Judgment of the Lords of the Judicial Committee on the Privy Council on the Appeal of Mohesh Chunder Dhal v. *Satrughan Dhal and Others, from the High Court of Judicature at Fort William, in Bengal; delivered the 22nd February* 1902.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR FORD NORTH.

[*Delivered by Lord Macnaghten.*]

The only question on this appeal is whether the Calcutta High Court was right in holding that lineal primogeniture is the rule of succession in the Dhalboom family whose headquarters are at Ghatsila. There were other questions raised in the suit but they have all been finally determined. In the Court of First Instance the District Judge of Bankura seems to have come to the same conclusion. He found that the rule of succession in the family was lineal primogeniture "in a "limited form." He did not however explain what he meant by that qualification and no satisfactory explanation of it has been offered.

The High Court considering that the question was merely a question of fact on which they agreed with the Lower Court properly declined to give leave to appeal. This Board however under the circumstances recommended that special leave should be given. All the evidence that was adduced in the Lower Court was laid

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before their Lordships and the case was very ably argued on behalf of the Appellant. But their Lordships see no reason to differ from the conclusion at which the High Court arrived.

It will therefore not be necessary for their Lordships to deal with the matter in any detail.

The property in dispute is undoubtedly an impartible Raj which descends upon a single heir. The last owner Raja Ram Chundar Dhal III. died on the 5th of January 1887 without issue. On his death the eldest line of descent from Raja Jagannath I. who took settlement of the estate from the Government in 1777 became extinct. A contest then arose between the Respondent Satrughan Dhal the eldest male lineal descendant of the second son of Jagannath I. and the original Plaintiff Nityanund Dhal (now represented by the Appellant) who was descended from the fourth son of Jagannath I. but was nearer by one degree to the person from whom descent was traced.

The Dhalboom family is one of a group of families whose ancestors originally came from the north-west of India and established themselves by conquest in that part of Bengal which is known as the Jungle Mehals. Some of these families like the Dhalboom family are now governed by the Mitakshara law and others by the Daya Bhaga. But there are intermarriages between them. In all the Raj descends on a single heir. These families or at any rate the more important of them keep up a sort of semi-royal state and dignify the heir apparent and those in immediate succession with titles of honour which denote precedence. Thus in the Dhalboom family the eldest son of the ruling Raja takes the title of Jubaraj the second that of Hikim the third that of Bara Thakoor the fourth

that of Koer the fifth that of Musib and the remaining sons that of Babu.

It cannot be disputed that according to the Kulachar or custom in this family and those belonging to the same group a grandson whose father is dead succeeds to the grandfather's estate in preference to a surviving uncle. But it was contended on the part of the Appellant that this does not prove that the rule of lineal primogeniture applies in cases of collateral relationship. Standing alone it might not be sufficient to establish the point though it has an important bearing on the question. Then it was said that there is no instance of a case of descent among collaterals on all fours with the present. That is quite true. Of course such cases must be exceedingly rare. On the other hand there is no instance of a collateral relation in a junior line nearer in degree being preferred to the descendant of an elder line.

The High Court relied on the oral evidence which was very fully discussed in the Court of First Instance. There was abundant evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted. But there again no witness was able to point to an actual instance in which in cases of collateral relationship the rule had either been followed or departed from. The evidence of course would have been much stronger if the witnesses had been able to cite instances confirming their view. But still the evidence is not to be disregarded.

The High Court relied principally on certain decrees relating to disputes in families belonging to the same group in which it was decided that the rule of succession was lineal primogeniture.

These decrees do not of course bind the parties to the present suit but they go a long way to show the prevalence of the custom among families having a common origin and settled in the same part of the country.

Lastly, the High Court relied on the precedence conferred or marked by the titles of honour given to the sons of the reigning Raja in order of seniority, a precedence which would naturally be attached to the lines of descent traced from them.

All these various considerations point in one direction, and in one direction only.

The principal argument on behalf of the Appellant apart from the obvious argument that no one of these considerations would be sufficient of itself was founded on a statement or return made in answer to an official requisition on a printed form by the grandfather of the last owner Chitreswar II. when he was the ruling Raja. Their Lordships think that the learned judges of the High Court were right in treating this as an important document and also in declining to accept it as laying down any positive rule of succession in the family. It is a clear statement of succession as regards the Raja's own sons. In dealing with more remote relations the Raja does not seem to have arranged the members of his family in any intelligible order of succession. He puts a person who was one generation distant from him before a person who was two generations distant but immediately afterwards he puts a person who was four generations distant before two persons only two generations distant. And indeed the heading of the column in which the relationship of these persons is stated does not seem to require that the names entered therein should be arranged according to their order of succession to the estate. The heading simply requires that there should be

written " how many sons how many brothers " and brothers' sons the Zemindar has and " amongst them who are near and who are " remote and by how many generations remote " with particulars."

Their Lordships therefore agreeing with the High Court will humbly recommend His Majesty that this Appeal should be dismissed.

The Appellant will pay the costs of the first Respondent who alone defended this Appeal.