Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sheo Pertab Bahadur Singh v. *The Allahabad Bank, Limited, and Another, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered the 24th June* 1903.

Present at the Hearing:
LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

On the 14th November 1881 Janki Koer, a Hindu lady governed by the Hindu law of the Benares School, executed a mortgage deed in favour of the present Respondents, the Allahabad Bank, by which she purported to charge, first, her Zemindari Pawansi, and secondly, in case Pawansi should be insufficient, another property, to secure the repayment by instalments of a sum advanced by the Bank, with interest.

Janki Koer having died in the meantime, the Bank on the 19th February 1894 filed a suit in the Court of the Subordinate Judge of Pertabgarh to enforce the mortgage deed. A number of persons were made Defendants to the suit, but of these it is only necessary now to mention the first Defendant, the present Appellant, Sheo Pertab Bahadur Singh, who had succeeded to the Zemindari of Pawansi on the death of Janki Koer, and who is now in possession of it. The plaint alleged that he was the

27062. 125.—6/1903. [43] A

heir of Janki Koer. The present Appellant in his written statement said that Janki Koer held Pawansi as a Hindu daughter, without power of alienation, that he himself was not Janki's representative, and that no transfer by her could affect him. Issues were settled, of which it is sufficient to to mention the 6th: "Was Rani Janki Koer competent to mortgage taluqa Pawansi in such a way as to make it binding beyond her lifetime?"

The history of Pawansi, so far as it is necessary to notice it, is this. At the time of the annexation of Oudh, in which it lies, Kablas Koer, the mother of Janki, was in possession of it. The summary settlement was made with her, a sanad was granted to her, and she was entered in lists 1 and 2 under Section 8 of the Oudh Estates Act, 1869 (Act 1 of 1869). After her death in August 1872 disputes arose as to the succession to her property, and litigation ensued, which ended in a judgment of this Committee, by which it was decided that Kablas Koer had taken a permanent heritable and transferable right in Pawansi, and that on her death it had passed to her daughter and only child Janki; *Brij Indar Bahadur Singh* v. *Ranee Janki Koer*, 5 I. A. 1.

After the death of Janki Koer, controversy again arose as to the succession, and again the litigation was carried to this Committee; *Jagdish Bahadur* v. *Sheo Partab Singh*, 28 I. A. 100. In that litigation no one claimed to be entitled as stridhan heir of Janki. The suit was framed upon the assumption that upon the death of Janki the property did not pass to any heir of hers, but reverted to the heirs of an earlier generation. In the Judgment it is said (at p. 106):—"It is not disputed that the succes-"sion must be to the heirs of her (Janki's) "father," presumably as the stridhan heirs of her mother in the absence of lineal heirs of the latter.

The question then which their Lordships have to decide is whether Janki Koer had power to mortgage Pawansi absolutely, or whether her power to do so was limited to her own lifetime?

The case for the Plaintiff Bank was put upon two grounds:—First, that under the Oudh Estates Act of 1869 Janki Koer, as heir of a taluqdar or grantee, had express statutory power to alienate the whole estate, whatever the extent of her own interest might be; secondly, that apart from the Act, under the Hindu law of the Benares School, she having inherited what had been her mother's stridhan, held it as her own stridhan with full power of alienation. The Subordinate Judge decided in favour of the Plaintiff Bank, the now Respondent, upon both grounds, and made a decree in its favour. The Judicial Commissioners on appeal expressed no opinion upon the first question, but on the second question agreed with the First Court and affirmed its decree. Against this decision the present Appellant alone has appealed, and the Appeal therefore relates only to Pawansi.

With regard to the first question, there can be no doubt that Kablas Koer, the mother of Janki, was a taluqdar or grantee under Act I. of 1869, and the portions of the Act material to the present question are:—

"Section 2.—'Estate' means the taluqa or "immoveable property acquired or held by "a taluqdar or grantee. . . .

"'Heir' means a person who inherits property "otherwise than as a widow under the "special provisions of this Act.

"Section 11.—Subject to the provisions of this "Act and to all the conditions under which "the estate was conferred by the British "Government, every taluqdar and grantee, "and every heir and legatee of a taluqdar "and grantee, of sound mind and not a

"minor, shall be competent to transfer the "whole or any portion of his estate, or of "his right and interest therein, during his "lifetime, by sale, exchange, mortgage, "lease, or gift, and to bequeath by his will "to any person the whole or any portion of "such estate, right, and interest."

