Privy Council Appeal No. 44 *of* 1935
Oudh Appeal No. 4 *of* 1934

Thakur Gaya Bakhsh Singh since deceased (now represented by Rani Suraj Kunwar and another) and another - - *Appellants*

v.

Deo Singh (minor) and others - - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

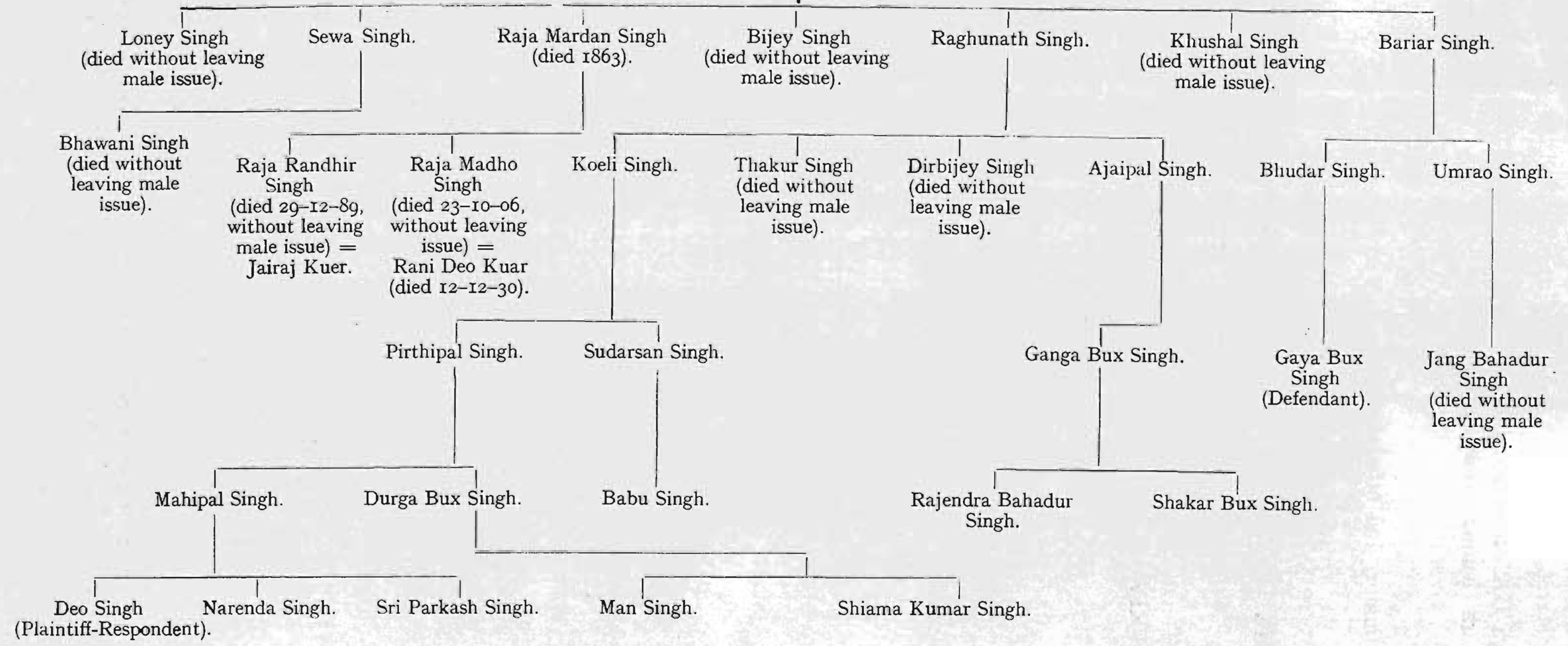
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JANUARY, 1938.

Present at the Hearing :
LORD MACMILLAN.
LORD ROCHE.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

This appeal was brought by Thakur Gaya Bakhsh Singh, who will be referred to herein as "the appellant," though he assigned part of his interest to appellant No. 2 and has died since the appeal was brought. He was the first defendant to a suit filed on the 16th February, 1931, in the Chief Court of Oudh in its original jurisdiction by the first respondent Deo Singh, a minor (herein called "the respondent"). The plaint claimed a number of properties and impleaded four defendants, but this appeal relates only to three estates and the first defendant is the only party disputing this claim before the Board. These estates are taluqdari estates in Oudh, and may be considered as one taluqa: the main estate goes by the name of Bharawan and is situated in the district of Hardoi: included in it are two smaller estates called Basantpur and Marhapur in the districts of Lucknow and Unao. The respondent's claim was that he had become entitled to these estates upon the death on 12th December, 1930, of a lady called Rani Deo Kuar.

