

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rani Bhagwan Kaur v. Bose and others, from the Chief Court of the Punjab; delivered the 5th August 1903.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

Sirdar Dyal Singh, a wealthy gentleman who resided at Lahore, died on the 9th September 1898, having executed a will on the 15th June 1895, by which he appointed the Respondents his executors, and made various dispositions of his property which need not now be considered. The testator was by birth a Sikh.

On the 18th February 1899 the executors applied to the Chief Court of the Punjab for probate of the will under the Probate and Administration Act (Act V.) of 1881. Several persons opposed the grant, amongst whom was the present Appellant, the testator's widow. She raised a variety of objections of which it is only necessary to notice two. She alleged, first, that the application was not maintainable under the Act of 1881, as the deceased was not a Hindu within the meaning of the Act at the time of his death or at the time of the making of his will. Secondly, she denied the due execution of the will, and alleged that there were alterations and

interlineations which affected the right to probate. Issues were settled raising these questions. The Chief Court decided against the Appellant on both points, and granted probate to the executors. Against that decision the present Appeal has been brought.

The Appellant's first objection resolved itself in argument into three. First, that the testator as a Sikh was not included in the term "Hindu," as used in the Act of 1881. Secondly, that assuming Sikhs to be Hindus within the meaning of the Act, the testator had before his death ceased to be a Sikh and become a member of the Brahma Somaj, and so was not a Hindu. Thirdly, that certain personal habits of the testator in respect of diet and otherwise were inconsistent with Hindu or Sikh orthodoxy, and so excluded him from the term Hindu in the Act. Their Lordships will deal with these several points in their order.

A long series of legislative provisions have been enacted for the purpose of securing to the people of India the maintenance of their ancient law, amongst others in matters of inheritance and succession, and many minor enactments have been passed to facilitate the administration of the laws so preserved. The object and principle of this legislation has been throughout to enable the people of various races and creeds in India to live under the law to which they and their fathers had been accustomed, and to which they were bound by so many ties.

The framers of the earlier acts, regulations, and charters had a less detailed acquaintance than we have now with the diversities of creed and of religious law existing in India. They were familiar with two great classes, Muhammadans and Hindus, each with its own law bound up with its own religion. They thought no doubt that they were sufficiently providing for the

case by securing to Muhammadans the Muhammadan law, and to Hindus (or Gentus, as they were sometimes called) the Hindu law. In process of time it became more and more clearly understood that there were more forms than one of the Muhammadan law, and more forms than one of the Hindu law, and the Courts, acting in the spirit which prompted the legislation, have applied the law of each school to the people whose ancestral law it was. In the same way it came to be known that there were religious bodies in India which had, at various periods and under various circumstances, developed out of, or split off from, the Hindu system, but whose members have nevertheless continued to live under Hindu law. Of these the Jainas and the Sikhs are conspicuous examples. Their cases had to be considered by the Courts, and in dealing with them a liberal construction was always placed upon the enactments by which Muhammadans and Hindus were secured in the enjoyment of their own laws.

As to Jainas the Courts in India always applied the Hindu law generally to their cases in the absence of custom varying that law. This course was approved by this Board in *Sheo Singh Rai v. Mussumut Dakho*, 5 I. A. 87, and *Chotay Lall v. Chunno Lall*, 6 I. A. 15.

The case of the Sikhs came up for consideration for the first time, so far as their Lordships are aware, before the Supreme Court in Calcutta, in *Doe dem. Kissenchunder Shaw v. Baidam Beebee*, reported briefly from Sir E. Hyde East's notes in 2 Morley's Digest, 22. In the previous volume of the same work (at p. clxxvii) a statement is quoted, made to a Parliamentary Committee in 1830 by Sir E. Hyde East, by whose Court the case just mentioned was decided. He said of that case: "The difficulty was gotten

'over by considering the Sikhs as a sect of "Gentoos or Hinloos, of whom they were a "dissenting branch."

From that time to the present the same view has been acted upon by the Indian Courts, and particularly (as has been pointed out by the learned Judges of the Chief Court in the present case) by the Courts of the Punjab, which is the real home of the Sikhs.

An ingenious argument was addressed to their Lordships upon this point. It was suggested that the application of Hindu law to the Sikh community was not based upon their being Hindus within the meaning of the early legislation bearing on the subject, but upon the alternative rule of justice, equity, and good conscience, also sanctioned by that legislation, in accordance with the principles laid down in *Abraham v. Abraham*, 9 Moo. I. A. 195, as applicable to converts from Hinduism to Christianity. As to this it seems sufficient to say that the ground of decision has never been that which is now suggested, but that the decisions have been based upon the view that Sikhs were included under the term Hindu.

