Privy Council Appeal No. 32 *of* 1932.

Patna Appeal No. 17 *of* 1931.

Amarendra Man Singh Bhramarbar Rai and another - - *Appellants*

v.

Sanatan Singh and others - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 4TH APRIL 1933.

Present at the Hearing:

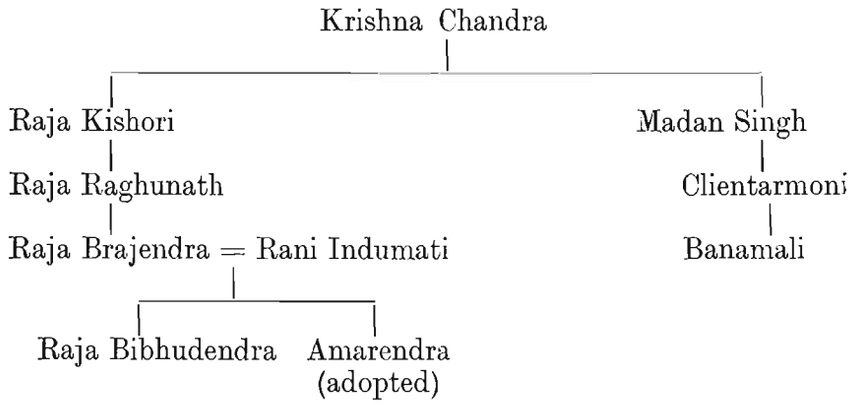
LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

This appeal raises an important question with regard to the validity of an adoption by a Hindu widow.

The facts upon which the decision turns may be stated quite shortly. The issue involved is as to the right of succession (using the word in its widest significance) to the Dompara Raj, an impartible zemindari in Orissa. The early history of the Raj is dealt with at length in the judgments below, and it is unnecessary to refer to it for the purposes of this appeal. The parties are *kshatriyas* by caste, and are governed, apart from special family custom, by the Benares school of the Mitakshara law. The following pedigree will show the relationship of the

persons to whom reference will have to be made, the successive holders of the estate being denominated by the title of Raja :—



On the 20th July, 1898, Raja Brajendra, being then without issue, executed a deed of which the following are the important clauses :

> 1. God forbid if I die without leaving any issue or if the son born of my loins or my adopted son die without leaving a son after my death, then my Rani Srimati Indumati Patmahadei shall be competent to adopt a son in accordance with rules laid down below.
>
> 4. God forbid if the sons adopted by the said Rani die, then the said Rani shall be competent to adopt sons one after the other from the Raj family of the same caste (as ours) in the aforesaid manner.

The deed was duly registered, and no dispute arises as to either its authenticity or interpretation.

Some time in or about the year 1902 a son was born, Raja Bibhudendra, who succeeded to the estate on his father's death in 1903. It then came under the superintendence of the Court of Wards, and so remained till the death of Bibhudendra which occurred on the 10th December, 1922. He died unmarried at the age of 20 years and 6 months, and was therefore in the view of the law a minor : section 3 of the Indian Majority Act, 1875, as amended by Act VIII of 1890. He was also incompetent, without the consent of the local government, either to adopt or to authorise an adoption to him : section 61 of Bengal Act 9 of 1879. A week later, on the 18th December, his mother, Rani Indumati, adopted Amarendra, who was then (and still is) a minor. The Court of Wards remained in possession of the estate, apparently on his behalf. It was then claimed by Banamali, a sapinda of Bibhudendra several degrees removed, who disputed the validity of the adoption. He filed his suit on the 23rd June, 1924, in the Court of the Subordinate Judge of Cuttack, impleading Amarendra and the Rani, and succeeded in both the Courts in India. Various matters were raised at the trial which are not now in issue, the only questions before the Board being as to the existence of a family custom by which females are excluded from succession, and as to the adoption. The parties are agreed that if the custom is established and the adoption inoperative, Banamali was entitled to the estate as the nearest reversioner. He died pending the appeal to the High Court and is now represented by the respondents.

