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do the very thing he was correcting in his subordinate, *viz.*, to decide in the dark, and to prejudice claims which had never been tried.

It has before been pointed out that the difference between the two properties in dispute consists in the circumstance that in the one case a settlement was to be made, and in the other none. It was quite necessary to have the additional materials now afforded as regards Sahrawan; but, having got them, their Lordships find that, so far as regards the form of orders made by the Government, little difference is left between this property and the other. In the Lucknow case the order of 4th July 1863 is: "The heirs of Jania Ali will be informed that they have no claim against Government, and should settle the dispute among themselves just as they like." And the *parwana* issued the same day directs the *darogah* "to inform all the heirs to the Queen Dowager that the Government have reserved no claim whatever . . . . , and that they may mutually settle among themselves as they like." Yet in the Lucknow case the question of gift or no gift being decided in favour of the donee, the property falls to the donee.

The same result must follow in Sahrawan. The plaintiff wholly fails, and his appeal must be dismissed with costs. Their Lordships will humbly advise Her Majesty to this effect.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Watkins & Lattey.*

Solicitor for the respondent: Mr. *T. L. Wilson.*

P. C. 1885, *June* 9.

BHUBANESWARI DEBI (PLAINTIFF) *v.* NILCOMUL LAHIRI (DEFENDANT).

[On appeal from the High Court at Fort William in Bengal.]

Hindu law, Adoption—Adoption as regards succession to estate of a collateral relation vested in an heir before the adoption—Fraud on the part of such heir delaying adoption.

According to Hindu Law, as laid down in the decided cases, an adoption effected after the death of a collateral relation does not entitle the adopted son to come in among the heirs of such collateral.

Of three brothers deceased, the one who died first left one son; the second dying left a widow, who took her estate for life in her husband's

* *Present:* LORD WATSON, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, AND SIR A. HOBHOUSE.

property; and the third left a widow to whom he gave by will a power to adopt.

On the death of the widow of the second deceased, the son of the first inherited his uncle's share in the family estate, and by fraudulent acts caused delay in the exercise of the power to adopt by the widow of the third. Afterwards a boy, who had not been born in the lifetime of the widow who took for life as above stated, was adopted under the said power.

Held, that the adopted boy could not claim to share along with the nephew the estate which had belonged to the uncle, notwithstanding the nephew's conduct in reference to the exercise of the power to adopt, inasmuch as the date of this boy's birth rendered it impossible for him, under any circumstances, to have been made an adoptive heir to the uncle.

APPEAL by special leave from a decree of the High Court (25th March 1880) (1) reversing a decree of the Subordinate Judge of Rangpur (30th April 1879).

This was a suit on the ground of title by inheritance as an adopted son to obtain possession, with mesne profits, of a half share in zemindaries which had belonged to Rammohun Lahiri, deceased, who was the defendant's uncle, *i.e.*, his father's brother.

The plaintiff claimed to be entitled in equal degree with this nephew, as he was the adopted son of another brother, and thus nephew to Rammohun, it being also part of the plaintiff's case that the adoption had been delayed in consequence of the defendant's fraud. These brothers, with a third, were all dead, the three being Kalimohun, Rammohun and Shibnath Lahiri, sons of Ramanath Lahiri, deceased many years ago. Rammohun left a widow, Chandmoni, who took his property for her widow's estate, and died on the 15th June 1867. Shibnath, who survived the other two brothers, died in 1861, leaving a son and two daughters, all infants. He also had made a will, whereby he gave his estate to his son, but directed that if his wife Bhubaneswari, who was then pregnant, should give birth to a second son, that son should take half the estate. He also empowered Bhubaneswari, in the event of the son dying, or of her not having a second son, or of such second son's dying, to adopt one son after another, as might be necessary. The son died, as also

(1) I.L.R., 7 Calc., 178.

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all the offspring of Shibnath Lahiri. But the adoption was delayed under the following circumstances:—

After the death of Shibnath, Nilcomul acted for some time as Bhubaneswari's manager, but ceased so to do after about four years; and in 1866 he set up another will, purporting to have been made by Shibnath, containing no power to adopt. This was disputed by Bhubaneswari, and led to litigation. The High Court found, on 25th May 1869, that the will put forward by Nilcomul was a forgery, and that having got the true will into his hands he had suppressed it. Nilcomul appealed to Her Majesty in Council, but his appeal was dismissed on 23rd March 1874. Whilst that litigation was pending, Bhubaneswari applied to several persons to give her a son to adopt, but without success, in consequence of the uncertainty cast upon the will. Afterwards, whilst the appeal was still undisposed of, Akhoy Chunder Singh executed to Bhubaneswari a deed of gift, dated 22nd January 1879, giving her his second son, for the purpose of adoption. This boy was duly adopted by her to her deceased husband Shibnath, receiving the name of Jotendromohun; and now, by his adoptive mother as his guardian, he brought this suit, and preferred this appeal.

