

*Privy Council Appeals Nos. 87 and 88 of 1910 and 78 of 1911.*

*Oudh Appeals Nos. 20 and 30 of 1907 and 7 of 1909.*

Thakur Rajindra Bahadur Singh, since deceased	- - - - -	<i>Appellant,</i>
	<i>v.</i>	
Rani Raghubans Kunwar, since deceased	-	<i>Respondent.</i>
Rani Raghubans Kunwar, since deceased	-	<i>Appellant,</i>
	<i>v.</i>	
Thakur Rajindra Bahadur Singh, since deceased	- - - - -	<i>Respondent.</i>
Thakur Rajindra Bahadur Singh, since deceased	- - - - -	<i>Appellant,</i>
	<i>v.</i>	
Rani Raghubans Kunwar, since deceased	-	<i>Respondent.</i>

*Consolidated Appeals*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY, 1918.

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*Present at the Hearing :*

VISCOUNT HALDANE.

SIR JOHN EDGE.

MR. AMEER ALI.

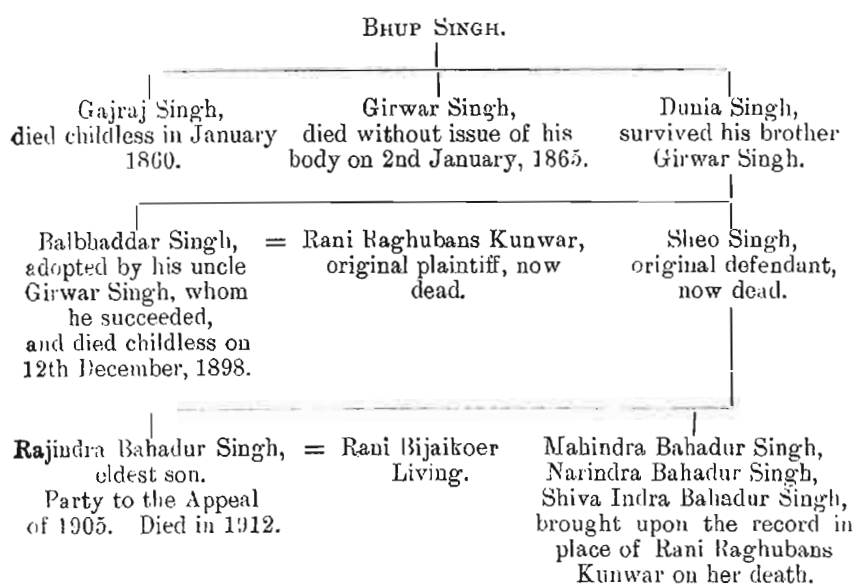
SIR WALTER PHILLIMORE, BART.

[*Delivered by* SIR JOHN EDGE.]

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The suit in which these consolidated appeals have arisen came on appeal before the Board in 1905. The Board which heard the appeal finally decided several important questions which were in dispute between the parties, but did not finally dispose of some other questions which related to portions of the property which were in dispute in the suit, and in respect of the questions which were not then finally decided advised His Majesty that these questions should be remanded to the

Court of the Judicial Commissioner of Oudh with power to that Court to remit the case to the Court of the Subordinate Judge for inquiry. The judgment of the Board is reported in 32 Indian Appeals, 203. The Court of the Judicial Commissioner made on the 4th March, 1907, a decree which dealt with some of the questions in dispute, and on the 21st January, 1909, a further decree, which dealt with the remaining questions in dispute, and from those decrees these consolidated appeals have been brought. The original parties to the suit are dead and to understand the position of the parties to these consolidated appeals it is advisable to state, so far as it is material for that purpose, the pedigree of the family to which they belong, so far as it has been proved or admitted in this litigation. The members of the family are Hindus.



The property to which the suit related was property, movable and immovable, of which Balbhaddar Singh died possessed on the 12th December, 1898. On his death his widow Rani Raghubans Kunwar and his brother Sheo Singh each claimed adversely to the other all the property of which Balbhaddar Singh had died possessed, the Court of Revenue made an order for the mutation of names in favour of Sheo Singh, and he obtained possession of all the property, movable and immovable. Rani Raghubans Kunwar on the 6th February, 1900, brought this suit against Sheo Singh for possession of all the movable and immovable property. She alleged that Balbhaddar Singh had been adopted by his uncle Girwar Singh, and that Girwar Singh had by his will devised all his property to Balbhaddar Singh, who had enjoyed it until his death. Her suit was resisted by Sheo Singh, who alleged that all the property claimed by her appertained to taluqa Mahewa and was impartible; that by a custom in the family females were excluded from the inheritance; that the succession to the taluqa was governed by section 22 of the Oudh Estates Act (1 of 1869), under which he claimed that a brother was entitled in priority to the widow; and he denied that Balbhaddar Singh had been