To recur to the Acts of the Legislature, there have undoubtedly been modern instances in which, in the light of more complete knowledge, the various creeds of India have been more accurately or at least more carefully distinguished than they once were. Their Lordships' attention was called to several instances of this. The Hindu Wills Act, 1870 (No. XXI. of 1870), an Act not in force in the Punjab, is made applicable to the will of any Hindu, Jaina, Sikh, or Buddhist. Act III. of 1872, passed to provide a form of marriage for persons not professing the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion, enumerates those religions accordingly. And the Married

Women's Property Act (III. of 1874) similarly distinguishes Hindus, Muhammadans, Buddhists, Sikhs, and Jainas.

But though in some modern Acts religions are thus distinguished with more detail than was formerly used, in others the old form of language is used, and with the old generality of meaning. An instructive example is to be found in the Punjab Laws Act (Act IV.) of 1872, Section 5 of which enacts that in questions regarding succession, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be (a) any special custom applicable to the parties concerned; " (b) the Muhammadan law in cases in which " the parties are Muhammadans, and the Hindu " law in cases in which the parties are Hindus." It is impossible to suppose that the Legislature in laying down the law for the Punjab, while providing a rule of decision for Muhammadans and Hindus, should have overlooked the case of the Sikhs, or left them dependant only upon such customs as they might be able to prove. It seems clear that the Legislature used the old phraseology in the old sense, and included Sikhs under the term Hindu.

The evidence in the present case makes it clear, and it is satisfactory to find it so, that in including Sikhs under the term Hindus, Legislators and Judges have acted quite in accordance with popular usage. Witnesses on one side and on the other, Sikhs and others than Sikhs, speak of Sikhs as Hindus. And in an official publication of high authority, the General Report on the Census of India 1891, at p. 164, it is said that a Sikh is "generally called a Hindu in common " parlance."

These considerations naturally lead up to an examination of the particular legislative enactments which their Lordships have to construe.

The Indian Succession Act (Act X. of 1865) laid down the law as to inheritance and testamentary disposition in British India for all classes of persons who were not exempted from its provisions. The Act is based upon English law, and for the most part it expresses the rules of that law. It would obviously have been absurd to apply such an Act to the people of India generally, whose laws were wholly different from the English. And accordingly in Section 331 it is declared that:—

“The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist.” Section 332 further gave power to the Government of India to exempt any race, sect, or tribe from the operation of the Act; but no exemption affecting the present question has been made under this Section. It appears to their Lordships to be clear that in Section 331 the term Hindu is used in the same wide sense as in earlier enactments, and includes Sikhs. If it be not so, then Sikhs were, and are, in matters of inheritance, governed by the Succession Act, an Act based upon, and in the main embodying, the English law; and it could not be seriously suggested that such was the intention of the Legislature.

The Probate and Administration Act, 1881 (Act V. of that year), which is mainly a procedure Act, commences with a preamble reciting that “it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply.” In Section 2 it is said that

“ chapters II. to XIII. (both inclusive) of this
“ Act shall apply in the case of every Hindu,
“ Muhammadan, Buddhist, and person exempted
“ under Section 332 of the Indian Succession
“ Act, 1865 ”; and the chapters there mentioned
include the provisions for the grant of probate
of wills.

Their Lordships think it clear that the term
Hindu in this Act is used in the same sense as in
the Succession Act, and they agree with the
Chief Court in holding that a Sikh is included
under that term.

The second form in which the objection to the
grant of probate was put was that, assuming the
testator as a Sikh to have been originally a
Hindu within the meaning of the Probate and
Administration Act, he had ceased to be either a
Sikh or a Hindu by becoming a member of
another religious body, the Brahmo Somaj. The
learned Judges of the Chief Court examined the
literature bearing upon the Brahmo Society ;
they had before them much important evidence
with reference to the Brahmos and the relation
of their principles and their organisation to the
Hindu system ; and they came to the conclusion
that a Sikh or Hindu by becoming a Brahmo did
not necessarily cease to belong to the community
in which he was born. They also found on the
evidence that the testator never became a pro-
fessed Brahmo at all. In both these conclusions
their Lordships agree.

It was next objected that in matters of diet
and ceremonial observance the testator had
departed so far from the standard of orthodoxy
binding upon him as a Hindu or a Sikh as to
exclude him from the term Hindu in the Act in
question. Their Lordships agree with the
learned Judges of the Chief Court in thinking
that such lapses from orthodox practice, as-
suming them to be established, could not have

the effect of excluding from the category of Hindu in the Act one who was born within it, and who never became otherwise separated from the religious communion in which he was born.

