

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
E. O. Muthuswami Mudaliyar and others v.
Sunambedu Muthukumaraswami Mudaliyar,
from the High Court of Judicature at Madras;
delivered 9th May 1896.*

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The question in this appeal is one of pure law, relating to the inheritance of a Hindoo gentleman who died in the year 1879. No facts are in dispute. He had no issue except a daughter who died without issue in 1883; his widow who became his heir died in 1888; at that time, when his inheritance opened, he had no collateral relatives of the same gotra with himself; both parties claim as Bhandhus or cognates; the Plaintiffs are the deceased's first cousins once removed, being sons of his father's father's sister; the Defendants claim under a half-brother of the deceased's mother.

The text of the Mitakshara which governs the question raised on these facts (Cap. II., Section 6) is, as translated by Colebrooke, as follows:—

“ ‘ On failure of *gotrajas* the *bhandhus* are heirs. *Bhandhus*
“ ‘ are of three kinds, related to the person himself [*atma*
“ ‘ *bhandhu*] to his father [*pitri-bhandhu*] or to his mother
“ ‘ [*matri bhandhu*] as is declared by the following text:—The
“ ‘ sons of his own father's sister, the sons of his own mother's
“ ‘ sister and the sons of his own maternal uncle must be con-

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“ ‘sidered his *atma bhandhus*. The sons of his father's paternal
 “ ‘ aunt, the sons of his father's maternal aunt and the sons of
 “ ‘ his father's maternal uncle must be reckoned as his *pitri*
 “ ‘ *bhandhus*. The sons of his mother's paternal aunt, the
 “ ‘ sons of his mother's maternal aunt and the sons of his
 “ ‘ mother's maternal uncle must be reckoned as his *matri*
 “ ‘ *bhandhus*.’ ”

The commentator then says in the next
 verse :—

“ ‘Here by reason of near affinity the *bhandhus* of the
 “ ‘ deceased himself [his *atma bhandhus*] are his successors
 “ ‘ in the first instance: *on failure of them*, his father's
 “ ‘ *bhandhus* (*pitri bhandhus*) or if there be none, his mother's
 “ ‘ *bhandhus* [*matri bhandhus*].’ ”

The Plaintiffs, being the sons of the paternal
 aunt of the deceased's father, are expressly
 mentioned as falling within the second kind of
bhandhus who cannot succeed until after failure
 of the first kind. They are therefore reduced to
 contend that the quoted text contains an ex-
 haustive list of *bhandhu* successors, and that as
 the deceased's maternal uncle is not mentioned
 in it he cannot succeed. Both Courts below have
 decided against that contention.

Their Lordships do not think it necessary
 to discuss the fanciful suggestion made in the
 Courts below and refuted there with much care
 and learning, to the effect that the quoted text
 is addressed to religious ceremonies of purifica-
 tion rather than to positive rules of succession.
 To whatever extent rules of succession may have
 been founded on religious observances, or may
 now be explained by them, it is clear that fixed
 rules of law for successions have been established
 for ages, and equally clear that the *Mitakshara*
 professes to express such rules in the quoted
 text. Taking it to mean what it says, the
 question is whether its omission to mention a
 maternal uncle signifies that he is excluded from
 the first class of *Bhandhus*, or whether the writer
 is not rather classifying by sample without
 attempting to specify every member of each
 class.

Their Lordships are of opinion that even if the quoted text stood alone the only admissible construction would be the latter one; for no rational ground can be assigned for excluding the maternal uncle of the deceased while his more remotely allied sons are admitted to succeed. But in fact the text does not stand alone, and whatever difficulty might at one time have been felt in applying it has now been removed by judicial decision.

In the case *Gridhari Lall Roy v. The Bengal Government* reported 12 Moo. Ind. App. p. 448 the person claiming to be heir was the maternal uncle of the deceased's father. The High Court of Calcutta decided against his claim on the ground that he was omitted from the quoted text. On appeal, this Board referred to a passage in the *Mitakshara*, which is not translated by Colebrooke, but which was translated and used for the purpose of that suit. In that passage, which deals with the property of a trader dying abroad, his maternal uncle is included among Bhandhus capable of succeeding, though the order of succession is not there stated. The Board also referred to a passage of the *Viromitrodaya* as a work of high authority at Benares and properly receivable to explain things left doubtful by the *Mitakshara*. That passage states that maternal uncles are to be comprehended in the quoted text; noting how objectionable it would be to exclude them while admitting their sons. This Board held that a grand-uncle fell within the same reasoning, and upheld the Plaintiffs' title.

It is true that in that case the dispute was between the person claiming as heir and the Crown claiming as in default of heirs. But the grounds of the judgment apply equally to questions between nearer and more remote Bhandhus. The decision is precisely in point, and as it

entirely commands the assent of their Lordships, they examine this question no further.

The only other question raised is whether a mother's brother by the half-blood stands on the same footing as an uterine brother. This point also is decided in the Courts below against the Plaintiffs on grounds in which their Lordships entirely concur. A half-brother may be postponed to an uterine brother; but there does not appear to be any authority, and certainly there is no reason for holding that he should be postponed to more remote kinsmen. In fact the point was not pressed by the Appellants' Counsel at this bar.

The result is that their Lordships will humbly advise Her Majesty to dismiss this appeal, and the Appellants must pay the costs.
