

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Bhubaneswari Debi v. Nilkomul Lahiri, from  
the High Court of Judicature at Fort William  
in Bengal; delivered June 9th, 1885.*

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Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

BHUBANESWARI Debi, as the mother and guardian of Jotindra Mobun Lahiri, sues to recover, on behalf of her son, half the estate of Rammohun. Rammohun died leaving two brothers and a widow, Chandmoni. 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 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, Nilkomul, 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 Nilkomul, who was also a nephew. But the allegation is, that in con-

sequence of Nilkomul'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, Nilkomul 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 at pages 82 and 83 of the record 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 at the top of page 83:—  
 “When in 1277 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 judgement of the High Court, and they make no order as to the costs of this Appeal.

