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December 21.

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

LALI (DEFENDANT) *v.* MURLIDHAR (PLAINTIFF).*

*Limitation—Act No. XV of 1877 (Indian Limitation Act), sch. ii, art. 119—Adoption—Suit for possession of immovable property, plaintiff claiming as adopted son, his title as such having been denied by defendant more than six years before suit—Construction of document—Document of a testamentary nature—Declaration made in wajib-ul-arz by the sole proprietor of a village as to his wishes respecting the devolution of the property after his death.*

*Held*, that art. 119 of the second schedule to the Indian Limitation Act, 1877, did not apply to a suit for possession of immovable property in which the plaintiff claimed as the adopted son of the last male owner of the property, and in which the plaintiff's adoption was denied by the defendant, and the plaintiff himself alleged that his right as adopted son had been interfered with more than six years before the institution of his suit.

*Basdeo* v. *Gopal* (1), *Ganga Sahai* v. *Lekhraj Singh* (2), *Ghandharap Singh* v. *Lachman Singh* (3), *Natthu Singh* v. *Gulab Singh* (4), *Lala Parbhu Lal* v. *Mylne* (5), *Jagannath Prasad Gupta* v. *Runjit Singh* (6), *Padajirav* v. *Ramrav* (7), *Fannyamma* v. *Manjaya Hebbar* (8), and *Harilal Pranlal* v. *Bai Rewa* (9), followed. *Inda* v. *Jehangira* (10), *Parvathi Ammal* v. *Saminatha Gurukal* (11) and *Shriniras* v. *Hanmant* (12) dissented from. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri* (13), *Mohesh Narain Munshi* v. *Taruck Nath Moitra* (14) and *Lachman Lal Chowdhri* v. *Kanhaya Lal Mowar* (15) distinguished.

The sole proprietor of a certain village caused the following entry to be recorded in the village wajib-ul-arz:—

"I am the only zamindar in this village. I am a Marwari Brahmin. Seven years ago I adopted my sister's son, Murli. He is my heir and successor *(Malik)*. If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son. If more than one son be born to me, the property would be equally divided among them, including the adopted son, as brothers. I have two wives now. They will receive their maintenance from him (Murli)."

A son was born to the person making this declaration, but he died before the plaintiff's suit was instituted.

As to the adoption of Murli, it was found that, although Murli had been brought up by his alleged adoptive father, and more or less treated by him as

*First Appeal No. 160 of 1897 from a decree of Maulvi Syed Muhammad Siraj-ud-din Ahmad, Subordinate Judge of Agra, dated the 18th June 1897.

(1) (1886) I. L. R., 8 All., 644.
(2) (1886) I. L. R., 9 All., 253.
(3) (1888) I. L. R., 10 All., 485.
(4) (1895) I. L. R., 17 All., 167.
(5) (1887) I. L. R., 14 Calc., 401.
(6) (1897) I. L. R., 25 Calc., 354.
(7) (1888) I. L. R., 13 Bom., 160.
(8) (1895) I. L. R., 21 Bom., 159.
(9) (1895) I. L. R., 21 Bom., 376.
(10) Weekly Notes, 1890, p. 241.
(11) (1896) I. L. R., 20 Mad., 40.
(12) (1899) I. L. R., 24 Bom., 260.
(13) (1886) I. L. R., 13 Calc., 308.
(14) (1892) I. L. R., 20 Calc., 487.
(15) (1894) I. L. R., 22 Calc., 609.

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his son, it was not satisfactorily proved that there had been any valid adoption, even if such adoption were legally possible.

*Held* that the declaration in the wajib-ul-arz above cited amounted to a testamentary declaration of the wishes of the proprietor of the village, and that the person described therein as the adopted son was entitled by virtue of it to half of the village. The description of the devisee as an adopted son was treated as a mere mis-description, which ought not to affect what appeared to be the real intention of the testator. *Fanindra Deb Raikat* v. *Rajeswar Dass* (1) and *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu *Jogindro Nath Chaudhri* and Pandit *Moti Lal Nehru*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by the respondent to recover possession of property which originally belonged to one Dhanraj, who died on the 3rd of April, 1885. Dhanraj left surviving him two widows, Musammat Lali, the appellant before us, and Musammat Sundar, now deceased, and a son by Musammat Lali, named Nand Lal, who is also dead. The property is now in the possession of Musammat Lali. The plaintiff alleges that he was adopted by Dhanraj in Sambat 1927, corresponding to 1870-71, and was brought up and maintained by him. He also alleges that at the settlement of 1877, Dhanraj made a will, which he caused to be recorded in the village administration paper, to the effect that on his death the plaintiff should be his heir, and that if a son should be born to him (Dhanraj), the son and the plaintiff should hold the property in equal shares. He states that after the death of Dhanraj, the defendant did not allow the plaintiff's name to be entered in the revenue papers and got her own name entered, and two years afterwards she turned him out of the house of Dhanraj. He claims the property on the strength of the adoption alleged by him, and also on the basis of the will referred to above. The defendant denies the adoption set up by the plaintiff, denies that Dhanraj made the will relied upon by the plaintiff, and asserts that the plaintiff, being the sister's son of Dhanraj, could not be legally adopted by him. She further contends

