Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bhaiya Sher Bahadur v. *Bhaiya Ganga Bakhsh Singh and others, from the Court of the Judicial Commissioner of Oudh (P.C. Appeal No.* 25 *of* 1912) ; *delivered the* 10*th December* 1913.

PRESENT AT THE HEARING :

LORD ATKINSON.

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD ATKINSON.]

This is an Appeal from a judgment and decree dated the 26th February 1906 of the Court of the Judicial Commissioner of Oudh, which affirmed a judgment and decree dated the 3rd of January 1905, of the Court of the Subordinate Judge of Gonda, dismissing the Plaintiff's suit.

The action out of which the appeal arises was instituted on the 3rd of April 1902 by the Plaintiff as eldest son and heir of his father Jang Bahadur Singh, by a Mahomedan woman, claiming to recover the possession of the several villages mentioned in the schedule annexed to the Statement of Claim, same forming part of an estate called the Balrampur estate which had been bequeathed to the Plaintiff's father by his, the Plaintiff's, paternal grandfather, the Maharajah of Balrampur, by a codicil dated the 15th of March 1878 to the last will of the

Maharajah. Possession of these villages had been taken in the year 1899 by the first Defendant, and since then retained by him. Mesne profits were claimed in respect of this possession, and a claim was added to recover possession of the moveable and immoveable property mentioned in Schedules B and C, also annexed to the Statement of Claim, or in the alternative the Plaintiff's legal share thereof, on the ground that the same was property acquired by the Plaintiff's said father, with an additional claim for further relief.

The first Defendant, Bhaiya Ganga Bakhsh Singh, filed a written statement alleging that the Plaintiff was the issue of a Mahomedan woman with whom his the said Defendant's father, Jang Bahadur Singh, had had illegal intercourse, as were also the Defendants numbered 2, 3, and 4, and that her nikah had never taken place, that his father followed the Hindu religion bigottedly, and was a Hindu from his boyhood up to his death, that he married for the first time a Hindu lady of a Surajbansi Chhattri family, that the Defendant No. 1 was the only child of that marriage, is the only legitimate son and heir at law of his father, and is consequently under the provision of the said codicil entitled to the allowance therein mentioned.

The Plaintiff replied traversing the several allegations contained in this and the other written statements filed by other Defendants, and upon these pleadings the eight issues set forth at page 884 of the Record were knit. A vast body of evidence was given bearing upon each of these issues. Many of them are no longer of importance on this appeal, which is the ultimate stage of the litigation. The real questions now in dispute are first, the proper construction of the language of this codicil of the 15th of March 1878, and second

the actual intention which the Marharaja desired to effect in executing it.

The facts so far as material to the decision of these questions are as follows. The Plaintiff is the first-born son of his father, and the 2, 3, and 4 Defendants are his brothers, sons of Jang Bahadur Singh by the Mahomedan woman already mentioned. It has been found as a fact by both the Courts before which this case has come, that no ceremony of marriage was ever gone through between Jang Bahadur Singh and this woman, that she was his mistress not his wife, and that, consequently, the Plaintiff and his brothers are illegitimate. The Appellant accepts this finding as conclusive on this point. The first Defendant is the son of Jang Bahadur by a a Hindu lady of the Chhattri caste with whom he had, admittedly, gone through the ceremony of marriage according to the strict Hindu rite.

The validity of this marriage is impeached by the Plaintiff upon the ground that at the time it was celebrated Jang Bahadur was neither a Hindu nor a member of the Chhattri caste, and that consequently the first Defendant is, like the Plaintiff and his brothers, illegitimate. The issue thus raised necessitated a somewhat lengthy examination of the life history of Jang Bahadur. He was, as already mentioned, the son, born in the year 1846, of a rather distinguished man, a Hindu by religion of the Junwar Chhattri caste, Sir Drigbijai Singh, Maharaja of Balrampur, by a Mahomedan mistress named Imam Bandi, and was therefore, as held by both the Courts above-mentioned, a Mahomedan by birth. This decision is also accepted by the Appellant.

