

**(1944) 11 AHC CK 0016**  
**In the Allahabad High Court**

Maiyan Dalip Rajeshwari Debi

APPELLANT

Vs

Sri 5 Mohan Bikram Sah alias Ram Raja and Others

RESPONDENT

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**Date of Decision :** 01-11-1944

**Acts Referred:**

**Citation :** AIR 1945 All 409 : (1946) 16 AWR 278

**Hon'ble Judges :** Malik, J;Allsop, J

**Bench :** Full Bench

**Final Decision :** Disposed Of

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## Judgement

Allsop, J.—The subject-matter of the suit which has given rise to this appeal is the half of a sum of Rs. 6,33,796-13-2, the total amount of sixteen fixed deposits in the Benares branches of the Imperial Bank of India and the Allahabad Bank. The fixed deposits receipts admittedly state that the money has been received from the plaintiff, Maiyan Dalip Rajeshwari Debi, and her sister, Rani Chatter Kumari Debi (hereafter referred to as the Rani), and is repayable to either of them or to the survivor. The plaintiff assumed that she was entitled to one half of this money and instituted the suit in order to obtain a declaration that she was entitled to the other half after the death of the Rani because the latter had already made a gift of her share to the plaintiff, or in the alternative because the money was the absolute property (stridhan) of the Rani and the plaintiff was in law entitled to inherit such property. The defendant, Mohan Bikram Shah, alias Ram Raja (hereafter referred to as Ram Raja) is admittedly the adopted son of the Rani's late husband, whose name was also Mohan Bikram Shah. As such he would inherit the Rani's stridhan if she was married in one of the approved Hindu forms. The plaintiff, however, alleged that the Rani was bought by her husband for Rs. 25,000 from her father, that the marriage was in the unapproved asura form and that the stridhan would pass to her as the nearest descendant of the Rani's father. As the plaintiff had signed an agreement that the money in deposit should be divided in equal shares between her and Ram Raja, she sought a declaration that this agreement was not binding upon her because its execution

was procured "through duress and coercion and show of force and violence." She also claimed damages on the ground that Ram Raja had wrongfully seized the fixed deposit receipts and prevented her from making arrangements for the further payment of interest by the banks.

2. The lower Court found that there had been no gift, that the marriage of the Rani had been in an approved form, that Ram Raja and one of the widows of the Rani's father would have had better claims than the plaintiff even if the marriage had not been in an approved form, and that the agreement was binding upon her because her allegations of coercion were untrue. He dismissed the suit and the plaintiff has appealed. I may say at once that the Civil Judge who decided this suit has since been convicted of an offence of receiving illegal gratification in connexion with some other judicial decision and has been sentenced to a term of imprisonment. We cannot therefore place as much reliance on his decisions on questions of fact as we otherwise might have done. We have examined the evidence independently and have reached our own conclusions. Before discussing the evidence in detail, I must give some general idea of the history of the family of the parties and of the circumstances in which the gift and agreement are alleged to have been made.

3. Ram Raja's adoptive father was a scion of the royal family of Nepal and was the owner of a large landed estate in India known as the Ramnagar Raj. He had four wives of whom the youngest and latest was Rani Chattar Kumari Debi. She had a son who died as an infant in the year 1897. Her husband, who had no other issue, executed a will in 1901. By its provisions his property was to go to his son, natural or adopted if there was a son alive at the time of his death, and otherwise was to go to the Rani till she adopted a son to him. In 1903 he adopted Ram Raja and executed a second will by which the property generally was to go to him (in the absence of a natural son). In 1904 he executed a third will in which he expressed his dissatisfaction with Ram Raja and left the property away from him to the Rani till such time as she exercised the authority given to her to adopt a son.

4. The Rani's husband died in 1912 and she took possession of the property, but from 1923 to 1931 there was litigation between her and Ram Raja over the title to the Raj which ultimately was ended by a decree of the Privy Council in her favour. The Rani had two sisters. One is the plaintiff, who has a son, Bhagirath Mal. After the plaintiff became a widow she and her son lived with the Rani. The other sister had two daughters, one of whom married the Ruling Prince of Jashpur. This lady is now a widow and is the Junior Dowager Princess or Rajmata. Her minor son is now the Ruling Prince. She plays an important part in this case and I will refer to her hereafter, as the Rajmata. The Rani had gone to England in connexion with her case and Bhagirath had gone with her. After their return Bhagirath was married sometime in 1932 or 1933. The exact date does not appear. The Rani arranged the marriage and paid all the expenses. The allegation of the plaintiff is that there were at that time some sums of money in fixed

deposit in various banks in the joint names, respectively of the Rani and the plaintiff, the Rani and the Rajmata and the Rani and Bhagirath, and that the Rani some time after the marriage expressed her intention of making a gift of these sums to the plaintiff, the Rajmata and Bhagirath. respectively and delivered the fixed deposit receipts to them. They gratefully accepted the gift but, expressing their inability to understand these financial affairs, begged the Rani to take back the receipts and to continue her management of the money on their behalf. It is presumably implied that the money now in suit, held under receipts executed in 1936, is the money in deposit in 1932 or 1933 together with any interest which may have accrued upon it and which has not been withdrawn.

5. The Rani died on 30th January or early on 31st January 1937, at Ramnagar. At that time the plaintiff and Bhagirath Mal were in the house or palace, as it has been called, and the latter took charge of affairs and made arrangements for the Rani's funeral. The sub-divisional officer, Mr. Bryson, apparently heard of the Rani's death and feared complications because he arrived at Ramnagar at 8.30 A.M. and stayed there till 5 P. M. He sealed up the safes and treasuries and passed an order u/s 144, Criminal P.C. that nobody should break the seals and that only certain persons should enter the gates of the house. Ram Raja reached Ramnagar about the time when Mr. Bryson was leaving, but they did not meet. Ram Raja immediately asserted his position as adopted son by interfering with the funeral arrangements. He could not enter the house on account of the order u/s 144, Criminal P.C. but spent the night in the inspection house or dak bungalow. Next day the District Magistrate, Mr. Salisbury, arrived at Ramnagar, withdrew the order u/s 144, broke open the seals and delivered the house and all the Rani's property into the custody of Ram Raja. Mr. Salisbury deposed that he was aware of a decision of their Lordships of the Privy Council upholding the validity of Ram Raja's adoption, that he made a proclamation at the gate of the palace asking whether there were any other claimants and that no claim was made.

6. The plaintiff was herself lying ill in her own apartments at the time of the Rani's death, but she says that the Rani sometime before she died delivered to Bhagirath a box containing some jewellery and the fixed deposit receipts. Ram Raja took possession of the house after the District Magistrate had withdrawn the order u/s 144, Criminal P.C. and remained in it till he went to Calcutta for medical treatment early in March. During this period according to the plaintiff she and Bhagirath were virtually prisoners in the house and were forced by threats to give up the fixed deposit receipts and to sign agreements that the sums in fixed deposit should be recovered half by Ram Raja and half by the plaintiff and Bhagirath respectively. As far as the plaintiff is concerned, such an agreement was admittedly signed by her and Ram Raja on 1st March 1937.