adopted by Girwar Singh. Sheo Singh relied upon a sanad of the 19th October, 1859, by which the Government had granted taluqa Mahewa to Gajraj Singh and his heirs without other limitation of the line of inheritance. At some period of the litigation a copy of a sanad, which was granted by the Government to Girwar Singh in 1861 was produced, and the Board in 1905 held that the copy was admissible in evidence, and that Girwar Singh had in fact surrendered to the Government the sanad which had been granted to Gajraj Singh in 1859 and the estate which had been granted by it, and in lieu of that sanad had accepted the sanad of 1861. The sanad of 1861 said expressly :—

“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.”

The Courts in India had held that the sanad of 1861 could not in law operate to substitute the line of descent prescribed by it, for the line of descent prescribed by the earlier sanad of 1859, and having found that Balbhaddar Singh had been adopted by Girwar Singh and had succeeded to taluqa Mahewa under the will of Girwar Singh, and that the alleged custom excluding females from the inheritance had not been proved, gave Rani Raghubans Kunwar a decree for possession. That alleged custom excluding females from inheritance was the only custom of the family which Sheo Singh attempted to prove.

In the appeal which came before the Board in 1905 from the decree of the Court of the Judicial Commissioner it was contended on behalf of Rani Raghubans Kunwar that Girwar Singh was not competent to surrender to the Government the sanad of 1859 ; that the Government, having granted by the sanad of 1859 the estate to Gajraj Singh and his heirs, had nothing left to grant to Girwar Singh in 1861 ; and, further, that the Government had no power to create by the grant of 1861 an estate descending by any rule of inheritance that was contrary to the ordinary law, which, as the family were Hindus, was the Hindu law. The Board, however, held that Girwar Singh, being entitled by inheritance to everything that had passed to Gajraj Singh under the sanad of 1859, was competent to surrender the sanad of 1859 and to accept instead of it the sanad of 1861, and had surrendered the sanad of 1859 and the estate which had passed under it, and that the Government was competent to grant the sanad of 1861. As to the contention that the Government had no power to grant to a Hindu, as it did by the sanad of 1861, an estate which should descend on an intestacy to the nearest male heir according to the rule of primogeniture their Lordships said : “ Whatever force such a contention might otherwise have had appears to their Lordships to be removed by the Act to which

their attention was called: 'The Crown Grants Act, 1895' ('Act XV of 1895'). That Act recites, amongst other things, that doubts have arisen as to the power of the Crown to impose limitations and restrictions upon grants and other transfers made by it or under its authority, and it is expedient to remove such doubts. And section 3 enacts that—

“‘all provisions, restrictions, conditions, and limitations over contained in any such grant or transfer, as aforesaid, shall be valid and take effect according to their tenor, any rule of law, statute, or enactment of the Legislature to the contrary notwithstanding.’”

When the appeal was being argued before the Board in 1905, the arguments addressed to their Lordships related only to the right to the possession of taluqa Mahewa on the death of Balbhaddar Singh, and it appears to have been overlooked by counsel during the arguments that the appeal also related to other property which was alleged to have been acquired by Balbhaddar Singh, and which had not formed part of the property granted by the sanad of 1861. Before the judgment of the Board was delivered in 1905 the attention of their Lordships was drawn by counsel to the fact that the appeal also related to such other property. In their judgment of 1905 their Lordships consequently said: “The present appeal relates mainly to taluqa Mahewa, and the argument before their Lordships dealt only with it. The principle adopted in this judgment only applies to that taluqa, including, of course, any property that may have accreted to it since the date of the sanad under which it is held. It has been pointed out by counsel that the suit out of which the appeal arises related also to property said to have been acquired apart from the taluqa. It seems clear that their Lordships have not materials before them to enable them to define what property (if any) other than the original contents of the taluqa now passes as part of it.” Their Lordships held that taluqa Mahewa, as constituted at the date of the sanad of 1861, with accretions (if any) or properties (if any) appurtenant to the taluqa, had, on the death of Balbhaddar Singh, passed in accordance with the limitations of that sanad to Sheo Singh as the next male heir according to the rule of primogeniture, and humbly advised His Majesty to make:—

“a declaration that the taluqa Mahewa, as constituted at the date of the sanad, with accretions (if any) or properties (if any) appurtenant to the taluqa, has passed to the appellant, and that as to any other property of the deceased the decrees of the Courts below are not affected, and to order that it be left to the Court of the Judicial Commissioner, if it be found that there is real controversy on the point, either itself to determine what property falls under one category and what under the other, or to remit the case for inquiry to the Court of the Subordinate Judge, and to order that, so far as may be necessary to give effect to the first part of the foregoing declaration, the decrees of the Courts below ought to be discharged and the suit dismissed.”

