Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakurain Jaipal Kunwar and another v. *Bhaiya Indar Bahadur Singh, from the Court of the Judicial Commissioner of Oudh; delivered the 25th February* 1904.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal against a decree of the Court of the Judicial Commissioner of Oudh, which so far as is now material affirmed the decree of the Subordinate Judge of Bahraich. The point raised is a short one. Indarjit Singh died on the 4th June 1877, possessed of the taluka of Mustafabad, a taluka governed by the Oudh Estates Act (I. of 1869). He left three widows, and under Section 22 (7) of that Act the first Appellant as the first married of the widows succeeded to the taluka; the other widows have since died. On the 25th December 1896 the first Appellant executed a will by which she purported to declare the second Appellant, who is her sister's son, as her heir and successor to the estate; and this will was registered on the 2nd January 1897.

The Respondent filed the present suit against the Appellants in the Court of the Subordinate Judge of Bahraich. He alleged himself to be the next reversionary heir to the estate, and he

set out the pedigree upon which he based his claim to that character. He stated the will of the first Appellant, and his contention that it was invalid for the purpose of transferring the estate, and he asked for a declaratory decree to that effect.

The Appellants by their joint written statement denied that Indarjit died intestate, and denied that the first Appellant was in possession as a Hindu widow. They submitted that the mere execution of a will did not give the Respondent a cause of action to obtain a declaratory decree. They traversed in detail the Respondent's pedigree. And they alleged that the first Appellant was absolute owner of the estate under an oral will of her husband. On all the points thus raised issues were settled. At the trial the evidence was mainly directed to the proof of the Respondent's character as next reversionary heir. The Subordinate Judge found the necessary issues in the Respondent's favour, and granted a declaratory decree as prayed; and that decree was affirmed on appeal by the Court of the Judicial Commissioner.

In both the Courts in India it was realised that under Section 42 of the Specific Relief Act, 1877, a claim to a declaratory decree is not a matter of right, but that it rests with the judicial discretion of the Courts; both Courts, however, held that in the exercise of their discretion in the present case the decree ought to be made. The only point raised by the present Appeal is that the Courts in India exercised their discretion improperly.

Act No. I. of 1877.

Their Lordships would guard against being thought to lay down that the execution of a will by a limited owner, such as a Hindu widow, as a general rule, affords a sufficient reason for granting a declaratory decree. They are not prepared to concur in all the reasoning of the

learned Judges in the present case. And if they had been sitting as a Court of First Instance they would have felt no little hesitation before making the decree that has been made.

But their Lordships are always slow to reverse the decisions of Courts below made in the deliberate exercise of a discretion entrusted to them by law. And in the present case there are special reasons why they should hesitate before so interfering at the instance of the present Appellants. The will of the first Appellant, taken by itself, left it open to doubt on what ground she relied in what she was doing. But when the Appellants came to file their written statement, and thereby to define their position and put their own interpretation upon what had gone before, there was no ambiguity left. It was made clear that they relied upon an alleged title in the first Appellant inconsistent with any present or future rights of the Respondent or any other reversionary heir. And, further, the Appellants have no legitimate interest in this Appeal except in respect of costs; and it is clear that the costs which have been incurred have been caused by the course taken by them throughout the case.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Respondent not having appeared, there will be no order as to costs.

In order to guard against any possible misapprehension hereafter their Lordships think it well to point out that, although in the present case issues have necessarily been raised and decided as to the position of the Respondent as next reversionary heir to the taluka, those issues have been raised and decided only between the parties to the suit, and that whenever the inheritance opens by the death of the widow the present decision will have settled nothing as to who should succeed.