The suit was tried jointly with another suit in which one Ramchandra Mardaraj Singh asserted a superior title to the estate as the second son of Brajendra by a subordinate wife. His suit failed before the Subordinate Judge, and an appeal filed by him was dismissed for want of prosecution. No further reference will be necessary to his claim.

On the question of custom, both the Subordinate Judge and the High Court have held it to be sufficiently proved, though the judgments differ as to the weight to be attached to different parts of the evidence. Their conclusions on this head have been attacked in some detail before the Board, but their Lordships, following their usual practice, are not disposed to interfere with concurrent findings upon what is essentially a question of fact. That there is evidence upon which these findings could legitimately be based is undeniable, and no sufficient reason has been shown for a reconsideration of the question here.

It was also held by both Courts that the adoption of Amarendra was invalid, with the result that the claim of Banamali was decreed. It is upon this issue that the main contentions of the parties have centred before the Board. The argument has been exhaustive, and their Lordships have already expressed their obligations to counsel on both sides for the valuable assistance they have afforded.

On this question it was alleged in the plaint that the Rani's power of adoption was extinguished on Bibhudendra's death, in as much as he had then attained full age and full legal capacity to continue his line, and that the adoption could not divest the estate which had vested eight days previously by inheritance in Banamali as the nearest collateral heir of the last male holder. The latter contention was accepted as decisive by the Subordinate Judge, who passed a decree dated the 30th November, 1925, in his favour. The learned Subordinate Judge also expressed the opinion that Bibhudendra at the time of his death had "attained full age and legal capacity to continue his line," but this does not appear to have been the basis of his judgment.

In the High Court separate judgments were delivered by Jwala Prasad and Scroope JJ., who concurred generally with the conclusions of the Subordinate Judge. The authorities were exhaustively dealt with in both Courts. Their Lordships think that nothing would be gained by referring to these judgments in greater detail. It is from no disrespect to the learned Judges that they refrain from doing so, but only to avoid undue lengthening of what must, in any case, be a lengthy examination of authorities and arguments. They will, they believe, be found to have dealt with all the relevant considerations.

Before the Board these contentions were elaborated by counsel for the first respondent who alone appeared. First it was said that treating Banamali as a separated sapinda claiming strictly by

inheritance—the basis upon which the claim was laid in the plaint —the authorities established that when once the estate had vested in an heir of the last male holder, other than the adopting widow, the power of adoption was at an end. If this were the true view, inasmuch as the Rani was precluded by the custom from inheriting to her son Bihudendra, she could no longer adopt.

In the second place, it was said that where the husband from whom the power to adopt was derived left a son to succeed him, and that son attained full legal capacity to continue the line, the power of his mother was equally at an end, and that this would be the case whether the family was separate or joint.

The two lines of reasoning are, their Lordships think, distinct. The first approaches the question from the point of view of rights in property: the second from what may be regarded as the religious and ceremonial side. Both are said to have the sanction of decisions of the Board.

For the appellant it is contended that the first proposition enunciated is altogether unsound, the power to adopt not being dependent in any way on the vesting of property, and as to the second, that the rule upon which reliance is placed, if properly interpreted, does not apply to the facts of the present case.

Their Lordships think that in dealing with the arguments which have been addressed to them, it is important to bear in mind the essential features of the doctrine of adoption among orthodox Hindus, as they are conscious that these may have been to a certain extent blurred by the mass of case law which has been accumulated in the last three-quarters of a century.

The origin of the custom of adoption is lost in antiquity, and may well have been no more than the natural desire for a son as an object of affection, a protector in old age, and at the last an heir. However this may be, it is certain that through all the centuries which have seen the spread of Brahminical influence, and among all classes which have come under its sway, a peculiar religious significance has attached to the son. He is so essential to the spiritual welfare of the souls of his immediate ancestors that an extensive class of subsidiary sons was admitted to the family, all of whom could perform the necessary ceremonies, though only some of them were allowed full rights of inheritance. Of these among the orthodox classes, only the adopted son is now recognised, but he, in the absence of an *aurasa*, or natural born son, is clothed with all the attributes of a son, and is from the date of his adoption regarded as having been born in his adoptive family.