That declaration was made by the Order in Council, and the Court of the Judicial Commissioner remitted the case for inquiry to the Court of the Subordinate Judge.

The Court of the Subordinate Judge made two reports, one relating to the villages in dispute, and the other to a house at Sitapur, a house at Lucknow, and movable property of which Balbhaddar Singh had died possessed. Objections which were taken to each of those reports came at different dates before the Court of the Judicial Commissioner, and from the decrees of that Court made upon those reports these consolidated appeals have been brought.

Some of the learned Judges of the Court of the Judicial Commissioner misunderstood what their Lordships meant in 1905 by the terms "accretions" and "properties appurtenant" to taluqa Mahewa. Their Lordships obviously did not mean to limit accretions to accretions to land which had gradually and imperceptibly by the action of water gone to the owner of the adjacent soil. No accretion of that nature had apparently been suggested by the parties to the suit. What was suggested was that Balbhaddar Singh had acquired property by purchase, and had added it to the estate which had been granted by the sanad of 1861 to Girwar Singh. The facts were not before their Lordships in 1905 which would have enabled them to decide whether any lands had accreted to taluqa Mahewa as it was constituted at the date of that sanad. The Crown has in British India power to grant or to transfer lands, and by its grant, or on the transfer, to limit in any way it pleases the descent of such lands. But a subject has no right to impose upon lands or other property any limitation of descent which is at variance with the ordinary law of descent of property applicable in his case. Sir Edward Chamier, then Mr. Chamier, Judicial Commissioner of Oudh, in his judgment on some objections taken to one of the reports of the Court of the Subordinate Judge, correctly stated the law in this respect as to the power of a subject, thus:—

"I take it that is settled law that a subject cannot make his property descendible in a manner not recognised by the ordinary law, and that he cannot subject it to a rule of descent such as is contained in the primogeniture sanad granted to Girwar Singh. If this is so, it appears to me to follow that Balbhaddar Singh could not by express declaration, still less by mere volition, whether actual or presumed, subject property acquired by him to the rule of succession entered in the primogeniture sanad granted to Girwar Singh."

With that statement as to the law their Lordships agree. It follows that in ascertaining what were the lands claimed by Rani Raghubans Kunwar in respect of which her suit was not dismissed in 1905, it must be ascertained what were the lands of which Balbhaddar Singh died possessed which were acquired by him and did not form part of taluqa Mahewa as it was constituted at the date of the sanad of 1861, and were not lands

acquired by him from the Government in exchange for lands which were included in that sanad. The Government had power to give to Balbhaddar Singh in exchange for sanad lands other lands which had not been granted to Girwar Singh in 1861, and the lands so acquired by him in exchange would be subject to the rule of descent prescribed in the sanad of 1861.

By the sanad of 1861 the Government granted to Girwar Singh "the full proprietary right, title, and possession of taluqa Mahewa, consisting of the villages as per list attached to the Kaboolyut you have executed," subject to the payment of rent and the other conditions in the sanad mentioned. The estate, which was granted to Girwar Singh in 1861, was the same estate which had been granted to Gajraj Singh in 1859 and had been surrendered to the Government by Girwar Singh. Unfortunately neither the Kaboolyut which was executed by Girwar Singh in 1861 nor the Kaboolyut which was executed by Gajraj Singh in 1859 has been found, but the lands granted in 1861 were lands of which the Government was then in a position to grant "the full proprietary right and title" to Girwar Singh.

When the case was remitted for inquiry to the Court of the Subordinate Judge, that Court reported that of the 166 villages for which Rani Raghubans Kunwar had obtained her decree, which was the subject of the appeal in 1905, there was no controversy as to 108 of them, it was admitted that the 108 villages were taluqdari villages, that is, that they were villages which were included in the sanad of 1861. As to the remaining 58 villages the Subordinate Judge reported that Sheo Singh was entitled to 27 specified villages, and that Rani Raghubans Kunwar was entitled to 31 villages, which also were specified in the report. Rani Raghubans Kunwar filed objections to the findings of the Subordinate Judge as to 19 of the 27 villages which the Subordinate Judge had reported to be taluqdari villages, and on the other side objections were filed as to the findings of the Subordinate Judge as to the 31 villages which he had reported to be non-taluqdari villages, that is, villages not covered by the sanad of 1861.