(1) (1885) L. R., 12 I. A., 72; at p. 89. (2) (1876) L. R., 3 I. A., 253.

that the claim is barred by limitation under article 119 of schedule ii of the Limitation Act. The learned Subordinate Judge has decreed the claim, finding in favour of plaintiff upon all the questions raised in the suit. The parties are Bohra Brahmins, and it is conceded that as the plaintiff is the sister's son of deceased Dhanraj, his adoption is invalid according to Hindu Law, as recently held by their Lordships of the Privy Council in *Bhagwan Singh* v. *Bhagwan Singh* (1). The plaintiff, however, asserts that by the custom prevailing among Bohra Brahmins, the adoption of a sister's son is valid and legal. As evidence upon that point was not taken in the lower Court by reason of the Full Bench ruling of this Court in *Bhagwan Singh* v. *Bhagwan Singh* (2), which was binding on the Court below at the time when the case was decided by that Court, but which has since been overruled by the Privy Council, it was necessary to refer an issue to that Court in the question of the custom referred to above. Evidence upon that issue has now been adduced by the parties at great length, and the finding of the Court below is before us. We shall refer to this finding and the evidence in a subsequent part of this judgment.

The first question which we have to determine in this appeal is whether article 119 of schedule ii of the Indian Limitation Act is applicable to the case. There can be no doubt that if that article applies the claim is beyond time, the plaintiff's right as adopted son having, according to his own allegation, been interfered with in 1887, that is, two years after the death of Dhanraj, and the present suit having been brought on the 26th of September, 1896.

The question as to whether article 119 is applicable to a suit of this nature is by no means free from difficulty, and the rulings of the different High Courts as to the applicability of that article and the cognate article 118 are conflicting. We have in support of the appellant's contention the ruling of this Court in *Inda* v. *Jehangira* (3), the decision of the Madras High Court in *Parvathi Ammal* v. *Saminatha Gurukal* (4), and the recent Full Bench decision of the Bombay High Court in *Shrinivas*

(1) (1898) I. L. R., 21 All., 412.
(2) (1895) I. L. R., 17 All., 294.
(3) Weekly Notes, 1890, p. 241.
(4) (1896) I. L. R., 20 Mad., 40.

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v. *Hanmant* (1). On the other hand, as opposed to the view adopted in those cases, we have the rulings of this Court in *Basdeo* v. *Gopal* (2), *Ganga Sahai* v. *Lekhraj Singh* (3), *Ghandharap Singh* v. *Lachman Singh* (4), *Nathu Singh* v. *Gulab Singh* (5), the decisions of the Calcutta High Court in *Lala Parbhu Lal* v. *Mylne* (6), and *Jagannath Prasad Gupta* v. *Runjit Singh* (7), and the earlier decisions of the Bombay High Court in *Padajirav* v. *Ramrav* (8), *Fannyamma* v. *Manjaya Hebbar* (9), and *Harilal Pranlal* v. *Bai Rewa* (10). In all the cases last-mentioned it was held that articles 118 and 119 can only apply to suits the sole object of which is to declare the validity or invalidity of an adoption, and that a suit for possession of property will be governed by the rule of limitation prescribed for such a suit, even though the question of the validity of an adoption may arise in it and have to be decided. The Courts that have taken an opposite view have considered themselves bound by certain decisions of the Privy Council. If there were any clear ruling of the Privy Council on the matter, we should, of course, be bound to follow it. But we are unable to find in any of the decisions referred to any clear pronouncement of opinion which places the matter beyond doubt, and which would justify us in departing from the view of law taken by this Court in all the cases in which the question has been considered, with the exception of one. It is noticeable that one of the Judges who decided the case of *Inda* v. *Jehangir* (11), was a party to the earlier case of *Basdeo* v. *Gopal* (2), in which an opposite view was taken. We shall now refer to the cases decided by the Privy Council, which were relied on by the appellant, and which formed the basis of the decisions of the Madras High Court, and the latest decision of the Bombay High Court. The first is the case of *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri* (12). The Limitation Act applicable to that case was Act No. IX of 1871, the language of article 129, schedule ii of which differs materially from that of articles 118 and 119 of