The facts out of which his claim arises are not in dispute. In 1859 at the Second Summary Settlement the estates in question were settled with Raja Mardan Singh. In accordance with requests made to taluqdars by Government that they should make wills specifying the names of their heirs in cases where there was no practice of


ABDHUT SINGH.
Loney Singh (died without leaving male issue).
Sewa Singh.
Raja Mardan Singh (died 1863).
Bijey Singh (died without leaving male issue).
Raghunath Singh.
Khushal Singh (died without leaving male issue).
Bariar Singh.
Bhawani Singh (died without leaving male issue).
Raja Randhir Singh (died 29-12-89, without leaving male issue) = Jairaj Kuer.
Raja Madho Singh (died 23-10-06, without leaving issue) = Rani Deo Kuar (died 12-12-30).
Koeli Singh.
Thakur Singh (died without leaving male issue).
Dirbijey Singh (died without leaving male issue).
Ajaipal Singh.
Bhudar Singh.
Umrao Singh.
Pirthipal Singh.
Sudarsan Singh.
Ganga Bux Singh.
Gaya Bux Singh (Defendant).
Jang Bahadur Singh (died without leaving male issue).
Mahipal Singh.
Durga Bux Singh.
Babu Singh.
Rajendra Bahadur Singh.
Shakar Bux Singh.
Deo Singh (Plaintiff-Respondent).
Narenda Singh.
Sri Parkash Singh.
Man Singh.
Shiama Kumar Singh.

gaddinashini by custom or *sanad*, Raja Mardan on 5th March, 1860, executed a document called an *ikrarnama*, stating:—

> "I therefore desire and apply that after my death my estate should remain intact and impartible in my family in the name of my eldest son Raja Randhir Singh according to the custom of *raj gaddi* and the younger brothers shall be entitled to receive maintenance from the holder of the *gaddi*."

In compliance with these wishes, the sanad granted to him in a common form (cf. Sykes Compendium, p. 386) on 24th November, 1862, conferred "the full proprietary right, title and possession" on him and his heirs for ever subject to conditions as to payment of revenue and the observance of certain rules of good behaviour towards Government. It provided also:—

> "It is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate the estate shall descend to the nearest male heir, according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate either in whole or in part by sale, mortgage, gift, bequest or adoption to whomsoever you please."

Raja Mardan Singh died in 1863 and was succeeded by his eldest son Raja Randhir Singh. The terms of the sanad were sufficient of themselves to vest the estate in Randhir on the death of his father, but the law applicable at that time to Hindus in Oudh imposed no formal requirements as to wills and it is the case both of appellant and respondent that Randhir could also claim to have succeeded under the *ikrarnama* as a will. In 1869 when Act I (the Oudh Estates Act) was passed in the lists prepared under section 8 thereof the three estates now in question were entered in list 1 and the name of Raja Mardan Singh (though dead) was entered in lists 1, 2 and 5. In 1889 Randhir died without male issue and was succeeded by his brother Raja Madho Singh. On the death of Madho without issue on 23rd October, 1906, he was succeeded by his widow Rani Deo Kuar. It is upon her death in 1930 that the respondent claims to have become entitled to the estate. In 1906 the respondent's father Mahipal Singh was alive, but he predeceased Rani Deo Kuar. The pedigree incorporated herewith shows the respondent's descent from Ragunath Singh, brother of Raja Mardan Singh, and that he is in the senior male line is not now contested.

The objection taken by the appellant to the respondent's right to inherit the taluqa is that in 1906, on the death of Madho, the person entitled to succeed him was the respondent's father Mahipal Singh and not Madho's widow, Deo Kuar. If this be so, the appellant contends that whatever article of the Limitation Act (be it Article 140, 142, 144 or 120) applied to the case the respondent is out of time and his title has come to an end under section 28 of the Act. This inference has not been accepted by the Chief Court either at first instance or on appeal. Upon the merits of the inference something may depend on whether Rani Deo Kuar is regarded as having asserted and been permitted to enjoy a Hindu woman's estate or an estate

"for her lifetime only" within the meaning of section 22, clause 7 of Act I of 1869. In any view it raises difficult and important questions of law which have not been argued before the Board. Their Lordships do not find it necessary to pronounce upon them and without intending to suggest that the views taken in the Chief Court were wrong they refrain from discussing the matter.

