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The judgment of the Court was as follows :—

The appellant rightly contends that the Assistant Collector had no power to make the reference, and that consequently the Judge's opinion cannot be regarded as authoritatively binding on the Assistant Collector and the parties to the proceeding. It is not necessary for us to go on to consider the validity of the second plea, but we may notice that the opinion recorded by the Judge appears to be in conformity with the ruling of the Privy Council in *Unnoda Persaud Mookerjee* v. *Kristo Coomar Moitro* (1), in which it was held that the analogous provisions of s. 14, Act XIV of 1859, do not apply to suits instituted under Act X of 1859, because the latter is a special law. On similar grounds it was ruled in *Mahomed Bahadur Khan* v. *The Collector of Bareilly* (2) that the provisions of the Limitation Law relating to disability do not apply to enlarge the period of limitation prescribed by Act IX of 1859. We must, however, declare the reference to the Judge has no legal effect and his opinion cannot be held binding on the parties. We order the Judge to return the reference to the Assistant Collector, that it may be submitted through the proper channel should the Collector think fit to make a reference, and we shall direct each party to bear his own costs.

BEFORE A FULL BENCH.

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June 28.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield).

SHAM KUAR AND OTHERS (DEFENDANTS) *v.* GAYA DIN AND ANOTHER (PLAINTIFFS). *

Hindu Law—Adoption—Inheritance.

An adopted son, under the Dattaka Mimansa and Mitakshara, succeeds to property to which his adoptive mother succeeded as the heiress of her father (3).

* Special Appeal, No. 923 of 1875, against a decree of the Judge of Azamgarh, dated the 11th June, 1875, reversing a decree of the Subordinate Judge, dated the 15th January, 1875.

(1) 15 B. L. R. 60 note ; S.C., 19 W. R. 5 ; adopting the view taken by the Full Bench of the Bengal High Court in their decision in *Poulson* v. *Maahusudan Pal*, B. L. R., Sup. Vol., 101 ; S.C., 2 W. R., Act X Rulings, 21.

(2) L. R. 1 Ind. App. P. C. 167 ; S.C., 13 B. L. R. 292.

(3) See, however, besides the cases cited afterwards, *Chinnaramakristna Ayyar* v. *Minatchi Ammal*, 7 Mad. H. C. R. 245.

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SHAM KUAR v. GAYA DIN.

The plaintiffs in this suit were the sons of Sheodat Singh, the adopted son of Ramdat Singh, the deceased husband of Birja Kuar, deceased. They claimed a declaration of their right to, and possession of, certain shares in certain villages which Birja Kuar had inherited from her father Lotan Singh, in virtue of a will which Birja Kuar had executed in their favour, with the consent of their father, and in virtue of their father's right of succession, under Hindu law, to the property of Birja Kuar, his adoptive mother. The defendants were descended from other daughters of Lotan Singh.

The Court of first instance dismissed the suit. On appeal by the plaintiffs the lower appellate Court gave them a decree.

On special appeal by the defendants to the High Court, the Court (Turner and Spankie, JJ.) referred the following question to the Full Bench, *viz.*—

"Whether an adopted son is entitled to succeed to property which descended to the wife of the adopting father as the heiress of her father."

Lala *Lalta Parshad* and Munshi *Kashi Parshad*, for the appellants.

The *Senior Government Pleader* (Lala *Juala Parshad*) and Munshi *Hanuman Parshad*, for the respondents.

The opinion of the Full Bench was as follows :—

Looking to the object of the rite of adoption, we find it to be to ensure by providing a son the spiritual benefit of the adoptive father and the perpetuation of his family name (Dattaka Mimansa, ss. 1—9), rather than to obtain any benefit for the adoptive mother whose happiness in a future state is not so dependent on having a son to perform the funeral obsequies and can be otherwise secured (Dattaka Mimansa, s. 1, v. 29), and it is also the fact that the wife has no power to adopt on her own account, the right being absolute in the husband. Such being the case, there is no doubt at first sight much force in the contention that the adoption of a son merely affiliates him in the family of the adoptive father, and not of the adoptive mother, and that he cannot in consequence succeed by inheritance to the property which descended to his adoptive mother