(1) (1899) I. L. R., 24 Bom., 260.
(2) (1886) I. L. R., 8 All., 644.
(3) (1886) I. L. R., 9 All., 253.
(4) (1888) I. L. R., 10 All., 485.
(5) (1895) I. L. R., 17 All., 167.
(6) (1887) I. L. R., 14 Calc., 401.
(7) (1897) I. L. R., 25 Calc., 354.
(8) (1888) I. L. R., 13 Bom., 160.
(9) (1895) I. L. R., 21 Bom., 159.
(10) (1895) I. L. R., 21 Bom., 376.
(11) Weekly Notes, 1890, p. 241.
(12) (1886) I. L. R., 13 Calc., 308.

schedule ii of Act No. XV of 1877. In that case no doubt their Lordships of the Privy Council held that article 129 applied indiscriminately to suits for possession of land, and to suits of a declaratory nature; but they remarked that in the Limitation Act of 1877, which superseded the Act then under discussion, the language is changed, and they go on to observe:—"Whether the alteration of language denotes a change of policy or how much change of law it affects are questions not now before their Lordships." It is thus clear that in that case their Lordships expressly refrained from pronouncing an opinion as to the effect of the alteration in the law made by the Act we have to construe. The next case decided by the Privy Council is *Mohesh Narain Munshi* v. *Taruck Nath Moitra* (1), which was a case in which it was held that the law of limitation applicable was the Act of 1871. It is true that Lord Shand, in delivering the judgment of the Judicial Committee, observes with reference to the alteration of language in the Act of 1877:—"It seems to be more than doubtful whether, if those were the words of the statute applicable to the case, the plaintiff would thereby take any advantage." That no doubt, as an expression of opinion by the highest tribunal, is entitled to great respect, but it seems to us to stop short of deciding the question now raised and not to afford a sufficient justification for departing from the course of rulings which exist in this Court on the point, more specially as the effect of that observation was considered in *Nathu Singh* v. *Gulab Singh* (2). The third case decided by their Lordships of the Privy Council is *Lachman Lal Chowdhri* v. *Kanhaya Lal Mowar* (3). In that case the counsel for the appellant argued that the plaintiff's suit was time-barred under article 118 of schedule ii of Act No. XV of 1877. In disposing of that contention Lord Shand observes:—"The appellant's counsel, founding on section 118 of the schedule to the Limitation Act, argued that the limitation of six years from the date of the alleged adoption of the appellant barred the suit. It was maintained that the suit was one in effect to obtain a declaration that the adoption of the appellant was invalid or had never in fact been made, and that six

(1) (1892) I. L. R., 20 Calc., 487. (2) (1895) I. L. R., 17 All., 167.
(3) (1894) I. L. R., 22 Calc., 609.

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years had elapsed after the alleged adoption had become known to the respondent before the suit was instituted. If the adoption was really made by Bhuina Chaudhrain of a son to herself, and not to her husband, which the High Court has held to be the true construction of the deed of adoption produced, the plea of limitation could have no application in this suit which relates entirely to the husband's estate. But, in the opinion of their Lordships, there is another ground, in respect of which also this defence clearly fails, *viz.*, that it has not been proved that the alleged adoption did become known to the respondent till the death of Bhuina Chaudhrain, which occurred within two years of the institution of the suit." The Bombay High Court considered that this was a conclusive decision by their Lordships in favour of the view that article 118 applies to a suit for possession. With all deference to the learned Judges of that Court, we are unable to hold that this judgment of the Privy Council conclusively decides the question. As we understand the judgment of the Privy Council, the argument of the counsel was met by setting forth two reasons, either of which, assuming article 118 to be applicable, would dispose of the plea. We cannot infer from the mere absence of a distinct statement that article 118 was inapplicable, that the question of its applicability was authoritatively decided. It must be remembered that the period of limitation for a suit relating to adoption was twelve years under article 129, schedule ii of Act No. IX of 1871. Had the Legislature intended to cut down the ordinary period of twelve years' limitation fixed for suits for possession of immovable property to a term of six years in suits for possession in which the question of the validity of an adoption arises we should have expected it to give effect to its intention in unmistakable language. Following therefore the decisions of our own Court and of the Calcutta High Court, particularly the case of *Jagannath Prasad Gupta* v. *Runjit Singh* (1), in which the question of the applicability of article 119 to a suit like the present was considered, we hold that the respondent's suit is not barred by limitation.