The contention was that every heir, whether absolute or qualified, of a taluqdar or grantee (and it would seem to follow, every legatee, however limited his interest) has an absolute power to alienate the whole estate. If Section 11 had stood alone the question would hardly have been arguable. A power to an heir to alienate "his "estate or his right and interest therein" would certainly have meant his estate, if he owned the estate, or his right and interest therein, if he owned less than the estate. But the argument was based upon the words "otherwise than as a "widow" in the definition of an heir. It was argued that the insertion of these words indicated an intention to give to all heirs other than widows some power which widows do not possess. It is useless to speculate why the words referred to were inserted in the definition; but their Lordships think that much clearer language would have to be shown to justify them in saying that the Legislature has departed so far from the ordinary principles of law as to empower people to alienate what may not belong to them. And the decisions of this Committee in former cases seem to lend support to this rather than to the contrary view. In a series of cases it has been held that, notwithstanding the strong language of the Act, and in particular the enactment in Section 10 that the Courts are to accept the lists framed under the Act as conclusive that the persons included in them are taluqdars or grantees, and those of Section 11, the Courts may nevertheless go behind the Act to the extent

at least of recognising trusts, and may give effect to beneficial titles distinct from the statutory title under the Act. It may be sufficient to refer to *Hurpurshad* v. *Sheo Dyal*, 3 I.A. 259; and *Seth Jaidial* v. *Seth Sita Ram*, 8 I.A. 215. From what was said in the last mentioned case (at p. 228) it would appear that, if the facts had been such as to require it, their Lordships would have granted an injunction restraining a taluqdar recorded as such under the Act from attempting to alienate the estate to the detriment of those beneficially interested.

The question which remains is whether, apart from the provisions of the Act, Janki, being governed by the Hindu law of the Benares School, had power to alienate absolutely the taluqa of Pawansi which she had inherited from her mother. The question thus arising is not the same question as that with which their Lordships had to deal in the case of *Sheo Shankar Lal* v. *Debi Sahai*, in which judgment has just been delivered, but it is very closely connected with it. Each case has to do with the estate of a woman under Benares law in property inherited from a woman. The former case referred to the descent of such property; the present raises the question whether it is the absolute property of the last holder in such a sense that, apart from any grounds of necessity, she could alienate it beyond her lifetime.

In the present case their Lordships have had the advantage of hearing a full argument upon both sides. The argument for the Appellant was to the effect that the alleged power of the lady to alienate in the present case could be based only upon the literal interpretation of the Mitacshara, which seems to make all property inherited by a woman her stridhan in the strict sense of the term with all the incidents of such property, including the free power of alienation; that that

view of the Benares law had already been negatived by this Committee in the case of property inherited from a male; that inheritance from males and that from females could not be differently treated; and that the authorities in most parts of India were to the effect that what a woman has inherited from a woman she does not hold as her absolute and alienable estate, but for a qualified estate, with reverter after her death to the heirs of her predecessor in title. The argument on the other side was based strictly upon the text of the Mitacshara; but it was contended that a distinction should properly be drawn between property inherited from males and that inherited from females; and an endeavour was made to show that the decisions in various provinces in India applying the doctrine of reverter to such cases were wrong.

On the present point, as on that arising in the previous case, it is too late to contend for the literal meaning of the Mitacshara to the full extent. The previous decisions of this Committee have established that, under the Benares law, what a woman takes by inheritance from a male she takes not absolutely, but for a qualified estate alienable only under the conditions applicable to such an estate.

The reasons given by their Lordships in the Judgment just delivered for declining to draw a distinction between property inherited from a male and that inherited from a female seem to them to apply to the present case. As to the argument directed against the application of the doctrine of reverter in such cases as the present, their Lordships are of opinion that that doctrine is too well established in India generally to be now overthrown. The question may be different in those parts of Bombay which are governed by the Mayukha. An exact examination of the terms of that

treatise seems to have led to some diversities of view in the Bombay High Court, which need not now be considered.

Their Lordships will humbly advise His Majesty that the Decree of the Subordinate Judge and that of the Judicial Commissioners ought to be set aside so far as they affect the property of the present Appellant, and that instead thereof the suit ought to that extent to be dismissed with costs in both Courts. The Respondent Bank will pay the costs of this Appeal.