There remains one further point to be disposed of. It was contended for the Appellant that the will admitted to probate had not been duly executed in its present form. The mode in which the objection arose is somewhat peculiar. The will is signed by the testator at the end of it, and attested by two European officers, Dr. Clark, who was at the time the Civil Surgeon, and Colonel Marshall, who was at the time the Divisional and Sessions Judge of Lahore, the attestation clause being in the completest possible form. The will, which is an English document, and which their Lordships have had an opportunity of examining, is also signed at the bottom of each page by the testator and by the attesting witnesses. It was deposited in the office of the Registrar a few days after its execution, and there it remained till after the death of the testator more than three years later. The application for probate fully complied with the requirements of the law as expressed in Sections 62 and 67 of the Probate and Administration Act; it was verified by the executors, and there was appended to it a declaration of due execution by Clark, one of the attesting witnesses. If this had been all, there would have been quite sufficient to warrant the issue of probate. The Appellant, however, in opposition to the grant, disputed the due execution of the will, and alleged that there were alterations and interlineations in it which affected the grant of probate. This the executors denied.

At the trial Clark was called as a witness in Court. In examination-in-chief he spoke to the execution of the will with little recollection on the subject, and relying mainly upon his attes-

tation. In cross-examination he said: "I have
 " a vague recollection that the Sardar said some-
 " thing had been omitted which would be filled
 " in afterwards about investments or something
 " of that sort. There is a sort of picture in my
 " mind of a page partly left blank." Further
 on he said: "My recollection as to the blank page
 " was that it was blank at the bottom. It was
 " not the last page according to my recollection.
 " I noticed it as the pages were being turned
 " over to be signed."

Marshall, the other attesting witness, was
 examined in England on commission. In chief
 he spoke pretty clearly to the execution of the
 will. In cross-examination he said: "To the best
 " of my recollection, a portion of one of the
 " pages, about the middle of the document, was
 " left blank, that is, was not written upon to the
 " foot of the page, as they now all are; and the
 " Sardar gave some explanation as to some details
 " being required. I did not read the will."
 Question: "By details being required did you
 " not understand that these details would
 " subsequently be filled into the will?"
 Answer: "I presumed such would be the case.
 " I cannot say to what these details referred.
 " I knew nothing of the contents of the will. I
 " only witnessed the Sardar's signature." (Wit-
 ness is shown paragraph 25 of the will, page 11,
 and says with regard to the words "Mrs. L.
 " Catherine Gill" appearing there, that he
 cannot say whether these words were present
 when he signed his name at the foot of the
 page.) Question: "Can you state any reasons
 " why the Sardar gave the explanation that
 " there were some details that would be subse-
 " quently filled in?" Answer: "Because, as
 " far as I recollect, there was a portion of a
 " page which had not been written upon."

Re-examined he said :—

“ I cannot indicate in any way the page of
“ this document which had not been written upon
“ down to the bottom. I cannot say upon looking
“ through the will (as I am not an expert) which
“ paragraphs were written before or after my
“ signatures. I cannot state exactly the length
“ of the blank space. I cannot state what were
“ the number of lines left blank on the unfinished
“ page.”

The impression then upon the minds of these two witnesses is that some one of the pages in the middle of the will was not written on to the bottom. The learned Judges of the Chief Court, dealing with this part of the case, showed that the impression of these witnesses could not be correct, because there is no page of the will in which a sentence ends with the page and in which there could have been such a blank as the witnesses picture to themselves. And for this and other weighty reasons the learned Judges considered that the witnesses must have been mistaken in their impression.

Their Lordships have examined the will for themselves and they entirely concur with the Chief Court in rejecting the suggestion of the supposed blank in the will at the time of its execution.

For these reasons their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs of the Appeal.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Narain Joshi v. Parmeswar Narain Mahta and Others, from the High Court of Judicature at Fort William, in Bengal; delivered the 13th December 1902.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Sir Arthur Wilson.*]

The Appellant filed his suit on the 9th June 1892 in the Court of the Subordinate Judge of Mozufferpore. He alleged that he had purchased a share in a certain property from Bibi Sahodra; he complained that notwithstanding his purchase the property had been attached in execution by a creditor of his vendor, and he asked to have his title established and the property released from attachment.

In the following year the Appellant brought a second suit in the same Court with respect to the same property, asking for similar relief against another attachment by another creditor. The two suits were heard together and the Subordinate Judge held that the Appellant had failed to prove the genuineness of his purchase, and accordingly dismissed both suits on the 25th June 1894.