On the consideration of the Report the Court of the Judicial Commissioner allowed the objections of Rani Raghubans Kunwar to the findings of the Subordinate Judge as to Chak Sarkhanpur, Chak Simri, and one-half of Hasnapur, and held that they were non-taluqdari; and, on the other hand, allowed the objections to the findings of the Subordinate Judge as to Sarkhanpur Marhuna, Puraina, and Patti Bhupatpur, and held that they were taluqdari villages, and overruled all the other objections, and made the decree of the 4th March, 1907, which is one of the decrees now under appeal.

Their Lordships will now deal with the appeals in which the title to the villages is disputed before them. They will consider only those cases in which it appears from the record that the objections to the report of the Subordinate Judge

which had been filed were persisted in by one or other of the parties in the Court of the Judicial Commissioner. It must be taken that the findings of the Subordinate Judge were correct in all those cases in which the objections to his findings were not supported in the Court of the Judicial Commissioner.

The villages Parai, Unchgaon, and Khandwa Mitmau, which were non-taluqdari villages, and were not included in the sanad of 1861, are villages which the Government subsequently transferred to Balbhaddar Singh in exchange for three of the taluqdari sanad villages or parts of them, and consequently must be treated as taluqdari villages which on Balbhaddar Singh's death descended to Sheo Singh.

The village Sarkhanpur Marhuna, which is distinct from Chak Sarkhanpur, must be taken to have been a taluqdari village at the time when the sanad of 1861 was granted, and to have been included in that sanad. It descended on Balbhaddar Singh's death to Sheo Singh. The pleader for Rani Raghubans Kunwar gave up on her behalf all claim to the village.

Puraina was entered in the summary settlement of 1859 in the name of Jauki Pershad as the proprietor. It had been mortgaged to Thakur Umrao Singh, under a mortgage with possession of 1245 Fasli (1837-1838), which became irredeemable by reason of Act XIII of 1866, and the Settlement Officer on the 30th June, 1868, gave Balbhaddar Singh, who was the legal representative of Thakur Umrao Singh, a decree for the full proprietary possession. Puraina was non-taluqdari property at the time of the sanad of 1861.

Patti Bhupatpur was entered in the summary settlement in the names of Jangu and Lachman as the proprietors. Balbhaddar Singh obtained a decree for one-third of the village on the 7th February, 1868, under a mortgage of conditional sale which had been granted in 1248 Fasli (1840-1841) by the then proprietors. In an application for partition Balbhaddar Singh described Patti Bhupatpur as not comprised in any taluqa, and in 1894 he purchased another one-third of the Patti. It was non-taluqdari, and was not included in the sanad of 1861.

Munda Nizampur was inherited by Balbhaddar Singh from Anand Kunwar, and could not have been included in the sanad of 1861. It is not taluqdari.

Benipur was purchased by Balbhaddar Singh between 1880 and 1884, and was not included in the sanad of 1861. It is non-taluqdari.

Kasba Kheri. The register of the summary settlement does not show that it was settled with Gajraj Singh. No evidence has been referred to which shows with whom the village was settled, but as Rani Raghubans Kunwar stated in her plaint that Kasba Kheri had been settled with Gajraj Singh it must be taken to have been included in the sanad of 1861 and to be taluqdari.

Rechan was found by the Subordinate Judge and by the Judicial Commissioner's Court to have been included in taluqa Mahewa at the date of the sanad of 1861. No evidence has been brought to the attention of their Lordships to show that those findings were not correct. Gajraj Singh paid revenue assessed in respect of Rechan. Rechan must be taken to be taluqdari.

Chak Sarkhanpur. In the summary settlement Chak Sarkhanpur was entered in the name of Har Pershad as the proprietor. Balbhaddar Singh acquired it by purchase. It was not included in the sanad of 1861 and is non-taluqdari.

Chak Simri was entered in the summary settlement in the name of Mohan Lal. It was purchased by Balbhaddar Singh. It was not included in the sanad of 1861, and is non-taluqdari.

Hasnapur. One-half of Hasnapur was purchased in 1270 Hijri (1853) by Umrao Singh, and the other half in 1865 by Balbhaddar Singh. Consequently one-half of the village was included in the sanad of 1861 and is taluqdari, and the other half is non-taluqdari.