The 9th chapter of Manu's Code, which has always been regarded as of paramount authority, is instinct with this doctrine. The father by the birth of a son discharges his debt to his progenitors (v. 106); through him he attains immortality (v. 107); by a son a man obtains victory over all people; by a son's son he enjoys immortality: and afterwards by the son of that grandson

he reaches the solar abode (v. 137); a son is called *Putra* because he delivers his father from Put (v. 138). In the Dharma Sutra of Baudhayana, which is probably older than the Christian era, the formula prescribed for adoption is "I take thee for the fulfilment of my religious duties: I take thee to continue the line of my ancestors" (Bau.: vii, 11, Sacred Bks. of the East, Vol. xiv, 335).

In their Lordships' opinion, it is clear that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites. And it may well be that if this duty has been passed on to a new generation, capable itself of the continuance, the father's duty has been performed and the means provided by him for its fulfilment spent: the "debt" he owed is discharged, and it is upon the new generation that the duty is now cast and the burden of the "debt" is now laid.

It can, they think, hardly be doubted that in this doctrine the devolution of property, though recognized as the inherent right of the son, is altogether a secondary consideration. So Sir James Colvile, in delivering the judgment of the Board in *Shri Raghunadh* v. *Shri Brozo Kishoro*, 3 I.A. 154 (a case to which further reference will be made later) observes at p. 192 that

> "a distinction which is founded on the nature of property seems to belong to the law of property, and to militate against the principle which Mr. Justice Holloway has himself strenuously insisted upon elsewhere, viz., that the validity of an adoption is to be determined by spiritual rather than temporal considerations; that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property a mere accessory to it."

Having regard to this well-established doctrine as to the religious efficacy of son-ship, their Lordships feel that great caution should be observed in shutting the door upon any authorised adoption by the widow of a sonless man: see in this connection *Kannepalli Suryanarayana* v. *Pucha Venkata Ramana*, 33 I.A. at p. 153. The Hindu law itself sets no limit to the exercise of the power during the lifetime of the donee, and the validity of successive adoptions in continuance of the line is now well recognised. Nor do the authoritative texts appear to limit the exercise of the power by any considerations of property. But that there must be some limit to its exercise, or at all events some conditions in which it would be either contrary to the spirit of the Hindu doctrine to admit its continuance, or inequitable in the face of other rights to allow it to take effect, has long been recognised both by the Courts in India and by this Board, and it is upon the difficult question of where the line should be drawn, and upon what principle, that the argument in the present case has mainly turned.

In support of his first line of reasoning, based upon the vesting of property in an heir other than the adopting widow,

counsel for the first respondent relied upon the often quoted judgment delivered by Lord Kingsdown in *Bhoobun Moyee Debia's* case 10 Moo. I.A. 279. There one Gour Kishori died leaving a son Bhowanee, and a widow Chundrabullee Debia to whom he gave authority to adopt in the event of Bhowanee's death. Bhowanee died at the age of 24 without issue, but leaving a widow Bhoobun Moyee, who succeeded by inheritance to his property. Chundrabullee then adopted Ram Kishore who sued Bhoobun Moyee for the recovery of the estate. It was held by the Board that his claim failed. The parties being governed by the Dayabhaga law, Bhoobun Moyee would have succeeded to Bhowanee's property in preference to Ram Kishore, even if he had been a natural born son of Gour Kishore, and the Board held that it was " contrary to all reason and to all the principles of Hindu law " that he should displace the rightful heir. It is not so much the actual decision in this case that is relied on as certain dicta in the judgment and the implications which have been held to arise from it. " The question is " said Lord Kingsdown (p. 311) " whether the estate of his 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. . .*" From this it is argued that it was upon the vesting of the property that the determination of the power of adoption depended, and that this view is confirmed by subsequent decisions of the Board to which reference must be made.

