Judgement of the Lords of the Judicial Committee on the Appeal of Haji Abdul Razzak v. *Munshi Amir Haidar, from the Court of the Judicial Commissioner of Oudh; delivered March* 14*th*, 1884.

Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

IN this case Mussumat Kutub-un-nissa was the taluqdar of an estate called Gauria, under a sunnud granted to her by the Government of India. She died in 1879, having made a will on the 30th of April 1874. The present suit is brought by her heir-at-law, her brother, who claims what he is entitled to of her estate as heir. The Defendant is a nephew of hers, a sister's son; and he sets up the will, under the provisions of which he was entitled to the taluka and the greater part of her property. The Plaintiff denied the execution of the will; he imputed fraud, he denied the capacity of the testatrix, and in other ways impugned the will. It is not necessary to dwell upon these issues, which both Courts have found against him, and which have not been argued again by his Counsel here. A further question was raised which certainly had been alluded to, if not mentioned as distinctly as it might have been in the plaint, that the will had not been properly registered under the Oudh Taluqdar's Act. The Subordinate Judge declined to entertain this question, because it was raised at a late stage

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when apparently the evidence had been finished, and because on the settlement of issues it had not been suggested on either side that an issue should be raised on this point; and he found the will to be established. Thereupon an appeal was brought by the Plaintiff to the Judicial Commissioner. The Judicial Commissioner agreed with the Subordinate Judge as to the factum and validity of the will, except so far as it was not registered; but he came to the conclusion that it had not been properly registered under the provisions of section 13 of the Oudh Taluqdar's Act. That is the question before their Lordships Many other questions were raised in the ingenious argument of Mr. Sykes; but inasmuch as the greater part of them have been disposed of in the course of the argument, their Lordships do not think it necessary further to advert to them.

The 13th section is to this effect:—"No taluq-
"dar or grantee shall have power to give or
"bequeath his estate or any portion thereof,
"or any interest therein, to any person not
"being either (1) a person who under the
"provisions of this Act, or under the ordinary
"law to which persons of the donor's or testator's
"tribe and religion are subject, would have
"succeeded to such estate or to a portion thereof,
"or to an interest therein, if such taluqdar or
"grantee had died intestate." Sub-section 2 follows, which is not material to the present case, and then come the words:—"Except by an
"instrument of gift or a will executed and
"attested, not less than three months before
"the death of the donor or testator, in manner
"herein-after provided in the case of a gift or
"will, as the case may be, and registered within
"one month from the date of its execution." There is an interpretation clause, which says
"'registered' means registered according to the

" provisions of the rules relating to the regis-
" tration of assurances for the time being in
" force in Oudh." The two questions, then, which arise are these: In the first place, was it necessary that this will should be registered? In the second place, was it registered?

The first question depends upon whether the devisee came under the description of persons in the first subsection of clause 13—" a person who " under the provisions of this Act, or under the " ordinary law, would have succeeded to such " estate or to a portion thereof, or to an interest " therein, if such taluqdar or grantee had died " intestate." The only plausible argument adduced on the part of the Appellant on this subsection was that the Appellant would have been entitled to maintenance, which, if not an " estate or a portion thereof," was " an interest therein," and therefore that a devise to him need not be registered. Their Lordships are far from affirming that a mere title to maintenance would be such an " interest therein " as would come within this clause; but it is not necessary to decide this question, because the section which, if at all, confers this right to maintenance, —section 26,—(taken in conjunction with section 24), speaks of " nephews of the deceased, being fatherless minors," and it is not shown that this Appellant was a minor either at the time of the death of the testatrix or at the execution of the will. It is scarcely necessary to observe that under section 22, which regulates the succession to taluqs, his claim cannot be supported. There appears no pretence for speaking of him as an adopted son under the fifth clause; and none of the other clauses have been contended to be applicable to him.

This being so, it follows that the will is one which, in order to be valid so far as to pass the taluk, requires registration; and then we come

to the question whether it has been registered in accordance with the Act.

The interpretation clause before referred to leads to the inquiry what were the rules relating to the registration of assurances for the time being in force in Oudh. They are to be found in Act 8 of 1871. It is to be observed with reference to that Act that it contains a very distinct set of provisions with respect to what is called depositing wills and registering them. Section 27 is in these terms:—"A will may at "any time be presented for registration,"—that is one thing,—"or deposited in manner herein-"after provided,"—which is another thing. When we proceed with the Act we find that Part 8 relates to presenting for registration wills, and authorities to adopt. Section 40 is in these terms:—"The testator, or any person claiming "as executor or otherwise under a will, may "present it to any registrar or sub-registrar for "registration." Section 41 runs thus:—"A will "or an authority to adopt, presented for registra-"tion by the testator or donor, may be registered "in the same manner as any other document." Part 9 refers to the deposit of wills, and Section 42 says:—"Any testator may, either "personally or by duly authorised agent, deposit "with any registrar the will in a sealed cover "superscribed with the name of the depositor "and the nature of the document." Section 43 says:—"On receiving such sealed cover, the "registrar, if satisfied that the depositor is the "testator or his duly authorised agent, shall "transcribe in his register book No. 5 the "superscription on such sealed cover, and note "in the register and on the sealed cover the "year, month, day, and hour of such presentation "and receipt, together with the name of the "depositor and the name of each of the persons "testifying to the identity of such depositor,

" and the inscription, so far as it is legible, on " the seal of the cover. The registrar shall then " place and retain the said cover in his fire-proof " box." Section 44 says:—" If the depositor of " any such sealed cover wishes to withdraw it, he " may apply to the registrar with whom it has " been so deposited for the delivery of the cover; " and the registrar, if satisfied as to the identity " of the depositor with the applicant, shall " deliver the cover accordingly." And then, after the death of the testator, there is a provision for its being opened and registered. So it appears that by the deposit of a will no information is given to anybody who may search the register as to its contents, and the testator can at any time during his lifetime withdraw it in the sealed envelope in which it was deposited; whereas, with respect to the registration, in the ordinary and proper sense of the word, of wills and other documents, there are provisions which would enable persons who searched the register to ascertain the contents of those documents,

It appears, therefore, to their Lordships that the will was not registered in accordance with the provisions of section 13 of the Oudh Taluqdar's Act. That being so, they are of opinion that the judgement of the Commissioner was right, that the will had no operation as far as the taluk was concerned; but as far as the personal property was concerned it had an operation, inasmuch as so much of it did not require to be registered; and he gave the Defendant the benefit of its operation in that respect.

Under the circumstances their Lordships will humbly advise Her Majesty that the judgement appealed against should be affirmed. The Appellant must pay the costs of the Appeal.