

*facie* 2 per cent. *per mensem*. The other view, that it only means 2 per cent., or Rs. 70 for the whole period, seems almost absurd.

Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed, the decree appealed from reversed with costs, and the decree of the District Judge restored.

The respondents will pay the appellants' costs.

*Appeal allowed.*

Solicitors for the appellants—*T. L. Wilson & Co.*

J. V. W.

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TIRBHUWAN BAHADUR SINGH (REPRESENTATIVE OF DEFENDANT) v.  
RAMESHAR BAKHSH SINGH (PLAINTIFF).

[On appeal from the Court of the Judicial Commissioners of Oudh,  
Lucknow.]

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May 9, 10.  
July 27.

*Act No. XV of 1877 (Indian Limitation Act), section 2, and schedule II, article 118—Act No. IX of 1871 (Indian Limitation Act), schedule II, article 129—Acquisition of title by apparent adoption not set aside within 12 years under Act No. IX of 1871—Suit for possession after Act No. XV of 1877 in force—Res judicata—Decision in former suit—Code of Civil Procedure, section 13.*

Under the ruling in the case of *Jagadamba Chaudhrai v. Dakshina Mohun Roy Chowdhry* (1) and the other cases which followed it, the immunity gained by the lapse of 12 years after the date of an apparent adoption does not amount to an acquisition of title within the meaning of section 2 of the Limitation Act (XV of 1877). And this is so whether the alleged adoption was or was not an apparent adoption to which the ruling in the above case would apply if the Limitation Act IX of 1871 were now in force.

The defendant alleged that in 1868 he had been adopted by a Hindu widow, a taluqdar in her own right, to whom a *sanad* had been granted and whose name had been entered in lists 1 and 2 under Act I of 1869. In 1873 he brought a suit against her for possession of the taluq in which the question of the validity of the adoption, which was denied by the widow, was the main issue and was decided in 1873 against the present defendant, who preferred an appeal to the Privy Council which was dismissed on his failure to deposit security for costs. The widow died on 13th November, 1893. On 27th May, 1899, the plaintiff, who had attained his majority in June, 1896, brought a suit for possession of the taluq claiming to succeed as next heir of his grandfather who was the eldest brother of the widow. The defendant, who was in

*Present* :—Lord MACNAGHTEN, Sir ANDREW SCOBLE, Sir ARTHUR WILSON, and Sir ALFRED WILLS.

(1) (1886) L. R., 13 I. A. 84 : I. L. R., 13 Calc., 308.

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possession, set up his title under the adoption. *Held* by the Judicial Committee that the suit was not barred by limitation.

*Quere* whether the decision in 1878 in the former suit that the adoption was invalid was not *res judicata* in the present suit under section 13 of the Code of Civil Procedure (Act XIV of 1882).

APPEAL from a judgment and decree (April 18th, 1902) of the court of the Judicial Commissioners of Oudh, which affirmed a decree (October 12th, 1900) of the Subordinate Judge of Lucknow decreeing the respondent's suit.

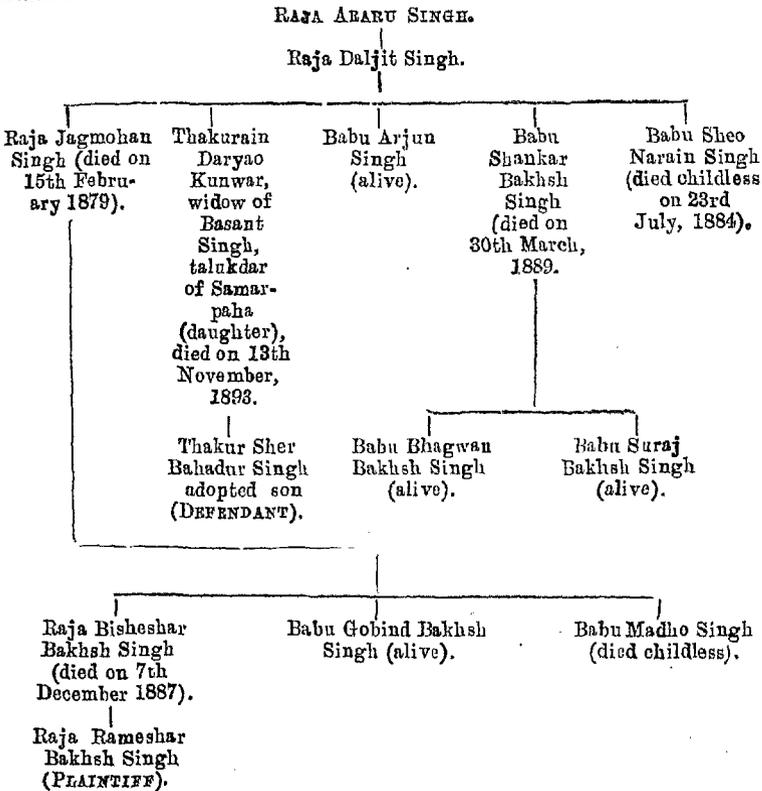
The question for determination on this appeal was the title to the taluqa of Samarpaha in the district of Rae Bareli in Oudh, the appellant basing his claim on an alleged adoption of his father, Sher Bahadur Singh; and the respondent claiming to succeed as next heir under the Oudh Estates Act (I of 1869), section 22, clause 6.