The present suit had originally been valued at a sum under Rs. 5,000, while the second suit

was valued at a sum over Rs. 5,000. After the decision by the Subordinate Judge of the two suits against the Appellant he filed an appeal in each case. In the second case he correctly valued the appeal above Rs. 5,000 and filed the appeal in the High Court, the proper tribunal to entertain it. But in the present suit, by an unfortunate error as it is said, he undervalued his appeal, placing it below Rs. 5,000, and presented it on the 3rd September 1894 in the Court of the District Judge, a Court which on a true valuation had no jurisdiction to hear it. This mistake on the part of the Appellant or his advisers has been the source of all his subsequent difficulties.

On the 10th January 1895, upon the petition of the Appellant a Division Bench of the High Court issued an Order to show cause why the appeal in this case should not be transferred to the High Court under Section 25 of the Civil Procedure Code, and heard with the other appeal already pending in the High Court. The rule to show cause came on for hearing before another Bench on the 9th August 1895 and on that day the Order was made absolute; but the Order then made contains the important words:—"The
" pleader for the Respondent objects to the
" transfer of this appeal to this Court on the
" ground that it has been wrongly preferred to
" the District Judge of Mozufferpore and that
" upon its proper valuation the appeal should
" have been made to this Court. As no objection
" has been raised in the Court to which the
" appeal has been made, we direct the transfer
" of the appeal to this Court, leaving it open to
" the parties, at the hearing of the appeal, to
" raise this objection. The Appellant must
" understand that should the objection be allowed,
" he must take the consequences in regard to the
" course taken by him."

Thus whatever misconception the Appellant's advisers may have laboured under prior to the 9th August 1895, on that day at all events their attention was distinctly called to the mistake which had been made and to the consequent difficulties in which the Appellant was involved.

The next step taken was on the 16th September 1895. By a petition verified on that date, and presented on behalf of the Appellant, it was prayed that the Memorandum of Appeal, which had been filed in the District Court might be admitted in the High Court and duly registered and numbered. An Order to show cause was issued, in the terms of the petition, and this came on for argument on the 19th January 1897.

At the time when this application was made to the High Court the period limited by law for appealing against the original decision of the Subordinate Judge had long expired. And the most favourable light for the Appellant in which his petition can be viewed is to regard it as an application to the Court to exercise the power conferred upon it by Section 5 of the Limitation Act, by which an appeal may be admitted after date "when the Appellant satisfies the Court "that he had sufficient cause" for not appealing in due time.

The Judges of the Division Bench which dealt with the matter on the 19th January 1897 first considered certain points which it is not necessary now to examine, and then they came to the questions arising under the Section above cited. They said, "the Applicant has not "satisfied us that he had sufficient cause for "not presenting his appeal before." They were not convinced that the Appellant had really mistaken the value of his appeal; and they further thought that the delay between the

9th August and the 16th September, for which no reason was shown, would preclude the Applicant from having the rule made absolute, and it was accordingly discharged.

The Appeal in this case came on for hearing before a Bench of the High Court on the 20th July 1897, and the objection was at once raised that the Court had no jurisdiction to hear it. It appears that some time before this date the appeal in the other case had been heard, and the decision of the first Court reversed and a Decree made in the Appellant's favour.

In dealing with the Appeal in this case the learned Judges before whom it came held that, as to admitting the appeal to the High Court out of time, the matter was concluded by the decision of the Division Bench in discharging the Order to show cause on the 19th January 1897, and after considering the other points raised before them they dismissed the appeal for want of jurisdiction.

Against this dismissal of the Appeal to the High Court the present Appeal has been brought, and has been heard *ex parte*.

It has been pressed upon their Lordships that the case is one of apparent hardship, inasmuch as in two cases raising the same question on the merits the Appellant has a Decree in his favour in one, and a Decree against him in the other, and that, though the whole difficulty has arisen from the mistakes of the Appellant or his advisers, those mistakes were venial, and he ought, if possible, to be relieved from the serious consequences which they have entailed. In particular it was urged that the refusal of the Division Bench on the 19th January 1897 to admit the Appeal out of date, which was treated as conclusive at the hearing, was wrong. And it was suggested that the dismissal of the Appeal by the High

Court ought to be set aside and the case remitted to that Court, in order that it may again consider the question decided on the 19th January 1897.

Their Lordships are of opinion that they could not properly interfere in this case unless they were satisfied that the refusal by the Division Bench on the 19th January 1897 to admit the Appellant's Appeal after date was wrong, and they are not so satisfied. And the long interval of time which has elapsed between the 19th January 1897 and the hearing of this Appeal before their Lordships would enhance the danger of such interference. The Appellant may or may not be responsible for this delay, but at least it has not been accounted for.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