After the death of Bhoobun Moyee, Ram Kishore got possession of the property and if his adoption was good he was undoubtedly the next heir. His title, however, was disputed by a distant collateral and the validity of his adoption was the subject of another suit. The Bengal High Court upheld the title of Ram Kishore, considering that the Board in the previous case had only affirmed the prior right of inheritance of Bhoobun Moyee, and had not held the adoption to be invalid. This case again came before the Board (*Pudma Coomari Debi* v. *The Court of Wards*, 8 I.A. 229) and the decision of the High Court was reversed, the opinion of their Lordships being that upon the vesting of the estate in the widow of Bhowanee the power of adoption was at an end and incapable of execution, and that this was what the Board had held in the previous case.

These authorities were again considered in a case from Madras: *Thayammal* v. *Venkatarama*, 14 I.A. 67, the decision in which is also relied on by the respondents. The question there was as to the right of succession to the estate of one Kuttisami who had died without issue leaving his widow Thangammal as his heir. After his death his mother, Thayammal, with the permission of the sapindas, adopted a son to the father of Kuttisami. The validity of the adoption was disputed on the ground that " the survival of the son's widow and the vesting of the estate in

her put an end to the right of Thayammal, his mother, to adopt a son to his father." Their Lordships were of opinion that this objection was fatal to the adoption, and that the learned Judges of the High Court who had so decided, were correct in considering that the case was governed by the authorities above referred to.

Thayammal's case was followed in *Tarachurn Chatterji* v. *Suresh Chunder Mookerji* 16 I.A. 166 where Sir Richard Couch observes (p. 170) " On the son's death after coming of age leaving Matangini his widow, Madhub Chunder's wife would not have power to adopt a son, *the estate of Kali Churn having become vested in his widow.*"

So far then, their Lordships think, it was well established that a power of adoption in a mother was extinguished when her son had died leaving a widow to whom the son's estate passed by inheritance. But though undoubtedly certain passages in the judgments relied on seemed to suggest that it was the succession to the estate by the son's widow that was the determining factor, and, as was stated by a learned Hindu judge in 1900 " the whole current of recent decisions has been to base this limitation solely on the question whether the widow's act of adoption derogated from her own rights or the vested rights of others " (per Ranade J. in *Venkappa* v. *Jivaji Krishna*, I.L.R. 25 Bomb., at 312), yet it was never so laid down by the Board in precise terms. The dominant consideration may have been the right of property, and equitable claims may not have been without their influence, but the religious and ceremonial side was not altogether ignored. In *Bhoobun Moyee's* case Lord Kingsdown evidently relied upon the fact that Bhowanee had died at an age which enabled him to perform—and it was to be presumed that he had performed—all the religious services which a son could perform for a father, and he refers to the doctrine of Hindu law that the husband and wife are one, and that in the widow a half of the husband survives. It is at least material that in each of the other cases it was the existence of the son's widow that stood in the way of the adoption, and that in none of them was there any suggestion that the same rule would apply if the heir in whom the property had vested were someone other than her. Moreover, in dealing with the successions in a joint family it is clear under the decisions of this Board that the vesting in another co-parcener does not put an end to the power of adoption: see *Sri Raghunadha* v. *Sri Brozo Kishoro* (*supra*): *Bachoo Hurkissondas* v. *Mankorebai*, 34 I.A. 107: *Yadao* v. *Namdeo* 48 I.A. 513. That this is so has not been questioned in the present case. Indeed, as their Lordships understood the argument of counsel for the first respondent, the joint family cases were rather relied on as emphasising the importance of " vesting " in the case of separate property.

It must also, their Lordships think, be taken as settled law that where the son dies in infancy, or before attaining what is often referred to as " ceremonial competence," leaving his

mother as his heir, her power of adoption is still exerciseable : *Rajah Vellanki Venkata* v. *Venkata Rama Lakshmi*, 4 I.A., 1 : *Veerabhai* v. *Ajubhai* v. *Bai Hiraba*, 30 I.A., 234 : *Mallappa* v. *Hanmappa*, I.L.R., 44, Bomb. 297. This again has not been disputed, and it is plain that if it were not so, successive adoptions would be impossible. It will, however, be necessary to consider the limits of this particular doctrine later on.

