Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Debi Pershad Chowdhry and others v. *Rani Radha Chowdhrain (since deceased) and others, from the High Court of Judicature at Fort William, in Bengal; delivered the 26th July* 1904.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

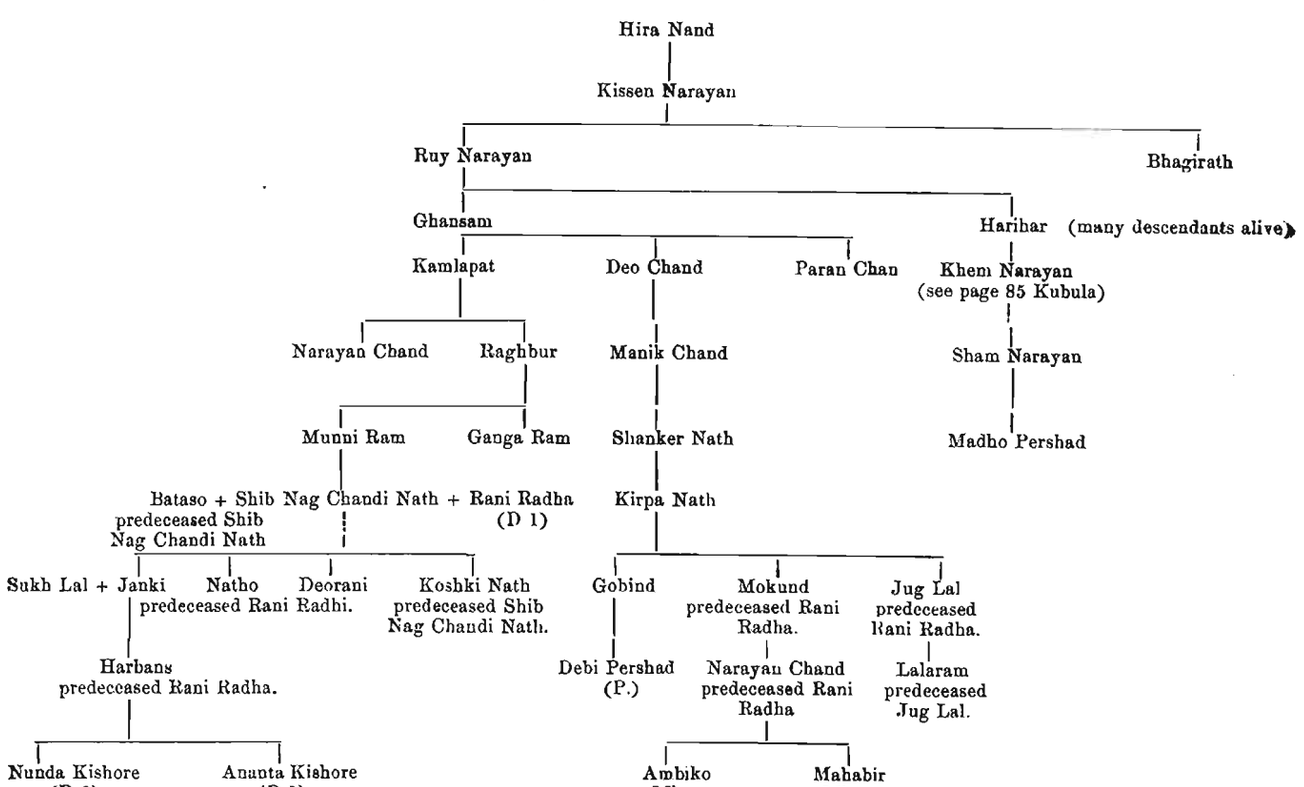
[*Delivered by Lord Robertson.*]

At the date of the suit, out of which this Appeal arises, the Respondents were in possession of the estate in dispute. Their title was a deed of gift in their favour, dated 21st July 1895. This deed was executed by Rani Radha Chowdhrain, widow of Shib Nag Chandi Nath Chowdhry, to whom the estate had belonged. (This lady, who figures largely in the controversy, will be referred to as the Chowdhrain.) The validity of this deed was immediately challenged by the Appellant Debi Pershad Chowdhry, who, in the suit brought on 12th September 1895, claimed a declaration that he was next reversioner, and that the Chowdhrain's gift was invalid and not binding on him.

Besides the Chowdhrain and her donees, the Appellant Debi Pershad impleaded one Ram Nath Chowdhry, who made pretensions to the estate which have now been finally negatived, and certain relatives who make no claim. The contest in the Courts below was between the Plaintiff on the one hand, and the Chowdhrain and her donees on the other. The Subordinate Judge decided in favour of the Appellant Debi Pershad, but this was reversed in the High Court. After

82838. 125.—7/1904. [50] A

judgment had been given in the High Court, the Chowdhrain died, and the Respondents in the present Appeal are the donees. The second and third Appellants are persons to whom the first Appellant has sold some part of his interest. The Respondents admit that their position as donees of a widow is untenable as against an agnatic relation of the husband of their donor. The whole question is whether the Appellant Debi Pershad (who may hereafter be called the Appellant) has proved his pedigree, as nearest agnate of Shib Nag, and has thus shown a title to eject them. This question is still further narrowed by explaining that the disputed steps in the following pedigree are those which make Kirpa Nath, who was admittedly the Appellant's grandfather, to have been himself the great-grandson of Deo Chand, through Shanker Nath and Manik Chand. The pedigree is as follows: –