The Subordinate Judge, at page 945 of the Record, finds that "Jang Bahadur was brought " up, not as a Mahomedan under the influence of " his Mahomedan mother, but by his Hindu father " in the religion of Hindus." "That (page 956)

" he never professed the Mahomedan religion " and was never a Mahomedan in fact; that " *after he was able to make a choice* he did not " choose the religion of Islam, but on the other " hand lived and died in the faith of Hinduism " . . . . that he was throughout his life a " follower of the popular idolatrous form of " Hinduism, a form directly antagonistic to the " cardinal principles upon which the religion of " Islam is founded," " and he (the Judge) came to " the conclusion that as Jang Bahadur was never " throughout his life a Mahomedan, the Maho- " medan law did not regulate the succession to " his estate, and as he was not a Hindu by birth " neither did the Hindu law regulate it; that " (page 959) neither of these laws nor yet the " Indian Succession Act governed him at his " death, and that according to the principles of " justice, equity, and good conscience, and by the " application of so much of the Hindu law as was " applicable to the case, Ganga Basksh Singh, " the first Defendant, was his father's legitimate " son and sole heir."

The Court of the Judicial Commissioner, whilst abstaining from pronouncing any definite opinion on the legitimacy of the first Defendant, gave in the following passage of their judgment a sketch of the status, life, and character of Jang Bahadur Singh, which, though it differs to some extent from that of the Subordinate Judge, is, in their Lordships' view of the evidence, fairly accurate. It runs thus:

" Jang Bahadur belonged to no caste, and even if the " issue of his marriage with Hansraj Kunwar should be " held to be legitimate, a point on which I express no " opinion, it is clear that the Hindu community at Balram- " pur treated the validity of the marriage as open to " question. The Subordinate Judge has cited several " authorities to show that the Hindu religion admits prose- " lytes of all kinds. The truth of this is indisputable, but " it is equally true that the admission of a proselyte and his

"descendants into the society of orthodox Hindus is a very "slow process. The Defendant's witnesses hit off the "position exactly when they say that they might eat with "Jang Bahadur's family if they persevered in their Hindu "habits and maintained their character for several gener- "ations (*see* the evidence of Defendant's witnesses Nos. 9 "and 10). In two parts of one and the same house Jang "Bahadur had a Mohamedan and a Hindu family and seems "to have been on equally affectionate terms with both. He "ate food in English Hotels and Railway Refreshment "Rooms, drank gin and kept fowls and pigs. It is evident "that he was neither an orthodox Hindu nor an orthodox "Mohamedan. It appears to be that he led a double life as "was almost inevitable under the circumstances. He no "doubt called himself a Hindu, and if he had any religion it "was, as the Subordinate Judge says, the popular idolatrous "form of Hinduism, but he is not proved to have been an "orthodox Hindu and therefore it seems to me that if the "Plaintiff were found to be of legitimate birth the circum- "stance that his father became a Hindu to the extent shown "by the evidence would be no reason for passing over the "Plaintiff and giving the property to the first Defendant."

It has been urged on behalf of the Respondents that the Court of the Judicial Commissioner was mistaken on supposing that Jang Bahadur kept his two families in two sides of the same house, that, in truth and fact, he kept them in two different houses. This is really a small matter and does not affect the general accuracy of the passage.

A vast body of evidence was given describing in great detail the participation of Jang Bahadur Singh on many occasions in the most solemn rites and ceremonies of the Hindu religion. It was proved by many witnesses that he wore, somewhat ostentatiously, the Hindu tilak on his forehead, that he was invested by his father with the sacred thread, that he kept a Hindu cook to cook his food, &c. The fair result of the evidence in their Lordships' opinion is that Jang Bahadur did his utmost to become an orthodox Hindu, and to pass as such in the society in which he lived. That his father, from the boy's youth upwards, aided and encouraged him in those efforts; and,

finally, when he was only 15 years of age, procured a marriage to be celebrated with great pomp and rejoicing according to the strict Hindu rite between him and the already mentioned Hindu lady of the Chhattri caste, Hansraj Kunwar.

This lady's family were apparently not well off, and it was stated in evidence that the Maharajah gave to her brother Sheo Dial a village to induce him to consent to the union. This, however, only proves the anxiety of the Maharajah to bring about the marriage. No doubt the Maharajah did not attend the ceremony himself. He allowed certain priests to perform for him those ceremonies properly performable on such occasions by a father, but the marriage cannot but be regarded as a somewhat bold attempt to force, as far as possible, the son's entrance into the ranks of a high (twice born) caste, and it might well be that the father, as the Subordinate Judge thought, may have absented himself from the ceremony from motives of prudence. On the other hand it is difficult to believe that all the parties concerned, Sheo Dial, with his own sons, and his daughters to get married, the Maharajah with his position and distinction, the priests with their duties to their religion and office, and all those who assisted at the ceremony with their notions of what was due to their creed, would have promoted, or taken part in an elaborate public function if they knew that it could at best create only a relation of permanent concubinage, without hope or prospect of elevation into a worthier and more respected state. The evidence of Sheo Dial is important in this connection. He said he went with two Pandits to visit the Maharajah, that he had learned that Jang Bahadur was a Mahomedan woman's son, that on his expressing his scruples about the contemplated marriage owing to this fact the

