Judgment on the Appeal of Thakurain Ramanund Koer v. *Thakurain Raghunath Koer and another, from the Court of the Judicial Commissioner, Oude; delivered* 21*st January* 1882.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This suit is brought by Ramanand Koer, one of the widows of Nihal Singh, talookdar of Sihipur, against Ragunath Kuar, another of his widows, and Bisheshar Buksh Sing, to whom the latter widow had made a gift of the talook.

The suit is described as a suit for a declaratory decree under the 6th chapter of the Specific Relief Act, and the plaint prays for a declaration "that the Plaintiff is reversioner, and is entitled "to succeed to the estate of Sihipur after the "death of the first Defendant, who holds only a "life interest and is a trustee, anything contained "in Act I. of 1869 notwithstanding."

There follows a short statement of facts, viz., that Nihal Sing was talookdar and owner of Sihipur, that he died in the year 1832, leaving him surviving five widows, of whom the first Defendant is the third, and the Plaintiff the fourth. That the first widow succeeded her husband in the possession of the talook, and that upon her death, the second widow having predeceased her, the first Defendant succeeded in pursuance of a

will of Nihal Sing, and that the first Defendant has acknowledged that she holds a life estate only under the will. That the said Defendant made a gift of the estate to the second Defendant on the 27th February 1877. The plaint concludes thus :—

"The Plaintiff submits that, as the first Defendant is only a holder of a life interest and is a trustee, the gift is invalid. The Plaintiff, therefore, prays that she is entitled as a reversioner aforesaid."

It was not contested that, by virtue of Act I. of 1877, Section 42, such a suit is maintainable. The case of the Defendants was, in substance, that Rugunath Koer had, by virtue of a summary settlement made with her on the 2nd December 1858, and of a sunud on the 15th of March 1861, followed by the entry of her name on the first and third lists prepared by the Chief Commissioner of Oudh, under Section 8 of Act I. of 1869, as published in the Gazette of India, under Section 9 of that Act, an absolute estate, which she had power to alienate to whom she chose.

The case of the Plaintiff was that, granting the legal title thus conferred upon the first Defendant, she has so conducted herself that she must be deemed in equity to be bound to hold the estate in trust, for the purpose of carrying into effect the provisions of her husband's will.

Whether or not she has so conducted herself is the question in the cause.

The Deputy Commissioner gave judgment for the Plaintiff, the Commissioner and the Additional Judicial Commissioner for the Defendant. Against the judgment of the latter this appeal is preferred.

The will of Nihal Sing is in these terms :—

"I, Nihal Singh, talukdar of Sihipur, do hereby declare in writing that I have married five wives, and therefore I execute this deed, and deliver it into the custody of Baldi Ram Pandit. After my death, my first wife should become the proprietor of the taluka, and all the goods and chattels that may be in my house, and she shall support the other four wives by supplying them with food and raiment, and they shall not claim a share

in the estate. After the death of my first wife, my second wife shall become the proprietor of the estate; on the death of the second wife, my third wife shall become the proprietor, on her death my fourth wife, and on her death the fifth wife shall become proprietor. After the death of all the five wives, Sheoambar Singh (may he live long) shall become proprietor of my estate, goods, and chattels.

"I have reduced the above into writing in order to maintain the integrity of the Sihipur estate, and to perpetuate its name and memory. Every one in my house is interdicted by oath of my person to do any act contrary to the terms hereof. I pray God that any one contravening it may be visited with calamity, similar to what befel the people of Chittaur. The Hindus are bound by oath of the Ganges, and the Mahomedans by the Koran, to act in consonance with the terms hereof. I have no issue, and therefore I have executed this deed. But if I get a child it shall succeed to my estate, and manage all the affairs.

"Dated this 5th day of Asarh Badi, 1238 Fasli (30th June 1831).

"(Signed) SHEODIAL MAHAJAN,
Resident of Sahibganj.

"Witnessed by—
"Gurdial Kaeth, of Hirdepur, and
"Ram Ghulam Lal, of Katra."

With respect to the devolution of the estate after the death of the testator, their Lordships adopt the view expressed by the Commissioner in his judgment of 17th November 1877. "Whoever may have been considered 'malik' "or real owner of the estate, it seems certain "that none of the widows engaged for it as "revenue payers with Government, subsequent "to the death of Nihal Singh. Till after the "death of Harpal Singh, shortly before annexa- "tion, the present holder being the senior sur- "viving widow, perhaps took an engagement, "and was found in possession at annexation."