Tarachurn Chatterji's case was decided in 1889, and during the next thirty years little further light is thrown upon the question now under consideration by decisions of this Board. In the Indian Courts, however, the effect of the earlier authorities was constantly under discussion, and various attempts were made to arrive at the true principle, the opinions of judges deeply versed in the Hindu law inclining now to what may be for convenience called the secular theory and now to the religious.

Nothing would be gained, in their Lordships' opinion, by attempting a critical examination of these cases in view of two recent pronouncements of this Board to which reference must now be made. It will, however, be necessary first to recite a decision in 1902 of the Full Court in Bombay. *Ramchandra* v. *Shamrao*, I.L.R. 26 Bomb. 526. The question in this case was as to the validity of an adoption by the grandmother of the last male holder who had died unmarried and without issue. It was not disputed that the grandmother was his heir, and it was contended that, inasmuch as by the adoption she divested no estate but her own, the adoption was valid. The Court held that it was invalid, on the ground that the penultimate owner, the son, had himself left a son, by reason of which fact the grandmother's power of adoption had come to an end. The judgment of the Full Court which was delivered by Chandavarkar J., involved a careful analysis of the older decisions of the Board and the conclusion come to was that

> " Where a Hindu dies leaving a widow and a son, and that son dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived.

Sixteen years later, in April 1918, the case of *Madana Mohana Deo* v. *Purushothama Deo* came before a Board consisting of Lords Haldane, Dunedin and Sumner with Sir John Edge and Mr. Ameer Ali (45 I.A. 156). It was by a somewhat strange coincidence, a sequel to *Raghunadha* v. *Brozo Kishoro* 3 I.A. 154, to which reference has already been made. In the earlier case Brojo, who had been adopted by the widow of Adikonda, was held entitled to succeed to the impartible zemindari of Chinnakimedi, notwithstanding the fact that on Adikonda's death it had passed to his undivided brother Raghunadha. Brojo held the estate from 1870 till his death in 1906. He left no issue but a widow, Ratnamala, who was alive at the date of the later litigation but was not joined as a party. On Brojo's death,

possession of the zemindari was taken by Raghunadha's son Vaishnava, who died in the same year and was succeeded by his son Purushothama. In 1907 the widow of Adikonda purported to adopt Madana, who sued Purushothama for the estate. The principal question before the Board was again whether this second adoption was valid. The Full Court case from Bombay was referred to, was approved, and was held to be decisive against the adoption.

Their Lordships will pass away from this case for the moment to refer to the second case which came before the Board a few months later, and which has perhaps a more direct bearing upon the particular line of argument which they are now considering. They only pause to point out that now the case law has arrived at a point where it would be impossible to say that the sole test of the validity of an adoption is the vesting or divesting of property.

In *Pratapsing Shivsing* v. *Agarsingji*, 46 I.A. 97, the litigation related to a village which had formed part of an impartible estate in the Bombay Presidency, and had been the subject of a maintenance grant to a junior branch of the family. By the custom of the family such grants reverted to the estate upon failure of male descendants of the grantee. The last holder, Kaliansing, died in October, 1903, childless, but leaving a widow who some five months later adopted the appellant. The respondent, the owner of the principal estate, sued for recovery of the maintenance lands on the allegation that they vested in him on Kaliansing's death, and that consequently the adoption was invalid. The Subordinate Judge dismissed the suit, but his decision was reversed by the High Court on the ground that the land having once vested in the respondent, the subsequent adoption could not divest it. If this view had been accepted by the Board, it might well have been decisive in favour of the present respondents on their first line of argument. But it was not accepted, and their Lordships think that it must be regarded as decisive the other way. Notwithstanding that the property had vested in the respondent, the adoption was held to be good, and the suit was dismissed. It was laid down in clear terms that " the right of the widow to make an adoption is not dependent on her inheriting as a Hindu female owner her husband's estate " ; and this dictum is supported by reference to the two cases already cited from the third and the thirty-fourth volumes of the Indian Appeals, both of them cases of joint property which had passed by survivorship. It necessarily follows, their Lordships think, from this decision, that the vesting of the property on the death of the last holder in someone other than the adopting widow, be it either another co-parcener of the joint family, or an outsider claiming by reverter, or, their Lordships would add, by inheritance, cannot be in itself the test of the continuance or extinction of the power of adoption. If in *Pratapsingh's* case the actual reverter of the property to the head of the family did not bring

the power to an end, it would be impossible to hold in the present case that the passing by inheritance to a distant relation could have that effect any more than the passing by survivorship would in a joint family.