The right of Madho's widow to succeed him in 1906 depends upon the proposition that on his death section 22 of Act I of 1869 as it then stood applied to the case.

The relevant parts of the section are as follows:—

> "22. If any Taluqdar or Grantee whose name shall be inserted in the second, third, or fifth of the lists mentioned in section eight, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, viz.:—
>
> (1) To the eldest son of such Taluqdar or Grantee, heir or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased;
>
> (2) Or if such eldest son of such Taluqdar or Grantee, heir or legatee, shall have died in his life-time, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid;
>
> (7) Or in default of any such brother, then to the widow of the deceased Taluqdar or Grantee, heir or legatee; or, if there be more widows than one, to the widow first married to such Taluqdar or Grantee, heir or legatee, for her life-time only."

For the appellant it is contended that succession to the estate at that time was governed by the sanad of 1862 but not by the section. This argument proceeds upon the fact that the "taluqdar" or person whose name was entered in list 1 under section 8 was Mardan Singh, though he had died in 1863, and upon the view that Randhir, who then succeeded, did not inherit the estate "under the special provisions of this Act" of 1869 so as to satisfy the definition of "heir" given as follows in section 2 thereof:—

> "*Section* 2.—In this Act unless there be something repugnant in the subject or context—
>
> "'Heir' means a person who inherits property otherwise than as a widow under the special provisions of this Act; and 'legatee' means a person to whom property is bequeathed under the same provisions."

Randhir not being an "heir" it is said for the appellant that the Act, or at least section 22 thereof, never applied to regulate the succession to this estate; that the death of Randhir was not the death of an "heir"; that Madho did not succeed under section 22 but under the sanad, that he too was not an "heir" and that on his death clause 7 of the section was not available to his widow.

The respondent disputes this reasoning and further contends that Randhir may be regarded as having succeeded

under his father's will, and that this attracted the operation of section 14 of the Act. In 1906 section 14 stood as follows:—

> "If any taluqdar or grantee shall heretofore have transferred or bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdar or grantee, or to such a younger son as is referred to in section 13, clause (2), or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator."

On the respondent's view this section puts Randhir in the same position as his father would have held had he lived to hold under the Act. The appellant maintains that the utmost effect of the section in this case is to put Randhir in the position of holding on the same terms as those upon which his father in fact held, viz., upon the terms of the sanad.

The trial Judge was of opinion that section 22 did not govern the succession to Madho. The Appellate Bench of the Chief Court held that it did. They proceeded upon two grounds: first, that Madho was an "heir" of Mardan within the meaning of section 22: secondly, that section 22 was applied to the case by section 14. Their Lordships will examine both of these grounds.

If Randhir be regarded as having succeeded his father in 1863 by inheritance in accordance with the terms of the sanad he cannot be said to have inherited under the special provisions of the Act of 1869. It is only the date, however, which excludes him: after the Act the sanads operated under section 3 as the creatures of the Act and the Act itself conferred the title [*Hurpurshad* v. *Sheo Dyal* (1876) L.R. 3, I.A. 259, 270-1]. The Appellate Bench were of opinion that the same difficulty did not apply to Madho, and that as "heir" did not necessarily mean the immediate heir, Madho's death was the death of an "heir of a taluqdar" within the language of section 22. The question would still remain: did Madho inherit under the special provisions of the Act?

It was a noticeable and intentional feature of the Act that it did not apply the word "taluqdar" to anyone save the individual mentioned in list 1 (cf. sections 2 and 10). The result is that any subsequent holder is referred to in the Act as an "heir or legatee." If sections 7, 11, 13-16, 18-20, 30 and 31, be considered, in hardly any case is it reasonable to think that the powers therein specified were intended to apply only to an immediate taker from the taluqdar and to no other successor. Apart from this consideration the phrase in section 7 "any heir or legatee of a taluqdar"; in section 11 "every heir and legatee of a taluqdar"; in