Had the talookdar left no will, each of the widows would, by the ordinary Hindoo law, have been entitled to an equal share of the estate; and, after the death of Harpal (who would seem to have taken unauthorized possession of it), the three surviving widows, viz., the Defendant, the Plaintiff, and Sheonath the fifth widow (who has not joined in this suit), would have been entitled to share it.

What was the effect of the sunud granted to the Defendant by the Native Government, if a sunud was granted to her, we do not know, but it may not be unfairly presumed to have been, in accordance with her husband's will.

The first material piece of evidence in the case is a letter (marked C) from Ragunath to Ramanand, dated 9th April 1856, about two months after the annexation of Oudh, in these terms:—

"Accept my good wishes and prayers for you. May God bless us both. Now the partition deed has been written, but considering your expenses to be heavy, I will pay you Rs. 500 per annum, separate from Sheonath Koer. But mind, you have to maintain our position; and, after my death, all the burden will fall upon you."

In the absence of any information relating to the "partition" referred to, it is difficult fully to understand the meaning of this letter. It has been argued, with some force, that the payment for expenses, together with the intimation that the burden of the inheritance will fall on Ramanand after the death of the writer, is a recognition that she holds under the terms of her husband's will.

The next document relied on by the Appellants is a deed of compromise (as it is termed), dated 14th November 1858, by which it would appear that certain disputes between the widows were for a time settled. This transaction took place some eight months after the confiscation of Oudh (15th March 1858), and before anything had been done to reinstate the landowners. The instrument is in two parts, one executed by Ragunath, the other by the other widows.

The latter document, marked D, is as follows:—

"Both of us, Ramanand Koer and Sheonath Koer, co-widows of Thakur Nehal Singh, talukdar of Sihipur, &c., do hereby agree with our free will and consent and bind ourselves in writing to Thakurain Raghunath Koer, that so long as she lives may manage the affairs of the ilaka, &c., and out of the allowance of Rs. 400 per annum fixed by her to enable us to pay for the expenses of our winter clothing, raiment, and

charity, and other necessaries of life, we will defray our expenses and will not indulge in extravagance. We will all three take our food, nice or coarse, whatever is cooked, together, and live in harmony with each other. We will not interfere with the management of the estate. We will try to maintain and guard what was earned by Thakur Nehal Singh, and will not waste it by extravagance. If perchance any expenses are required for the protection of life, property, or zemindari, they shall not be incurred without the sanction of Raghunath Koer.

"As long as the said Raghunath Koer lives and pays both of us according to the agreement herein recorded we will not complain to the brotherhood or to the authorities, and if we do so we shall render ourselves liable to blame before God, brotherhood, and the authorities. If God preserves the ilaka in its present condition we will continue to receive the allowance mentioned above, but if perchance the estate is increased or decreased we will of course receive the allowance at an increased or decreased rate, as the case may be. Our parents, brothers, and relations will be allowed to visit us according to the universal custom of the country."

Though no express mention is therein made of the will, their Lordships regard this document, which recognizes the right of Ragunath to a life estate in the entire property to which she was only entitled under the will, and her duty to pay an allowance to the other widows which was only prescribed by the will, as an affirmance by both parties of its binding effect upon them. Shortly after this, viz., on the 2nd December 1858, a summary settlement of a number of villages was made with the Defendant for three years.

The principal difficulty in this case arises from the conduct of the Plaintiff.

Subsequent disputes arose, in the course of which the Plaintiff repudiated this agreement or compromise, and indeed denied its existence, while on the other hand the Defendant in the most explicit terms set up the will, and claimed her rights under it.

On the 30th March 1859, the Plaintiff presented a petition to the revenue authorities, praying that she might be recorded as owner of one third of the estate, a claim in direct oppo-

sition to the will. On the question being referred to the Tesildar, the Defendant again set up the will, defended her exclusive possession under it, succeeded in her defence, and retained possession of the whole estate.