We have now to consider the next plea urged on behalf of the appellant, namely, that the respondent Murlidhar was never, in fact, adopted by Dhanraj. The lower Court has found upon the

(1) (1897) I. L. R., 25 Calc., 354.

evidence that the adoption is proved. As regards the oral evidence in support of the adoption, it is, in our opinion, meagre and unsatisfactory, and standing by itself, quite insufficient to satisfy us that any ceremony of adoption was ever performed. The adoption is said to have taken place on Basant Panchmi, Sambat 1927, corresponding to 25th of January, 1871. The first witness called to prove the adoption was one Pokhar Das Bohra, a resident of the Muzaffarnagar district. Dhanraj, we may mention, was a resident of the town of Kosi, in the district of Muttra. The witness, when giving his evidence on the 3rd of March, 1897, stated his age to be forty-two years, so that at the time of the alleged adoption he must have been between fifteen and sixteen years of age. He himself stated in cross-examination that he could not say whether, at the time of the alleged adoption, he was ten or twelve years' old, or more or less than that. His story is, that he was then going on a pilgrimage to Kosi, that he stopped at Dhanraj's house in the evening, and that the adoption took place the following day. If his story is to be believed the necessary ceremony of adoption was performed. It appears that he received no invitation to be present at the adoption, but that he casually arrived at Dhanraj's house at the time when the ceremony was to be performed. He never visited Dhanraj's house after that occasion. He had at the time no elder relative with him, but only a servant. It appears to us highly improbable that a lad of his age should go forth on a pilgrimage by himself. Although he gives a circumstantial and detailed account of the adoption, exhibiting a marvellous memory as to events said to have taken place twenty-six years before the time he was giving evidence, his testimony is not at all convincing to our minds.

The next witness is one Pirthi Raj, a resident of the Aligarh district. This witness was no relation of the parties. He was not invited to be present at the adoption, but says he went there with his master Radha Kishen. This witness, too, gives a circumstantial account of what took place. He gives the very date on which the adoption ceremony is said to have been performed, but he was unable to say in what year his eldest son was born, or in what year he was married. His evidence is, to our minds, as unsatisfactory as that of Pokhar Das.

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The third witness, Mohan Lal, is a resident of the Muttra district, but of a different pargana from that in which Kosi is situated. He is the first cousin of Baldeo, the plaintiff's natural father. He may therefore be supposed to be interested in supporting the plaintiff's case. He has made many confused and conflicting statements, and we do not regard him as a person on whose testimony we can place any reliance.

The next witness, Hargobind, is a resident of the Aligarh district, about thirty-five miles from Kosi. He gives the date of the adoption, and explains as the reason why he remembers the date—that he had noted the date of his invitation upon a paper. But no such paper was produced. It appears that the family property of this witness was sold in execution of a decree and purchased by Dhanraj, and it is probable as suggested that owing to this he would bear no friendly feeling towards Dhanraj's family, and has therefore come forward to give evidence for the plaintiff in this case.

The only other witness to the adoption is one Nathu Ram. He was in the service of Dhanraj for fifteen years. This witness was employed to cook his food and to write up his account-books. He left the service of the family after Dhanraj's death, because, according to his account, he was not on friendly terms with the karinda. These are the five witnesses called to prove the adoption. It is noticeable that, although one or two hundred guests are said to have been present at the time of the adoption, including residents of Kosi, not a single witness from Kosi has been called, although it is proved that some at least of those witnesses are alive and might have been called. We may mention that a number of witnesses who are residents of Kosi, some of whom are relatives of the family of Dhanraj, and of a higher social position than any witness for the plaintiff, have sworn that no such adoption took place, that they heard of no such ceremony being performed, and that had any such ceremony been performed, they would certainly have been invited, and have known of it. What tells more than anything against the plaintiff's case, is the conduct of the plaintiff himself and of his natural father Baldeo. It has been stated at the outset that Dhanraj's younger wife Lali gave birth to a son Nand Lal about