Nausar Jogipur. In the summary settlement this village was entered in the name of Gajraj Singh. In a mortgage deed Balbhaddar Singh stated that this village was included in the sanad. It must be taken that the village is taluqdari.

Mukaddarpur. In a mortgage deed Balbhaddar Singh stated that this village was comprised in the sanad. The pleader of Rani Raghubans Kunwar stated at the hearing that Behari had sold it to Gajraj Singh, who, however, had not obtained possession until after the summary settlements. It must be treated as a taluqdari village.

Bastauli. In the summary settlement the two halves of Bastauli were entered in the name of Gajraj Singh, and must be taken as taluqdari.

Saharwa. In the summary settlement this village was entered in the name of Gajraj Singh. It must be taken to have been included in the sanad of 1861 and as taluqdari. Asawa, Banjargaon, Bhargawan, Jamnaha, Saunkia, Sansarpur, and Kaimahra, all these villages were found by the Judicial Commissioner's Court to have been in the possession of Girwar Singh at the date of the sanad of 1861. The Subordinate Judge and the Court of the Judicial Commissioner dealt with them as taluqdari villages, and nothing has been brought to the attention of their Lordships to lead them to the conclusion that these villages, or any of them, were not included in the sanad of 1861 and were not taluqdari villages.

The result of their Lordships' view as to the villages is that to the list of villages set out in the decree of the 4th March, 1907, of the Court of the Judicial Commissioner, in respect of which Rani Raghubans Kunwar was entitled to maintain her decree for possession, the villages Puraina and Patti Bhupatpur should be added, and that no village should be struck out of that list.



Their Lordships will now consider the decree of the Court of the Judicial Commissioner of the 21st January, 1909, which was made on the hearing of the objections which were filed to the report of the Subordinate Judge which dealt with disputes as to a house in Sitapur, a house in Lucknow, and the movable property of which Balbhaddar Singh had died possessed.

The house in Sitapur was acquired by Balbhaddar Singh, and never at any time was part of the taluqdari estate which was granted to Girwar Singh by the sanad of 1861. It is non-taluqdari.

The house in the Kaiser Bagh at Lucknow. The right to the possession of this house does not depend upon the sanad of 1861, which was granted to Girwar Singh upon the surrender by him to the Government of the sanad of 1859, which had been granted to Gajraj Singh. The house in the Kaiser Bagh was not included in the sanad of 1861. It is common ground that a house in the Kaiser Bagh was allotted by the Government to Girwar Singh in 1864 or 1865 for his use as the Taluqdar of taluqa Mahewa. That house was demolished when the Canning College was built, and in place of it another house, the house now in dispute, was allotted by the Government to Balbhaddar Singh for his use as the taluqdar of the taluqa Mahewa. No sanad relating to the house has been produced, nor has it been proved that any sanad relating to the house was granted. But it may be inferred from the fact that the house was allotted to Balbhaddar Singh for his use as Taluqdar of Mahewa that such right to possession of it as he had passed not to his widow but to his successor in the Taluqdari of Mahewa.