7. The Rajmata was on a visit to the house from about 8th February to 14th February when she left (as she said) because her son had had an accident at Jashpur. She has given evidence that the plaintiff and Bhagirath complained to

her about the manner in which Ram Raja was treating them. After she left the house she sent a complaint to the Political Agent and eventually returned to Ramnagar about the middle of March and took the plaintiff and Bhagirath away with the assistance of the authorities. A good deal of emphasis was placed upon the conduct of the Rajmata and of Ram Raja in the evidence and arguments, but I do not think that their conduct has much bearing upon the result of the case. The main questions are whether the Rani intended to make a gift and, if she did so, whether the gift was perfected in the manner required by law. There are the following allegations in the plaint about these points:

(a) The plaintiff used to make joint deposits in the defendant's Banks under the guidance of the said Rani and in the said deposits the plaintiff's interest was to the extent of one half moiety and the interest of the said Rani was to the extent of the remaining half moiety; (b) On her return from England and having succeeded in her appeal to the Privy Council the said Rani out of natural love and affection for and also being pleased with the devotion and faithfulness of the plaintiff and her son, the said Bhagirath Mal, made a gift of her moiety interest in the deposits in the different Banks which stood jointly in the names of the plaintiff and the said Rani, to the plaintiff, and such deposits in the various Banks as stood jointly in the names of the said Rani and Bhagirath Mal to the latter; (c) The said Rani.... swore an affidavit on 5th October 1936, before the District Magistrate of Motihari in Bihar, stating that she had made the gift aforesaid and acknowledged the exclusive proprietary right of the plaintiff and her son, the said Bhagirath Mal, in the said deposits; and (d) The said Rani....died on 31st January 1937, at Ramnagar and after her death the plaintiff and her son were coerced on point of physical violence and in various other ways to hand over to defendant 1 (Ram Raja) the Bank deposit receipts.

8. The first witness on the point was Dambar Dwaja Khan who was examined on 18th September 1939, and described himself as a cultivator and as the nephew of Rani Bishan Kumari Debi, one of the earlier wives of Raja Mohan Bikram Shah, the husband of the Rani. (His Lordship here considered the evidence and concluded.) I have no hesitation in holding that it has not been established that the Rani intended to make a gift to the plaintiff at any time during her life of her share of the deposits in suit. Our attention was drawn to deficiencies in the cross-examination of the witnesses but this, in my judgment, is a matter of form to which we in this country should not attach much importance. Nobody could have supposed in the lower Court that the defendant was accepting any of the witnesses as witnesses of truth on the questions of the gift or the delivery of the receipts.

9. Even if it could be held that the Rani intended to make the gift, the gift could not be perfected without the necessary formalities. On the assumption that the receipts were delivered, it was argued at the bar that this amounted to the delivery of the moveable property, the subject of the gift, within the meaning of 8.123, T.P. Act. Our attention was drawn to several cases including *Cochrane v.*

Moore (1890) 25 Q.B.D. 57 Kilpin v. Ratiey (1892) 1 Q.B. 582 Raja Ram v. Ganesh ("99) 23 Bom. 131 and AIR 1927 42 (Privy Council) but I do not think it is necessary to discuss the point at length because it appears that the section which is applicable is Section 130, T.P. Act. There was no deposit of specie. The receipts evidenced merely debts on the part of the Banks. Before the gift either the plaintiff or the Rani would have had an actionable claim to recover the money from the Banks on production of the receipts. If the plaintiff had withdrawn the money the Rani would have had an actionable claim to recover half of it from her. After the gift the plaintiff alone would have had a right to recover. The Rani's claim to half would have been transferred to her. Such a transfer could have had no legal effect without the execution of a registered instrument. As no such instrument was executed I should have held that the gift was not perfected even if I had been able to hold on the facts in favour of the plaintiff. As the plaintiff's suit cannot succeed on the basis of the gift, it remains to be considered whether it can succeed on the basis of inheritance.

10. On this part of the case the plaintiff's allegation is that the Rani's marriage was in an unapproved form because her husband bought her from her father. The presumption is the other way and the plaintiff's evidence is not convincing. There is only the oral evidence of two witnesses. The first is Dambar Dwaja Khan who admits that he was only 15 or 16 years of age at the time of the marriage and yet says that it was he who arranged the marriage and induced the Rani's father to agree to it in consideration of a payment to him of Rs. 25,000. The next is Nar Bahadur Mal who certainly rose to commissioned rank in the Indian Army but who gave his age as 59 when he was giving evidence in 1939 and admitted that he had obtained his King's Commission in 1938. He was recruited in 1906 and became a lance corporal only in 1914 so it is doubtful whether he is as old as he pretends to be. Even on his own showing he must have been less than 17 at the time of the marriage which certainly took place before the year 1897. It is most unlikely that these witnesses would have been consulted about the arrangements for the marriage or would have had any knowledge about any negotiations or agreements or payments which might have been made and it would be very unsafe to rely upon their evidence. It is argued that the marriage took place at the husband's house and not at the house of the bride's father, as it would have taken place if it had been in the usual approved form, but the defendant has given evidence that the men of the royal family of Nepal are married in the towns where they live and apart from that, it may be that the bridegroom's dignity demanded that his bride should come to him rather than that he should go to her, so that it is not possible to base a definite conclusion that the bride must have been bought merely on the fact that she was not married at her father's house. The plaintiff has given evidence on this point in support of her allegation but in the first place she is an interested witness and in the second she was younger than the Rani who was about 14 or 15 when she was married and it is not likely that she would have known anything about the matter. I hold that it is not established that the marriage was in the unapproved

asura form.

11. If it had been so established, the rule is that the stridhan property would pass to the heirs of the Rani herself or of her father. Even if the defendant is not to be regarded as the Rani's son (being adopted by her husband) it is still admitted that the Rani's father left a widow who was surviving at the Rani's death and would be entitled to the Rani's property in preference to the plaintiff. I am satisfied that the plaintiff's case cannot succeed and it is, therefore, not necessary to examine in great detail the question whether the plaintiff is bound by the agreement which she executed on 1st March 1937. In addition to her general allegation that she and her son had been watched and intimidated and that their movements had been confined she made a charge against the defendant that he had threatened her and Bhagirath on two occasions. (Here his Lordship considered the evidence and proceeded.) The defendant was in a position to influence the plaintiff. She had nobody to help and support her except Bhagirath whose assistance was worth very little. The agreement may, in the circumstances, have been a reasonable compromise but I have no hesitation in holding that the plaintiff did not have the independent advice and the independence of action which a pardanashin woman should have before she is bound by a document which she has executed. I, therefore, find that she would not be bound by the agreement, but as the gift is not proved and it is not established that she has any right by inheritance I would dismiss the appeal with costs, allowing only one set of costs to the two Banks whose interests, such as they were, were identical. There is a cross objection by the Allahabad Bank against the order allowing it only one-fourth of its costs in the Court below. The Banks were entitled to have counsel to watch their interests but it is obvious that they had very little concern with the result of the dispute between the plaintiff and the defendant. I would, therefore, not interfere with the discretion of the Court below and would dismiss the cross objection with costs.