Maharajah assured him that Jang Bahadur was a Hindu; that he (the Maharajah) held him (Sheo Dial) by the arm and said: "From child-"hood I have got him suckled by a Brahmin "woman. He eats with me. He does puja, and "his ways are the ways of a Hindu." Sheo Dial further says that Jang Bahadur Singh wore a tilak of chandvan, that his cook was a Hindu, that he saw him sitting near the Maharajah at dinner, and that hearing and seeing this he, Sheo Dial, consented to the marriage of his sister with Jang Bahadur. No doubt it is stated by another witness that the Maharajah did not sit at meals with this son, but unless this evidence of Sheo Dial be an entire fabrication it bears additional testimony to the anxiety of the Maharajah to have his son accepted and treated as a Hindu. Hansraj Kunwar died in the Maharajah's lifetime. Jang Bahadur performed all the obsequies proper to be performed according to the Hindu religion by a surviving Hindu husband. His father, in the year 1872, got him, then about 24 years of age, again married to another Hindu lady, a member of the same Chhattri caste, Raj Kali Kunwar, who survived him, and is the fifth Defendant in this suit. There was the same publicity and pomp as on the occasion of the first marriage, the same religious ceremonial. The Maharajah absented himself on this, as he did on the former occasion, and got his duties performed vicariously in the same way. The sole issue of this second marriage was a girl. Both she and Baiya Ganga Bakhsh Singh married members of the Chhattri caste. Sir Robert Finlay insists that the law for many centuries has been that a Hindu must be born not made, and he cited several authorities in support of that proposition. On the other hand the treatises referred to by the Subordinate Judge at page 889 and the following pages of his

judgment appear to tend in an opposite direction, and the facts of this case show that in this matter of marriage the rules both of Hinduism and of caste were not, in this instance at all events, strictly applied. In the view their Lordships take it is unnecessary to express any opinion on the point. The matter for decision in this case being the construction of a codicil to the Maharajah's will, the point is not what is the strict rule of the Hindu religion, or the strict rule of the Chhattri caste, but this, namely what were the wishes, and intentions of the testator as revealed by the language of that instrument, viewed through the light of the circumstances which surrounded him at the time he made it.

It would be strange indeed if the man who had made it his special care to rear this son of his as a Hindu, and had succeeded in marrying him to two high caste Hindu women, should intend or desire, whatever might be the strict letter of the law, to place the offspring of these unions on the same level as the illegitimate children of his son's Mahomedan mistress and make them all equally the objects of his bounty.

Much reliance was placed by the Appellants upon the evidence of several witnesses, members of the Chhattri caste, which was directed to show that they would not eat with Jang Bahadur Singh, take betel leaves from him, or recognise him as a member of that caste, or of the Hindu religion, and it was contended that the Subordinate Judge had not paid sufficient attention to this evidence, or given it its due weight. He has no doubt not commented upon it at any great length, but it would be quite unreasonable because of this to conclude that he had not fully considered it. When the evidence is examined it will be found that the objection of many, if not most of these witnesses, to eat with Jang Bahadur or to give him betel leaves, &c., was due to the well-known

and undisputed fact that he was the illegitimate son of a Mahomedan mistress, rather than to the fact that he was not a genuine Hindu. This is notably so in the case of the witnesses page Kali Parshad, page 723, and Jagdeo Singh, 726. The former said, "I did not eat with "Jang Bahadur because he was Imam Bandi's "son," and again, "I wont eat kutcha food "touched by Ganga Baskhsh. I wont drink "water from his hand because his grandmother "was a Mahomedan," and the latter said "I "cannot eat food cooked by Raj Kali Kunwar "because she was Jang Bahadur's wife," but he proceeded to say that he would have no objection to eat with Jang Bahadur Singh if the Maharaja had asked him to do so, and then he added the important statement: "Jang Bahadur "had offended the Maharaja by keeping a "Mahomedan woman, that woman had four sons, "she lived with Bandi as Jang Bahadur's "mistress for 12 or 13 years until her death." Babu Basudeo Lal, an educated man and an advocate, at page 731 says "Jang Bahadur took "particular care to put on the tilak more than "a born Hindu would take because he was "anxious to appear a Hindu; that from the "orthodox point of view he (the witness) did not "consider him a Hindu, but he could not say he "was a Mahomedan, because he professed to be "a Hindu," yet he gave not this fact but the fact that Jang Bahadur was of illegitimate birth as the reason for his unwillingness to take water from his hands.