The last male owner of the taluqa was one Basant Singh who died on 12th November, 1857, leaving as his heir his widow, Daryao Kunwar, in whose favour, after the proclamation of March, 1858, the second summary settlement of the taluqa was, on 10th May, 1858, made, and a *sanad* subsequently granted to her in respect of it. On the preparation of the lists of taluqdars in accordance with the provisions of Act I of 1869, section 8, her name was entered in lists 1 and 2. And she admittedly became taluqdar in her own right and not in right of her husband, Basant Singh.

Daryao Kunwar died on 13th November, 1893. In proceedings for mutation of names in the revenue registers the Deputy Commissioner of Rae Bareli finding that Sher Bahadur Singh was in possession of the taluqa made an order on 1st February, 1894, directing the entry of his name in the place of Daryao Kunwar: and on 27th May, 1899, the respondent instituted the present suit against Sher Bahadur Singh, the plaint reciting that Daryao Kunwar was taluqdar of Samarpaha within the meaning of Act I of 1869; that she died intestate, and that the succession was governed by section 22 of that Act, under clause 6 of which section the plaintiff was entitled to succeed as next heir. The relief sought was possession of the taluqa with mesne profits.

The following pedigree shows the nature of the plaintiff's claim :—

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Sher Bahadur Singh, the defendant, stated in defence that Daryao Kunwar did not die intestate, but devised the taluqa to him by will; that the succession was not governed by the provisions of Act I of 1869; that the defendant even under the provisions of section 22 of the Act was preferential heir in consequence of having been validly adopted by Daryao Kunwar on 25th April, 1858, as it was necessary to have the adoption set aside; that the suit was barred by limitation; and that the plaintiff was estopped from challenging the defendant's adoption because it had been recognised and acted upon, and also because of an agreement alleged to have been made between the defendant and Daryao Kunwar about 1879. The plaintiff in a replication denied the adoption of the defendant, and alleged that it was therefore not necessary to have it set aside.

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The issues as eventually fixed by the Court were as follows:—

(1) Whether Thakurain Daryao Kunwar died intestate or she had written wills in favour of defendant, on 8th February, 1860, 11th May, 1861, and 1st September, 1861, and had appointed defendant to be her heir and successor after her death?

(2) Did she revoke all the wills made by her before December, 1866 and September, 1873, including the wills set up by the defendant?

(3) Was defendant legally, *i.e.*, by Hindu Law and custom, adopted by Thakurain Daryo Kunwar as her son and is he as such entitled to succeed under section 22, Act I of 1869?

(4) Whether the plaintiff, his ancestors, relatives, the whole brotherhood and clan and high authorities all along admitted the validity of defendant's adoption and treated the defendant as the lawful heir of Daryao Kunwar after her death. If so, whether the defendant's rights and the validity of his adoption cannot now be questioned and discussed?

(5) Is plaintiff, estopped from questioning the validity of the defendant's adoption, seeing that he did not bring a suit to set aside the adoption within limitation?

(6) Has clause 6 of section 22, Act I of 1869, no application in a case of this kind?

(7) Is plaintiff entitled to succeed to the taluqa as heir of Daryao Kunwar under clause 6, section 22, Act I of 1869?

On the first and second of these issues the Subordinate Judge held that Daryao Kunwar had executed the documents mentioned in the first issue, but that she had revoked them by the document of 23rd September, 1873, and had died intestate.