section 13 "no heir or legatee of a taluqdar"; in section 14 "the transferee or legatee and his heirs and legatees"—these can only with some difficulty be confined to immediate takers from the person mentioned in list 1. The general language of certain sections "subject to the same conditions and to the same rules of succession" (section 14) or "subject to the same conditions and in the same manner as the estate was held by the deceased" (section 22) might in some cases re-apply other sections on the footing that the latter of their own force applied only to immediate takers. But it is doubtful whether formalities required by the Act for transfer or bequest are included by the word "conditions" which may more safely be interpreted with reference to the stipulations of the sanad. In any view their Lordships are satisfied that the draftsman did not rely upon the word "conditions" in sections 14 and 22 for the purpose of applying the other sections above mentioned to the successors of immediate takers from the taluqdar. They agree with the Chief Court that an examination of the Act before its amendment by United Provinces Act III of 1910 shows that the following explanation—added by the amending Act—serves only to make plain what is implicit in the true construction of the Act as it originally stood:—

> "*Explanation.*—The words 'heir' and 'legatee' used with reference to a taluqdar or grantee . . . are not restricted to the immediate heirs and legatees of such taluqdar, grantee or person."

This explanation is very simply expressed and almost disguises the fact that "heir and legatee" is a phrase used very loosely if it be intended to cover not only the heir of an heir but the heir of a legatee, the legatee of an heir and the legatee of a legatee. But there is no great difficulty as to the word "heir" taken by itself. "Heir" is defined in Wharton's Law Lexicon as "a person who succeeds by descent to an estate of inheritance. It is *nomen collectivum* and extends to all heirs; and under heirs, the heirs of heirs are comprehended *in infinitum.*"

Their Lordships are so far in agreement with the Appellate Bench of the Chief Court as to consider that Madho should be regarded as an "heir" provided that he inherited under the special provisions of the Act. Independently of the general considerations already mentioned it is *prima facie* unreasonable that in a case in which the name of a deceased owner was entered in the lists the first successor after the passing of the Act should not be regarded as his heir in spite of the fact that he took by inheritance and not by transfer or bequest. The opposite view would do unnecessary violence to the Act in the interest of a literal construction. But it is necessary to see whether Madho inherited under the special provisions of the Act. If Randhir was not an "heir" then it may be said with force or at least with logic that on his death the succession was not within section 22. This objection the Chief Court do not seem to have anticipated, but their Lordships will assume—without so deciding—that Madho did not inherit under the section. Still, the

question is not whether he succeeded under that section but whether he "inherited property . . . under the special provisions of this Act." The word "heir" cannot be restricted to those who inherit under section 22: it is used in section 23 and applies to every estate whose owner was entered in list 1 whatever the rule of succession. Their Lordships think there is great force in the observation made in the Chief Court in the case of *Achche Mirza* v. *Ahmad Shah* (1926) I.L.R. 1, Lucknow 529, that "the limitations prescribed by the lists . . . are as much rules of succession so far as they go as the provisions of sections 22 and 23 of the Act of 1869." The Act by section 3 conferred an independent title to these estates—permanent, heritable, and transferable. By the entry in lists 1, 2 and 5 the estates were made taluqdari estates, it was definitely declared that succession to them should thereafter be regulated by primogeniture, and that the custom of the family before the Act had been that they devolved upon a single heir. They had come under the protection of the restrictions imposed as to transfer by sections 13, 16, 17, 18 and 20.

On the appellant's view that section 22 did not apply at all, the provisions of the sanad as to succession were re-affirmed by section 3 of the Act and reinforced by section 10. Had Madho's title been challenged by someone claiming to share with him under their personal law, the Act would have stood before the sanad in Madho's lines of defence. As regards successions after 1869 to oppose the sanad to the Act may be a false antithesis. Madho succeeded by virtue of provisions of the Act which prescribed a course of succession unknown to the general Hindu law, and was an heir of a taluqdar within the meaning of the Act.

Their Lordships for these reasons do not feel constrained to hold that the estates in the present case could never come under section 22 of the Act. That Randhir succeeded before 1869 is only another way of saying that the name entered in list 1 was the name of a dead man. "It is a matter of familiar knowledge that such entries of dead men's names were not uncommon" [*per* Sir Arthur Wilson in *Thakur Sheo Singh* v. *Rani Raghubans Kunwar* (1905) L.R. 32, I.A. 203, 209]. In that case it was held that to the *Mahewa* estate the Act never applied: before 1869 there had been two devolutions and a change of sanad since the time of the taluqdar. The appellant's argument, however, would frustrate the main intention of the Act in every case in which list 1 contained a dead man's name. This conclusion has never been accepted by the Board. In *Murtaza Husain Khan* v. *Mahomed Yasin Ali Khan* (1916) L.R. 43, I.A. 269, 280, the Court of first instance had held that Jamshed Ali's name was wrongly entered in the lists and that in consequence the statute did not apply to the taluqa. This view was firmly negatived by the Board and Mr. Ameer Ali observed that "his death before the Act was passed into law makes no difference in his status or in his rights." Lord Lindley in *Mohammad Abdussamad*

v. *Kurban Husain* (1903) L.R. 31, I.A. 30, 37, put the matter with clearness and accuracy as follows: —