Malik, J.

12. This is a plaintiff's appeal against the decree of the learned Second Additional Civil Judge of Benares dated 3rd April 1940 dismissing her suit for a declaration that the plaintiff was the owner of certain fixed deposits in the Allahabad Bank Ltd., Benares Branch, and the Imperial Bank of India, Benares Branch and for a further declaration that she was not bound by the agreement dated 1st March 1937 executed between her and defendant 1. She further claimed such damages as the Court might deem proper to award. The plaintiff, Maiyan Dalip Rajeshwari Devi is the sister of one Rani Chhatra Kumari Devi who died on the night between 30th and 31st January 1937. There were certain fixed deposits in the joint names of the plaintiff and Rani Chhatra Kumari Devi. The grand total of these fixed deposits in the Allahabad Bank and the Imperial Bank on the date of the suit amounted to Rs. 6,35,796-18-2. The plaintiff's case was that she was the owner of half of the amount and Rani Chhatra Kumari Devi was the owner of the other half. The latter half, according to the plaintiff, Rani

Chhatra Kumari Devi gifted to her about the year 1932. It is on the basis of this gift that the plaintiff has brought this suit claiming the amount of Rs. 3,17,898-6-7. In the alternative it is pleaded that if the gift is not proved then, as Rani Chhatra Kumari was married in an unapproved form to Raja Mohan Bikram Shah, on her death without leaving any issue the legal heirs to the property were the heirs of the father's family of Rani Chhatra Kumari Devi and the plaintiff being her own sister was the nearest heir and thus entitled to the money. For the purposes of this case, both parties have agreed to proceed on the hypothesis that the half share of these joint deposits was the stridhan of Rani Chhatra Kumari Devi. Defendant 1 Sri 5 Mohan Bikram Shah alias Ram Raja, however, denied that there was any such gift made by Rani Chhatra Kumari Devi and further alleged that there was, in any case, no legal gift in accordance with the provisions of the Transfer of Property Act. The defendant further denied that Rani Chhatra Kumari Devi was married in an unapproved form and urged that even if it be assumed that Rani Chhatra Kumari Devi was married in an unapproved form the plaintiff was not the nearest heir to her stridhan property. Raja Mohan Bikram Shah belonged to the royal family of Nepal. His ancestors had left Nepal and had settled at a place called Ramnagar where they had acquired considerable property and were known as Rajas. We do not know whether any title was conferred on them by the British Government, but popularly they were known as Rajas. Raja Mohan Bikram Shah had three wives but he had no male issue by any of the three. He married as his fourth wife Rani Chhatra Kumari Devi who was the daughter of one Raja Puran Chandra Khan of Garunkote, Nepal. Puran Chandra Khan also, we do not think, had any right to the title of Raja, and we are told that he is a petty zamindar of Nepal. We have not got any clear evidence of the date of the marriage, but the marriage must have taken place prior to 1897. We have evidence on the record that a son was born to Rani Chhatra Kumari Devi in the year 1897 but he died in his infancy. As a matter of fact, Chhatra Kumari Devi was probably married to Raja Mohan Bikram Shah even prior to the year 1893 as it was in 1893 that the Raja is said to have made a grant in her favour of certain mokarari villages {see page 292, line 17 of our paper book). The first wife of Raja Mohan Bikram Shah was Rani Rajkumari Devi who died in the year 1901. The second was Rani Balkumari Devi who died in the year 1888. The third was Rani Bishun Kumari Devi who died in the year 1907. Rani Chhatra Kumari Devi was the fourth and the last wife who, as al. ready stated, died on the night between 30th and 31st January 1937.

13. On 12th October 1901, Raja Mohan Bikram Shah executed a will in which he provided that in case he adopted any boy in his life-time and that boy was alive at the time of his death such adopted son was to be the proprietor of the whole of his property, but in case he had no adopted or natural son living at the time of his death his entire property was to go to Rani Chhatra Kumari Devi and she was further given the authority to adopt. On 31st May 1903 Raja Mohan Bikram Shah is said to have adopted defendant 1 who is also known as Mohan Bikram Shah alias Ram Raja, and we shall henceforward call him Ram Raja to avoid confusion.

Ram Raja also belonged to the royal family of Nepal and it is said that he was adopted with the permission of the Prime Minister of Nepal. On 26th May 1903 Raja Mohan Bikram Shah executed a second will. He made Ram Raja his successor to the entire estate and made certain other provisions for the Ranis and for others which it is not necessary to set out here. It appears, however, that Raja Mohan Bikram Shah got displeased with Ram Raja and he executed a third will dated 25th January 1904. Under this will the property was given to Rani Chhatra Kumari Devi and she was permitted to adopt four boys and any boy adopted by her was to be the owner of the estate, and the second will was revoked.

14. Raja Mohan Bikram Shah died on 18th April 1912. Soon after his death there was a dispute between Ram Raja and Rani Chhatra Kumari Devi and Rani Chhatra Kumari Devi got possession of the estate. Ram Raja filed a suit No. 34 of 1924, against Rani Chhatra Kumari Devi for possession of the entire estate, while Rani Chhatra Kumari Devi filed a suit against him, the suit being suit No. 4 of 1923, claiming a sum of Rs. 17,000 under a lease of the year 1903. The cases were fought up to the Privy Council and the decision of the Privy Council dated 8th May 1931 is printed in our paper book at page 409. Rani Chhatra Kumari Devi succeeded and it was held that she was entitled to the possession of the estate. Rani Chhatra Kumari Devi had lost from the High Court at Patna and she went to England to prosecute her own appeal before the Judicial Committee. She was accompanied there by Bhagirath Mal, son of the plaintiff Maiyan Dalip Rajeshwari Devi, her sister. After her success in the Privy Council she came back to India and took possession of the entire estate and started living at Ramnagar. She had with her sister Maiyan Dalip Rajeshwari Devi who had also become a widow and her son Bhagirath Mal. It is alleged on behalf of the plaintiff, and we think rightly, that Rani Chhatra Kumari Devi was attached to the plaintiff, her own sister and her sister's son, and the feelings between her and the adopted son, Ram Raja, were strained. After his failure in the Privy Council, Ram Raja started living at his natural place in Bareilly and hardly ever came to Ramnagar. Rani Chhatra Kumari Devi celebrated the marriage of Bhagirath Mal at Ramnagar, a year after her success in the Privy Council. Rani Chhatra Kumari Devi had joint fixed deposit accounts in various banks with several of her relations, and we have evidence in this case to the effect that she had joint accounts for large sums of money with Bhagirath Mal, Maiyan Dalip Rajeshwari, Maharani Mohan Raj Lakshmi Devi, daughter of another sister of Jog Rajeshwari Devi and Sita Maharani, another daughter of Jog Rajeshwari. We have no materials before us from which we can find out when these fixed deposits were first made, but these fixed deposits existed in the year 1932-33 at the time of the marriage of Bhagirath Mal and were thereafter renewed with interest from time to time when they fell due. The plaintiff's case is that Rani Chhatra Kumari Devi made a gift of her half share in these fixed deposits to the persons whose names appeared jointly with her own. We shall deal with the question of the gift a little later in greater detail, but it may be mentioned here that according to the plaintiff Rani



Chhatra Kumari Devi was requested after the gift by the various donees to continue to manage and look after these fixed deposits as before and she, therefore, kept them with herself and continued to deal with the banks. Rani Chhatra Kumari Devi fell ill and died of pneumonia between the night of 30th and 31st January 1937. It is alleged that three or four days before her death Rani Chhatra Kumari Devi handed over the box containing the fixed deposit receipts of the plaintiff and Bhagirath Mal along with certain jewellerys, etc., belonging to them and which they had handed over to Rani Chhatra Kumari Devi for safe custody and since then the box remained with them.

