Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Rani Chandra Kunwar alias *Rani Chandeli* v. *Chaudhri Narpat Singh and others; and of Rani Chandra Kunwar* alias *Rani Chandeli* v. *Raja Makund Singh, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the* 14*th December* 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

The two suits out of which these consolidated Appeals arise were brought to recover from the Appellant possession of certain zemindari property, consisting of villages and gardens situate in the district of Budaun.

In one of these suits (No. 129 of 1899) Raja Makund Singh was the sole Plaintiff, while in the second (No. 128 of 1899), certain persons to whom it was alleged he had purported to sell and convey the property sought to be recovered in that suit were the Plaintiffs, and Makund Singh was joined as a *pro formâ* Defendant. The evidence was taken in the second of these suits, but as the questions arising in both suits were practically identical, they were tried together and the evidence taken in one was, by arrangement between the parties, treated as having been taken in both and used for the purposes of both.

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The property in dispute formerly belonged to Raja Sher Singh, a Raja of the State of Jaipur, who died many years ago, and in the events which have happened came by descent to Raja Partab Singh, his grandson, who died on the 26th of July 1898, leaving his widow him surviving. She is still alive. Raja Partab Singh was the youngest of three brothers. Both his elder brothers predeceased him. The eldest, Kishun Singh, the survivor of the two, died in 1873. At that date Partab Singh was 48 years old. The Plaintiff Makund Singh claimed to be the lawfully begotten son of Partab Singh, and to have inherited from his father the property sought to be recovered in the two actions. This was the sole title on which he relied. His age was disputed, the Defendants asserting that he was 10 years old in 1873, and the Plaintiffs that he was then 13 years of age. Several defences were filed in both suits, in which it was alleged (amongst other things) that Partab Singh was not the father of Makund Singh. Upon these pleadings certain issues were framed, with the first of which their Lordships have alone to deal, since it is that on which the decisions appealed from were alone rested. This first issue ran as follows:—

"Is Raja Partab Singh a son of Pran Kunwar, and is "Raja Makund Singh a son of Raja Partab Singh?"

It was found, and is not now disputed, that Partab Singh was the son of Pran Kunwar, the eldest daughter of Raja Sher Singh. It is upon the second branch of the issue that the controversy in the case arises. The Judges of the High Court have found that Partab Singh was the natural father of Makund Singh, and their Lordships see no reason to disturb their finding on that point. Under the Hindu law, however, a man who has been adopted

ceases by virtue of that adoption to be regarded as the son of his natural father, and becomes for the purpose of inheritance or succession the son of his adoptive father. And accordingly in the course of the litigation in the Court of the Subordinate Judge the Defendant at an early stage, without protest or objection on the part of the Plaintiffs, made the case that Makund Singh had been adopted by Kishun Singh. Deeds under the hands of Makund Singh and his father Partab Singh containing express statements to that effect were given in evidence by the Defendant. Questions directed more or less pointedly to the matter were addressed to the Plaintiffs' witnesses. Evidence was given by and on behalf of Makund Singh to explain away the admissions contained in those instruments and to account, if possible, for the fact that on the death of Kishun Singh Makund Singh had been put forward as his successor. No suggestion was made on behalf of the Plaintiffs that they were taken by surprise. No application was made that the pleadings should be amended, a new issue framed, or the hearing adjourned. In order that the Plaintiffs should succeed in these cases it was essential that it should be found in their favour (1) that Makund Singh was the natural son of Partab Singh, and (2) that he had not been adopted by Kishun Singh. From the passage in the Judgment of the Subordinate Judge (at the foot of page 98 in the second Record of Proceedings) it is quite clear that he considered that both these questions were before him for decison. His words were—

> "The Plaintiffs must then produce unimpeachable evidence "to prove their allegation that Raja Makund Singh is a son "of Raja Partab Singh, and, if so, he had not ceased to be so "by having been adopted by Raja Kishun Singh."

He does not appear, however, to have come to a definite decision on either of these points, but merely to have arrived at the conclusion

that the evidence before him did not amount to satisfactory proof that Makund Singh was the natural son of Partab Singh. The Judges of the High Court, on the other hand, found, as has been already stated, that Makund Singh was the natural son of Partab Singh, and although they considered that "the question of adoption was "never properly in issue between the parties," yet, on the assumption that it was, held—

"That the Defendant had wholly failed to satisfy the onus "which lay upon her of proving the adoption."

It is to be regretted that a definite issue was not framed upon this point, and the matter thus put beyond all controversy. But that course never seems to have been suggested at any stage of the proceedings by any of the persons concerned.

