Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pudma Coomari Debi Chowdhrani and another v. *Juggut Kishore Acharjia Chowdhry, minor, under the Court of Wards, and another, from the High Court of Judicature at Fort William in Bengal, delivered 12th November* 1881.

Present :

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The suit in this case was brought by Joy Kishore Surma Chowdhry, against Ram Kishore Acharjia Chowdhry and Gogun Chunder Chowdhry, for the possession of certain zemindaries, talooks, and other properties mentioned in the schedules to the plaint, which formerly belonged to Bhowani Kishore Acharjee Chowdhry, who died without issue on the 28th of August 1840 leaving a widow, Bhoobunmoyi. Joy Kishore having died during the suit, his widow, the first Appellant, was made a party to it in his place.

The property in dispute originally belonged to Gour Kishore, who died in 1821, leaving Bhowani Kishore, his only son, and a widow, Chundraboli, the mother of Bhowani. Chundraboli was the daughter of Krishnanath and grand-daughter of Ramchunder Chowdhry. The Plaintiff, Joy Kishore, was the great grand-

son of Ramchunder, and he claimed to succeed as the heir of Bhowani Kishore on the death of Chundraboli, who had succeeded to the estates on the death of Bhoobunmoyi in 1867, and died in April 1870.

In 1808, Gour Kishore, being then childless, executed a deed of permission to Chundraboli to adopt a son. Bhowani Kishore was born in December 1817, and in November 1819 Gour Kishore executed another deed of permission. On the death of Bhowani Kishore an instrument was set up as being his will by Chundraboli and Bhoobunmoyi, by which power to adopt a son was given to the latter, and until such adoption the income of the estates was given to Chundraboli and Bhoobunmoyi. The two ladies took possession of the estates and remained in enjoyment of them for nearly four years.

In December 1843, Bhoobunmoyi professed to exercise the power alleged to be given to her by the instrument already referred to, and adopted a boy called Rajendro Kishore. Thereupon Chundraboli alleged that the supposed will of Bhowani Kishore was a forgery, and had not been made till after his death, and that Bhoobunmoyi had no power of adoption, and in May 1844 she adopted, or professed to adopt, Ram Kishore, the first original Defendant, as the son of Gour Kishore, her late husband. The first of the now Respondents is his minor son.

The second Defendant and Respondent Gogun Chunder Chowdhry, it is now admitted, is the adopted son of Krishnanath by an adoption made by his widow Doyamoyi, having been given in adoption to her by his father Gokul Kishore and his mother Hurrosoondari Debi. It will be seen, therefore, that the Plaintiff cannot succeed if either Ram Kishore or Gogun Chunder has a valid title by adoption. Both the Lower

Courts have held that Ram Kishore and Gogun Chunder were heirs of Bhowani Kishore in preference to Joy Kishore, and the Plaintiffs' suit has been dismissed. Their Lordships will first consider the case of the former. Bhoobunmoyi, on behalf of Rajendro Kishore her adopted son, having obtained possession of all the property of Bhowani, a suit was brought in 1862 by the next friend of Ram Kishore on his behalf against them and other persons, the Plaintiff claiming, as the adopted son of Gour Kishore, the whole property ancestral and acquired of Bhowani. To this suit Chundraboli was made a Defendant. It was dismissed by the Sudder Ameen, and there was an appeal from his decision to the Sudder Dewanny Adawlut at Calcutta. The case was heard upon several different occasions. Finally, the Judges were unanimously of opinion that the adoption of Rajendro was invalid, and that the will of Bhowani purporting to give the power of adoption was a forgery. They were also unanimous in holding that the deed of permission by Gour Kishore was a genuine and valid instrument, and that if the power to adopt continued at the time when Chundraboli professed to execute it there had been a valid adoption. One of the Judges was of opinion that the power was gone, and that the adoption was invalid. The other two were of opinion that the power existed at the time of the adoption, and a decree was made, therefore, in favour of the Plaintiff as to the ancestral property of Bhowani Kishore, but not as to his self-acquired property.

From this decree there was an appeal to Her Majesty in Council, and the question in this appeal as regards Ram Kishore is what was then decided. The judgment of this Committee on that occasion is not and cannot be relied upon in this suit as binding the parties to it, the now Plaintiff not being a party to the former suit;

but it is treated as a decision upon the law which should be considered as binding.

In that judgment their Lordships say :—

"The next question is as to the validity of the adoption of Ram Kishore. We see no reason to dissent from the opinion of the Court below upon the facts of the case, viz., that the oonamuttee patter of Gour is a genuine instrument, and that supposing the powers given by it to have been in force, when the adoption under it took place the adoption was good; but we think it unnecessary to examine into the genuineness of this instrument, as we are of opinion that at the time when Chundrabully professed to exercise it the power was incapable of execution."

The judgment then, after stating the words of the instrument, and saying that it was not of a testamentary character, but merely a deed of permission to adopt, proceeds :—

"How, then, is the deed to be construed when we regard it merely as a deed of permission to adopt ? What is the intention to be collected from it, and how far will the law permit such intention to be effected ? It must be admitted that it contemplates the possibility of more than one adoption ; that it shows a strong desire on the part of the maker for the continuance of a person to perform his funeral rites, and to succeed to his property ; and that it does not in express terms assign any limits to the period within which the adoption may be made. But it is plain that some limits must be assigned. It might well have been that Bhowanny had left a son natural born or adopted, and that such son had died himself leaving a a son, and that such son had attained his majority in the lifetime of Chundrabully. It could hardly have been intended that after the lapse of several successive heirs a son should be adopted to the great grandfather of the last taker, when all the spiritual purposes of a son, according to the largest construction of them, would have been satisfied.

