Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakur Harihar Buksh v. *Thakur Uman Parshad from the Court of the Judicial Commissioner of Oudh; delivered December* 14*th*, 1886.

Present:

LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

THEIR Lordships do not think it necessary to call upon counsel for the Respondent.

This case has been put before their Lordships by Mr. Branson with great fullness, and they consider that he has argued it with great lucidity and force, and said everything that is possible in favour of his client; but it is put before them in so clear and perspicuous a manner that they are able to deal with it on the opening.

There are two questions. The first is, how the agreement, the Razinama or compromise, of the 4th May 1864, is to be construed; and if it is to be construed as giving an absolute interest to Bissessur Buksh, then the second question is, in what shares the inheritance is to be taken by his heirs?

To take the last question first, the Plaintiff alleges that by a certain custom prevalent among the Punwar Rajputs, if a branch of a family has become extinct the other branches take the estate in equal shares, which means in equal shares as between those branches, without regard to their being more or less remote in kinship to the deceased. That question was tried in the Courts below, and both Courts, the District Judge and the Judicial

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Commissioner, have come to the same conclusion upon it, adverse to the Plaintiff. Two lines of evidence appear to have been pursued, one consisting of instances of successions in kindred families, and the other of records of rights in Wajib-ul-arzees. Upon the first line of evidence the Judicial Commissioner, who seems to have examined the cases with care, has come to the conclusion that, balancing case against case, there is no certain invariable custom proved on this point. He also states, and the District Judge states, that the Wajib-ul-arzees do not support the custom. In their Lordships' judgment the Wajib-ul-arzees to which they have been referred seem to go further. The document appearing in page 126 of the record is a specimen, and it states that brothers or nephews of the deceased are to succeed, regard being had to the nearness of kinship. That is a statement contrary to the statement in the plaint and to the custom which the Plaintiff alleges. Therefore their Lordships have not considered it proper to go through the mass of oral evidence given in this case, because, if the Courts below concur in their conclusion upon such a matter as a family custom, their Lordships are very reluctant to disturb the judgement of those Courts. If there had been any principle of evidence not properly applied; if there had been written documents referred to on which the Appellant could show that the Courts below had been led into error, their Lordships might re-examine the case; but in the absence of any such ground they decline to do so.

Then the question comes back to the construction of the Razinama, and that again is divided into two branches. The Courts below have found that the Razinama ought to be construed to give an absolute interest, because it has been decided that it should be so construed,—in fact

that the matter is *res judicata.* Upon that point it is unnecessary for their Lordships to pronounce any opinion; but they wish it to be understood that they do not express any agreement with the Court below on this point, and it must be taken that, not having heard the argument on the other side, their minds are completely open upon it.

They rest their opinion upon the terms of the Razinama itself. After providing that the estate shall be divided into the fractions specified in it, the conclusion of the Razinama is that the division shall hold good for ever, and to descend from generation to generation—*naslan - bad - naslan.* Their Lordships have not been furnished with any authority, in fact Mr. Branson has fairly said he can find no authority, in which a gift with the words *naslan-bad-naslan* attached has been held to confer anything less than the absolute ownership. On the contrary, in the various cases in which the expressions *mokurruri*, *istimrari*, *istimrari mokurruri*, have been weighed and examined with a view to see whether an absolute interest was conferred or not, it seems to have been taken for certain that, if only the words *naslan-bad-naslan* had been added, there would have been an end to the argument, because an absolute interest would have been clearly conferred. Their Lordships think that the insertion of those words in the Razinama would be conclusive in itself; but, looking at the expressed objects of the Razinama, they would come to the same conclusion even if words of a less peremptory character had been used. It was for the purpose of settling a dispute which had been going on for several years about the proprietary right to the Talook Sarora, and it was agreed that the whole dispute should be set at rest. The dispute was not as to maintenance; it was not as to a temporary interest; but it was as to the proprietary right. That is the dispute

to be set at rest; and when their Lordships find that such a dispute is set at rest by a division of the estate to hold good for ever, and that not a word is introduced which of its own force imports less than an absolute ownership, they find it impossible to doubt that the true intention of the parties was to give to all alike the same amount of interest in the shares conceded to them, viz. that absolute ownership which each was claiming for himself in the whole or part of the property.

On those grounds their Lordships agree with the decision of the Courts below, though not for the same reasons, and the result is that the appeal will be dismissed.

Their Lordships will humbly advise Her Majesty in accordance with that opinion, and the Appellant must pay the costs of the appeal.