The litigation seems to have been ended by the following sulehnamah or deed of compromise on the 9th December 1859 :—

"We, Musstt. Kawal Jhari Koer, Plaintiff, and Raghunath Koer, Defendant, widows of Nihal Singh, deceased, talukdar of Sihipur, parganna Sultanpur, declare herein that :—

"Whereas there has been going on a dispute between both of us about the share of inheritance and the case was pending in the Court: The Deputy Commissioner of Fyzabad personally came to Khapradih and disposed of the dispute with our mutual consent in the following manner : that residing in Gaura or in Sihipur Khas, Kawal Jhari, Plaintiff, shall get from Raghunath Koer, Defendant, Rs. 450 in cash per annum for her expenses. Consequently we, the Plaintiff and the Defendant, having compromised, have recorded these few words as a deed of compromise (sulehnamah), that it may serve as a document for the future. And if ever we bring a claim in this matter we shall render ourselves amenable to Government.

"Dated this 9th day of December 1859, corresponding with the 14th of Aghan Sudi."

In January 1861, a letter, probably a circular letter, was sent to the Defendant, no copy of which is, unfortunately, to be found in the record, and whose purport can only be collected from her answer, which is in these terms (it is called Document E) :—

"Sir,—I have the honour to acknowledge the receipt of your parwana (letter), dated 7th December 1860, inquiring as to whom I wish to bequeath my estate after my death and what relationship he bears to me.

"Sir, so long as I live I shall continue to be the proprietor and mistress of my estate. After my death my rival widows, Mt. Sheo Nath Koer and Ramanand Koer, shall succeed to my heritage and the estate. But I must note that none of my two rival widows shall have power to alienate the estate by gift, transfer, or grant to any of their relatives, or to any stranger after my death, except Ram Sarup Singh and Balbhadar Singh, talookdars of Khapradih. After my death, and after the death of the two rival widows, Ram Sarup Singh and Balbhadar Singh, talukdars of Khapradih, shall inherit the estate and all

our legacy. The said talukdars are my great grandsons as described below.

"My husband, Thakur Nehal Singh, had an elder brother, Ganga Parshad Singh. My husband was killed and left no issue. Ganga Parshad Singh had three sons, Sheo Sewak Singh, Hubdar Singh, and Harpal Singh. Harpal Singh also was killed and left no issue. Hubdar Singh had a son, by name Bhairon Singh, who died during the lifetime of his father; soon after Hubdar Singh was also killed. Sheo Sewak Singh had a son, by name Sheoambar Singh. The latter has left two sons, Ram Sarup Singh and Balbhadar Singh, talukdars of Khapradih, who shall succeed us and inherit all property.

"Petition of Raghunath Koer, talukdar of Sihipur, &c., pargana Sultanpur.

"Dated this 6th day of January 1861."

It should be mentioned that another translation of this letter represents the inquiry to have been "whom she wished to appoint as her successor."

On the 15th of March following the Defendant received a sunud, whereby an estate of inheritance according to the law of primogeniture, together with full power of alienation, was granted to her.

The letter of the 6th of January is treated by the two Appellate Courts as simply a will, revocable by the testatrix and revoked by her when she made the gift to her nephew, the second Defendant, who, it may be stated, is not a member of her husband's family. If it had stood alone it might have been so treated, according to the view of this Committee in the case of Hurpurshad *v.* Sheo Dyal, 3 L. R., I. A., 259, with reference to a somewhat similar document, but which, having been acted upon, was there treated as amounting to a conveyance *inter vivos*. But, looking at the document in connexion with the will of Nihal Sing, the other documents, and the conduct of the Defendant in the suit before the revenue authorities, their Lordships regard it rather as a declaration that on her death the estate would devolve according to the directions of the will.

The doctrine that, notwithstanding the confiscation of the land in Oudh by the proclamation of Lord Canning, its restoration by his circular letter of 10th October 1859 affirming the absolute title of the grantees of summary settlements, and the granting a sunud with full power of alienation, confirmed by the Oudh Estates Act of 1869, the legal owner may, either by express agreement or by his conduct, constitute himself in equity a trustee for others as to the whole or part of the beneficial interest, has been affirmed by many decisions of this Board.

This doctrine was first laid down in these terms in the judgment delivered by Lord Justice James in the case of Thakorain Sookraj Koer *v.* The Government and others, 14 Moore, Indian Appl. 112:—

"It (the Government letter of 10th October 1859) gave the registered talookdar the absolutely legal title as against the State, and against adverse claimants of the talukdari, but it did not relieve the talukdar from any equitable rights to which, with a view to the completion of the settlement, he might have subjected himself by his own valid agreement. In this case the Appellant was the acknowledged cestuique trust of the registered talookdar, who bound himself expressly in writing that he would respect her rights if she would permit him to be alone so registered."