as heiress of her father. But on the other hand we find that the wife is associated in making the adoption with the husband, and its effect is declared to be to make the adopted child the son of the adoptive mother as well as of the adoptive father.—"By the husband's mere act of adoption the filiation of the adopted son, as son of the wife, is complete in the same manner as her property in any other thing accepted by the husband"—Dattaka Mimansa, s. 1, v. 22. Nowhere do we find it stated that there is any difference in the effect obtained by this filiation with reference to the son's position towards the adoptive father and mother or their families, while we know that in respect of the natural father and mother the effect is alike to completely sever the adopted son from the families of both.—"A given-son must never claim the family and estate of his natural father. The funeral cake follows the family and estate, but of him who has given away his son the obsequies fail"—Dattaka Mimansa, s. 6, v. 6. "The estate of the maternal grandfather also like that of the father lapses from the son given"—Dattaka Mimansa, s. 6, v. 51. When the separation is so complete from the natural father and mother's family, in the absence of texts to the contrary, it may perhaps be not assuming too much to infer that the affiliation by adoption is into both families of adoptive father and mother. But we have what seems to be an express text to that effect. Dattaka Mimansa, s. 6, v. 50 declares—"The forefathers of the adoptive mother only are also the maternal grandsires of sons given, and the rest: for the rule regarding the paternal is equally applicable to the maternal grandsires of adopted sons." There is also another fact which affords the strongest argument in favour of the adopted son's right of succession, and this is that he has the right to perform funeral obsequies to his adoptive mother's father. In Dattaka Mimansa, s. 6, vv. 52, 53, we find—"Accordingly Hemadri himself, from not being satisfied with that (just stated), has advanced the other position: 'In the same manner as for the secondary father, a funeral repast must be performed in honour of the secondary maternal grandfather and the rest.' And this even is proper. The adopted son as substitute for the real legitimate son being the agent of rites performed by a legitimate son, it follows that he is the performer of funeral repasts, the objects of which are the manes in honour of whom a legitimate son performs

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such repast." This right of performing the obsequies indicates a right of heirship in the family of the adoptive mother. We have seen the rule laid down by Manu to be—"A given-son must never claim the family and estate of his natural father," and the reason assigned is because "the funeral cake follows the family and estate," and the same reason is assigned in v. 51, s. 6, Dattaka Mimansa, why the given-son cannot claim the estate of his natural maternal grandfather—'the funeral cake follows the family and estate'; "the family and estate are declared to be the cause of performing the funeral repast." So when we find that the adopted son performs by right the obsequies of his adoptive maternal grandfather, it will follow that he does so because he is amongst the heirs, or to quote the text because "the family and estate are the cause of performing the funeral obsequies," and this doctrine of funeral cake has been held by a high authority (Sir W. Jones) to be the key to the whole Hindu law of inheritance.

Amongst decisions on the question, we find that in *Moruu Moyee Debeah* v. *Bejoy Kishto Gossamee* (1), decided the 23rd July, 1863, the High Court of Bengal held that an adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs.

There is the case of *Gunga Mya* v. *Kishen Kishore Chowdhry* (2), decided the 17th December, 1821, in which a *vyavastha* was delivered to the effect that a son adopted with the permission of her husband by a woman on whom her father's estate had devolved will not be entitled to such estate on his adoptive mother's death, but such estate will go to her father's brother's son in default of nearer heirs. This opinion was based on an interpretation given by the Daya-bhaga to the text of Manu by which the adopted son's right of succession collaterally was confined to succession to property of persons belonging to the same family as the adopting father. But that dictum was accepted by one Judge only, and the majority of the Court expressed no opinion on it, as the point did not arise in the case. The dictum has, however, been accepted by Mr. Macnaghten—Hindu Law, vol. ii., 187.

(1) W. R., F. B. 121. (2) 3 S. D. A. Rep., L. P. 128.

Then there is the case of *Gungapersad Roy* v. *Brijessuree Chowdhrain* (1), decided by the High Court of Bengal on the 30th July, 1859, in which the learned Judges considered that the doctrine laid down in the case of *Gunga Mya* v. *Kishen Kishore Chowdhry* stood merely as the dictum of the Pandit who gave it, and had not been conclusively adopted by the Court and could not be said to have acquired all the authority of a recognized principle of Hindu Law to which the Sudder Court had intended to give effect, and the Court proceeded to decide the question before them, which was the converse of that before us, and held that the relations of the adoptive mother inherit the property of her adopted son just as they would inherit the property of her natural son.

In another case, *Teencowree Chatterjee* v. *Dinonath Banerjee* (2) the right of inheritance by the adopted son was held to be limited to the adoptive mother's stridhan, and did not extend to the property she had inherited from her father and paternal ancestors, but this limitation of the succession proceeded on the ground that the adopted son cannot perform the shradh of the adoptive mother's father, in which view the Court appears to have been mistaken.

Referring again to the decision in *Morun Moyee Debeah* v. *Bejoy Kishto Gossamee*, it should be noticed that in that case the Pandits of Moorshedabad and the Sudder Court gave their opinion that a legally adopted son can inherit the property of the adopting mother's father. They thus differed from the dictum given in 1821, and it should be also noticed that this *vyvastha* of 1821, on which the Judges in *Morun Moyee Debeah* v. *Bejoy Kishto Gossamee* principally relied, has special reference to the Daya-bhaga law, and will not have equal weight in deciding the question before us, which must be governed by the Dattaka Mimansa and Mitakshara.

On a full consideration of the question there seems no valid reason to doubt that the adopted son does succeed to property which descended to his adoptive mother as heiress of her father.

(1) 15 S. D. A. Rep., L. P., part ii, p. 1091. (2) 3 W. R. 49.