> "Entries of the names of deceased persons in the lists mentioned in section 8 do not appear to have been contemplated by the Act but such entries have no doubt been made and they are practically harmless if the names were already in former lists made under the Orders in Council, or if the entries do not alter the previously acquired rights of anyone."

It is not, however, right that the decision in the present case should be rested solely upon the foregoing considerations. If Randhir succeeded under his father's will it is more correct to regard him as a legatee than to found upon the right which he had to succeed in the absence of a testamentary disposition. If he be treated as legatee then section 14 of the Act governs his position. Their Lordships are in full agreement with the reasoning and the conclusion of the Appellate Bench upon the effect of section 14. In the case of a bequest which is within the retrospective words with which section 14 opens, and which was made by a taluqdar to a person who would have succeeded according to the provisions of the Act [*sc.* had they been in force at the time when the succession opened (*per* Lord Macnaghten in *Thakurain Balraj Kunwar* v. *Rai Jagatpal Singh* (1904) L.R. 31, I.A. 132 at 142)] the consequence attached by the section is that such person "shall have the same rights and powers in regard to the property . . . and shall hold the same subject to the same conditions and to the same rules of succession" as the testator. In their Lordships' opinion this provision was intended to indicate how the Act was to take effect upon such property and not to perpetuate a system of succession under the bare terms of the original sanad and outside the main provisions of the Act. This is a question of the intention to be collected from the language used. The section is expressly dealing with a case in which the taluqdar has parted with his interest or part thereof prior to the Act. Whatever defects may be imputed to the draftsmanship of the Act and whatever their consequences, it is difficult to suggest that the statute designedly provided that estates should in some cases within section 14 run for all time on the bare general principle provided by a sanad, and that the reference to "rights and powers," "conditions" and "rules of succession" should in these cases import none of the elaborate provisions of the Act. No doubt some saving of vested rights may be implied in retrospective legislation, but subject to that the section operates retrospectively as well as prospectively in order to achieve the same result for all estates of the same class. It operates alike whether the transferee is an heir apparent, another taluqdar or a younger son. In giving the other taluqdar the same rights as the transferor the Act may have been unhappy, since the taluqas might not be subject to the same rules of succession. But the purpose of the section was to make the acquisition descend with the old estate. Likewise, the inclusion within the section of persons who would have succeeded under the Act, is intended to preserve in such

cases the same character to the estate as it would have continued to bear if the succession had been *ab intestato*. As explained by Lord Macnaghten in *Thakurain Balraj Kunwar* v. *Rai Jagatpal Singh, supra* at 142:—

> "If a transfer or bequest is made to a person in the prescribed line of succession there is reason for placing the transferee or legatee in the same position with regard to succession to the estate as the transferor or testator; but if the prescribed line of succession is broken by a transfer or bequest of the entailed estate to a person outside the prescribed line it seems not unreasonable that the fetter of the entail, such as it is, should no longer apply to the estate."

In their Lordships' view the effect of section 14 was not to stereotype this estate as one which could never attract the course of succession prescribed by the Act, but on the contrary to put Randhir, though a devisee, under the operation of the Act as the holder of an estate within lists 1, 2 and 5. Whether or not section 22 applies to his case of its own force, it is applied by section 14.

On this view Rani Deo Kuar was in 1906 the rightful successor to her husband under clause (7) of section 22. The Crown Grants Act of 1895 does not abrogate the Act of 1869 and has no bearing on the matter.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

(47164—3A) Wt. 8151—17 190 2/38 P. St. G. 338

In the Privy Council

THAKUR GAYA BAKHSH SINGH
since deceased (now represented by RANI SURAJ KUNWAR AND ANOTHER) AND ANOTHER

v.

DEO SINGH (MINOR) AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
POCOCK STREET, S.E.1.

1938