In the case of the widow of Shunker Sahai *v.* Rajah Kashi Pershad, 4 L. R., I. A., 198, it was held that, with respect to a one-third share of seven villages in the talook, the Rajah had, though no formal deed or writing was produced, by his admissions at the time of the summary settlement, constituted himself a trustee for the Plaintiff so as to be bound to account to her for a one-third share of the rents and profits.

The doctrine was further illustrated by the case of Thakoor Hardeo Bux *v.* Thakoor Jawahir Singh, 4 L. R., I. A., 178. The evidence being unsatisfactory, the case was remitted for retrial on the following issue, viz., "whether the Re-"spondent has in any or what manner agreed

" or become bound to hold the villages comprised " in the summary settlement and sunud, or " any or what part thereof, in trust for the " Appellant."

On the case again coming before this Board, their Lordships observe,—" The actual relation " of the Appellant, Respondent, and Parbut Sing " (who was no party to the appeal) remained that " of a joint and undivided Hindoo family from the " date of Lord Canning's proclamation up to the " quarrel and removal of the Respondent to Kas- " wara in 1865. The Commissioner also found, " and correctly in their Lordships' opinion, that " the evidence proved that during that period " there had been a joint interest in and common " management of the property. Such an interest " could not have existed unless the Defendant " had consented that the villages should be held " as the joint property of the family. Their " Lordships are of opinion that the facts so " found, coupled with the statement of the De- " fendant in his application for a summary " settlement, to the effect that Hardeo Bux was " his partner, and with his deposition on the 8th " July 1859, in which he stated that the custom " prevailing in his family was that if his cousins, " meaning the Plaintiff and Parbut Sing, who " were his partners, should claim, they would " get them divided, afford sufficient grounds to " justify their Lordships in presuming that, up " to the time of the quarrel in 1865, it was the " intention of the Defendant that the villages " included in the summary settlement, and " sunud should be held by him in trust for the " joint family and as a joint family estate, " subject to the law of the Mitakshara."

The principles of equity laid down in these cases (to which others might be added) appear to their Lordships to apply to the facts of the present case.

The Defendant Ragunath all along, certainly from April 1856 to the time when she obtained the sunud, held herself out as claiming the estate under the terms of her husband's will.

At the time of the summary settlement with her, on the 2nd December 1858, the agreement or compromise of the 14th of November previous, which their Lordships interpret as a recognition by all the three widows of that will, seems to have been in force. Although the junior widows soon after repudiated that compromise, and the Plaintiff claimed in a suit one third of the property, the Defendant succeeded in defeating her by setting up the will, and the suit ended in a second compromise of the 9th December 1859, which, though not clearly expressed, their Lordships regard as in effect recognizing the position of the Defendant which she claimed. This compromise, as far as appears, remained in effect until January 1861, when the Defendant executed document E, which has been before referred to, and which, coupled with the surrounding and preceding circumstances, their Lordships regard as a declaration by Ragunath that she held the estate in trust—a trust which would bind her heirs—to carry into effect the provisions of her husband's will. It is said that nothing was done by Ramanund in consequence of Rugonath's affirmance of the will, and that she was in no way damnified thereby. But their Lordships think it very difficult to maintain that position. It is true that Ramanund's former claims are quite inconsistent with her present claim. But then she has been defeated, and Rugonath has succeeded. Without the will the two would have been ordinary Hindoo widows, and Rugonath would not have been in a position to claim the sole benefit of the two settlements and of the sunnud which were granted to her. Document D is dated 18 days before the sum-

mary settlements. Document E is dated about 10 weeks before the sunnud. At two critical points of time we find Rugonath the author of formal and important documents, which, though they do not expressly mention the will, are not explicable except on the supposition that she was abiding by the will, which, on other occasions, she expressly set up and successfully used as a defence to her possession. They are, therefore, of opinion that the Plaintiff is entitled to the relief she prays for, viz., that it may be declared that she is entitled to succeed to the estate after the death of the first Defendant. It follows that the deed of gift to the second Defendant could confer no more than the life interest of the first Defendant. There is no prayer to set that deed aside, and if there had been it could have been effectual, inasmuch as the deed is not wholly void but operative to convey a life estate.

