Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Roshan Singh v. *Balwant Singh, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 28th November* 1899.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.
MR. ROBERTSON.

[*Delivered by Lord Hobhouse.*]

The Defendant in the original suit, now Respondent, is in possession of the Husain Talook by virtue of a mortgage effected in the year 1838 by the Talookdar Narain Singh. The Plaintiff seeks to redeem the property. The Subordinate Judge decreed redemption on payment of Rs. 51,000 and interest to date of payment. The High Court reversed that decree and dismissed the suit.

The Plaintiff is the son of Bhoj Singh who was son of Indarjit and first cousin once removed of Narain; the common ancestor of the two being Mittar Singh the grandfather of Narain and the great-grandfather of Bhoj. The Plaintiff first claimed title as a co-sharer in the estate; but he failed in that claim because his father Bhoj was not the legitimate son of Indarjit. The

Plaintiff still claims to redeem on the ground that he is entitled to maintenance out of the estate; which, as he contends, is a charge or interest carrying with it the right to redeem within the terms of the Transfer of Property Act 1882. This position he seeks to establish in two ways. First, he alleges a title by contract with the widows and heirs of Narain. Secondly, he contends that Bhoj, though excluded from inheritance, was entitled to maintenance from the estate, and that Bhoj's title has descended to himself.

The contract with the widows is contained in a declaration by them dated 20th August 1850 (Rec., p. 40). It appears that Bhoj had sued to recover the whole estate from them, that his suit had been dismissed by the Sudder Ameen, and that he had appealed to the Sudder Dewani Adawlut. The operative part of the declaration is as follows:—

"Now through fear of ruining the ancestral "estate he came on the right path, and of his own "free will and accord came to us and so we are "also pleased with him. We therefore declare "in writing that we shall continue to pay "Rs. 457 from the malikana dues to the said "Kuar without objection after taking possession "of the said villages under the settlement pro- "ceeding, as the same was paid for maintenance "to the forefathers of the said Kuar by the "Raja, masnad-nashin of this family."

Four days later Bhoj executed a deed of relinquishment in which he withdrew his appeal and stated "In fact the Appellant has no right "except to the malikana dues of village Allah- "dinpur which was formerly granted to his "grandfather Sanwant Singh by Raja Narain "Singh."

From these documents the Subordinate Judge deduces the conclusion that the widows of

Narain, in whom a widow's estate was then vested, granted, or agreed to continue, a malikana allowance, which was charged on the estate in favour of Bhoj and on his death descended to the Plaintiff. But there is no such agreement. What virtue there might be in the word 'malikana,' or in the thing signified, we need not discuss; for the widows do not profess to vest or to recognise any malikana right in Bhoj. There is nothing in the Record to show any malikana right in anybody but the widows except the indirect assertion of Bhoj himself that malikana dues over one of the 43 villages for which he was suing had been granted to his grandfather. The malikana dues of the estate belonged to the widows subject to the mortgage by Narain. They were not in possession. All they undertake is that when they get possession they will out of the malikana dues so recovered pay Rs. 457 a year to Bhoj, as the same was paid to his forefathers. In point of fact the agreement has been wholly ineffectual, because the widows, who have now been dead for many years, never got possession at all. But if they had, they only agreed to make a money payment to Bhoj personally, and they did nothing to create a heritable interest in him or any charge on the inheritance.

The more general question of law raised by the Plaintiff relates to the position of the offspring of an illegitimate son. The family belongs to one of the twice-born classes. Among them an illegitimate son takes no part of the inheritance; but he is entitled to maintenance from the estate of his father. This law is found in Sections 11 and 12 of Cap. I. of the Mitakshara. In par. 3 of Sec. 12 it is thus stated "It follows "that the son begotten by a man of a regenerate "tribe on a female slave does not obtain a share ". . . but if he be docile he receives a simple "maintenance." There is no reason to think

that this effect of illegitimacy differed according to the particular mode of it; and the more general statement applying to illegitimacy generally which their Lordships have just made is embodied in the judgment of this Board in *Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn* reported in 7 Moore's Indian Appeals, pp. 50, 53.

The Subordinate Judge, whose opinion has been supported at this Bar in an able argument by Sir Wm. Rattigan, reasons thus. He states the rule that illegitimate sons of a Hindoo are entitled to maintenance out of their father's estate. He then continues "Bhoj Singh was "entitled to maintenance out of the estate held "by Narain Singh, not because of his relationship "with Narain Singh, but because he was a son "of Indarjit Singh, who in his turn had a share "in the estate. I have therefore no doubt that "as the estate was joint family property of the "descendants of Mittar Singh, among whom "Bhoj Singh was one, the latter as such member, "though of illegitimate descent, was entitled to "be maintained out of the estate."

It seems to their Lordships that this reasoning leaves the difficulty of the Plaintiff's case wholly untouched. Conceding that Bhoj could claim maintenance as against Narain, the question is whether he could transmit that claim to his son. Indarjit, we are told, had a share in the family estate. Bhoj then had a right to maintenance out of Indarjit's estate including that share. But Bhoj had no share in the family estate out of which the Plaintiff could be maintained; therefore the Plaintiff's right to be maintained out of his father's estate does not place him in the same relation to the family estate as Bhoj derived from his right in respect of Indarjit's estate.

On this point the High Court, speaking of Bhoj's right, say "No authority has been shown

" to us for holding that this is anything but a " personal right." Neither has any been shown to their Lordships. Sir Wm. Rattigan cited a case from Madras High Court Reports Vol. I. p. 478, *Pandaiya Telaver and another* v. *Puli Telaver and others*, which he contended was a direct authority in his favour. But the question there was whether an illegitimate daughter entitled to maintenance out of her father's estate was so far a member of his family as to make a marriage with her a lawful marriage; and the Court held that she was. Whether right or wrong, that decision has no bearing on the question whether a right to be maintained, vested in one who cannot inherit, is itself a heritable right. The Plaintiff's proposition does not appear to follow from the expression in the Mitakshara which says that the illegitimate son "if he be docile, receives a " simple maintenance." On the contrary that passage is more consistent with a purely personal right; and there is no authority either of texts or of decisions to contravene the obvious meaning.

The Plaintiff would also, before he could succeed, have to show that a claim for maintenance, not founded on contract or decree, is an interest in or charge upon the property within the meaning of the Transfer of Property Act. The High Court think it is not. The point has been much discussed at the Bar, but no authority has been produced either way. As the principle on which their Lordships have expressed their concurrence with the High Court goes to the root of the Plaintiff's title to maintain this suit, it is not necessary for them to decide the second point. They will humbly advise Her Majesty to dismiss the Appeal. The Appellant must pay the costs.