On the question as to the adoption involved in the third issue it was alleged that in April, 1858, Daryao Kunwar sent for the defendant, who was brought to Samarpaha by his father, Ram Bahadur Singh, and that on 25th April she performed certain ceremonies of adoption and constituted him her adopted son, giving him the name of Sher Bahadur Singh in lieu of his original name of Daljit Singh and presenting him to her people as her adopted son and heir to the estate. At the time of the adoption the defendant, then a boy of 13 years of age, was made to sign a document by which he solemnly pledged himself to obey Daryao Kunwar in all things and not to aspire to the possession of the estate during her lifetime. After the adoption the defendant and his father, Ram Bahadur Singh, stayed in Daryao Kunwar's house until some time in June, 1858, when

differences arose between them and her, which resulted in Ram Bahadur Singh and the defendant returning to their own house, at which time Ram Bahadur executed a document in favour of Daryao Kunwar as follows:—

“ I, Ram Bahadur Singh, tender my compliments. I wrote a document in your favour relating to the adoption of (my) son. The son does not agree to obey the Thakurain or her orders. I take him away of my own accord. You seat on the *gaddi* anyone you like. I have no concern with the adoption or estate. I invoke those (gods) whose names are given at the top to bear testimony to this. They shall punish me if I raise any objection. Secondly, I request the whole brotherhood to be witness.

This document was also signed by the defendant under the name of Daljit Singh.

Subsequently the defendant and Daryao Kunwar were reconciled to one another and the defendant was brought back to Samarṇaha and on 23rd February, 1859, he was made to sign another document in the same terms as the former one dated 25th April, 1858.

Disputes again arose in 1865 in consequence of an attempt by the defendant to take possession of the taluqa. Failing in this he, on 10th September, 1866, applied to the Government for the grant of a *sanad* to himself, alleging that he had been adopted by Daryao Kunwar. His claims were rejected by an order of the Chief Commissioner of Oudh dated 11th April, 1867. After unsuccessfully endeavouring to obtain a reconsideration of that order the defendant appealed to the Governor General in Council, who on 13th February, 1872, passed final orders against his claims.

On 1st September, 1873, the defendant brought a suit in the Court of the Deputy Commissioner of Rae Bareli to recover possession of the taluqa from Daryao Kunwar. He alleged that on 25th April, 1858, he had been adopted by Daryao Kunwar as the son of Basant Singh with his express permission, and that Daryao Kunwar had constituted herself a trustee of the estate in his behalf by two letters written by her, one at the time of the second summary settlement and the other at the time of Sher Bahadur's marriage. In her written statement Daryao Kunwar denied that her husband had ever given her permission to adopt, and also that she had ever adopted Sher Bahadur within the

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meaning of the Hindu law. She asserted her title under the *sanad* and denied the genuineness of the letters alleged to constitute the trust. On 15th November, 1873, the Deputy Commissioner dismissed the suit: he refused to enquire into the adoption and decided that the title under the *sanad* was absolute. This judgment was, on 12th August, 1874, confirmed by the Commissioner on appeal. Sher Bahadur appealed to the Privy Council and their Lordships of the Judicial Committee remanded the case to the Court of the Commissioner to determine the genuineness of the letters. Their judgment is reported in I. L. R., 3 Calc., 651. On the remand the Commissioner fixed issues on the question of the adoption and genuineness of the letters after recording evidence which included the evidence of Daryao Kunwar and of Sher Bahadur. The father of Sher Bahadur, though alive, was not examined as a witness in the case. On 29th October, 1878, the Commissioner decided that Sher Bahadur had not been adopted as the son of Basant Singh and that Basant Singh had not authorized any adoption by his widow. He was of opinion that there had been an adoption in a popular sense, namely, the nomination of an heir. He also decided that the letters were not genuine and made a decree dismissing the suit.

