Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Verabhai Ajubhai and Others v. *Bai Tirtha and Others, from the High Court of Judicature at Bombay; delivered the* 12*th May* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The Appellants, who represent the original Plaintiffs, are male descendants of one Bhogji. He had a grandson named Hamjibhai, who died leaving a widow Hiraba and a son Lalubha surviving him. Lalubha died a minor and unmarried, but he was 15 or 16 years of age when he died.

After his death Hiraba, the widow, adopted the son of a relative of her late husband. The validity of this adoption is contested by the Appellants on two grounds, viz., (1) that adoption is not allowed by the custom of their caste; (2) that if it is, yet that as Lalubha survived his father and attained the age of ceremonial competence, there was no occasion or justification for any adoption.

In the Courts below the then Plaintiffs attempted to impeach the validity of the adoption on the ground that it was not *bonâ fide*, but was

attributable to corrupt motives and inducements. This ground of validity was, however, abandoned in the course of the argument before their Lordships, and no further notice of it will be taken.

All the parties concerned belong to the Hindu caste of Chudasama Gameti Garasias, and it is common ground that the ordinary Hindu law applies to this caste unless excluded by special custom. The Appellants allege that by the custom of the caste daughters cannot inherit and adoption is forbidden. The inability of daughters to inherit seems to have been established in the Courts below. Their Lordships have not to determine this matter and have not re-investigated it. The evidence adduced to show that adoption is forbidden by the custom of the caste consists entirely of what is said by a number of witnesses who say that, if a man dies leaving a widow and no son, the widow cannot adopt a son and that no custom to adopt is recorded. But it appears that there are no written rules as to customs. Some instances to prove the statements made by the witnesses are adduced; but, as pointed out by the Subordinate Judge, they are all explicable on other grounds than the existence of the alleged custom. Moreover, one of the Plaintiffs' principal witnesses (Vajesang) is discredited by his own inconsistent statements. Not one of the Plaintiffs' witnesses goes so far as to say that he knows of any case or authority which shows that adoption is forbidden. On the other hand the Defendants adduce evidence showing that it is not forbidden, and they cite a case in point, viz., that of Ladhubha of Rojka. Their evidence is not very strong, and if the onus were on the Defendants to prove a custom to adopt, their evidence might not suffice for the purpose. Both the Subordinate Judge and the High Court have, however, properly held that it was for the Plaintiffs to prove the custom on which

they rely; and both Courts have come to the conclusion that the Plaintiffs failed to prove it. Their Lordships, so far from differing from them, concur in their conclusion.

There remains the question whether, as Lalubha survived his father and lived to attain the age of 15 or 16, his adoption was invalid. He died a minor and unmarried. Counsel for the Appellants contended that Lalubha nevertheless ought to be held to have attained ceremonial competence, and that consequently the adoption was invalid. A great number of authorities bearing more or less on this subject were cited, but so far as they went they appear to their Lordships to be rather in favour of than against the validity of the adoption. Certainly no authority was cited which shows it to be invalid. Assuming that it would be invalid if it were shown that Lalubha had attained ceremonial competence, their Lordships are not in a position to decide whether he had or had not attained it. There does not appear to be any fixed age at which a Hindu child attains such competence. Nor is there any proof that Lalubha had attained such competence in fact, or that he ever acted or was treated as having attained it.

The Subordinate Judge, himself a learned Hindu, considered it to be clear that Lalubha had not attained such competence, as he died a minor and unmarried, and the High Court came to the same conclusion. Their Lordships are not prepared to say that he had attained such competence in the absence of evidence or authority to that effect. How the case would have stood if it had been proved that Lalubha had attained ceremonial competence may be open to controversy, but their Lordships are not under the necessity of pursuing the enquiry.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed, and the Appellants must pay the costs of the two Respondents who appeared on the Appeal.