Privy Council Appeal No. 23 *of* 1931.

Oudh Appeal No. 4 *of* 1930.

Kanhaiya Lal and another - - - - - - *Appellants*

v.

Syed Hamid Ali - - - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL 1933.

Present at the Hearing:

LORD TOMLIN.
LORD THANKERTON.
SIR GEORGE LOWNDES.

[*Delivered by* LORD TOMLIN.]

In this case their Lordships, with reluctance, have come to the conclusion that they are not able to deal with the appeal in the absence of Sri Thakurji Maharaj, whose interest arises under the *waqf*, or his representative. In these circumstances, following the precedent in *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick* (52 I.A., 245), their Lordships think that the decrees below must be set aside and the case must be remitted to the Chief Court for directions as to a new trial with reference to the effect of the *waqf* with the appropriate parties added.

So far as the costs are concerned their Lordships think that there should be no costs of this appeal, but that the costs which have hitherto been incurred below should be left to the discretion of the Chief Court to deal with after the new trial has been disposed of, whether or not there be an appeal after the new trial to the Chief Court.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

KANHAIYA LAL AND ANOTHER

v.

SYED HAMID ALI.

DELIVERED BY LORD TOMLIN.

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