Hanwant Singh (page 727) gives remarkable evidence to the same effect. He said: "I con-"sider Jang Bahadur a Hindu. He worshipped "like a Hindu. He did pilgrimages like a Hindu. "He gave dans to Brahmins like a Hindu. His "ways were those of a Hindu. I saw him doing "puja in the temple for the first time 30 years

"ago, and three times altogether I saw him "feeding Brahmins at the temple." Yet despite what he saw, and his opinions on Jang Bahadur's religion, he says on the next page he would not eat with him because he was born of Imam Bandi, nor would he eat with Ganga Baksh, because presumably he was his father's son, though he admits that if the latter "persevered in his Hindu "habits for two generations, he would be taken "into the *biradri*."

These witnesses are fair specimens of those examined on this point. Their evidence might be of importance if it was necessary for their Lordships to determine whether or not the Defendant No. 1 was the legitimate son and heir at law of Jang Bahadur. The Subordinate Judge has (at page 961) determined that question in the affirmative. Their Lordships concur with the Court of the Judicial Commissioner in thinking that it is not necessary to determine it one way or the other for the purposes of the decision of this Appeal, and they therefore abstain from expressing any opinion upon it. What is of importance, when one has to construe this codicil, and determine what was the testator's intention on making it, is to ascertain in what light he regarded his son, the marriages he helped that son to contract, and the issue that sprung from them.

Their Lordships are of opinion that the reasonable conclusion to be drawn from the evidence is that the Maharajah treated this son of his as a Hindu in religion, and desired that others should so treat him, that he treated his marriages with the two Chhattri ladies as lawful marriages and desired that others should so treat them, and consequently resolved to regard and treat the offspring of these unions as legitimate, and desired they should be so treated and regarded by others; and that it was in this

frame of mind he made the testamentary deposition which is in dispute. It is lengthy, and in its material parts runs thus :—

"Whereas I have a son, named Jang Bahadur Singh "born of an unmarried *Mahal*, and whereas he is not born "of *Khas Mahal*, and it is against the usage of the family "and against religion according to the Hindu Shastras, "so he is not considered capable of *gaddinashini* and the "proprietorship of the *riasat*. But he also being born of "my loins, it is incumbent on me that such means be "provided for support as would enable him and his (aulad) "issues to support themselves well and with respect. "Accordingly ever since the date of his birth till this day "whenever proper opportunity presented, grant was made "for his support; and during my life-time I shall make "grants according to my will whenever I shall deem it "expedient to do so. But with a view to clearly make "a provision beforehand in order that there may not "remain any co-ownership and dispute relating to a part "or the whole of my moveable and immoveable property, "a property should be determined for Jang Bahadur Singh "and his (aulad) issues for generation after generation in "order that the conditions of the deed may remain binding "in perpetuity. Accordingly the settlement is made as "follows. It is this: Rs. 4,000 per mensem or Rs. 48,000 "per annum shall be continued to be paid by the proprietor "of the *riasat*, the *locum tenens* of the *gaddinashin* for the "time being; and that amount shall be paid to Jang "Bahadur Singh and his (aulad) issues for generation after "generation as long as the (Khandan) family of Jang "Bahadur Singh and his (aulad) issues remain in "existence."

"DETAILS OF CONDITIONS.

"1. He shall not directly or indirectly take part in "running the *riasat*, and shall also remain a well wisher of "the *riasat*.

"2. He shall not transfer his maintenance allowance "to a stranger by sale, mortgage or otherwise.

"3. For his lifetime Jang Bahadur Singh has a right to "spend this money, but after his death from among his "(aulad) issues one person (Jis Ko haq pahunchta ho) "to whom the right may go shall be considered "proprietor of this maintenance allowance without division "as a *rais*. The other issues of the family of Jang Bahadur "Singh shall be entitled to get food, raiment and other "necessaries out of the monthly allowance; . . . .

"4. When there remains no descendant of the family of "Jang Bahadur Singh, at any time, the monthly allowance "of Rs. 4,000 will be resumed and remain in proprietary "possession of the proprietor of the *riasat*, the *gaddinashin*.