15. The Rani having died sometime during the night, Mr. Bryson, the Sub-divisional Officer of Bettiah, came to the palace at 8 o'clock in the morning of 31st January and stayed there almost the whole day. He locked and sealed the treasury, the iron safes and the office and issued a proclamation u/s 144, Criminal P.C. permitting access to certain servants and members of the family who were living with Rani Chhatra Kumari Devi to certain parts of the palace and sealed the rest of the palace and directed that no one should enter the same. This order was passed u/s 144, Criminal P.C., (see p. 442 of our record), At the time of Rani Chhatra Kumari's death and at the time when Mr. Bryson was at Ramnagar, Ram Raja had not arrived. At about 5 o'clock in the evening Mr. Bryson left Ramnagar and the funeral procession also left for Benares. The funeral procession had only gone a little distance from the palace when Ram Raja with some of his retainers arrived on the scene. He seems to have immediately taken charge of the affairs and directed that the cremation of the Rani should not take place in Benares but on the banks of a river nearby known as Bagha. The plaintiff alleges that it was the Rani's last wish that she should be cremated in Benares and Ram Raja acted in a very high-handed manner in directing otherwise. On behalf of Ram Raja however it is equally strenuously argued that the Rani had never expressed any such desire nor was Ram Raja responsible for her cremation at Bagha but the other people present at the funeral had, even before Ram Raja's arrival, decided that the body should not be taken to Benares but to Bagha. There is some evidence on the record that preparations were made for the cremation to take place at Benares, but it is not necessary for us to go into this matter at all, as we do not see how this question is at all relevant to the various issues that arise for decision before us. After the cremation Ram Raja returned to Ramnagar and as Mr. Bryson had promulgated the order mentioned above u/s 144, Criminal P.C. Ram Raja had to stay in a house outside the palace. Next morning Mr. Salisbury, the District Magistrate of Champaran at Motihari, appeared on the scene and according to Mr. Salisbury he stood at the gate of the palace and asked for claims to the Raj and as nobody came forward as a rival claimant he decided then and there that Ram Raja was the only rightful heir to the Raj and he set aside the order of Mr. Bryson under his revisional powers, as he calls it. We doubt whether Mr. Salisbury had any such revisional jurisdiction as he claimed, but it is unnecessary to go into that matter now. Mr. Salisbury further directed that the seals put by Mr. Bryson be broken open and ordered Mr.

Bryson to hand over the keys to Ram Raja. Ram Raja thus on 1st February 1937 got possession of the Ramnagar Raj.

16. The orders of Mr. Salisbury seem to have upset Bhagirath Mal. We do not know exactly what was the nature of the claim that he wanted to put forward to the estate as Bhagirath Mal has not been examined in this case. On 2nd February 1937 Bhagirath Mal sent a telegram from a place called Siswa Bazar near Ramnagar to Sita Ram Singh, an employee of Maharani Mohan Raj Lakshmi Devi of Jaspur which is as follows: "Chhatra Kumari Devi died. Come soon and save my-self by all force." Jaspur is one of the Indian States in the Chhatishgarh Group in Central India. Maharani Mohan Raj Lakshmi Devi, as we have already said, is the daughter of Jog Rajeshwari Devi, a sister of Chhatra Kumari Devi and Maiyan Dalip Rajeshwari Devi. Her husband, the Maharaja of Jaspur had also died and her minor son was His Highness the Maharaja of Jaspur. On 3rd February 1937 Bhagirath Mal followed up the first telegram by a second telegram and this time from Muzaffarpur which is as follows:

Junior Rajmata, Jaspur State, Jaspur, Maharani Sahiba died on the 31st morning. Ram Raja got possession, come immediately safety for your helpless sister, brother. Maiya Sahiba also seriously ill.

These two telegrams are at pp. 446 and 447 of our record. On 4th February 1937 Ram Raja got a list prepared of certain jewelleryes and other valuable articles in the palace and in the safe. The details of this list are at pp. 448 to 453. The preparation of this list, it is alleged, was started on 3rd of February and was finished on the 4th. The list was prepared by Raghunath Prasad Pandey, Treasurer Ramnagar Raj, Siddhi Bahadur Mal and Babu Balram Prasad Rai. Bal Ram Prasad was another employee of Ramnagar Raj (see statement of Raghunath Prasad Pandey at pp. 47 and 48). The plaintiff denies that any such list was prepared on 3rd and on 4th February 1937, and the reason for the denial is that in this list it is mentioned that the fixed deposit receipts some of which are now in dispute in this case and the others, we are told, are in dispute in other Courts in India were in the iron safes of Rani Chhatra Kumari Devi. The plaintiff's case, on the other hand, as I have already stated, was that these fixed deposit receipts were in a box which had been handed over to Bhagirath Mal three or four days prior to her death by Rani Chhatra Kumari Devi. To prove the preparation of this list the defendant has produced, besides himself, Raghunath Prasad Pandey (p. 47).

17. We then come to the next important date on which is supposed to have happened one of the incidents most hotly contested in this case. On 5th February 1937 Ram Raja is said to have gone to the plaintiff's room after midnight armed with a pistol and at the point of the pistol had broken open the box containing bank receipts, jewelleryes, cash, etc., and removed the same (p. 120, lines 20 to 26). On 8th February 1937, Maharani Mohan Raj Lakshmi Devi of Jaspur whom, for the sake of brevity, I shall henceforward call the Rajmata came to Ramnagar. She was accompanied by Thakur Prasad, Sita Ram Singh and a maid servant. On

11th February the 13th day ceremony was performed. There is some dispute between the parties as to who performed the cremation and the 13th day ceremony, the defendant claiming that he did the same, while on the side of the plaintiff it is said that Bhagirath Mal did it. The only importance of this controversy between the parties is that the defendant alleges that by reason of the fact that he had done the cremation ceremony he was not able to look to the household affairs and he had placed in the hands of Bhagirath Mal a sum of Rs. 80,000 which he had brought from Barewa at the time when he came after hearing of the death of Rani Chhatra Kumari Devi and Bhagirath Mal kept the account of the said money. The defendant has filed the said account which is said to be in the hand of Bhagirath Mal and is printed at pp. 678 and 679 of our paper book.

