Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Umrao Begam v. *Irshad Husain and another, from the Court of the Judicial Commissioner of Oudh; delivered 30th June* 1894.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The original Plaintiff in this suit was Ahmadi Begam, the only surviving widow of Raza Husain, talookdar of Narauli, who died in the year 1885, leaving no son. He had two daughters who survived him; the elder named Sarfaraz, and the younger named Umrao, who is the present Appellant. Sarfaraz married Ahmed Husain, who is one of the Respondents, and at the death of Raza she had a son named Sajjad Husain, then less than five years old. The original Defendants in the suit were Sajjad, Sarfaraz, and Umrao.

The talook, being entered in Lists 2 and 3 under the Oudh Estates Act, is one of those which descend to a single heir by primogeniture, and which fall under the provisions of Section 22 of that Act. On Raza's death a claim was preferred on behalf of the child Sajjad, that he was entitled to the talook under Sub-section 4, inasmuch as he had been treated by Raza in all respects as his own son. On that claim Sajjad

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got possession, and soon afterwards Ahmadi instituted this suit. The title is governed entirely by the question whether Sajjad was treated by Raza as a son. If he was, the talook passed to him and his male lineal descendants by virtue of Sub-section 4. If not, it passed to Ahmadi for her life by virtue of Sub-section 7.

Ahmadi, Sarfaraz, and Sajjad have all died since the institution of the suit. Sajjad has been replaced on the record by his brother Irshad. On the death of Ahmadi the appeal abated, and Umrao was allowed to revive it under circumstances on which their Lordships will presently make some remarks.

It is common ground that Sajjad's mother Sarfaraz was after her marriage taken into Raza's house, and that Sajjad was born there, and from that time till Raza's death he was treated as a child of the house. Evidence was given of a number of incidents, some apparently trivial, and some important, for the purpose of showing that Raza's treatment of Sajjad was that of a son. On Ahmadi's side it was contended that all those incidents were sufficiently accounted for by the circumstance that Sarfaraz and her son were inmates of Raza's house, and that Sajjad was his grandson, and in the line of succession. The case appears to have been very elaborately examined by the Courts below; first by the District Judge of Lucknow, and afterwards by the Judicial Commissioner of Oudh. Both Courts held that Sajjad had been treated as a son by Raza, and that Ahmadi's claim must be dismissed.

This is not only a question of fact, but it is one which embraces a great number of facts whose significance is best appreciated by those who are most familiar with Indian manners and customs. Their Lordships would be specially unwilling in such a case to depart from the general rule,

which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the Lower Courts. The Counsel for the Appellant frankly admitted that they laboured under this difficulty, and that they must find some ground of law or general principle for impugning the decree.

To do this, they made some comments on the use made by the Courts below of Raza's oral statements, but those comments all resolved themselves into objections to the weight of evidence, and did not affect its admissibility. The only question of law or principle which they could suggest was founded on the language used by this Committee in deciding the well-known case of Man Singh's estate (*Pertab Narain Singh* v. *Subhao Kooer*, L. R. 4 I. A., p. 228). It appears to have been pressed upon the Committee that the treatment required by the Oudh Estates Act must be something of the nature of adoption. In answer to that suggestion, their Lordships pointed out that the Section applies, not to Hindoos alone, but to all religions, and they continue as follows :—

"It is necessary, then, to put a general as well as a rational construction upon the provision advisedly introduced by the Legislature into this statutory law of succession. And, taking the whole section together, their Lordships are of opinion that where-ever it is shewn by sufficient evidence that a talukdar, not having male issue, has so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment in question."

Upon this passage Mr. Finlay argued that the Committee intended to lay down an authoritative interpretation of the language of Sub-section 4 of universal application; that treatment which does not conform to the description there given cannot rightly be held

to fall within the sub-section; and that the Committee meant to indicate that the acts of treatment must be absolutely unequivocal and not by possibility referable to any other relationship than that of a son. But this argument puts a strained and unnatural construction on the words of the Committee. Their expression "general construction" clearly refers to the propriety of so construing the Act that it may apply to Mahomedans and others as well as Hindoos. The rest of the passage is only a statement in abstract form of circumstances which will clearly bring a case within Sub-section 4. In the sequel of the judgment they show that those circumstances exist in the case before them. There is nothing to show that the Committee intended to set up a standard to which all cases must conform, or that they demanded more demonstrative proof for this kind of question than for any other.

Their Lordships hold that whenever the evidence shows that a daughter's son has been treated by the talookdar in all respects as his own, it is sufficient to bring the case within Sub-section 4; that the question is one of fact, and must be tried and determined by the same methods as other questions of fact; and that it is very difficult, if not impossible, to lay down a test for such a question in terms less wide than those of the Act itself.

Their Lordships do not comment on the evidence in detail, because they think it important to maintain the general rule as to concurrent findings of fact. But as during the discussion their attention has been called to several points in the evidence, they think it right to add that nothing has been brought forward to induce them to think that the Courts below have taken any wrong view.

As regards the talook the appeal fails.

But Raza was possessed of other property not belonging to his talook, both moveable and immoveable. Ahmadi claimed the whole; and Umrao now claims that, whatever the decision as to the talook, the rights of the parties to the non-talookdari property should be dealt with in this appeal. It appears that by her plaint Ahmadi claimed the whole property in block as devolving to her by force of Sub-section 7 of the Oudh Estates Act, and by custom; that, being a Shiah and a childless widow, she was not entitled to any interest in the immoveables, and that in Court she did not press any claim to the moveables. What interests Umrao may have independently of Ahmadi is a question that has not been argued, because their Lordships are of opinion that the revived Appeal is confined to the question raised between Ahmadi and Sajjad with regard to the talook.

On Ahmadi's death Umrao, being in the line of succession, applied to the Judicial Commissioner of Oudh to be allowed to revive and prosecute the appeal. That learned Judge felt difficulty in acceding to her application, but directed the proceedings to be forwarded to the Registrar of the Privy Council as a Supplementary Record. Umrao then applied to Her Majesty in Council for an order of revivor and substitution. Their Lordships also felt difficulty, and in fact the case is peculiar and novel. But it appeared to them that the question of Sajjad's status must be settled, even if it should only affect the past income; that it would be simpler and less expensive to try it by the existing Appeal than by a new suit; and that the Oudh Estates Act so far created a unity of interest between the persons in the line of succession as to justify the substitution, at least in such a case as this, of the more remote

claimant for the nearer one. The application was not heard *ex parte*. Mr. Branson appeared for the Respondents, and agreed that the substitution of Umrao would be more beneficial to them. The order therefore was made at the wish of both parties. But nothing was said in the petition or at the bar about non-talookdari property; the reasons for the revivor apply only to the talook; and it would obviously be improper and dangerous to allow Umrao to use the position she has obtained as the substitute of Ahmadi for the purpose of advancing her personal claims. Whatever claims Umrao has against any part of the estate, she must enforce by suit on her own behalf. The present appeal wholly fails and their Lordships will humbly advise Her Majesty to dismiss it with costs.