Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Karamsi Madhowji v. *Karsondas Natha and others, from the High Court of Judicature at Bombay; delivered 12th July 1898.*

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The suit in which this appeal is presented was instituted in the year 1887 on the original side of the High Court of Bombay to procure an authoritative construction of the will of Kessowji Jadhowji. He was a wealthy Hindoo, who made his will on the 8th February 1886 and died the next day. The Appellant claims to be entitled to his residuary estate.

The testator was the son of Jadu Asar who had other children. The testator had one child, a son named Liladhur, who married Ladkavahu and in his turn had one child, a daughter named Kesserbai. Liladhur predeceased the testator. Ladkavahu has died, but Kesserbai is still living. The testator had two nephews; one named Karsondas who is one of his executors, and is stated to be his nearest reversionary heir, and another whose son is the Appellant Karamsi.

The will is written in Gujerati. The version used in this suit is by the translator of the High Court. In the first 27 clauses the testator gives a great number of legacies and

directions about his property. The 28th clause is as follows:—

" 28. There is my nephew Madhavji Kachra's son Karamsi " Madhavji now (living). He is about nine years of age. It " is my wish to adopt him as my son. If I should not be " able to do so in my lifetime, then my son Liladhur's widow " is to take the said Karamsi in adoption. His adoption " ceremony (Datvidhan) is to be performed. My property " which may remain as a residue after all the things mentioned " in my will have been done I give to this lad as (his) " inheritance. And (I) appoint (him) as my heir. Choru " Liladhur's widow Ladkavahu is to get him betrothed (the " outlays being made) out of my property. For the same about " Rs. 5,000 are to be spent."

By the 29th and 30th clauses he directs that after Karamsi is adopted he shall take the name of Kessowji; and provides for the costs of his marriage and for his residence, which till he is 18 is to be with Ladkavahu. By the 31st clause he directs his executors to make over the property to Karamsi on his attaining 21, if his conduct is good, with alternative provisions if his conduct is bad, in favour of a well-behaved son. The 46th clause is as follows:—

" 46. In the twenty-eighth clause above it has been directed " (that a son) should be adopted. In accordance therewith " after the said Karamsi shall have been adopted should he die " without (leaving) any descendants then Choru Ladkavahu is " duly to adopt out of my father Jadu Asar's descendants any " lad who may be found fit. And if the said Ladkavahu " should not be living at that time then (any) lad (begotten) " of the loins of my father Jadu Asar who may appear to " my executors to be fit, is duly to be appointed my heir. " And to him my property as mentioned above is duly to be " given in inheritance. And his adoption ceremony is to be " performed and the outlays on the occasion of his marriage " also are duly to be made as written above."

The difficulty has arisen from the circumstance that Ladkavahu refused to adopt Karamsi. The cause was heard in October 1887 when Ladkavahu was living before Mr. Justice Farran now Chief Justice of Bombay, who decided that until adoption Karamsi was not entitled to the residue. After Karamsi attained majority he obtained leave to appeal; and in February 1896

the Court of Appeal affirmed the decree below. The present appeal is from that Court. The Respondents are the executors, one of whom has an interest to support the existing decree.

5. The controversy turns on the construction to be given to the sentence "My property which "may remain as a residue after all the things "mentioned in my will have been done I give to "this lad as his inheritance." That sentence admits of being read in two different ways with equal facility. The words "after all things mentioned in my will have been done" may be attached to the preceding word "residue"; or making a pause at "residue," the same words may be thrown forward and attached to "I give." On the former reading the disputed words merely show what is meant by "residue"; on the latter they import a condition precedent to the gift.

Mr. Justice Farran arrived at his conclusion without leaving on record any verbal criticsim. The learned Judges of the Court of Appeal express themselves thus :—

"Clause 28 of the will is as follows :—'To this boy all the "'things (kam literally business, work, things to be done) "'mentioned in my will having been done, I give the residue "'of my estate as his inheritance and I appoint him my heir.' "That clearly means that he is first to be adopted, adoption "being one of the things mentioned in the will."

It is not clear whether they mean to say that the words between commas are a clearer translation than the official one, or only to put their own construction on the words as they stand in the official translation. On the expressions used by the learned Judges no question can be raised. But their Lordships not being able to read the original for themselves, must abide by the official translation.

Of course the controversy takes the form of subjecting the will to a minute analysis in order to extract inferences in favour of or adverse to each of the two possible constructions;

and that has been done very thoroughly at the Bar. On the Appellant's side it is forcibly argued that the construction adverse to him leads to an intestacy, which it must be presumed that one who is making his will does not intend. It is also urged that if the testator had attached primary importance to adoption, he would have taken care to place his meaning beyond doubt; that if it were so essential, it was an adoption not to himself but to his dead son, which he might have secured before his own death; that he must have known that after his death Ladkavahu would be a free agent, and might disregard his wishes; and that the words "inheritance" and "heir" are just as compatible with the idea of taking directly by devise as with that of taking in the character of grandson and heir through adoption. On the other hand it is insisted that the wish for an adopted son is placed first in order; that it is an express condition precedent to the assumption of the testator's name; that it is necessarily implied in the direction that the boy shall reside with Ladkavahu; that the gifts over on failure of Karamsi's issue are only to take place after his adoption, and that there is no gift over unless he is adopted; in short that the testator assumed as a basis of his dispositions that there would be an adoption, and that the alternative did not occur to him. Thus, it is urged, with the failure of adoption the whole structure of the will fails; and there ensues an intestacy, not as desired or contemplated by the testator, but because he took for granted the existence of a condition which has not come to pass.

On such a peculiar will it is hardly a profitable task to weigh each verbal criticism in very nice scales, the more particularly as several of the expressions relied on are double-edged and may be used one way or the other with nearly

equal force. Their Lordships confine themselves to saying that the meaning of the testator is very obscure, but that the arguments adduced to support the decree are such that they are not justified in disturbing it. They will humbly advise Her Majesty to dismiss the appeal. The costs must follow the result, and the Appellant must pay them.