The suits were commenced on 23rd September 1899. On the 30th November 1899 and 1st December 1899 respectively the issues were framed. The cases came on for hearing on the 30th November 1900. The arguments were concluded on the 1st December 1900, and Judgment was delivered and decrees pronounced by the Subordinate Judge on the 12th December. Evidence was taken by commission and the witnesses examined by interrogatories at Alwar on the 29th January 1900, at Agra on the 5th November 1900, and the Plaintiff Makund Singh at Delhi on the 16th October 1900. Other witnesses were examined in the Court of the Subordinate Judge at the hearing.

On the 30th November 1899 there was filed in Court on behalf of the Defendant a list of documents, one of which is described as a copy of a deed of gift dated the 25th of June 1892, duly executed by Partab Singh and Makund Singh, in which the latter is stated to be the "adopted son of Raja Kishun Singh, *raïs* of "Patan, in the Sewai Jaipur State." And

on the 14th of May 1900 a second list of documents was in like manner filed on behalf of the Defendant. One of the documents in this second list is described as a copy of a power of attorney, dated the 10th of June 1891, duly executed by Partab Singh and Makund Singh, in which the latter is similarly described, and in the body of the deed specifically stated to be the Ruler of Patan. The object for which the first document was to be given in evidence was stated to be—

"To prove that Makund Singh is not the son of Partab "Singh, and that he did not mention himself in this document "to be the son of Partab Singh."

And the object for which the second deed was proposed to be given in evidence was in like manner stated to be—

"To show that Raja Makund Singh is the adopted son of "Raja Kishun Singh, and that in this *mukhtarnama* (power of "attorney) Raja Makund Singh has described himself as the "adopted son of Kishan Singh."

There can be no ground therefore for the suggestion that the Plaintiffs were not fully informed that this question of adoption would be raised, and that one, if not both, of these documents, would be relied upon to prove the admissions of Makund Singh upon this question of adoption contained in them. This indeed was the only purpose for which they could have been given in evidence in these suits. One witness examined on behalf of the Plaintiffs, Gur Dhan Singhji, was, on the 29th of January 1900, pointedly cross-examined as to this deed of gift.

On the 16th of October 1900, many months afterwards, Makund Singh was himself examined by interrogatories. In the seventh interrogatory he is asked—

"What relation do you bear to Raja Kishun Singh, and "how did you receive his property?"

Answer :—

"Raja Kishun Singh was my *Taya* (father's elder brother). "On his death he left no descendant, and his property devolved "on my father. As my father was an old man, he of his own "accord installed me on the *gaddi* of the *riyasat*."

And on cross-examination he deposed—

"Raja Kishun Singh died in '30 Sambat. The title of "Raja held by him was received by me. This title has not been "given by any one. It is a hereditary one. After (the death "of) Raja Kishun Singh, I was installed on the *gaddi* with "the consent of my father. Before this Jamna Lal, Pleader, "examined me by means of commission. I stated in that "deposition that after the death of Kishun Singh I received "his estate by right of inheritance, *i.e.*, it came to my family. "By this statement I meant that my father received it, and "that I received it with his consent. I do not remember "now whether I stated in that deposition that Raja Partab "Singh installed me."

To the Pleader for the Plaintiff:—"I was not asked "plainly whether that property was received by Partab Singh "or by me."

On the 5th December 1900, after the arguments in the case had concluded and before Judgment was delivered, the pleaders of the Plaintiffs made an application to the Court of the Subordinate Judge that the reason given in the argument why Makund Singh described himself in the deed of gift and power of attorney as the adopted son of Kishun Singh should be reduced into writing and recorded, that reason being that—

"The Patan Raj was in the name of Raja Kishun Singh, "that Raja Makund Singh was mentioned as his adopted son, "so that he might be installed on the *raj gaddi*, and that at the "time of installation, a *nazrana* (present) is paid to the "Jaipur Raj as a token of mourning. After the death of "Kishun Singh, Makund Singh was installed on the *gaddi* to "make a saving in the payment of the *nazrana*; for once it "would have to be paid at the time of installation of Raja "Partab Singh after the death of Raja Kishun Singh, and "again at the time of installation of Makund Singh after the "death of Raja Partab Singh. As Makund Singh was "proclaimed an adopted son at the time of installation, he was "written as such in the documents."

