may be presented against such person by Counsel representing the Viceroy in connection with the inquiry into the death of the said Rao Rajah Khuman Singh,” and, in case of the conviction of such person, “to pass upon him such sentence as might be passed in a like case by a Court of Criminal Jurisdiction in British India;” sentence of death to be subject to confirmation by the Viceroy in Council.

In pursuance of the inquiry five members of the petitioner’s household were charged: one, Shambhu, with murder, and the other four with being engaged in a conspiracy to murder the Rao Rajah Khuman Singh. With regard to the petitioner, the [3] Commissioners observed: “Inasmuch as the imputation upon the Maharajah is in substance that he also was a member of the alleged conspiracy and abetted the offence committed by Shambhu, we combined the inquiry into his conduct with the trial of the four accused. We apprehend that this course was contemplated by the Government of India, and we were not moved by Counsel to take any other.”

In the result, the Commissioners on 25th January 1902 acquitted two of the persons charged with conspiracy and found that Shambhu had absconded; they also found that there was reasonable ground for the belief that the petitioner and the remaining two persons charged with conspiracy had conspired together to murder the Rao Rajah. As to one of these two persons they found there was no doubt of his guilt and they sentenced him to be hanged; and as to the other that he was entitled to the benefit of a doubt. As to the petitioner the Commissioners on the same date made their report to the Viceroy “that to the best of their judgment and belief the imputation against the petitioner was true, since it was impossible to explain the facts upon any hypothesis other than that the petitioner was a member of the conspiracy to murder the Rao Rajah.”

On 21st April 1902 the Government of India in the foreign Department resolved that the finding of the Commissioners was correct, and that the guilt of the petitioner was established, and directed that the petitioner be deposed from his Chiefship of the Panna State.

On 12th June 1903 the petitioner applied to the Viceroy and Governor-General of India in Council for leave to appeal to His Majesty in Council, but his application was on 10th August 1903 refused.

The prayer of the petition was for special leave to appeal from the report of the Commissioners convicting the petitioner and from the order of the Viceroy and Governor-General in Council confirming the same, or for such further or other order as to His Majesty the King in Council might appear just and proper.

*Haldane K. C.* and *Cowell*, for the petitioner, submitted that the report of the Commissioners was a conviction of the petitioner [4] by Court of the offence of instigating murder, or being a member of a conspiracy to commit murder, without any definite or specific charge having been made against him, but in the course of a collateral inquiry during the trial of other persons, which inquiry was not regulated by any recognized method of procedure ; that the conclusion as to the petitioner's guilt was not justified by the findings upon either the direct or indirect evidence ; and that thereby substantial and grave injustice had been done to him which should be redressed by hearing his case on appeal, or by directing a fresh investigation to be conducted on a specific charge made against him and decided upon evidence duly directed thereto, and legally admissible. On these grounds relief was asked for according to the prayer of the petition.

*Cohen K. C.* and *Phillips*, for the Secretary of State, referred to Act XXI of 1879, ss. 4, 5 and 6, as giving the Viceroy in Council jurisdiction in Native States, and power to delegate it and to appoint persons to exercise such jurisdiction in cases of offences committed in places beyond British India. They submitted it was not a case in which special leave to appeal should be granted.

*Haldane K. C.* replied.

The judgment of their Lordships was delivered by

LORD DAVEY. In this case the petitioner, the Maharajah, seeks to obtain leave to appeal to His Majesty in Council against an act of the Governor-General of India in Council removing him from the government of the State of Panna. That is clearly a political act—an act of State done by the Viceroy in Council in the interest of the State of Panna and the inhabitants of Panna, and for the peace and good government of India generally. Their Lordships are precluded by a long series of authorities, and by well-established principles from entertaining a petition for leave to appeal against an act of that character. Mr. Haldane has contended that the appeal is against a conviction of the Maharajah ; but it is sufficient to say that the Commission in question was one appointed by the Viceroy himself for the information of his own mind, in order that he should not act in his political and sovereign character otherwise than in accordance with the dictates of justice [5] and equity, and was not in any sense a Court, or, if a Court, was not a Court from which an appeal lies to His Majesty in Council.

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Their Lordships will therefore humbly advise His Majesty to dismiss the petition. There will be no order as to costs.

*Application refused.*

Solicitors for the petitioner : *Gill, Pugh & Davey.*

Solicitor for the Secretary of State for India : *The Solicitor, India Office.*

32 G. 6.

[6] APPELLATE CIVIL.

*Before Mr. Justice Pratt and Mr. Justice Geidt.*

SHYAMANAND DAS MOHAPATRA *v.* RAMA KANTA DAS MOHAPATRA.\*

[16th, 17th 18th, and 19th, February, and 21st March, 1904.]

*Hindu Law—Inheritance—Primogeniture, rule of—Custom—Orissa, land tenure in—Regulation XI of 1793—Regulation X of 1800—Regulation XII of 1805, s. 36—Bhujyan—Paharaj—Killa—Garh—Hereditary office, estate attached to—Evidence Act (I of 1872) ss. 13 (b), 32 (3) & (5), 49, 90—Statements of persons who are dead—Usage, opinion as to—Ancient documents, custody of—Regulation VII of 1882, s. 9.*

The rule of primogeniture may exist by family custom, although the estate may not be a raj or polliam.

*Chintaman Singh v. Nawlukho Konwari* (1) followed.

The law as prescribed in the Regulations expressly allows the rule of primogeniture to prevail in the district of Cuttack in cases in which by established usage succession to the entire estate devolves to a single heir, provided the rule is shown to have been in existence at the time of Regulation XII of 1805, and has not since been departed from.

*Rajkishen Singh v. Ramjoy Surma Mozoondar* (2) referred to.

Words like *Bhujyan* and *Paharaj* used as titles of the owners of an estate in Orissa, and words like *Killah* and *Garh* used as descriptive of the estate, were held, when read in connection with passages from standard works of reference on land tenure in Orissa, and taken in connection with the evidence adduced in the case, to furnish a proper basis for the inference that the estate, being attached to and devolving with some public office, descended only to the eldest son as the holder of the office.

The statement in a genealogical table filed by a member of a family who is dead, regarding the descendants of another member of the family, before any question arose as to the latter, is relevant under section 32 (5) of the Evidence Act.

[Reversed. 36 Cal. 590=13 C. W. N. 581 ; Ref. 13 C. L. J. 305=9 I. C. 961.]

APPEAL by the defendant, Shyamanand Das Mohapatra.

Rama Kanta Das Mohapatra and Balabhadra Das Mohapatra, brothers, and their four sons brought the suit for a declaration of [7] their title to a two-thirds share of the properties in suit, including *killah* Talmunda and *talug* Arang, in *perganah* Banchas, district Balasore, and several other immoveable and moveable properties, and for possession of the same jointly with the defendant No. 1. It was alleged that the plaintiffs and the defendant No. 1 belonged to a family governed by the *Mitakshara* School of the Hindu Law, and that the properties in dispute were the joint family properties of the plaintiffs Nos. 1 and 2 and Harihar,

Appeal from Original Decree, No. 25 of 1900, against the decree of Behary Lall Mallick, Subordinate Judge of Cuttack, dated Sept. 27, 1899.

(1) (1875) I. L. R. 1 Cal. 159 ; L. R. (2) (1872) I. L. R. 1 Cal. 186: 19 W. 2 I. A. 263. R. 3.