Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Mahashoya Shosinath Ghose and others v. *Srimati Krishna Soondari Dasi, from the High Court of Judicature, at Fort William, in Bengal; delivered July 8th*, 1880.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE question in this case is whether the Plaintiff has been validly adopted as the son of Dwarkanath Ghose, who died on the 30th of June 1863, by his widow, the Defendant. It is admitted that she had authority from her husband for that purpose, and the adoption is alleged to have taken place on the 11th of June 1864.

Their Lordships do not propose to go at any length into the facts of the case, which are fully and lucidly stated in the two able judgments that are the subject of this Appeal. It is sufficient to refer to a few of them. It appears that the widow lost no time in seeking to carry out her husband's direction to adopt a son. A correspondence, which was carried on chiefly by Soorjonarain Singh, her brother, who took the principal part in all these transactions, began in January 1864; from which it appears that, whatever unwillingness Srinarain, the natural father of the Plaintiff, may have felt at first to give his son in adoption, had been overcome before the end of the following May. The record contains only the letters written by Soorjonarain during this

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period; but from them it may be inferred that Srinarain, in one or other of his letters that are missing, had stipulated for the execution of deeds of gift and acceptance which, if witnessed as was contemplated by the reversionary heirs of Dwarkanath Ghose, would afford evidence against them of the adoption and of the authority under which it was made. It may also be inferred that at one time it was contemplated that the Defendant should send persons to bring the boy, without his father, to her house at Bhagulpore from Mahta, his father's place of residence, in order that she might see him before adopting him. Ultimately, however, Srinarain himself accompanied the boy, and came to Bhagulpore on the 7th of June 1864; and it may be that there was at that time some notion in the minds of all the parties that the adoption would then take place. However this may be, it is an undisputed fact that the deeds upon the construction of which the determination of this Appeal must now depend were executed on the 11th of June 1864. It is, on the other hand, equally clear, that the boy, instead of remaining with the Defendant in her house, went back with his natural father to Mahta on the following day, the 12th of June 1864. He afterwards returned to the Defendant's house, together with his brothers, who at least were only there on a visit, in September 1864, whilst Srinarain was on a pilgrimage. The brothers went home in November, but the boy remained in the house of the Defendant. There appears to have been on the part of the father some remonstrance as to this, or, at all events, the expression of a wish that the boy should be sent back to him; and accordingly the boy was sent back to his father's house, in December 1864, as it was expressly stated in the letter which accompanied him on his return, agreeably to his father's order. After that

period he never returned to the Defendant's house. Further correspondence ensued, and ultimately, on the 25th of March 1865, Srinarain himself wrote a letter in which, after stating the boy's repugnance to leave his own home, the repugnance probably being that of his mother to part with him, and the general feeling of the family, he ends by saying: "In this I have no "power, as I have already informed you in my "previous letter; and now I positively inform "you that you all, relinquishing this hope, in "consideration of the future, for the preserva-"tion of the estate, should make dattak-grahan "(accepting a son in adoption) or any other "arrangement you think fit:" pointing evidently to the adoption of another child by the Defendant.

In this the Defendant appears to have acquiesced; but it was suggested on her part that the deeds which are in question ought to be cancelled, in order to remove the cloud which would otherwise rest on the title of any other boy whom she might adopt. For nearly a year Srinarain seems to have thought that this was the right and proper thing to be done, and to have been willing to concur in it; but in March 1866, he, having probably been advised, during a visit he was then paying to Calcutta, that his right to do so was at least questionable, refused to do it, and determined to leave things as they were; not, however, even then insisting on the adoption as complete and irrevocable. Thereupon the suit which has been before their Lordships on a former occasion was brought by the present Defendant, seeking to have those deeds cancelled. In the course of that suit the validity of the adoption came in question; the Courts in India pronounced against it, and decided that the deeds should be delivered up to be cancelled. On appeal to Her Majesty, their Lordships were of opinion that the suit was improperly brought, and could not be maintained, being one in the

nature of a suit for a declaratory decree, and brought in the absence of the child said to have been adopted; and they finally dismissed it, leaving every question touching the validity of the adoption open.

So matters remained until the Plaintiff came of age, and he then brought the present suit to enforce his rights as an adopted son.

The case made by him, and the case tried in the Courts below, was not that he had a good title by adoption by virtue of the deeds in question alone; but treated the execution of those deeds as cotemporaneous with the performance of all the ceremonies incident to an ordinary adoption. There was great conflict of evidence upon the case so set up; and ultimately both the Indian Courts, in extremely well-reasoned judgments, found that no such formal adoption, as was alleged, ever took place, and dismissed the suit. A suggestion, however, as appears at the end of the judgment of the High Court, was made by one of the counsel for the Plaintiff, to the effect that, even if there had been no such formal adoption as was alleged, the deeds themselves operated as a complete giving and taking of the Plaintiff; that that was all that was essential in the case of Sudras; and that the adoption was completed by virtue of the deeds alone.

