Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakoor Jeebnath Singh v. *The Court of Wards and others, from the High Court of Judicature at Fort William in Bengal; delivered Thursday, March* 11*th*, 1875.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.

THIS was a suit brought by Thakoor Jeebnath Singh against Baboo Brumnarain Singh, represented by the Court of Wards, and the Maharanee Heeranath Koowuree, to recover the possession of the raj of Ramgurh, which is an impartible raj. The principal question raised in the suit turned upon the Hindu law of inheritance, and was whether the Plaintiff Jeebnath Singh or Baboo Brumnarain Singh was entitled to succeed the Rajah Trilokenath, who was the last proprietor of the raj. Rajah Trilokenath died childless, and, indeed, a minor. The Appellant Jeebnath Singh claims as father's sister's son, and no doubt he is a nearer relative, in one sense, to the deceased Rajah than the Respondent Brumnarain Singh; going back to the common ancestor, Brumnarain is the great-grandson of that common ancestor.

It was admitted by Mr. Leith in argument, that the case which was lately decided by this Tribunal, of *Bhyah Ram Singh* v. *Bhyah Ugur Singh*, in the 13th Moore, page 371, was an authority decisively against the Appellant's claim. It is immaterial to consider whether Brumnarain

was a sapinda or samanodaka, because he was clearly in one of those two classes, and whether in one or the other he was in the line of male descendants from the common ancestor, and the decision referred to is that this line must be exhausted, before bundhoos are resorted to, in order to discover the heir of the last proprietor. Jeebnath Singh is a bundhoo or cognate only, and therefore he cannot take as long as there is either a sapinda or a samanodaka in existence. The case, therefore, to which Mr. Leith referred, in the 13th Moore, has really decided the Appeal, so far as that question is concerned, against the Appellant, and that case in principle followed two previous cases, one in the 2nd Moore, page 132, and the other in the 4th Moore, page 292.

The other point which Mr Leith raised was this: that assuming the Appellant, Jeebnath, was not the nearest heir according to the ordinary rules of succession, he was made an heir by the act of Maharajah Sidnath Singh, who, he says, appointed a daughter, Jeebnath's mother, to raise a son to him; and he contends that by a rule of Hindu law, a son of a daughter so appointed is entitled to succeed in preference to more distant male relatives. That a rule of law of this nature is to be found amongst old collections of Hindu law appears to be established by the text to which Mr. Leith referred, but there seems to be an opinion amongst the text writers that that rule has become obsolete. In Sir Thomas Strange's book, under the head of "Inheritance," he thus speaks of it:—"Daughters.—The right of "daughters to succeed in default of sons and "widow, is not to be confounded with that of "the appointed daughter under the old law. "That appointment was one of the many substi-"tutions for the son, and by a fiction no longer

" subsisting regarded as one." Then he says, referring to another custom :—" This is analogous to " the law as applicable to the appointed daughter, " but that substitution, with others of a more " questionable kind, became obsolete. In Sir William Macnaghten's Treatise on Hindu Law, in the chapter on " Adoption," he says :—" In former " times it was the practice to affiliate daughters " in default of male issue, but the practice is " now forbidden. The other forms of adoption " enumerated by Menu appear to be wholly " obsolete in the present age." This appointment of a daughter may not be strictly an adoption, but the text writers evidently refer to this custom, amongst others, as being obsolete. It is not necessary in this case to decide that this is so, although there certainly does not appear to have arisen in modern times any instance in the Courts where this custom has been considered. But supposing it to exist, inasmuch as it breaks in upon the general rules of succession, whenever an heir claims to succeed by virtue of that rule, he must bring himself very clearly within it.

It is difficult to discover the precise ground on which the Plaintiff originally based this claim. The plaint certainly does not state enough to bring him within the rules as laid down in Menu and in the Mitakshara. The plaint says this : —" Your " petitioner's maternal uncle, Maharajah Luchmeenath Singh Bahadoor, agreeably to the " counsel of his father Maharajah Sidnath Singh " Bahadoor, having given in marriage your " petitioner's mother, kept her under his roof, " declaring and giving her hopes that if a son " be born to her such son will stand in the " relation of son's son to his mother's father, " and that if at any time occasion arise, he will " observe the religious rites of *sradh* (obsequies), " and keep the estate intact; and accordingly

" your petitioner, from the day of his birth to " the present moment, lived with the deceased " Maharajahs in common for all the purposes " of board, lodging, and worship." Now, in this statement it is not said that the Maharajah Sidnath by any act of his appointed the daughter, nor that the son, her brother, Luchmeenath Singh, did any formal act appointing her to raise a son to his father; the plaint says no more than that the latter gave her hopes that if a son was born to her such son would stand in that relation.