18. On the night of 12th February 1937 another very important incident is alleged to have taken place. According to the defendant, a proposal was made by him that the question of these fixed deposits should be amicably settled between the various parties and according to the defendant it was agreed on all hands that the fixed deposits that stood in the joint names of Rani Chhatra Kumari Devi and various other persons should be divided half and half, that is, the defendant should get the half share which stood in the name of Rani Chhatra Kumari Devi and the other half should go to the person in whose-joint name the receipt stood. According to the defendant, parties then wanted that a lawyer should be approached to make a draft and as there was no lawyer available in Ramnagar, on the morning of the 13th, Bhagirath Mal, Kashi Nath Lal, Private Secretary of Ram Raja and Shatrumardan Sahi, Chairman, District Board, Champaran, a friend of the defendant, went to one Girja Prasad, a lawyer at Motihari who was known to the defendant and who had appeared for him in the litigation of 1924. Girja Prasad is said to have made a draft in Urdu of the agreement and he also made a draft of the letters that were to be sent to the various banks informing them of the said agreement. Having got the draft from Girja Prasad the party left for Ramnagar in the evening. While at Motihari it is said that three stamp papers of Rs. 15 each were purchased by Bhagirath Mal for the agreement to be executed on behalf of himself and his mother, the present plaintiff, and his cousin, Rajmata, while three stamps of the value of Re. 1 each were sold to Ram Raja through Kashi Nath Lal, his Private Secretary. With the draft and with these stamps and a letter from Girja Prasad which is printed at p. 460 of our record the party is said to have returned to Ramnagar on the evening of the 13th.

19. On 14th February 1937 Rajmata left Ramnagar. It is said on behalf of the plaintiff that her minor son had received certain injuries from gunshot and she had, therefore, to leave suddenly. It is suggested on behalf of the defendant that this was merely a ruse as Rajmata wanted to leave Ramnagar and get proper advice and find out how she and her relations stood in the matter of these fixed deposits before they entered into an agreement. The plaintiff denies entirely the allegation about the agreement and denies that Bhagirath Mal ever went to Motihari to get the draft. Rajmata claims that she asked Ram Raja to give her,

her fixed deposit receipts which stood in her name jointly with that of the late Rani Chhatra Kumari and Ram Raja gave her two receipts but later she found that the bank receipts had been extracted from her cash box.

20. The Prime Minister of Nepal had come to British India and on 14th February 1937, he was to leave Raxaul, which is the last British outpost on the borders of Nepal, for Nepal. It was decided that before the Rajmata went back to Jaspur she and others should go and pay their respects to the Prime Minister who was also the father of the wife of Ram Raja. Accordingly Ram Raja with his wife and son and Rajmata left in a car for Raxaul and in a second car certain other members of the party of Rajmata and Ram Raja were to follow. It is a matter of controversy between the parties whether Bhagirath Mal was or was not in the second car. Ram Raja alleges that he lost his way due to heavy rain and could not reach Raxaul and therefore returned to the Dak Bungalow at Bettiah on the 14th at about noon. Rajmata says that she felt giddy and she did not remember what happened, but she ultimately found herself in the Dak Bungalow at Bettiah and after several hours' rest at the place she left by train for Ranchi on her way to Jaspur. The second car after a fruitless search at Raxaul for the first party also came to Bettiah. Nothing of importance seems to have happened between 14th and 18th February. Rajmata went to Ranchi and stayed there for several days before she went to Jaspur. Ram Raja went back to Ramnagar and stayed there till the beginning of March. On 18th February Rajmata sent Khan Sahib Gul Mohammad to Ramnagar with a letter addressed to Ram Raja which is printed at p. 462 of our paper book and is in these terms:

My dear brother,

Owing to the inconvenience in the course of the journey I had to break my journey at Ranchi and am unable to return at once. I am therefore sending Khan Saheb Gul Mohammad Khan, in whom I have confidence. Please give him a hearing and grant his prayer.

Your well wisher, R. L. D. (Raj Lakshmi Devi).

The fact that Gul Mohammad came to Ramnagar with the above letter is not denied by the defendant, but the defendant denies that Marcus Mistry (p. 96) came with Gul Mohammad in the Rani's car. Gul Mohammad went back with a reply from Ram Raja dated 21st February 1937, which is printed at page 473.. He wrote:

My dear sister,

Received your letter through Khan Bahadur Gul Mohammd Khan. I am so glad that you had selected such a good man to send your message. I am sorry to hear that you are unwell. Please come and see me as soon as you are well enough to stand the journey and everything will be settled satisfactorily. Please do not worry about Bhagirath and others. They are quite well. I have explained everything to Khan Bahadur in presence of Bhagirath, who will report to you in

detail.

With love, Yours affectionate brother.

It is alleged on behalf of the plaintiff that Bhagirath also sent two letters through Gul Mohammad, one addressed to Rajmata and the other addressed to Master Sahab and Sita. Ram Singh. These two letters are printed at pages 473 and 474. While Gul Mohammad was still at Ramnagar, Rajmata sent a letter dated 20th February 1937, to the Agent to the Governor-General, Eastern States, Ranchi (page 463). In that she complained about the conduct of defendant 1 and alleged that the plaintiff and Bhagirath were prisoners of the defendant and appealed to the Agent to intervene with the local authorities and get them released. The allegations made in the said letter are more or less the same as the allegations made in the plaint about the treatment meted out to the plaintiff and her son by the defendant. Great stress is laid by the defendant on the fact that it is not mentioned in this letter that on 5th February Ram Raja broke open the box given to the plaintiff by Rani Chhatra Kumari Devi at the point of the pistol and removed the receipts, though it is mentioned that at the point of the pistol he wanted to find out where the properties of the late Maharani were kept.

21. On 20th February certain telegrams were sent on behalf of the plaintiff by Bhagirath Mal to various banks informing them of the death of Rani Chhatra Kumari Devi and warning them against anybody other than the sender of the telegram realising the money in fixed deposits in the joint name of the sender and Rani Chhatra Kumari Devi. These telegrams, it is not denied, were sent by Rajmata on behalf and for the benefit of the plaintiff and her son Bhagirath Mal. She followed up these telegrams by a number of letters addressed to the banks which are printed from pages 475 to 477 of our paper book. There is nothing further of importance till we come to 1st March 1937. On that date the agreement between the plaintiff and the defendant was signed. The agreement itself is at p. 482 of our paper book. It is on a stamp paper of rupee 1 which is alleged to have been sold to Ram Raja through Kashi Nath Lal on 13th February 1937 and the scribe of the document was Bhuaneshwar Jha who has, however, not been examined by either party. It was signed by the plaintiff as well as by the defendant and was witnessed by Bhagirath Mal, Dr. Janki Charan and Kanchi Maharani. Neither the scribe nor the attesting witnesses has been examined by either party. After the agreement letters were sent under the signature of the plaintiff and the defendant to the banks informing them of the said agreement and the rights of the parties.