two years before Dhanraj's death. If an adpotion had taken place, the adopted son would have been entitled to a share in Dhanraj's property on his death. But we find that the name of Nand Lal alone, under the guardianship of the two widows of Dhanraj, was entered in the revenue papers as succeeding to the valuable estate of Dhanraj. Again, when Nand Lal died two years afterwards, the name of Lali alone—the other widow having died—was entered as in possession of the estate. On neither of these occasions was any claim put forward on behalf of the plaintiff to this valuable estate. At the time of the first mutation of names Baldeo, the natural father of the plaintiff, was alive, and had he, as a matter of fact, given one of his sons in adoption to Dhanraj, his brother-in-law, he surely would have taken some steps to protect his son's interests. At the time of the second mutation of names Baldeo was dead, but the plaintiff had then attained majority, and he had elder brothers. None of them asserted any claim in opposition to Musammat Lali. There was another occasion in 1887 on which the plaintiff's rights as an adopted son, if he had any, might have been, but were not, asserted; that is, when the mutation of names took place in regard to a property which had been usufructuarily mortgaged to Dhanraj. Not only was no claim put forward on any of these occasions by, or on behalf of, the plaintiff as the adopted son of Dhanraj, but we find that when the plaintiff's natural father Baldeo died, the plaintiff's name was entered as succeeding to Baldeo's property in the same way as the names of his three brothers (*vide* p. 21 of the appellant's first book). Had the plaintiff been validly adopted by Dhanraj, he would have ceased to have any claim to his natural father's property. This conduct of the plaintiff and of his relations, for which no explanation has been offered, seems to us to indicate strongly that they were conscious of the infirmity of his title, and confirms us in the distrust we cannot help entertaining as to the truth of the statements of the five witnesses to whom we have referred above.

Had it not been for certain documents to which we will now allude, we would not have had the slightest hesitation in holding that the plaintiff had failed to prove that any formal adoption had taken place. The most important of those documents is an

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extract from the village administration paper (printed at page 34 of the respondent's book) of mauza Daidna, a village owned by Dhanraj. This administration paper, which was prepared at the time of settlement in 1877-78, contains the following statement purporting to have been made and signed by Dhanraj:—"I am the only zamindar in this village. I am a Marwari Brahman. Seven years ago I adopted my sister's son, Murli. He is my heir and successor (*Malik*). If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son. If more than one son be born to me, the property would be equally divided among them, including the adopted son, as brothers. I have two wives now. They will receive their maintenance from him (Murli)." As regards this document, the case of the defendant was, that it was not the deed of Dhanraj, and that the statement was not actually made by Dhanraj himself, but by the plaintiff's natural father Baldeo, who, it is said, acted for some time as Dhanraj's agent. We entirely agree with the Subordinate Judge that the defendant has failed to substantiate this allegation. We see no reason whatever to doubt that it is a genuine statement made by Dhanraj himself before the settlement officer. As to the importance of the document, there can be no question. Dhanraj asserts categorically that seven years previously he had adopted the plaintiff Murli. Had the evidence for the plaintiff in support of the adoption been of a more satisfactory character, this statement of Dhanraj himself would have afforded the strongest corroboration that an adoption had taken place. But looking to the unsatisfactory nature of the oral evidence, and the unexplained equivocal conduct of the plaintiff and his relations to which we have referred, we cannot look upon this wajib-ul-arz as conclusive. We say this, having regard to our common knowledge of the vague notions entertained as to what is necessary for a valid adoption. It is sometimes considered that the execution of a deed is enough; some times it is thought that it is sufficient if the child is brought up and treated as a son. We see no reason to doubt that the plaintiff was brought up by Dhanraj in his house, investiture with the sacred thread and marriage ceremonies were there performed, and that in all respects he was treated by Dhanraj as his son, at any

rate before a son was born to him. It is quite possible, therefore, that when Dhanraj speaks of having adopted his sister's son, he may be referring to his having taken him into his house and treated him as his son. This would explain the absence of stronger evidence to prove the performance of the ceremony of adoption, and would account for the conduct of the plaintiff and his relations after Dhanraj's death, to which we have alluded above.