Looking at the text, it seems not only that the act of appointment must proceed from the father himself, but apparently should be made by himself, because all the forms of expression which are given are those which it is supposed the father himself would utter. In Menu, the leading passage referred to by Mr. Leith in chapter 9, section 127, is, " He " who has no son may appoint his daughter in " this manner to raise up a son for him, saying, " the male child who shall be born from her in " wedlock shall be mine for the purpose of " performing my obsequies." The passages in the Mitakshara are to the same effect. In chapter 1, section 11, clause 3:—" The son of an appointed " daughter is equal to him,—that is, equal to the " legitimate son. The term signifies son of a " daughter. Accordingly, he is equal to the " legitimate son, as described by Vasisht'ha,— " 'This damsel, who has no brother, I will give " 'unto thee decked with ornaments: the son " 'who may be born of her shall be my son.' Or " that term may signify a daughter becoming " by special appointment a son." The last is not the present case. As their Lordships understand, what is set up is, not that the daughter became a son by appointment, but that she was appointed as a special daughter from whom might proceed a

son who should stand in the place of a son's son. "Still she is only similar to a legitimate son, for "she derives more from the mother than from "the father. Accordingly, she is mentioned by "Vasisht'ha as a son, but as third in rank." Then the note to that is,—"The *putrica-putra* is "of four descriptions; the first is the daughter "appointed to be a son; she is so by a stipula- "tion to that effect. The next is her son. He "obtains, of course, the name of son of an "appointed daughter, without any special com- "pact. This distinction, however, occurs: he "is not in place of a son, but in place of a son's "son, and is a daughter's son,"—that is, the son of a daughter who is herself appointed to be in the place of a son. Then there is this:—"The "third description of son of an appointed "daughter is the child born of a daughter who "was given in marriage with an express stipula- "tion in this form. The child which shall be "born of her shall be mine for the purpose of "performing my obsequies." The attempt is made to bring the Appellant within this third description of son of an appointed daughter. A special form of stipulation is given. It is stated that it must be expressed, and Ménu also speaks of an express appointment proceeding in the same way from the father himself upon the marriage of the daughter. In this case no appointment was made by the father, and it certainly requires positive law or evidence of a custom from which the law may be presumed, that, supposing the rule still to exist that a father may appoint a daughter for this pur- pose, it is a part of it that he may dele- gate the appointment to his sons. There is nothing said of that power to delegate being a part of the law, but, on the contrary, the rules as to the manner of appointment given in the old authorities point to the act proceeding per-

sonally from the father. The law as to adoption of sons bears an analogy to this, but the usages of that law cannot, without authority, be imported into this mode of appointment. These adoptions must stand upon the authority relating to each. In this case, there was no formal appointment by the father himself in his lifetime, and no sufficient authority has been cited to establish that what was done afterwards can have the effect of making the son of the daughter, who appears to have been married with the consent of her brother upon the condition that the husband should live in the house, equal for the purposes of succession to the son of a son. But, however the law may be, the evidence of the authority supposed to have been given by Maharajah Sheebnath to his sons, and of the exercise of it by them, is most vague and unsatisfactory. No more appears respecting the supposed exercise of it by the sons, than that when their sister married, a condition was imposed upon the husband that they should live in the Maharajah's (her brother's) house, and the son be brought up as one of his. No ceremonies are proved to have been performed, nor any express form of appointment used. This evidence seems to be wholly insufficient to establish a formal appointment which is to have the serious consequences of altering the line of succession.

On the whole, therefore, their Lordships think that the judgments of the Courts below are correct, and they will humbly advise Her Majesty to affirm them, and to dismiss this Appeal with costs.