22. On or about 5th March, Ram Raja left for Calcutta and he was in Calcutta when on 9th March 1937 Rajmata accompanied by Rama Kant Malaviya, advocate, and certain other people reached Ramnagar. She put up at the Dak bungalow. She complained to Mr. Bryson that certain servants of the Ramnagar State had caused her annoyance, and Mr. Bryson wrote a letter to the Sub-Inspector at Ramnagar to enquire into the matter and see that such objectionable conduct was stopped. He also wrote another letter to the Sub-

Inspector in which he mentioned that Bhagirath Mal wanted to leave Ramnagar and go to Jaspur and the Sub-Inspector was to see that no obstruction was caused to Bhagirath Mal leaving Ramnagar and he was further directed to make an inventory of the luggage removed if Bhagirath Mal so desired. Mr. Salisbury, the District Magistrate, also wrote to Mr. Broucke, the Manager of the Ramnagar Raj to the same effect that no obstruction should be placed to Bhagirath Mal leaving Ramnagar with his wife and mother and if they so desired an inventory was to be made of their luggage. On the night between 9th and 10th March at about 2 A. M. the Sub-Inspector of police accompanied by Mr. Rama Kant Malaviya went to the palace and Bhagirath Mal was awakened from sleep and he along with his wife and mother left the palace {see Sub-Inspector Mohammad Akhtar Hussain's diary at p. 499}. An inventory was made only of such properties about which there was a dispute between Bhagirath Mal and the servants of Ram Raja. The inventory is at pp. 494, 495, 496 and 497. Learned Counsel for the defendant has drawn our attention to item 119 of the said agreement which mentioned that two agreements on Rs. 15 stamps dated 1st March 1937, one executed by Ram Raja and Bhagirath and the other by Ram Raja and Maiyan Saheba were removed. The rest of the list consists of various items of jewellery, cash, promissory notes, etc.

23. The plaintiff, Bhagirath Mal, and his wife then came to the Dak Bungalow and stayed with Rajmata. On the morning of 10th March a complaint was filed by the plaintiff before the S. D.O. Motihari, which is printed at p. 492. Learned Counsel for the defendant has urged that no mention was made in this-complaint of the incident of 5th February 1937 of breaking open the box at the point of the pistol nor in the statement made on the same date on the back of the complaint which is printed at p. 493. The complaint, however, was dismissed by an order of the same date which is printed at p. 491 and the complaint was referred to the civil Court. On 11th March 1937 the plaintiff wrote to the Imperial Bank and the Allahabad Bank informing them that the agreement had been obtained by force and the plaintiff was entitled to the entire sum in deposit. After one year of this, this suit was filed on 29th March 1938 for a declaration that the plaintiff was the owner of a half share in the fixed deposits on the allegations already stated above.

24. As I have already said, the plaintiff's claim is based on an oral gift by Rani Chhatra Kumari Devi. Learned Counsel for the defendant has denied that there was any gift and has also urged that even if the plaintiff's case be accepted that the Rani wanted to make a gift it was ineffectual in law and the Rani remained the owner of the property and the property must go to her legal heir on her death. Great reliance has been placed by learned Counsel for the plaintiff on the fact that Rani Chhatra Kumari Devi was admittedly not well disposed towards the defendant and the only persons for whom she had affection were her own relations and she was specially fond of her sister, the present plaintiff, and Bhagirath Mal who was the only son born of any of the three sisters. She had reasons to be specially pleased with them as Bhagirath Mal and the plaintiff

stayed all along with Rani Chhatra Kumari Devi from the time that she became a widow and looked after her. It is pointed out that Bhagirath Mal went with the Rani to England when she went there to fight her case before the Privy Council and the plaintiff was also to accompany her as is evident from the fact that a passport was obtained for her but she could not go as she fell ill. It is argued that it was, therefore, very natural that Rani Chhatra Kumari Devi should make a gift of her half share in these fixed deposits.

25. The plaintiff's case about the gift is that two or three days after Bhagirath Mal's marriage Rani Chhatra Kumari Devi got all those in whose joint names there were fixed deposits along with her own and told them that she was making a gift of her share to them and as a token of the completion of the gift she handed over the fixed deposit receipts to them. The donees, however, returned the fixed deposit receipts to Rani Chhatra Kumari Devi and requested her to continue to deal with the banks as before. The fixed deposit receipts were thus again taken back by Rani Chhatra Kumari Devi and remained with her till about four or five days before her death when she sent for Bhagirath Mal and gave him the box in which the fixed deposit receipts in the joint names of the Rani and Bhagirath Mal and the Rani and the plaintiff were kept, and it was on 5th February 1937 that the defendant forcibly broke open the box and took the fixed deposit receipts into his own custody. Learned Counsel for the defendant has pointed out that no such allegation as regards the delivery of the fixed deposit receipts to the alleged donees was made in the plaint. He has drawn our attention to paras. 6 and 7 of the plaint. In para. 6 it is set out that the Rani out of natural love and affection for and also being pleased with the devotion and faithfulness of the plaintiff and her son, the said Bhagirath Mal, made a gift of her moiety interest in the deposits in the different banks which stood jointly in the names of the plaintiff and the said Rani, to the plaintiff, and such deposits in the various banks, as stood jointly in the names of the said Rani and Bhagirath Mal to the latter. Learned Counsel has further argued that the first witness to prove the gift was one Dambar Dwaja Khan who was examined on commission on 18th September 1939. (After considering the evidence the judgment proceeded.) After having carefully considered the affidavit and the oral evidence on the point, I am of opinion that the Rani may have intended only that her relations might be benefited from her share of these joint deposits and may even have thought that as a result of these joint deposits on her death they would be entitled to the entire money. It may even be true that after the marriage of Bhagirath or after her return from England she had expressed some intention that her share of the money of these fixed deposits should go to her various relations in whose joint names these deposits stood, but I am not convinced that she ever made any gift in the manner stated by Dam-bar Dwaja Khan or the plaintiff.

26. A question has arisen what would be the appropriate section of the Transfer of Property Act (4 of 1882) applicable to such a gift and how such a gift should be effected under the law. Learned Counsel for the plaintiff has relied on Section

123 which says that for the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered. He has argued that the handing over of the fixed deposit receipts amounted to a delivery and was sufficient compliance with the provisions of the law. Learned Counsel for the defendant, however, has urged that even if the fixed deposit receipts were handed over to the persons concerned, it would not be sufficient compliance with Section 123 of the Act and according to him so long as the Rani was in a position to withdraw the money from the banks it could not be said that she had made a gift of it. He has, however, argued that the proper section applicable is not Section 123 but Section 130, T.P. Act, and he contends that a fixed deposit is a debt or an actionable claim and a transfer of the same could only be made by an instrument in writing signed by the transferor. To my mind, Section 130 is the proper section and a fixed deposit in a bank clearly comes under the heading of a debt or an actionable claim. An actionable claim is defined in Section 3 of the Act:

Actionable Claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Learned counsel cited before us a single Judge decision of Gentle J. reported In Re: Travancore National and Quilon Bank Ltd., S. Barkatally and Others, where the question was whether a fixed deposit receipt could be transferred by an endorsement on its back, and it was held that it was not a negotiable instrument and an endorsement on the back did not have the same effect as an endorsement of a bill of exchange or promissory note and that u/s 130, Sub-section (1), T.P. Act, a written instrument was necessary. Evidently the endorsement on the back of the promissory note was not accepted as an instrument in writing signed by the transferor. The two other cases cited by him are reported in Doraisami Mudaliar and Thangavelu Mudaliar and Co. Vs. M. Doraiswami Iyengar and Others, and Bengal Nagpur Railway Employees' Urban Bank, Ltd. Vs. Erie Walter Seager, The first was not a case relating to a fixed deposit and the question mainly was as to what amounted to a written assignment of the debt. The second was a case of a creation of an equitable charge. None of these three cases are really very helpful to the point before us, but on a careful examination of the section, I have come to the conclusion that the proper section applicable was Section 130, T.P. Act.