Sher Bahadur obtained leave to appeal to the Privy Council, but on his failure to deposit security within the time allowed by law, his application was finally rejected by order of July 29th, 1879. In the present suit the Subordinate Judge held that the defendant was not prevented from setting up the adoption by the above judgment of 29th October, 1878, that judgment not being *res judicata*. On the third issue he found that Daryao Kunwar had adopted the defendant in fact, but had no authority from her husband to do so, nor was there any custom proved which enabled her to adopt without authority; that the adoption was therefore not valid under Hindu law or custom, and that the defendant was not entitled to succeed to the taluqa under section 22 of Act I of 1869. On the fourth issue he decided that the defendant had been treated as the adopted son and heir to the estate by the persons referred to in the issue, but that such treatment did not amount to an estoppel as against the plaintiff or prevent him from questioning the validity of the adoption. On

the issue as to limitation he was of opinion that as the plaintiff was suing for possession of the estate, and not for a declaration that the defendant's adoption was invalid, his right to sue was not barred, as his cause of action accrued on 13th November, 1893, when Daryao Kunwar died. On the sixth issue he held that the provisions of section 22 of Act I of 1869 applied to the succession to estates granted to taluqdars who were women, and that under clause 6 of that section the plaintiff as the grandson of her eldest brother living at the time of her death was her heir; and on the seventh issue that as such he was entitled to succeed to her estate.

The Subordinate Judge therefore made a decree for the plaintiff.

An appeal by the defendant to the Court of the Judicial Commissioners of Oudh was heard by Mr. *Ross Scott* (Judicial Commissioner) and Mr. *G. T. Spankie* (Additional Judicial Commissioner), who agreed with the Subordinate Judge that the plaintiff was not estopped from disputing the defendant's adoption; that the suit was not barred by limitation; and that the succession to the taluqa was governed by Act I of 1869, section 22. On the question of adoption the Judicial Commissioners agreed with the lower Court on the general question at law that a Hindu widow could not validly adopt without the authority of her husband, and also with the findings of fact that no authority had been given by Basant Singh, and that no custom had been proved altering the general law so as to dispense with such authority. On the question of fact whether Daryao Kunwar had formally adopted the defendant on 25th April, 1858, the appellate Court reversed the finding of the Subordinate Judge and agreed with the finding of the Commissioner on 29th October, 1878, that there was no formal adoption, but only a revocable nomination of a successor to the estate on the death of Daryao Kunwar.

In the result the appeal was dismissed with costs.

On this appeal—

*Cohen, K. C.* and *K. W. Bonnerjee* for the appellant contended that section 22 of Act I of 1869 was not applicable to Daryao Kunwar as a taluqdar: that section, it was

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submitted, applied only to male taluqdars. The decision of the Courts below to the contrary was based on the supposed authority of *Brij Indar Bahadur Singh v. Janaki Kunwar* (1); but in that case the question was not raised, and it was merely assumed that section 22 was applicable. The language of that section did not make it applicable to female taluqdars, who came, it was submitted, under section 23 of the Act. If section 22 was not applicable, the claim of the respondent, which was based only on clause 6 of that section, could not be maintained. Reference was also made to Act I of 1869, section 22, clauses 7 and 11, under which last clause it was contended the case fell. Even if section 22 were held to apply, Sher Bahadur Singh (and consequently the appellant) as the adopted son of Daryao Kunwar was, under clause 1 of that section and also on the construction of the *sanad* granted to Daryao Kunwar, entitled to succeed to the taluqa in preference to the respondent. As to the adoption, the Subordinate Judge had considered himself bound by the cases of *Tulshi Ram v. Behari Lal* (2), and *Bhagana v. Barjori Singh* (3) in holding that the adoption was invalid because Daryao Kunwar had no authority from her husband to adopt. But he found at the same time that there were three celebrated treatises of the Benares School of Hindu law, namely the *Viramitrodaya* by Mitra Misra, the *Nirnaya Sindhu* by Kamlakar, and a treatise by Balam Bhatta, which all supported the view that no authority from her husband was necessary. From what had taken place it was contended that some sort of adoption of Sher Bahadur Singh had taken place; and that adoption whether valid or invalid had to be set aside before a suit like the present could be successful. And this led to the question of limitation, for no suit had been brought within the period fixed by the Limitation Act (IX of 1871) for a suit to set aside an adoption; see article 129 of the second schedule to that Act. Such period, 12 years, ran from the date of the adoption, which was made in 1858. Daryao Kunwar died in 1893: any right to set aside the adoption was therefore barred long before her death, and became extinguished under Act IX of 1871, and

(1) (1877) L. R., 5 I. A., 1 (13). (2) (1889) I. L. R., 12 All., 323.  
 (3) (1898) 1 Oudh Cases, 30.