The other documents relied upon by the plaintiff are three mortgage-deeds, two of which were executed by one Asa Ram in 1873, and the third by Baldeo and Musammat Sahib Kunwar in 1880. These documents were executed in favour of Dhanraj and Murlidhar. In two of the documents Murlidhar is described as the adopted son of Dhanraj. Our observations with regard to the wajib-ul-arz apply with equal force to these documents. Much was made by the respondent of the fact that the executant of two of the documents was one Asa Ram, who was a near relation of Dhanraj, and might have had some chance of succeeding to his property. Asa Ram was examined as a witness, and he stated that he did not know that the name of Murli had been mentioned in the deeds as the son of Dhanraj. It is somewhat difficult to believe this; but if Dhanraj wished the name of Murli to appear in the document as his son or adopted son, it is not likely that the person borrowing money from him would object. On a review of the whole evidence, we can come to no other conclusion than that the plaintiff has failed to prove by credible evidence that the ceremonies necessary to a valid adoption were performed, and on this issue we cannot agree with the lower Court. This finding relieves us of the necessity of determining whether a custom exists among Brahmans of the class to which the parties to this suit belong by which the adoption of a sister's son is regarded as valid. If it were necessary to express an opinion on the point, we should have no hesitation in agreeing with the conclusion at which the learned Subordinate Judge has arrived after an exhaustive and careful consideration of the mass of evidence adduced by both parties. We agree with him that the evidence adduced by the plaintiff falls far short of establishing a custom which would override the ordinary rule of Hindu law, according to which such an adoption as that set up by the plaintiff is invalid.

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The only question that remains to be considered is the effect of the statement made by Dhanraj in the wajib-ul-arz of the village of Daidna, which we have set forth above. It is contended on behalf of the plaintiff that this document is of a testamentary nature. Although in his plaint the plaintiff claimed to be entitled to the whole of the property under the terms of this document, his counsel admitted here, and indeed he could not do otherwise, that in the event of his failure to establish the adoption he could not under that document claim more than half of the property. For the appellant it was contended that this was not a testamentary document, and even if it were held to be of the nature of a will, there was no bequest to the plaintiff, apart from, or independent of, the adoption; in other words, that the bequest to the plaintiff was conditional on the adoption standing good. We are of opinion that the document is of a testamentary nature. It provides for what is to happen in the event of a son being born to the testator, and makes a bequest to the plaintiff of a larger share of the property than he would be entitled to under the Hindu law. Assuming that there had been a valid adoption, the plaintiff would under that law have been entitled, upon the birth of a son to Dhanraj, to one-fourth of his property, and not to the half share to which Dhanraj declares he will succeed. We have now to consider whether this bequest by Dhanraj was contingent upon the adoption of Murli being valid. In other words, to use the language of their Lordships of the Privy Council in the case *Fanindra Deb Raikat* v. *Rajeswar Dass* (1), the question is whether the mention of the plaintiff as an adopted son is merely descriptive of the person who took under the gift or whether the assumed fact of his adoption is not the reason and motive of the gift, and indeed a condition of it. In such a case the intention of the testator is what has to be looked to. The present case is somewhat similar to the case of *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee* (2). The effect of the will in that case according to their Lordships' view, was as follows:—"I declare that I give my property to Kaibullo whom I have adopted." It was held that it was a gift by the testator to a designated person,

(1) (1885) L. R., 12 I. A., 72; p. 89. (2) (1876) L. R., 3 I. A., 253.

and that it was immaterial whether the adoption was a valid one or not. We may also refer to the following passage at page 89 of the judgment in the case reported in L. R., 12 I. A., p. 72:—"The distinction between what is descriptive only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstance. If a man makes a bequest to his lawful wife 'A B,' believing the person to be his lawful wife, and he has not been imposed upon by her, and falsely led to believe that he could lawfully marry her, and it afterwards appears that the marriage was not lawful, it may be that the legality of the marriage is not essential to the validity of the gift. Whether the marriage was lawful or not may be considered to make no difference in the intention of the testator." The principle of this ruling applies to the present case. Here we have a designated person, namely, Murlidhar. To this person Dhanraj bequeathed half of his property. It is true he describes him as his adopted son, and it may be, that he was under the impression that he was a validly adopted son. But, as stated above, he gives him more than a validly adopted son would get. This is an indication that the adoption was not the reason or motive of the bequest. There is no evidence to show that any deception was practised upon Dhanraj. It is unnecessary to refer to all the cases that were cited in argument by counsel on both sides. Every case must be decided with due regard to the language of the document in question and the surrounding circumstances. In the present case we arrive at the conclusion that it was Dhanraj's intention to make a bequest in favour of the plaintiff of a half share, and that this bequest was not contingent upon the adoption being in all respects a valid adoption.

The result is that we allow the appeal in part, and, varying the decree of the court below, we decree in plaintiff's favour for half of the property claimed. The parties will pay and receive costs in both Courts in proportion to their failure and success.

*Decree modified.*