Their Lordships will humbly advise Her Majesty that the judgment appealed against be reversed, that a declaration to the effect above mentioned be made, and the costs of both parties be paid out of the estate.

~~Draft~~ *Judgment on the Appeal of Anant Bahadur Singh* v. *Thakurain Raghunath Kuar and others, from the Court of the Judicial Commissioner, Oude, delivered* 21*st January* 1882.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This suit was brought by Ram Sarup Sing, who was a son of Sheombar Sing, to whom the estate was given in remainder after the life estates of the widows, by the will of Nihal Singh, which has been before set out. Ram Sarup having died, leaving the Plaintiff, his son, and Ram Sarup's brother, Balbhadur, having also died, without issue, the present Plaintiff succeeds to all the rights of Sheombar.

He brings his suit against the Defendants in the former suit, with whom he has joined the two junior widows, for a declaratory decree under the Specific Relief Act, and prays to have it declared "that the deed of gift, dated the 27th "day of February 1877, is invalid against the "Plaintiff, who is a reversioner, because the "donee, the first Defendant, held only a life "interest, and is a trustee, anything contained "in Act I. of 1869 notwithstanding."

In their Lordships' opinion, the Plaintiff, having, in terms of the English law, a vested remainder immediately after the life estates, is

entitled, under the Specific Relief Act, to maintain this suit.

The question is whether the first Defendant is to be declared, *quoad* the Plaintiff, to hold the estate in trust for carrying into effect the provisions of her husband's will.

The evidence in this case differs in some respects from that in the former case. The Exhibits C and D (of the dates 9th April 1856 and 14th November 1858 respectively) are not in evidence.

The proceedings in the suit which has been referred to, of Ramanath against Ragunath, are in evidence.

Exhibit E (the letter of 6th January 1861) is in evidence.

In addition to these, two documents of some importance were tendered, one being a letter of Defendant to the present Plaintiff, of the 18th January 1870, marked "Bé;" another letter of the same date, marked "Alif," written (as alleged) by her agent, and referred to in the first letter. With respect to these documents, the Deputy Commissioner thus expresses himself:—

"The letters Alif and Bé remain for consideration as to the alleged admissions of trust. Alif was put in, it was said, only because it was referred to in Bé, so it will suffice to consider the value and effect of the latter. The Defendant, Ragunath Kuar, if she wrote this, informed the Plaintiff that she would do 'nothing contrary to the writing of the Thakur;" that he had been falsely informed that she meant to write a deed in favour of Bisheshar Baxsh (Defendant 4). A witness, Kunj Behari Lal, deposes that he wrote Bé for the Defendant, being at the time in her service; other witnesses depose that the signature to this letter is Defendant's. The letter is denied. It is pointed out that Alif and Bé were not filed with the plaint, nor alluded to in any way. This fact, a very important one, certainly renders the genuineness of these papers doubtful; whether genuine or not, Bé contains only a promise, and does not create any fiduciary relations, if none previously existed betwen the Plaintiff and Defendant. There is nothing in the promise which gives it any legal force."

He dismissed the suit.

The Commissioner who affirmed this judgment makes no distinct allusion to these letters.

The judgment of the Deputy Commissioner and the Commissioner being concurrent, no appeal lay to the Judicial Commissioner. The present appeal is brought from the judgment of the Commissioner.

Although the Deputy Commissioner throws some doubt on the genuineness of the two letters, —chiefly, it would appear, on the ground that they were not filed with the plaint (they seem to have been filed before the settlement of the issues),— he does not reject them, but considers their effect. As several witnesses testify to the signature of the Defendant to "Bé," and there is no contradiction of their testimony, and as Janki Lal, the writer of "Alif," testifies to his own handwriting, their Lordships do not deem themselves justified, in the absence of a finding by the Court below that the witnesses were not to be believed, in rejecting the letters. "Bé" is in these terms:—

"May God assist us. You will know the particulars from this letter and from that of Janki Ram.

"From Thakurain Ragunath Kuar to Ramsarup Singh.

"My dear Ramsarup Singh. After my good wishes to you, I pray God to keep us in good health.