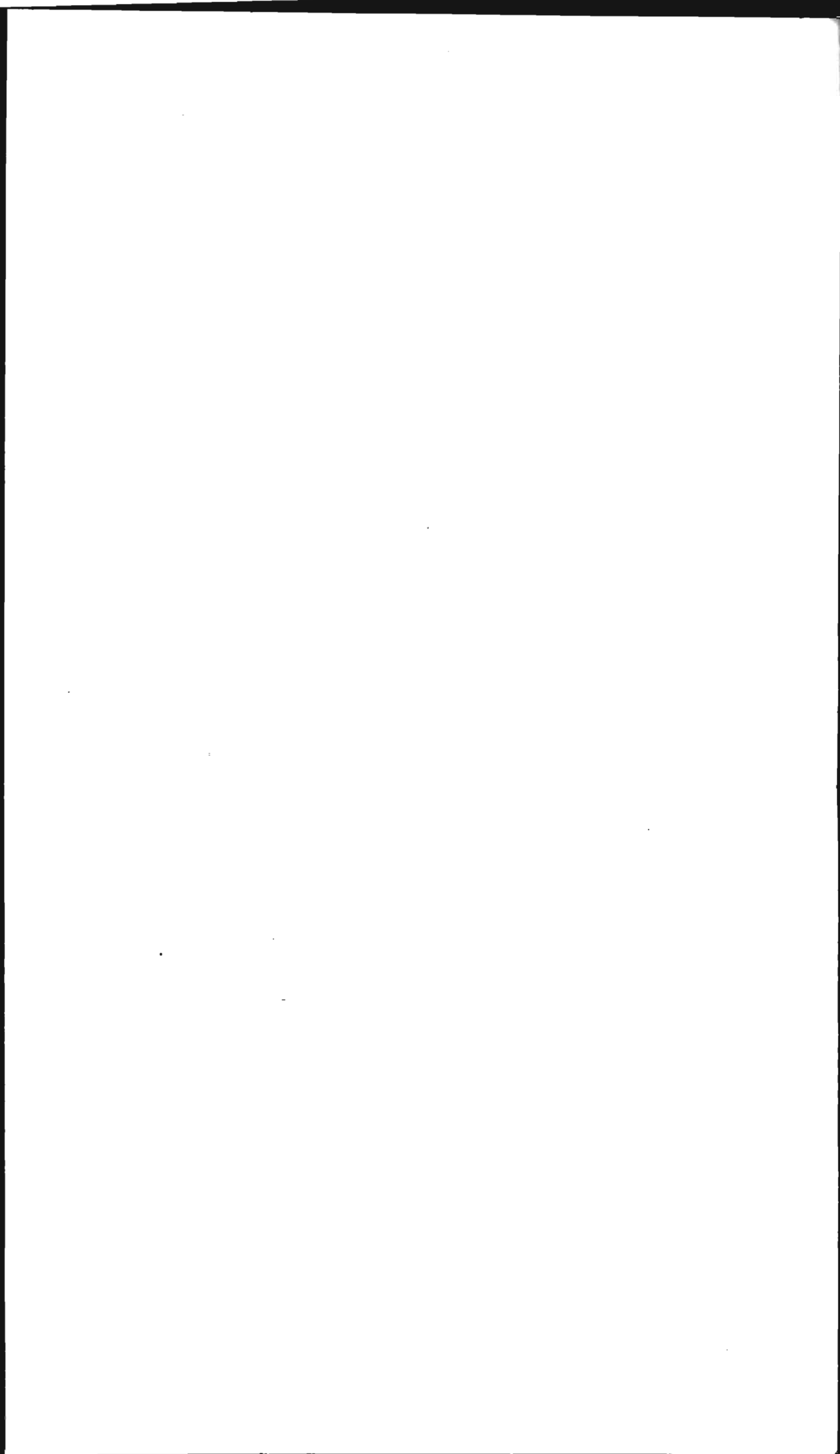
The movable property of which Balbhaddar Singh died possessed was not subject to the limitation of descent which was by the sanad of 1861 prescribed for the villages which were included in that sanad, and passed on his death to his widow, Rani Raghubans Kunwar.

The decree of the Court of the Judicial Commissioner, dated the 21st January, 1909, should be varied by decreeing that the suit of Rani Raghubans Kunwar should stand dismissed so far as her suit related to her claim for the possession of the house at Lucknow.

Thakur Rajindra Bahadur Singh, who was brought upon the record as the representative of his late father, Sheo Singh, died in 1912, and Rani Raghubans Kunwar died in 1910, and their Lordships have been much pressed to advise His Majesty as to who is now entitled to the property other than taluqa Mahewa as it was constituted at the date of the grant of 1861, in respect of which Rani Raghubans Kunwar brought her suit in 1900 in the Court of the Subordinate Judge of Sitapur, but their Lordships are not in a position to tender such advice, and can only advise His Majesty as to the rights of the parties as they existed at the time when the decrees of the Court of the Judicial Commissioner now under appeal were made.

Their Lordships will humbly advise His Majesty that the decree of the Court of the Judicial Commission of the 4th March, 1907, should be varied by adding to the list of villages set forth in that decree the villages Puraina and Patti Bhupatpur, and that the decree of the Court of the Judicial Commissioner of the 21st January, 1909, should be varied by decreeing that the suit of Rani Raghubans Kunwar should stand dismissed so far as her suit related to her claim for possession of the house at Lucknow, and that so varied those decrees should be affirmed as of the dates when they were made respectively by the Court of the Judicial Commissioner, and should have effect accordingly as to the rights of the parties who were concerned at those respective dates and of those claiming under them. No costs of these consolidated appeals as between the parties to them shall be allowed.

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In the Privy Council.

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THAKUR RAJINDRA BAHADUR SINGH

*v.*

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DELIVERED BY

SIR JOHN EDGE.