the title acquired under the adoption became complete by section 2 of Act XV of 1877, the present Limitation Act. The respondent therefore had now no right, and the present suit, which, though a suit for possession, was one to get rid of the Sher Bahadur Singh's adoption, was barred. In cases decided on Article 129 of Act IX of 1871 the principle was laid down that "a suit to set aside an adoption" meant a suit in which the validity or invalidity of an adoption was in dispute, and that those words applied to all suits in which the plaintiff to be successful had to displace an apparent adoption in virtue of which the defendant was in possession. This principle, it was contended, was applicable to cases governed by the present law, Act XV of 1877, Schedule II, article 118, and in this view the interpretation put on article 118 of Act XV of 1877 by the Courts below was incorrect. Reference was made to *Jagadamba Chaodhrani v. Dakhina Mohin Roy Chowdhry* (1); *Mohesh Narain Munshi v. Taruck Nath Moitra* (2); *Parvathi Ammal v. Saminatha Gurukul* (3); *Shrinivas Murar v. Hanmant Chavdo Deshapande* (4); *Barot Naran v. Barot Jesang* (5); *Ram Chandra Mukerjee v. Ranjit Singh* (6) and *Bijoy Gopal Mukerji v. Nil Ratan Mukerji* (7). If the same construction was put on article 118 of Act XV of 1877 as was put on article 129 of Act IX of 1871 the result would be that the suit was barred, and was not revived by Act XV of 1877. Sykes' Taluqdari Law, 172, was also cited.

*DeGruyther* for the respondent contended that the suit was governed by section 22 of Act I of 1869. In the case of *Brij Indar Bahadur Singh v. Janki Kunwar* (8), where a woman was taluqdar in her own right and her name was entered in lists 1 and 2 under Act I of 1869 it was held that the succession was governed by section 22 of that Act. Women have not been expressly excluded, as would have been the case had the intention been to exclude them. It was said that section 23 applied, but that section only applied to taluqdars whose names were entered

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| (1) (1886) L. R., 13 I. A., 110 : I. L. R., 13 Calc., 308.           | (5) (1900) I. L. R., 25 Bom., 26.         |
| (2) (1892) L. R., 20 I. A., 30 (35) : I. L. R., 20 Calc., 487 (495). | (6) (1899) I. L. R., 27 Calc., 242 (253). |
| (3) (1896) I. L. R., 20 Mad., 40.                                    | (7) (1903) I. L. R., 30 Calc., 996.       |
| (4) (1899) I. L. R., 24 Bom., 260 (270, 281).                        | (8) (1877) L. R., 5 I. A., 1.             |

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in list 4. The case being governed by section 22, if Sher Bahadur Singh was not validly adopted the respondent would be the person to succeed. On the construction of clause 6 of section 22, *Haidar Ali v. Tasadduk Rasul Khan* (1) and *Partab Narain Singh v. Subhao Koer* (2) were referred to.

On the question as to whether the adoption, if made, was a valid adoption the cases since 1816 were all one way and showed that an adoption made without the husband's authority was invalid. Reference was made to Macnaghten's Hindu Law, 182, and the case there mentioned decided in 1816; *Haimun Chull Singh v. Koomer Gunsheam Singh* (3); *Collector of Madura v. Muttu Vijaya Raghunada* (4); *Ramji v. Ghaman* (5); *Giriowa v. Bhimaji Raghunath* (6); *Tulshi Ram v. Behari Lal* (7); *Bhagana v. Barjori Singh* (8); Stoke's Hindu Law Books, Dattaka Chandrika, 534, and Dattaka Mimansa, 630; and Mayne's Hindu Law, 6th edition, 140. The question should therefore be treated as in *Bhagwan Singh v. Bhagwan Singh* (9), as being a settled question which it was not competent for the Court to consider; in that view the adoption must be considered invalid. It was also contended that the validity of the adoption had been a question in issue in the suit brought in 1873 against Daryao Kunwar by Sher Bahadur Singh, in which suit the Commissioner of Rae Bareilly in 1878 had held that the adoption had not been one valid by Hindu Law; and that that decision was *res judicata* between the parties in the present suit, and prevented the appellant from setting up the adoption.