"5. For the realisation of the monthly allowance, a few "villages with *jama* and names of demarcated villages and "hamlets are selected, and a list of the same is annexed "to the document. The *jama* of the selected (*tajwiz shuda*) "villages will be credited from year to year towards the "aforesaid fixed monthly allowance of Rs. 4,000. Neither "has the proprietor of the *riasat*, *gaddi-nashin*, power to "realise the *jama* of the selected villages yielding Rs. 48,000, "including *mal* and *sewai*, from Jang Bahadur Singh or his "descendants, nor is Jang Bahadur Singh or his family "descendants competent to demand the fixed monthly "allowance of Rs. 4,000 from the *gaddi-nashin*, the "proprietor of the *riasat*.

"6. The *jama* of the selected villages, a copy of which is "attached to the document, shall be deemed the *jama*, "including *mal* and *sewai* in perpetuity. And the pro-"prietor of the *riasat* for the time being shall have no power "to increase or decrease the *jama*. And Jang Bahadur "Singh and his family descendants shall raise no excuse as "to increase or decrease of the *jama*. And the proprietor of "the *riasat* shall have no power to cancel the lease. And "Jang Bahadur Singh and his family descendants shall have "no proprietary right against the proprietor of the *riasat*, "except that of deriving benefit from the selected villages. "Besides, Jang Bahadur Singh and his family descendants "shall have no power to transfer the immovable property "by sale or mortgage or otherwise. But they shall continue "in perpetuity to hold possession over the said villages.

"7. The villages selected for payment of the monthly "allowance shall have their boundaries maintained accord-"ing to the map of *had-o-bast kishtwar*. The proprietor of "the *riasat* shall have no power to vary them contrary to it, "nor shall Jang Bahadur Singh or his descendants have "any."

Then follow the details of the villages leased out in perpetuity for the payment of the monthly allowance of Rs. 4,000. The testator then makes a bequest to Imam Bandi, the mother of Jang Bahadur, in the following words :—

"Besides, with a view to support the mother of "Jang Bahadur Singh, I propose to fix Rs. 1,000 per "mensem, or Rs. 12,000 a year for her personal expenses.

"She that is the mother of Jang Bahadur Singh has
"power to spend the fixed allowance without interference
"by anybody else, and may, in her lifetime, make a will
"in favour of anybody whom she pleases, and in respect of
"any good work she likes, and it will be deemed liable to
"be acted upon. And for the purpose of realising the
"aforesaid annuity of Rs. 12,000, a few villages, mentioned below, are given by way of *theka* with *jama*
"assessed thereon. The money will be realised from those
"villages from year to year."

He then gives a list of the villages out of which the Rs. 12,000 was to be collected, and proceeds to add :—

"These few sentences have been put down to make
"provision for her support while in the enjoyment of health
"and possession of the five senses, and out of my own
"pleasure and accord, in order that they may be of use
"after me."

The testator died on the 27th of May 1882. In or about January 1894 Jang Bahadur Singh became insane. He so continued for several years, and died on the 1st of October 1899 leaving as his own the moveable and immoveable property mentioned in Schedules B. and C. attached to the Statement of Claim. The first Defendant, as already mentioned, immediately went into possession of the property mentioned in Schedule A. and has since retained it.

Jang Bahadur Singh was created by the codicil ancestor or first proprietor of the estate, maintenance allowances somewhat resembling rentcharges, were charged upon it. It was to be perpetual, impartible, indivisible, and incapable of being otherwise charged or encumbered, and it was not to be the subject of any co-ownership. On the death of Jang Bahadur a person, styled at page 224 the representative of the former, was to succeed him as proprietor of this maintenance allowance, without "division" as a rais. "This proprietor was to be one of the issue of "Bahadur Singh." The other issue (aulad) of the family (khandan) of Jang Badahur Singh

being only entitled to get food and raiment out of the allowance. In addition the marriage and funeral expenses of the male and female children of the family of Jang Badahur Singh were to be paid. The only indication given as to how the particular individual one of the issue of Jang Bahadur, who was to succeed him as proprietor of the allowance was to be ascertained is that contained in the words " on whom the right may " devolve." The testator must have had in mind some law or rule which would apply to fix the succession. What law could this high caste Hindu possibly have had in mind for such a purpose other than the Hindu law? That law, however, in the matter of succession to property, takes no account, in the three higher classes, of illegitimate descendants. Sir Robert Finlay, as their Lordships understood, admitted this contention—at least to this extent, that if when a successor came to be ascertained the class of beneficiares contained both legitimate and illegitimate members, the eldest legitimate male would by the Hindu law succeed; but where, as in the present case, as he contended, all the children were illegitimate, the eldest male amongst them should succeed. But by what law or rule he did not indicate. It is difficult to suppose that if the testator intended all his grandchildren to be put upon the same level he would not have indicated some method by which the successor to his son should be selected. If he relied at all upon the Hindu law to select that successor it could only be because he wished it to be assumed that that law applied to some of the issue of his son, and that could only be the case if those members of the issue were to be taken to be, legitimate.