"But, whatever may have been the intention, would the law allow it to be effected ? We rather understand the Judges below to have been of opinion that if Bhowanny had left a son, or if a son had been lawfully adopted to him by his wife under a power legally conferred upon her, the power of adoption given to Chundrabully would have been at an end.

"But it is difficult to see what reasons could be assigned for such a result which would not equally apply to the case before us."

After saying that on the death of Bhowani, his wife succeeded as heir to him and would have equally succeeded in that character in exclusion

of his brothers, if he had any, and that she took a vested estate as his widow in the whole of his property, their Lordships say :—

"The question is whether, the estate of the son being unlimited, and that son having married and left a widow his heir, and that heir having acquired a vested estate in her husband's property as widow, a new heir can be substituted by adoption, who is to defeat that estate, and take as an adopted son what a legitimate son of Gour Kishore would not have taken.

"This seems contrary to all reason, and to all the principles of Hindu law, as far as we can collect them."

The substitution of a new heir for the widow was no doubt the question to be decided, and such substitution might have been disallowed the adoption being held valid for all other purposes, which is the view that the Lower Courts have taken of the judgment, but their Lordships do not think that this was intended. They consider the decision to be that, upon the vesting of the estate in the widow of Bhowani, the power of adoption was at an end, and incapable of execution. And if the question had come before them without any previous decision upon it, they would have been of that opinion. The adoption intended by the deed of permission was for the succession to the zemindary and other property, as well as the performance of religious services, and the vesting of the estate in the widow, if not in Bhowani himself, as the son and heir of his father, was a proper limit to the exercise of the power. The words at the end of the instrument are "that dattaka (adopted) son shall be "entitled to perform your and my *Sradh, &c.*, "and that of our ancestors, and also to succeed "to the property." Their Lordships are therefore of opinion that Ram Kishore had no title.

They have now to decide upon the title of Gogun Chunder Chowdhry.

It may here be stated that Chundraboli, after the death of Bhoobunmoyi and whilst she was

in possession of the property, executed a deed of relinquishment in favour of Ram Kishore dated the 10th of September 1869 and put him in possession. And by a deed, dated the 30th of December 1869, reciting this, Gogun Chunder agreed that neither he nor any of his heirs or representatives should be able to advance any manner of claim against Ram Kishore's right, and against any of the conditions of the aforesaid deed of relinquishment of rights. It is not necessary in this suit to determine what is the effect of this deed. If Gogun Chunder is entitled, the Plaintiff cannot succeed.

Gogun Chunder, it has been stated, is the adopted son of Krishnanath, the maternal grandfather of Bhowani, and is not of the same gotra as Bhowani, whose gotra is that of his father Gour Kishore ; and it is objected that, although Gogun Chunder as an adopted son may inherit collaterally, it must be in the same gotra, and consequently he is not heir to Bhowani. This was held by the Subordinate Judge, who quoted a gloss upon a text of Manu by Kalluka Bhatta as his authority. The High Court has held the contrary, and one of the learned Judges (Mr. Justice Mitter) said of the gloss in question, which is to be found in Colebrook's Digest, Book 5, Ch. 4, Sec. 1, Art. 178 :—

" In the original phrase 'gotra-dayada' stands for 'heirs to collaterals.' 'Dayada' is equivalent to heirs, and 'gotra' to family name. It is said that 'gotra-dayada' means heirs of the persons bearing the same family name. It may be that this would be the meaning of the phrase above alluded to if the letters are strictly adhered to. But it appears to me from the context that these words are intended to include all the collateral members of the family who stand in the relation of sapinda, &c., to the adopted son. But granting that the literal construction should be adhered to, does the text in question support the conclusion of the Lower Court? It lays down simply that the first six kinds of sons are heirs to the kinsmen sprung from the same family. It is not necessarily implied thereby that any one of these six descriptions of sons is not entitled to inherit to the estate of a kinsman sprung from a different family."

The limitation of the right of an adopted son to succeed to his collateral relations now contended for is contrary to the whole theory of the Hindu law of adoption. An adopted son occupies the some position in the family of the adopter as a natural-born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa, the authorities that govern the decision of questions of adoption arising in the Bengal school. And no text has been produced to show that an adopted son cannot succeed to the estate of such relatives of his father as are sprung from a different family. The author of the Dattaka Chandrika, after referring to the contradictory doctrines on the subject of the adopted son being heir to his father's kinsmen, and stating his way of reconciling them, says, Sect. 5, para. 24, "Therefore by the "same relationship of brother and so forth, in "virtue of which the real legitimate son would "succeed to the estate of a brother or other kins-"men, where such son may not exist the adopted "son takes the whole estate even." The doctrine in the Dayabhaga, Ch. 10, v. 8, that adopted sons are not heirs of collateral relations (sapindas, &c.), which is in opposition to the text of Manu, was considered by this Committee in Sumboochunder Chowdry *v.* Naraini Dibeh, 3 Knapp's P. C. Cases, 55, and it was held that an adopted son succeeds not only lineally but collaterally to the inheritance of his relations by adoption. And it has been pointed out by the High Court, and has not been disputed before their Lordships, that Gogun Chunder and Bhowani Kishore are related to one another as sapindas.

For the above reasons their Lordships are of opinion that Gogun Chunder is a preferential heir of Bhowani Kishore to Joy Kishore, and that on this ground the decree of the High Court affirming the decision of the Subordinate

Judge who dismissed the suit is right. And their Lordships will therefore advise Her Majesty to affirm that decree and to dismiss this appeal. The costs will be paid by the Appellants, one set of costs only to be allowed by the Registrar on taxation.