27. When money is deposited in a bank, to the extent of the deposit, the bank is a debtor and the only difference between an ordinary deposit and a fixed deposit is that in the case of a fixed deposit the person making the deposit undertakes that he would not withdraw the money within a certain period. There being no



instrument in writing in this case it cannot be argued that if Section 130 of the Act was applicable the provisions of that section had been complied with. If Section 123 of the Act was applied, the question would arise whether the handing over of the fixed deposit receipts, if proved, amounted to a delivery. The fixed deposit receipts represented the money in the bank and as they were payable to either or survivor, either of the joint depositors could withdraw the whole amount, but on such withdrawal he would be trustee for the other to the extent of his share. It is argued that in case of a gift and the handing over of the fixed deposit to the donees no such question of trust as regards the half share of the money would arise and therefore it must be deemed that it was a completed gift. In case Section 123 were applicable then the handing over of the fixed deposit receipt may be enough. But to my mind the making of a gift of a fixed deposit in a bank is not the making of a gift of moveable property but is the gift of an actionable claim. I am of the opinion Section 130, T.P. Act, applies and the handing over of the fixed deposit receipt would not be enough, but it will be necessary to have a document in writing signed by the transferor. In *R.D. Sethna Vs. Grace Edith Hemmingway*, in the case of a gift of the amount in fixed deposit in a bank Section 130 of the Act was applied. As I agree with the Court below, that it is not proved that the Rani made any gift of the money, nor was it proved that she actually handed over the fixed deposit receipts to the various donees and as I am further of opinion that the proper section applicable is Section 130 of the Act, it must be held that the plaintiff has failed to prove any valid gift in her favour. On this finding the plaintiff's suit must fail, but there are the other points raised before us which I may briefly dispose of.

28. The plaintiff has alleged that even if there was no gift, the plaintiff was entitled to the money as the heir of the Rani inasmuch as the Rani was married in an unapproved form (asura form). Learned Counsel for the plaintiff has admitted that the presumption is always in favour of an approved form of marriage, but he says that in this case he has proved that the marriage was performed in an unapproved form. Raja Mohan Bikram Shah had already married three wives and Rani Chhatra Kumari Devi was his fourth, wife. The Raja was at that time about 40, years of age and was descended from the ruling house of Nepal. Chhatra Kumari was the daughter of a Thakur of Garunkot in Nepal. The social and pecuniary position of the wife was thus much lower than that of Raja Mohan Bikram Shah. Learned Counsel for the plaintiff has argued that the father of Chhatra Kumari accepted money and villages in theka from the Raja as a consideration for his giving his daughter in marriage and he says that the marriage thus must be deemed to be an asura marriage. The first witness to prove this allegation of the plaintiff is Dambar Dwaja Khan at p. 68. He deposed that Inder Bilas Major and he, Dambar Dwaja, went with the father of Puran Chandra Khan to Ramnagar to negotiate the marriage and he and Inder Bilas Major persuaded Puran Chandra to accept the terms offered by the Raja and accept Rs. 25,000 cash and theka of some villages. I, however, find it very difficult to accept his statement. Dambar Dwaja Khan was 61 years of age at the

time when he was examined in Court in the year 1939. He was thus born about the year 1878. Rani Chhatra Kumari Devi was married, as already mentioned even prior to 1893, and I find it very difficult to believe that a boy of fourteen or fifteen will be the companion of Puran Chandra at the "time of the negotiation relating to the marriage and would be his advisor as to what he should do.

29. The other witness produced is Lt. Nar Bahadur Mal (p. 75). He was only fifty-nine at the time when he gave his statement and he was thus even younger than Dambar Dwaja. These are the only two witnesses produced by the plaintiff, besides herself. The plaintiff was cross-examined at length on this part of her statement at p. 125, and I am of opinion that the plaintiff and these two witnesses have entirely failed to prove that the marriage took place in an unapproved form and I have, therefore, no reason to differ from the finding of the lower Court on this point. The defendant produced two witnesses, Sabz Pari (p. 152) and Krishna Badan (p. 154) to swear to the contrary, but I consider that they are very unsatisfactory witnesses and no reliance can be placed on their statement. Even if the marriage was performed in an unapproved form, I do not see how the plaintiff can succeed. The law as regards stridhan succession is that the property of a woman goes to her descendants whether she is married in an approved or unapproved form. If she is married in an approved form, then she is deemed to have become a part of her husband and failing her descendants the property goes to her husband's heirs. If she is married in an unapproved form, she remains a part of her father's family and, in the absence of her own descendants, her property goes to her father's heirs. It is admitted that Rani Chhatra Kumari Devi's father left a widow who was alive on the date of the suit. His property would first go to his wife and then to his daughter and the plaintiff would thus be excluded. Further the defendant claimed that he was the adopted son of Rani Chhatra Kumari Devi and her husband and this fact does not seem to have been anywhere denied (see the written statement of the defendant, paras. 7 and 19 and paras. 5 and 10 of the additional pleas). Great reliance is placed by learned Counsel for the plaintiff on a statement made by Rani Chhatra Kumari Devi in her previous litigation with the defendant which is printed at p. 288 of our paper book:

I did not get any "thekapatta" in the name of my father from the Raja Saheb. The Raja did execute "theka patta" in the name of my father. I do not remember how many "thekapattas" were granted to my father by the Raja. The "theka" belonged to another, but I enjoyed the usufruct (?). I and also father used to pay "theka rent".

30. Again at p. 292 she said:

Six mauzaa had been given to me in "mokarrari," two in 1893 and four in 1898.

31. The defendant in his statement at p. 141 said:

I do not know if Raja Mohan Bikram Shah gave any "thekas" to Puran Chand Khan in the Bamnagar State. Afterwards I came to know from my mother that a

"theka" was given to her in the name of her father which was "benami". I do not know the number of villages given in "theka,

The mere fact that Raja Mohan Bikram Shah granted thekas either to Puran Chandra Khan for himself or for the benefit of his daughter would not make the marriage an unapproved form of marriage. It would have to be proved affirmatively by the plaintiff that those thekas were granted as a result of an agreement prior to the marriage in consideration of which Puran Chandra Khan agreed to give his daughter in marriage to the Raja. I have already "held that the evidence produced to prove such an agreement is wholly unsatisfactory and I am not prepared to differ from the Court below on the point.