The defence of Nilcomul was that, granting that Bhubaneswari had power to adopt, yet, as she had not adopted till after the death of Chandmoni, whom he, the defendant, had succeeded as sole heir in 1867, the adopted son, who was not born when Chandmoni died in that year, could take no share in Rammohun's estate.

The Court of first instance, the Subordinate Judge of Rangpur, found that the defendant has fraudulently, and in breach of the trust reposed in him, suppressed the will of Shibnath Lahiri, putting forward a forged will which contained no power to adopt, and had also influenced several persons not to give their sons to Bhubaneswari to adopt. The Court was of opinion that as a matter of equity, Nilcomul should not be allowed to derive advantage from his own wrong, and to deprive the adopted son of that moiety of Rammohun's estate to which he would have been entitled had he been adopted before Chandmoni's death. A decree was, therefore, made in favour of the plaintiff.

On appeal the High Court (MORRIS and TOTTENHAM, JJ.) reversed this decree. In their judgment, printed in the report of the appeal *Nilcomul Lahiri* v. *Jotendromohun Lahiri* (1) they held that, though the fraud of Nilcomul had put obstacles in the way of the taking a son in adoption by Bhubaneswari under the power conferred upon her, yet, inasmuch as "the minor plaintiff, subsequently adopted, was not even in existence when the fraud was committed by the defendant," and inasmuch as Bhubaneswari had not been wholly without any opportunity of adopting before Chandmoni's death, the fraud committed "was of too remote a character, so far as it affected Jotendromohun, for the Court, as a Court of Equity, to disturb the estate, which naturally vested in the defendant as sole heir of Chandmoni at the time of her death." The suit having been, accordingly, dismissed, the present appeal was brought.

For the appellant, Mr. *J. Rigby* and Mr. *R. V. Doyne* argued that, with regard to the fraud found by both the Courts below, which had differed as to the effect of the fraud, but not as to its having been committed, the lower Appellate Court had erred in allowing the appellant's title to be defeated on the ground of the delay in the adoption, seeing that the respondent had himself caused that delay. [Their Lordships intimated that the difficulty in the appellant's case was that the adopted son, not having been alive in the lifetime of Chandmoni who died in 1867, could not be said to have been among the heirs of Rammohun at her death. If the title of the adopted son was incomplete in itself, how could the effect of fraud convert him into an heir who would not have been one had no fraud occurred?] Upon this it was contended that the strength of the appellants' case was in the doctrine of estoppel; the respondent being estopped from alleging that Jotendromohun had not been adopted in due time. [Their Lordships asked whether the fact that the appellant was not in existence until several years after Nilcomul had taken the inheritance, did not prevent his making good his claim, whatever might be the assistance that he could get from the law of estoppel.]

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It was then submitted that, under all the circumstances, the respondent could not allege at all the ground against the appellant that he was not born till 1870 or 1871; this was in consequence of the position of Nilcomul. The latter had become manager for the widow, and was in a position of trust at the time when he suppressed the will empowering her to adopt. At that time it was his duty to promote the adoption in fulfilment of the trust, and yet he had frustrated the widow's attempts to adopt, while still remaining in this fiduciary relation. This misconduct deprived him of any right to insist on any defect in the title of the adopted son, arising from the fact that the widow had deferred adopting.

Reference was made to *Padmakumari Debi Chowdhrâni* v. *The Court of Wards* (1); Macnaghten, H. L. 189, Chap. VI, Adoption Case XIV; *Luttrel* v. *Waltham* (2).

Mr. *J. T. Woodroffe* for the respondent referred to the Full Bench decision of the High Court in *Kalidas Das* v. *Krishan Chandra Das* (3), for the proposition that property, once descended to an heir, cannot be divested in favour of a nearer relative, not in existence, or conceived, at the time of the death of the owner, from whom the property has so descended. This adopted son's claim must fail, as he was not in existence at the death of Chandmoni in 1867. The learned counsel was also heard as to costs.