Their Lordships, by their ordinary rule, are precluded from going into the correctness of the findings of the two Courts upon the fact of the formal adoption attempted to be proved. This has been fairly admitted by the learned counsel for the Appellants at their Lordships' bar, who have accordingly argued only the latter point, namely, whether the effect of the two deeds was not to make the Plaintiff fully and completely the adopted son of Dwarkanath Ghose.

It seems to their Lordships that two questions arise upon this point: first, whether, according

to Hindoo law, an adoption can be effected, even amongst Sudras, by the mere execution, without more, of such instruments as those in question; and secondly, whether it was the intention of the parties, when they put their hands to those two instruments, that such should be the case, or whether the execution of them was not intended to be a mere step in the proceedings which were to result at one time or another in a complete and full adoption. Their Lordships will deal with the last of those questions in the first instance.

The first thing that strikes them is the extreme improbability that it should have been the intention of the parties to make an adoption by the mere execution of the deeds. Yet that such must have been their intention, if there was then a complete adoption, follows from the findings of the Courts that nothing more was done, or, presumably, intended to be done. Such a course of proceeding seems to be in the highest degree repugnant to the ordinary habits, feelings, and usages of two Hindoo families both of considerable respectability. That this is so is shown by the circumstance that the Plaintiff has thought (as the father in the former suit thought) it necessary to set up a case of formal and full adoption, with all ceremonies, whether necessary or not necessary; being the case which has been negatived by the two Courts. Nor does it appear to their Lordships that the terms of the deeds are necessarily inconsistent with the finding of the High Court that such was not the intention of the parties. The words of the deed of acceptance, no doubt, are strong, and are, as translated, in the present tense. Those words, according to the translation on the present record, are these:—

"I take in adoption Srinain Nogender Chunder
"Mitter, the second son of your third wife,
"Sriwati Monmohini, with the consent of all.

" and according to rule and usage." In the record of the former case before their Lordships there is a somewhat different and more expanded translation of the same passage, the terms of which are:—"I do, with the prescribed rights " and ceremonies, adopt as my son Nogendro " Chundro Mittro, your second son by your third " wife, Sreemutty Monmohinee." The words " with the prescribed rights and ceremonies " are stronger than the words " according to rule and usage;" but, even taking, as their Lordships do, the latter to be the correct translation, it seems to them that the words point to an adoption in the customary and formal manner, and to something being done *ultra* the mere execution of those two instruments.

Great stress has been laid, by Mr. Branson particularly, upon the immediate registration of the deeds. But as to that, their Lordships think that, although the circumstance of registration, as well as that of the execution, of the deeds would, of course, be very cogent evidence upon the main issue which was tried in the case, namely, whether there had been a formal and regular adoption; and might, if the other evidence that was given upon that point had been nicely balanced, have been sufficient to turn the scale; it is of far less weight upon the question whether it was the intention of the parties, without more, to treat the execution of the deeds as an adoption. It shows, no doubt, what is fully admitted, that both parties then supposed that the adoption would take place at some time.

Their Lordships, therefore, see no reason to differ from the conclusion to which the High Court came upon the whole case,—that it never was the intention of the parties that the deeds should operate in the manner contended for. That conclusion, they think, is very much fortified by the subsequent correspondence that took place;

the mode in which the child was treated, going from one house to the other; and the clear willingness of the father at one time to treat the adoption as simply inchoate, and something which could be given up, so that the Defendant might carry out her purpose of performing the wishes of her husband by adopting another child. The circumstance, moreover, which the Courts have laid great stress upon—that on the occasion of Dwarkanath's sradh the boy supposed to be adopted was not present, and took no part in the ceremony—is strongly confirmatory of the notion that all parties then considered that at that time the adoption was not complete, but remained, to some extent, still *in fieri*.

That being so, it is unnecessary for their Lordships positively to decide the first question; namely, whether there can be, according to Hindoo law and usage, an adoption simply by deed, and without that corporeal delivery and acceptance of the child which is almost universally treated as the essential part of an adoption in the dattaka form. They desire, however, to say that they are very far from wishing to give any countenance to the notion that there can be such a giving and a taking as is necessary to satisfy the law, even in a case of Sudras, by mere deed, without an actual delivery of the child by the father. There is no decided case which shows that there can be an adoption by deed in the manner contended for; all that has been decided is that, amongst Sudras, no ceremonies are necessary in addition to the giving and taking of the child in adoption. The mode of giving and taking a child in adoption continues to stand on Hindoo law and on Hindoo usage, and it is perfectly clear that amongst the twice-born classes there could be no such adoption by deed, because certain religious ceremonies, the data homan in particular, are in their case requisite. The system

of adoption seems to have been borrowed by the Sudras from these twice-born classes; whom in practice, as appears by several of the cases, they imitate as much as they can: adopting those purely ceremonial and religious services which it is now decided are not essential for them, in addition to the giving and taking in adoption. It would seem, therefore, that according to Hindoo usage, which the Courts should accept as governing the law, the giving and taking in adoption ought to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption.

For these reasons, their Lordships think that no ground has been laid for disturbing the judgment of the High Court; and they will, therefore, humbly advise Her Majesty to affirm that judgment, and to dismiss this Appeal, with costs.