32. The defendant has relied on an agreement dated 1st March 1937 between the plaintiff and the defendant under which the plaintiff agreed to give up all claim to the half share now in suit and has urged that as a result of that agreement the plaintiff is not entitled to maintain the suit. We understand there is another case pending in Motibari in which this agreement is also in issue. After having held that there was no legal gift in plaintiff's favour it is not necessary for me to record any definite finding on the question of the agreement, but as the matter has been fully argued before us by learned Counsel on both sides, I propose to give my views on the question of the agreement. Great reliance was placed by learned Counsel for the defendant on the absence of Bhagirath Mal from the witness box. He has drawn our attention to the statement of the plaintiff at page 124, lines 10 to 20 and p. 127, lines 19 to 23 where the plaintiff stated that Bhagirath Mal was meeting the expenses in this case and she had no idea what amount had been spent and who had been appointed as vakil on her behalf. She says that it was her son who appointed vakil for her, gave the list of witnesses, instructed counsel to draft the plaint and was, in all other matters, acting for the plaintiff, she having left the conduct of the case entirely in his hands. At p. 127 she again said that she did not know whether any Income Tax was ever paid on her behalf on the fixed deposits and said that her son knew all about it. Learned Counsel for the defendant has relied on certain observations of their Lordships of the Privy Council reported in AIR 1937 152 (Privy Council) and again in *Maganmal v. Darbarilal* ("28) 15 AIR 1928 P.C. 39 The argument advanced by learned Counsel is that it was the defendant's case that the parties agreed on 12th February as regards the terms of the compromise that the defendant and the plaintiff were to divide the amount of the fixed deposits half and half, that pursuant to that agreement Bhagirath Mal went to Girja Prasad Vakil at Motihari and got the draft prepared and purchased the necessary stamps not only for himself but also for his mother and that Bhagirath had the draft transcribed in Hindi, executed by his mother and attested it himself. The defendant has further urged that it was his case that Bhagirath Mal read out the document to the plaintiff and he says that as Bhagirath Mal was not produced by the plaintiff it must be assumed u/s 114(g), Evidence Act, that Bhagirath Mal, if produced, would not have helped the plaintiff. I think I cannot accept the argument of learned Counsel in its entirety and I cannot assume that Bhagirath

Mal, if produced, would have supported the defence, but at the same time the absence of Bhagirath Mal from the witness-box on behalf of the plaintiff is a circumstance which I cannot rightly ignore.

33. There has been great controversy between the parties as regards the question whether Bhagirath Mal and the plaintiff were kept practically under restraint by the defendant in the palace at Ramnagar after the death of the Rani till they were rescued on 10th March. The plaintiff is an old lady and it is admitted that she was ill during the whole of this period. There is no evidence as regards the exact age of Bhagirath Mal but we have been told from such material, as there is on the record, that he was between the ages of 20 and 23. From what I can find on the record it further appears that Bhagirath Mal was not a young man of any very steady character. In one of his statements he has stated that during this period he was kept drunk day and night. Whether he was kept drunk by the defendant or he drank in the company of the defendant I do not know, but it appears that he was openly with Ram Raja and surreptitiously at times he was against him. The first thing that we have is an account of a large sum of money of the defendant written by Bhagirath Mal in his own hands (p. 678), and the evidence of Raghunath Prasad treasurer (p. 48, 1. 11) and Ram Raja (p. 136, 1. 35) relates to it. Then we have the further fact that it was Bhagirath Mal who on 4th February gave information to Ram Raja that certain blank papers had been obtained by Mahadeo Singh the old Manager of the Rani. Bhagirath Mal handed over the blank sheets with the Rani's thumb impression in his possession and also gave information as regards the other blank sheets which were in the possession of Mahadeo Singh and a servant of Mahadeo Singh (seep. 136, lines. 37 to 53, the statement of Hardip Singh S. D. M. p. 133 and the order of Mr. Bryson p. 456). While he was in this matter siding with Ram Raja, it appears that telegrams were being sent on his behalf on 2nd and 3rd February 1937, (pp. 446-447) in which he was appealing to Rajmata to save him. The Rani had entered into an agreement in her lifetime to buy a car and the sale was completed on 8th February 1937 and another car was purchased by Ram Raja about the middle of February. With reference to these two purchases Mr. Fairweather and Mr. Weatherall visited Ramnagar twice on 8th and 18th February. They have been produced as witnesses on behalf of the defendant to prove that Bhagirath Mal had trial runs in the cars with the salesmen, and the learned Judge has rightly pointed out that if Bhagirath Mal was a prisoner, as alleged on behalf of the plaintiff, there were opportunities for him to run away. It may, however, be said on the other side that as his mother and wife were still at Ramnagar it was not possible for him to leave them and go away himself. In any case he could easily have put himself in touch with the authorities and sought their aid on behalf of himself, his wife and mother.

34. Then again there is considerable controversy as to whether Bhagirath Mal did or did not go in the second car on 14th February 1937 to Raxaul and other places. It is said that that was again an occasion when Bhagirath Mal could have communicated with the British authorities. As I have, however, said above, in

examining the conduct of Bhagirath Mal, I have formed an opinion that he is not a very steady or reliable person and the impression caused on my mind is that he was afraid of displeasing Ram Raja and at the same time he was secretly trying to get the Rajmata to do something for him. The fact that according to the defendant's learned Counsel, the Rajmata herself found it necessary to leave Ramnagar under the pretext that her son had been injured so that she might be able to get independent opinion about the compromise proposed by the defendant along with the fact that the plaintiff was an old purdanashin woman, practically illiterate, living in the house of the defendant and under his protection, makes me think that she was not a free agent when she signed the agreement and I am, therefore, not prepared to hold that the agreement can be deemed to be an act of the plaintiff of her own free will and thus binding on her.

35. To prove that the agreement has been obtained from the plaintiff by force, the plaintiff examined Hari Prasad and the plaintiff herself. I may say that I am not prepared to believe the evidence of Hari Prasad that he saw the signature of the plaintiff taken on the agreement at the point of the pistol.

36. The plaintiff has examined several witnesses to prove the story about the confinement of Bhagirath Mal. It may be that Bhagirath Mal and the plaintiff were not free agents, in the sense that they could do whatever they liked and it may be that Ram Raja at times used threats and at times cajolery to get from them information about the State and about the affairs of the Rani, but I think the story about the confinement has been highly exaggerated. In any case, in the view that I have taken that I do not feel satisfied that the agreement was the outcome of free will of the plaintiff, I need not pursue this matter further. I would, therefore, dismiss this appeal with costs. As the banks were merely pro forma defendants, it was not necessary for the Allahabad Bank Ltd., to engage an expensive counsel in the lower Court. I would, dismiss the cross-objection filed on their behalf and grant the two banks a single set of costs as between them in this "Court.

37. We dismiss the appeal with costs, allowing only one set of cost to the two banks and one set to respondent 1. We dismiss the cross-objection with cost.