As to limitation; if time ran from the death of Daryao Kunwar, she died on 13th November, 1893, and the suit was brought on 27th May, 1899: if time ran from the date of the adoption, the respondent was born at the end of June, 1875, he attained majority in 1896 and the suit was brought within three years of his attaining majority. When a person had no right to sue he could not be guilty of *laches* or negligence in not suing; that could

(1) (1890) L. R., 17 I. A., 82 : I. L. R., 18 Cal., 1.

(2) (1877) L. R., 4 I. A., 228 (233) : I. L. R., 3 Cal., 626 (631).

(3) (1834) 2 Knapp, 203.

(4) (1864) 2 Mad., H. C. Rep., 206.

(5) (1879) I. L. R., 6 Bom., 493.

(6) (1884) I. L. R., 9 Bom. 58.

(7) (1889) I. L. R., 12 All., 328 (370, 381, 386).

(8) (1898) 1 Oudh Cases, 80.

(9) (1899) L. R., 26 I. A., 153 (164, 165) : I. L. R., 21 All., 412 (422, 423).

only occur when a person had a right to sue. The respondent had no right to sue to set aside the adoption. Had he brought a suit to have the adoption declared invalid, it would have been promptly dismissed. Daryao Kunwar was absolute owner of the taluqa; and the respondent had no interest sufficient to enable him to sue. *Kattama Natchiar v. Dorasingha Taver* (1) showed in what cases such declaratory suits were allowed: and *Anand Kunwar v. Court of Wards* (2) decided who should bring such a suit, the proper party being ordinarily the nearest reversioner. There was besides no necessity for such a suit, for in 1878 a competent Court had held the adoption to be invalid by Hindu Law.

Nor was the suit barred by the present law of Limitation (Act XV of 1877) which, it was contended, was applicable. Article 144 of schedule II of that Act, it was submitted, governed the present suit, as being one for possession of immovable property. Article 118 which was in terms different from those of article 129 of Act IX of 1871 did not apply to a suit for possession; that article only applied to declaratory suits such as were provided for by section 42 of the Specific Relief Act (I of 1877); see illustration (f) to that section. It could not be laid down that a person must sue for a declaratory decree in such a case as the present before bringing a suit for possession. Reference was made to *Lali v. Murlidhar* (3); *Luchman Lal Chaudhry v. Kanhya Lal Mowar* (4); *Ram Chandra Mukerjee v. Ranjit Singh* (5); *Jagannath Prasad Gupta v. Ranjit Singh* (6); *Shrinivas Murar v. Hanmant Chavdo Deshapande* (7); and *Ratnamasari v. Akilandammal* (8).

*Cohen, K. C.*, replied. Both Courts below had held that there was no estoppel created by the decision in 1878; *Barrs v. Jackson* (9) was referred to. As to limitation *Shrinivas Murar v. Hanmant Chavdo Deshapande* (10) was cited and a passage

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| (1) (1874) L. R., 2 I. A. 109 : 15 B. L. R., 83.                  | (7) (1899) I. L. R., 24 Bom., 260.  |
| (2) (1880) L. R., 8 I. A. 14 (21) : I. L. R., 6 Calc., 764 (772). | (8) (1902) I. L. R., 26 Mad., 291 (297).                                      |
| (3) (1901) I. L. R., 24 All., 195 (197).                          | (9) (1842) 1 Y. and C. C. C., 585; Smith's L. C. 11th Ed., 778 <i>et seq.</i> |
| (4) (1894) L. R., 22 I. A. 51 : I. L. R., 22 Calc., 609.          | (10) (1899) I. L. R., 24 Bom., 260 (272, 273 <i>et seq.</i> ).                |
| (5) (1899) I. L. R., 27 Calc., 254.                               |   |
| (6) (1897) I. L. R., 25 Calc., 354 (359).                         |   |

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from the judgment read, the conclusion from which, it was submitted, was that a suit impugning an adoption could not be brought after 12 years from the date of the adoption.

1906, *July 27th*.—The Judgment of their Lordships was delivered by LORD MACNAGHTEN :—

This is an appeal from a judgment and decree of the Court of the Judicial Commissioner of Oudh, affirming a decree of the Subordinate Judge of Lucknow.

The matter in dispute is the title to the taluqa of Samarpaha in the district of Rae Bareli in Oudh. The appellant's claim is based on an alleged adoption. The respondent claims as next heir under Act I of 1869, section 22, clause 6.