"I have received your letter, have become acquainted with its contents, and have been satisfied. Bhagwat Sing, Lalla Goorparshad, Pandit Goordyal Ram, and Chandka Singh paid a visit to me in person, and related all the particulars to me verbally. The report that you have received from the second wife to the effect that I wish to make a bequest in favour of Bisheshar is altogether false; she wishes to incite a quarrel between you and me. I do not wish to contravene the instructions given by my husband, either by thought, word, or deed. I am surprised that although I have twice represented to the Government authorities my intention to comply with the instruction imparted by my husband in favour of your father, you are not satisfied, and are easily led away by others. I beg to assure you that nothing will be done contrary to the will of my husband.

"You will learn the other particulars from Janki Lal's letter. The rest is all right.

"Dated Asarh-Badi, 5th, 1277 E. 18th June 1870."

"Alif" is in these terms:—

"From Janki Lall to Thakur Ram Sarup Singh.

"Sir,—After compliments, I beg to state that may it please God to keep you in good health, which is advantageous to me. Having taken leave of you, I arrived at Sihipur yesterday, and related all the particulars to Thakurain Sahab-Lala Gur Parshad, Chandka Singh. Bhagwant Singh and Gurdial Ram came to-day to the Thakurain with your letter to her, who is going to send you a reply. Lala Gur Parshad and Gurdial Ram will give you all the particulars verbally. Thakurain Sahab takes thousands of oaths to the effect that nothing will ever be done contrary to the written wishes of Thakur Nihal Singh, and that the second wife of Thakur Nihal Singh is trying to instigate a false quarrel between you and her, Thakurain Sahab. You may, therefore, rest assured that no other plan is set on foot. The Thakurain wishes to make over one or two villages to Bisheshar from the estate lying on the west, with your sanction, which, she says, will be obtained, so that there may be no dispute or litigation hereafter. The rest is all right.

"Dated Asarh Badi 5th, 1277 Fasli."

The proceedings in the suit of Ramanath *v.* Rugonath, referred to the Tehsildar, wherein Rugonath insisted, and successfully, that she held under her husband's will, could not have been unknown to the rest of the family. The present Plaintiff, the remainder-man, may well have relied on the expressed intention of Rugonath to observe that will, and may have therefore thought it unnecessary to dispute her claims to a sunud. Their Lordships have already intimated their view of her letter of the 6th January 1861, viz., that it was a declaration of trust on behalf of those interested under Nihil Singh's will, including the remainder-man. But it must be here noticed that the present Plaintiff, on the 9th of March 1862, presented a petition wherein he ignored the will of Nihal Singh, and impugned as invalid this very declaration of trust, contending that he had a present right to the estate, or at the least was next in reversion to Rugonath.

If his case had rested here, their Lordships

would not have been disposed to make in his favour a declaration of a trust which he had expressly repudiated. But the letters "Alif" and "Bé" give a different aspect to the case. The order made after his petition is that he be directed to apply to Rugonath. What correspondence upon this took place between them can only be conjectured from these two letters. It would seem from them that the Plaintiff no longer disputed the life interest of Rugonath or the will of Nihal Singh, but had received some information that she intended to make an absolute gift of the estate, whereupon Rugonath refers to her representation to the Government of the 6th January 1861, and to some subsequent representation to the same effect, for the purpose of reassuring him of her intention to comply with her husband's will, and quieting his suspicions that she intended to avail herself of the full powers contained by her sunnud. According, then, to the evidence in this suit, Rugonath has herself given a significance to her declaration of the 6th of January 1861, which still more clearly fastens upon her the obligation to abide by it. She treats it as a wrong done to her that she should be suspected of any intention of departing from her husband's directions. And this places it beyond doubt that the declaration in question, which, as before observed, does not expressly mention Nihal's will, is really founded upon it, and treats it as a direction obligatory in conscience if not in law.

Their Lordships, however, think that two concurrent declaratory suits were unnecessary at the present time, and that it would not have been unreasonable if the First Court had, as a matter of discretion, declined, under the circumstances, to grant declaratory relief to the more remote remainder men. That, however, was not done. Ram Sarup's suit has been decided on the merits,

and decided against him, as their Lordship's think, wrongly. They will, therefore, humbly advise Her Majesty that the Appellant is entitled to the decree he asks, but without costs, nor do they give any costs of this appeal.