Mr. *J. Rigby, Q.C.*, replied.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—Bhubaneswari Debi, as the mother and guardian of Jotendromohun Lahiri, sues to recover, on behalf of her son, half the estate of Rammohun. Rammohun died leaving two brothers, and a widow, Chandmôni. He left no son, and consequently the widow succeeded and took the widow's estate, and until her death no one could be designated as his reversionary heir. She died on the 15th June 1867. Shibnath, one of the brothers of Rammohun, died on the 28th May 1861, in the lifetime of Chandmoni, having given power to his widow to adopt

(1) I. L. R., 8 Calc., 302; L. R., 8 I. A. 220.

(2) Cited in 14 Vesey, 290.

(3) 2 B. L. R., F. B., 103.

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a son. He consequently did not succeed to any portion of the estate of his brother. Kalimohun, the other brother of Rammohun (we have not got the precise date of his death) died before Chandmoni, leaving a son, Nilcomul, who was the defendant in the suit. If the widow of Shibnath had adopted a son during the lifetime of Chandmoni, that son would have been entitled to a half share of the estate of Rammohun as one of the reversionary heirs of equal degree with Nilcomul, who was also a nephew. But the allegation is, that in consequence of Nilcomul's fraud in setting up a forged will, the widow of Shibnath was unable to get anyone to give her a son in adoption, and could not adopt until after the death of Chandmoni. In consequence of her not having adopted a son in the lifetime of Chandmoni, Nilcomul, the defendant, became entitled to the whole of the property of his uncle unless his fraud entitles the boy, who was subsequently adopted by the widow of Shibnath, to come in as the heir of one moiety of the estate.

It appears that the widow from time to time tried to get different persons to give her a son in adoption, and that they refused upon the ground of the forged will which had been set up by the defendant; and that consequently she could not get anyone to give her a son in adoption.

After the death of Chandmoni she did adopt the present plaintiff; but it appears clearly upon the evidence that the plaintiff was not in existence at the time of the death of Chandmoni.

The widow never could, by adoption, if there had been no fraud, have made the present plaintiff a reversionary heir of half the estate of Rammohun, because he was not in existence at the time of Chandmoni's death. According to the law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral. It appears from the evidence of the natural father of the present plaintiff that the widow applied to him in 1277—that is, in the year 1870—to give her his son in adoption, and that at that time he gave to her in adoption his second son.

That was about four years after the death of Chandmoni, and then the father says in his cross-examination: "When in 1277

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she made her first attempt, the age of my second son"—that is the present plaintiff—"was about two months." He was consequently only about two months old in 1870 or 1871, the widow having died in June 1867. The boy never could, in the course of nature, have become the heir of Rammohun's estate. Under these circumstances the High Court came to a right conclusion in dismissing the plaintiff's suit.

A question then arises whether, under the circumstances which have been detailed in the evidence, the fraud which has been brought home to the defendant and the forgery to which the High Court alluded, this is a case in which in their discretion their Lordships ought to give the respondent the costs of the appeal.

Their Lordships are of opinion that the respondent ought not to have those costs.

They will therefore humbly advise Her Majesty to affirm the judgment of the High Court, and they make no order as to the costs of this appeal.

Appeal dismissed without costs.

Solicitors for the appellant: Messrs. *Wrentmore & Swinhoe*

Solicitor for the respondent: Mr. *T. L. Wilson.*

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice Beverley.

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KRISTO CHUNDER GHOSE AND OTHERS (PLAINTIFFS) *v.* RAJ KRISTO BANDYOPADHYA AND OTHERS (DEFENDANTS).*

Bengal Rent Act (VIII of 1869), ss. 26, 64—Suit for possession by unregistered purchaser after ejectment—Effect of sale of tenure by shareholder in zemindari—Onus of proof.

K, the recorded tenant of a *maurasi mokurari* tenure, died leaving *G* his son and heir, who sold the tenure, which eventually came into the hands of the plaintiffs' father, and afterwards on his death became vested in the plaintiffs, but neither they nor their father, though they made attempts to do so, ever obtained the registration of their names as tenants.

* Appeal from Appellate Decree No. 788 of 1884, against the decree of Baboo Bhuban Chunder Mukherji, Second Subordinate Judge of Hooghly, dated the 4th of February 1884, affirming the decree of Baboo P. N. Banerji, Second Munsiff of Howrah, dated the 31st of January 1883.