Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bhaiya Rabidat Singh v. *Maharani Indar Kunwar and others, from the Court of the Judicial Commissioner of Oudh; delivered* 1*st December* 1888.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.
MR. STEPHEN WOULFE FLANAGAN.

[*Delivered by Lord Macnaghten.*]

It appears to their Lordships that this case is free from difficulty.

The will of the late Maharajah of Bulrampur, Sir Digbijai Singh, was recently under the consideration of this Board on the occasion of a claim by his junior widow to joint proprietary rights in his estate. Their Lordships then expressed their opinion that, according to the true construction of the will, the Maharajah conferred upon his senior widow (who is the first Defendant in the present suit), and upon her alone, a life estate in all his property, and authority to select and adopt such minor male child of his family as she might think fit. The adoption which she was not only authorized but required to make was to be "according to the custom of "the family and according to the Hindu law," and the adopted son was to "be in place of an

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" actual son the owner of the entire riasat, and " the assets moveable and immoveable," the widow taking a provision for her maintenance.

The senior widow selected for adoption a minor male child of the Maharajah's family. It has been admitted in this suit that " the " ceremonies of adoption were duly performed." They took place on the 8th of November 1883. On the 5th of December following the senior widow executed a deed of adoption, which was duly registered, by which she declared that, in accordance with the written permission of her deceased husband, she had adopted Udit Narain Singh (who is the second Defendant to this suit), and that he would be the proprietor of the Maharajah's estate and property both moveable and immoveable like a real son.

The Appellant, who is a distant relative of the late Maharajah, and the person upon whom, according to the rules of intestate succession prescribed by the Oudh Estates Act, 1869, in default of any widow of the Maharajah, or any son adopted by her, as provided by the Act, or any male lineal descendant of such son, the Maharajah's taluqdari estate would descend, brought this suit for the purpose of having it declared that the adoption of the second Defendant was invalid, fraudulent, and void.

Three grounds of objection to the validity of the adoption were urged before their Lordships.

In the first place it was contended that the adoption was invalid, because the authority to adopt was not contained in a registered document. Their Lordships are of opinion that there is no ground for this contention. The Act of 1869 requires the writing by which an authority to adopt a son is exercised to be registered. It also requires the authority to be in writing. But it does not require that writing to be registered. Act III. of 1877, Section 17, which does require

authorities to adopt a son to be registered, expressly excepts authorities conferred by will.

In the next place it was contended that the adoption was invalid, and the bequest to the adopted son of no effect, so far, at any rate, as regards the taluqdari property, because the adopted son was not a person who could take the taluqdari property under an unregistered will. It is obvious that this objection, assuming it to be well founded, would not better the position of the Appellant if the senior widow had authority in writing to make the adoption, and did in fact make the adoption in manner prescribed by the Act of 1869. The adopted son would not take until the widow's death, but still he would take to the exclusion of the Appellant. Their Lordships, however, are of opinion that the objection is not well founded. In order to make the objection good the Appellant has to establish the proposition that the adopted son is not within the exception contained in Section 13, Sub-section 1, of the Act, that he is not a person who, under the provisions of the Act or under the ordinary law to which persons of the testator's tribe and religion are subject, would have succeeded to the taluqdari estate or to an interest therein if the Maharajah "had died intestate" The Appellant endeavoured to support that proposition by arguing that if the Maharajah had left no will there would have been no authority to adopt in existence. And then, in regard to succession to the estate, Udit Narain Singh would have ranked as the son of Guman Singh. But the word "intestate" in Sub-section 1 evidently means intestate as to his estate, that is, his estate as that expression is defined by the Act, the taluq or immoveable property to which alone the Act is declared to extend. This is plain on consideration of Section 13 taken by itself, but

it is made still plainer, if possible, by reference to Section 22, which is closely connected with Section 13, and which expresses what otherwise would necessarily be implied, and qualifies the word intestate by the addition of the words "as to his estate."

The last point urged on behalf of the Appellant was described by the learned Counsel who appeared in support of the Appeal as his strongest point. It was this. The senior widow seems to have been unwilling to disregard her husband's injunctions, but at the same time she was anxious to keep the estate during her life. She obtained from the natural father of the child whom she proposed to adopt a document dated the 26th of October 1883, in which it was declared that she should have full control during her lifetime over the property left by the late Maharajah. It was not suggested that there was or could have been in the ceremonial of adoption any such condition or reservation, nor is any trace of that condition or reservation to be found in the deed of adoption of the 5th of December 1883. But some months afterwards, on the 28th of March 1884, the senior widow executed what is called a second deed of adoption, by which she purported to revoke the deed of the 5th of December, on the allegation that it ought to have contained a provision postponing the interest of the adopted son until her death.

On these facts it was argued that the adoption was a fraud upon the authority to adopt, and therefore void.

This point seems to their Lordships equally untenable.

The conduct of the senior widow is not altogether to be commended, but it would be extravagant to describe it as fraudulent, or to maintain that the adoption was made for a corrupt purpose or for a purpose foreign to the

real object for which the authority to adopt was conferred. It may be true, as suggested by Mr. Arathoon, that the child of Guman Singh was selected in preference to the child of the Appellant because the senior widow had reason to believe that the selection would be less likely to lead to her position being challenged. But it is difficult to understand how a declaration by Guman Singh or an agreement by him, if it was an agreement, could prejudice or affect the rights of his son, which could only arise when his parental control and authority determined. The ceremonies of adoption are unimpeached. The deed of adoption is open to no objection. The second deed is admittedly inoperative. No conditions, therefore, were attached to the adoption. Had it been otherwise, the analogy, such as it is, presented by the doctrines of Courts of Equity in this country relating to the execution of powers of appointment to which Mr. Arathoon appealed would rather suggest that, even in that case, the adoption would have been valid and the conditions void.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.