At the date of this codicil Jang Bahadur was only about 30 years of age. He had already had one son by his deceased Chhattri wife. He had

been married for some time to another Chhattri wife, by whom it was quite possible he might have had male issue, and it would have been quite in conflict with the whole tenor of the Maharajah's treatment of and conduct towards his son Jang Bahadur, to deprive by this codicil these marriages and the issue springing from them of the character and status he had striven to secure for them. The Court of the Judicial Commissioner came to the conclusion that the Maharajah thought these marriages of his son were valid, and the issue of them legitimate. However that may be, it is clear their Lordships think upon the whole of the evidence that he wished them to be so regarded by others. Nothing would more surely have defeated that desire—than that he should by this testamentary instrument show that he himself regarded them in a wholly different light, and placed the children of these marriages on an equality with those of a Mahomedan concubine. The Maharajah has used the word "*aulad*" throughout this codicil to describe the issue of his son Jang Bahadur. The Court of the Judicial Commissioner has laid it down that this word *primâ facie* means legitimate issue. This case is not one where a gift is made by will of the corpus of a fund, or a life interest in a fund to the "children" of the testator or of another as a class. There may be good reason in some such cases for holding that in India the word "children" includes illegitimate children, but here a succession of life interests from generation to generation is intended to be set up, the successor or "proprietor" in each instance being vested with absolute control of the income, subject only to the duty of maintaining the issue (aulad) of the family (khandan) of the first proprietor, Jang Badahur Singh. There is nothing on the face of the will to suggest that a meaning should be

given to the word "aulad" different from its *primâ facie* meaning; but if it is to be read as including illegitimate issue, then it follows that the testator intended to bring into the line of succession not only his illegitimate grandchildren but their illegitimate issue from generation to generation. Such a construction would render rather unnecessary the provision (No. 4, page 224) that if no descendants of the family of Jang Bahadur remained, the monthly allowance should fall into the possession of the gaddinashin, and would also seem to defeat the whole purpose and object of the testator in establishing this succession of life interests. Nor do their Lordships see any reason for extending in this instance the meaning of the word "*khandan*," which ordinarily refers to the group of descendants who constitute the family of the progenitor, so as to include illegitimate offspring, who from the necessities of the case cannot share in the family life or its worship or ceremonials.

It has been strenuously urged by Sir Robert Finlay on behalf of the Appellant: firstly, that there would have been nothing easier for the testator, if he desired to exclude his illegitimate grandchildren from all benefit under this codicil than to have said so. The question is, has he not done so by the use of the word aulad. But even if this be not so, it was quite as easy for him to include them in the class described by the word issue as to exclude them from it, so that the argument cuts both ways. And it was in the second place contended that having regard to his interest in these children, he never could have intended to leave them unprovided for. He undoubtedly did show some interest in them, but not a very keen interest, and it is by no means clear that he did not intend them to be provided for in

the way they have been, in fact, provided for, namely, by being maintained by their grandmother Imam Bandi during her life, out of the income left to her by the codicil. He enabled her by the exercise of the testamentary power over this income conferred upon her so to provide for them after her death. The income was large, Rs. 1,000 per mensem. She was a woman who at the date of the codicil must have been at least 45 years of age, her son Jang Bahadur being then 30 years of age. The son's mistress and her children lived with her. She, according to the evidence, helped to rear them. It was scarcely conceivable that she should require Rs. 12,000 per annum for her personal expenses alone. The power of disposing of this income by will clearly showed that the testator had some object in view beyond providing adequately for her maintenance. What more natural than that this income, handsome in amount, and disposable by her will, should have been given to enable her to provide for her grandchildren. Their Lordships are therefore of opinion that having regard to all the evidence in the case and the provisions of the codicil itself, the intention of the testator plainly was to treat the marriages of Jang Bahadur with the two Chhattri women already mentioned as valid marriages, and the issue of those mariages as legitimate issue. They think that the judgment appealed from was right, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

BHAIYA SHER BAHADUR

v.

BHAIYA GANGA BAKHSH SINGH AND OTHERS.

[DELIVERED BY LORD ATKINSON.]

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