The last male owner of the taluqa was Thakur Basant Singh. He died on the 12th of November, 1857. His next heir was his widow, Thakurain Daryao Kunwar. After the confiscation of proprietary rights in Oudh by the Proclamation of March, 1858, a summary settlement of the taluqa was made with her on the 10th of May, 1858, and a *sanad* was afterwards granted to her. On the preparation of the lists of talukdars in accordance with the provisions of Act I of 1869, her name was entered in lists I and II. It is not disputed that the Thakurain became taluqdar, not in right of her husband, Basant Singh, but in her own right.

The Thakurain died intestate on the 13th of November, 1893. Shortly after her death, the appellant's father, Thakur Sher Bahadur Singh, being found in possession and claiming under an adoption alleged to have been made in his favour by the Thakurain after her husband's death, had his name entered by the Deputy Commissioner in her place in the Revenue Register.

On the 27th of May, 1899, the respondent, who attained majority in June, 1896, instituted the present suit, claiming to succeed as next heir in right of his grandfather, who was the eldest brother of the Thakurain.

Both Courts decided in favour of the plaintiff. The defendant appealed to His Majesty in Council, having obtained a certificate to the effect that the case fulfilled the requirements of section 596 of the Code of Civil Procedure, and that the appeal involved substantial questions of law.

Many questions were raised in the Courts below which have now disappeared, or were argued so faintly before their Lordships, that it is not worth while to discuss them.

The main contest throughout has been in regard to the alleged adoption of Thakur Sher Bahadur Singh. On this point there was a difference of opinion in the Courts below. The Subordinate Judge held that there was an adoption in fact, attended with the ordinary ceremonies of adoption, although it was invalid because the Thakurain had not the authority of her husband in the matter. The Court of the Judicial Commissioner held that there was no adoption in fact, but only a nomination of the defendant as the Thakurain's heir, or, in other words, an adoption in a popular sense.

On the appeal before their Lordships it was argued that there was at any rate an apparent adoption, and that, on that assumption, it mattered not whether the adoption was valid or invalid, because there was enough to satisfy the provisions of the Limitation Act of 1871, as interpreted by this Board in the case of *Jagadamba Chowdhurani v. Dakhina Mohun Roy Chowdhury* (1). Mr. Cohen, who argued the case with great ability, relied entirely on the Act of 1871. He contended that the Limitation Act of 1877 did not apply because the appellant relied on title acquired before the passing of the Act of 1877, and his rights were therefore saved by section 2 of that Act. He admitted that if the Act of 1877 applied, his client was out of Court.

Their Lordships are unable to accede to Mr. Cohen's argument. Giving full effect to the *Jagadamba* case and the other cases which followed it, they do not think that the immunity, such as it is, gained by the lapse of twelve years after the date of an apparent adoption amounts to acquisition of title within the meaning of section 2 of the Act of 1877.

Their Lordships think that the appeal may be disposed of on this short ground, whether the alleged adoption was or was not an apparent adoption to which the ruling in the *Jagadamba* case would apply if the Act of 1871 were now in force.

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(1) (1886) L. R., 13 I. A., 84; I. L. R., 13 Calc., 308.

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Their Lordships do not think it necessary to enter upon a consideration of the other difficulties in the way of the appellant. But they may observe in passing that if they had to choose between the opposite views of the Courts below as to the so-called adoption, their Lordships would be disposed to prefer the view of the Judicial Commissioner. They may add that they are not satisfied that the finding of the Commissioner of Rae Bareli in 1878 in the suit between the Thakurain and the appellant (reported at an earlier stage before the Privy Council), (2) on the issue of adoption or no adoption, would not be fatal to the appellant's case. Whatever objections there may have been to that issue being raised before the Commissioner on remand, both parties accepted it. It was treated as the main question in the suit. The issue was decided adversely to the appellant. The appellant abandoned an appeal to the Privy Council which he had begun, and so the decision became final. Having regard to the language of the Code of Civil Procedure, section 13, which deals with issues as well as suits, it would seem that the finding on the issue as to adoption must be treated as *res judicata*. This point, however, was only touched upon in the argument, and their Lordships therefore abstain from expressing a final opinion on the question.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed.

The appellant will pay the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellant—*The Solicitor, India Office.*

Solicitors for the respondent—*T. L. Wilson & Co.*

J. V. W.

(2) (1877) *Shree Bahadur Singh v. Dariao Kuar*, L. L. R., 3 Calc., 645.