This was accordingly done, but no proof whatever was given that the custom of giving *nazrana* on the occasion of installations

to a *Raj Gaddi* prevailed in the State of Jaipur, or that a *nazrana* had, in fact, been paid on the occasion of Makund Singh's installation. Moreover, this explanation put forward at the last moment was not alluded to, directly or indirectly, by any of the witnesses examined in the case, and is quite inconsistent with the evidence of Makund Singh himself above set forth. It is, in addition, the second explanation, not the first, and is in direct conflict with that which preceded it. The first explanation is deposed to by more than one of the witnesses examined on behalf of the Plaintiffs, but is set forth more fully in the evidence of Pandit Ram Kunwar, who was examined at Agra on the 5th November 1900, than in that of any others. In answer to the seventh interrogatory addressed to him, he deposed—

"Maharaja Partab Singh had a right of inheritance after "the death of Raja Kishan Singh. But he subsequently "thought that as he was advanced in years he might perhaps "also die. This led him to give the whole of the property to "Makund Singh. Makund Singh was the managing member "of the families of Raja Kishan Singh and Partap Singh. "There was no other managing member. It was for this "reason that the property was given to him."

As at the date of Kishun Singh's death Partab Singh was only 48 years of age and Makund Singh at most 13 and possibly only 10 years of age, this explanation was not only incredible but absurd. It was therefore not unnaturally deemed advisable to suggest another. And accordingly the economical reason—the desire to escape a double tax, the giving of *nazrana* twice over—was at the last moment put forward in argument and subsequently solemnly recorded.

On the materials before their Lordships the broad and undisputed facts of these cases appear to be—

(1.) That the Plaintiff Makund Singh more than once under his hand and seal stated that he

was the adopted son of Kishun Singh, which statement was in effect an admission that he had no title to the lands he sought to recover in these actions.

(2.) That at the death of Kishun Singh Makund Singh was treated as the former's adopted son, and in that character, and by that right, installed in the Raj Gaddi.

(3.) That according to the evidence of three at least of the Plaintiffs' witnesses, on the death of Kishun Singh, Makund Singh entered into the possession and enjoyment of the former's property.

(4.) That two different and inconsistent explanations have been put forward by the Plaintiffs to account for the admission contained in the deeds, as well as for the action taken by the parties concerned after the death of Kishun Singh, one of which explanations is absurd and the other, in its most important parts, unproven.

The learned Chief Justice in his Judgment points out that the burden of proving that the adoption relied upon took place, rests on the Defendant. That is undoubtedly so, but it is difficult to conceive how she could, as against Makund Singh—*primâ facie* at all events—discharge that burden more effectually than by proving his solemn statement under hand and seal that it did take place. The proof of this admission shifts the burden, because, as against the party making it, as Baron Parke says in *Slatterie* v. *Pooley* (6 M. and W. 664, at p. 669), "What a party himself admits to "be true may reasonably be presumed to be "so." No doubt, in a case such as this, where the Defendant is not a party to the deeds, and there is therefore no estoppel, the party making the admission may give evidence to rebut this presumption, but unless and until that is satisfactorily done, the fact admitted must be taken to be established. The law upon

the point is clear. In *Heane* v. *Rogers* (9 B. and C. 577, at p. 586), Bayley J. in delivering the Judgment of the Court lays it down that—

> "There is no doubt but that the express admissions of a "party to the suit, or admissions implied from his conduct, are "evidence, and strong evidence against him; but we think he "is at liberty to prove that such admissions were mistaken or "were untrue, and is not estopped or concluded by them unless "another person has been induced by them to alter his "condition. In such a case the party is estopped from "disputing their truth as against that person (and those "claiming under him) and that transaction, but as to third "parties he is not bound."

In *Newton* v. *Liddiard* (12 Q.B. 926), Lord Denman approved and adopted this statement of the law, and *Ex parte Morgan*, *In re Simpson* (2 Ch. D. 72, at p. 89), and *Trinidad Asphalte Company* v. *Coryat* (1896, A. C. 587), in effect illustrate the same principle. There is here no suggestion of mistake. And the question for the decision of their Lordships in effect resolves itself into this: Has Makund Singh proved satisfactorily that the admissions contained in the deeds to which he was a party are untrue in fact? In the opinion of their Lord ships that question must be answered in the negative.

Their Lordships must therefore hold that on the materials before them the title of the Plaintiffs to recover has been disproved.

Mr. Ross, on behalf of the Plaintiffs, earnestly pressed that a specific issue on this question of adoption might now be framed, and submitted for trial to the Subordinate Judge. Their Lordships consider that, as matters now stand, this would be a most undesirable course, and they are unable to adopt it.

Their Lordships will therefore humbly advise His Majesty that the Appeals should be allowed, the decrees of the High Court set aside with

costs, and the decrees of the Subordinate Judge dismissing the actions restored.

The Respondents must pay the costs of the Appeals.