Before examining the evidence on this controverted part of the pedigree, it may be convenient first to mention the facts more immediately personal to the Appellant. He and his father before him (Gobind Pershad) lived on the estate in dispute and were in the employment of, and well known to, the Chowdhrain. Kirpa Nath, the Appellant's grandfather, also lived on the estate, and was well known to many of the witnesses, having lived to a great age and being, probably on that account, a noted character. The Appellant's uncle, Mokund, a brother of Gobind, also lived on the estate, and like the others of his family was a quite well-known man. Accordingly, on the first view, the case of the Appellant is not the case of a claimant who drops from the skies, but of a man who and whose people were well settled in the district and about whom everybody knew, including the people disputing their claim. The Chowdhrain, it is true, pretended in the witness-box to ignore them; but her denials of everybody and everything were so wholesale and undiscriminating that the Respondents did not claim credit for her as a witness of truth. Of the true degree of intimacy between this very lady and the group of persons in question, there is a very significant indication in an episode of her deposition, for her own pleader suggested that Gaibi Nath Panday (who married the Appellant's sister and is an important witness for him) should "repeat the exact words in cross-examination," he being a person "before whom the witness appears."

Now of this family (viz. that of the Appellant) thus well known, it is certain that three times, viz. in 1812, in 1863, and in 1885, its representative, for the time being, has, occasion requiring it, made public assertion of his position as an agnate of the Chowdhrain's husband, and has

never met with a denial. In 1812 Kirpa Nath, the Appellant's grandfather, and in 1863 and 1885, Gobind Pershad, the Appellant's father, came into Court in the quality of agnate. These judicial appearances have not the less significance that while Kirpa Nath came into Court adversely to the interests of the Chowdhrain, the intervention of the father, Gobind Pershad, was invoked by the Chowdhrain herself.

In face of these facts, it would be affectation to treat the thesis of the Appellant, as expressed in his pedigree, as being in any high degree improbable; but it not the less must be adequately proved. Now the Appellant brings a substantial body of evidence from his own kinsfolk, which is clearly within the Indian Evidence Act. This evidence derives special weight from the considerations explained in the following passage in the Judgment of the Subordinate Judge in this case:—

"The Plaintiff himself says, that amongst others he heard "the names recited by his father and uncles and Durga Dutt "Chowdhry. It is well known, as has been recorded in that "first volume of the fifth report from the Select Committee "that Hindu boys are taught the names of their ancestors, "paternal and maternal, by their parents and other relatives "while they are very young, together with their gotras and "*Prabars*, &c. These instructions are given not merely as a "matter of curiosity, but as a matter of necessity; for Hindus, "and specially the Brahmins, are required to perform their "sradhs annually and on *Parbana* occasions, and to offer "water oblations (Tarpana) for a whole fortnight, or rather "15 days of the dark side of the noon in the month of Bhadro. "Their right of inheritance depends upon such ceremonies, and "their marriages are regulated according to blood relationship. "This way the names of the ancestors up to the seventh degree "in ascent (the Sakulyas) at the least are taught, though in "most respectable families the names up to the fourteenth "degree in ascent (the Samanodakas) are also taught. So, "there is nothing unusual in the Plaintiff's statement."

It cannot be doubted that, in its quality, this is admissible evidence. The singular criticism of the High Court is that it comes from relatives of the Appellant; but it is difficult to see where

else such evidence could be found; or that in the mouths of strangers it would have any value at all. Each of the persons who has spoken to this pedigree has been carefully cross-examined, and each proves circumstances, apart from the pedigree, which support his knowledge and credit. This is not the case of a pedigree learned by rote, but it is circumstantially corroborated, as far as time and memory admit.

Their Lordships are unable to agree with the High Court in their appreciations of the evidence. For the reason already given, they do not think that the relationship of one class of the witnesses is a consideration which should inspire more than the ordinary caution with which testimony is sifted where sympathy with one side is to be taken for granted. Again the High Court discards, or at least largely discounts, the rest of the Appellant's witnesses because it appears that one of them, Kartik Nath Panday, besides being a relative was "assisting the "Appellant" in the case, and the others are connected with this person by blood or service. Their Lordships do not consider this to be a safe or sufficiently discriminating way of dealing with the testimony of these witnesses. They observe that the Subordinate Judge describes Kartik Nath Panday as "a very respectable "zemindar of this district"; and it is at least conceivable that he is supporting his kinsman because he knows his cause to be just. Nor do the instances in which the Subordinate Judge declined to accept specific statements of the witnesses seem to imply any reason for distrusting their testimony generally. The matter of the sradh, of which the High Court makes much, involves the credit of only one witness; and the other instances in which the Subordinate Judge has not acted on the evidence do not involve more than caution on

his part or inaccuracy on the part of the witness.

In default of more substantial topics, the learned Counsel for the Respondents bestowed much attention on a supposed anachronism in a pedigree which is printed on pages 63 and 64. It is enough to say that it is adequately proved that there were two persons of the name of Kirpa Nath; and, if this be so, the difficulty disappears.

Their Lordships deem it unnecessary to refer to several ephemeral arguments naturally arising out of a case so voluminous.

Their Lordships are satisfied that the Appellant has established his claim. They will humbly advise His Majesty that the Appeal ought to be allowed, the Decree of the High Court discharged with costs, and the Decree of the Subordinate Judge restored. The Respondents will pay the costs of the Appeal.