For these reasons, their Lordships are of opinion that the first line of reasoning upon which the respondents seek to uphold the decision below must fail, and they think that the true principle must be found upon the religious side of the Hindu doctrine to which they have already adverted.

Much reliance was placed by counsel for the first respondent on another Bombay case, *Bhimabai* v. *Tayappa*, 37 Bombay 598 in which an apparently contrary result had been arrived at in 1913 by Batchelor and Shah JJ. The property in question in this case was a *watan* estate which, under the provisions of the Bombay Hereditary Offices Acts of 1874 and 1886, did not pass by inheritance to the adopting widow on the death of her unmarried son, but vested in another member of the family, and for this reason the adoption was held to be bad. Unless there is something in the nature of *watan* property which makes the decision in *Pratapsingh's* case inapplicable, their Lordships think that this case can no longer be regarded as authoritative.

It being clear upon the decisions above referred to that the interposition of a grandson, or the son's widow, brings the mother's power of adoption to an end, but that the mere birth of a son does not do so, and that this is not based upon a question of vesting or divesting of property, their Lordships think that the true reason must be that where the duty of providing for the continuance of the line for spiritual purposes which was upon the father, and was laid by him conditionally upon the mother, has been assumed by the son and by him passed on to a grandson or to the son's widow, the mother's power is gone. But if the son die himself son-less and unmarried, the duty will still be upon the mother, and the power in her which was necessarily suspended during the son's lifetime will revive.

There is, in their Lordships' opinion, nothing in the Hindu law which is contrary to this, and nothing in previous decisions of this Board which would induce them to hold otherwise. It is, they think, in accord with the acceptance by Mr. Ameer Ali in *Pratapsingh's* case of the view that among Hindus the male line is not regarded as extinct, or a man to have died without issue until the continuation of the line by adoption is impossible (46 I.A. at 107). It is also in their opinion supported by Lord Haldane's judgment in *Madana Mohana's* case (45 I.A. at 161), which has been much discussed, and to which they must now return.

After referring to the conclusions come to by the Bombay Full Court in I.L.R. 26 Bomb. 526 the judgment proceeds :—

> " Their Lordships are in agreement with the principle laid down in the judgment of the Full Court of Bombay as delivered by the learned Judge,

> and they are of opinion that, on the facts of the present case, the principle must be taken as applying so as to have brought the authority to adopt conferred on Adikonda's widow to an end when Brojo the son she originally adopted, died after attaining full legal capacity to continue the line either by the birth of a natural-born son or by adoption to him of a son by his own widow."

Whether in order to bring this principle into play it is essential that the son's widow should herself be clothed with the power of adoption is left open, and it is not necessary for their Lordships to consider this in the present case, as Bibhudendra died unmarried; the only question is as to the bearing of the passage cited on the facts now involved.

For the respondents it is contended that the Board must be taken to have held that the mother's power came to an end upon the attainment by the son of what is called ceremonial competence; that it did not depend upon his having in fact left a son or a widow, but merely upon his competence so to do. Bibhudendra, it is said, having died at the age of 20½ years, must be regarded as a fully "competent" Hindu for all ceremonial purposes. He had not, it is true, attained legal majority, nor could he adopt or give authority to his wife to adopt without the consent of Government, but that, it is said, is immaterial; "ceremonial competence" is all that is necessary, and that should be ascribed to every Hindu of the age of 16.

But, in the first place, their Lordships have had some difficulty in understanding exactly what this expression means. They have not been referred to any passage in the evidence bearing upon the matter, nor has any real light been thrown upon it in the argument. The respondents would apparently suggest that ceremonial competence means no more than the age of discretion, and reliance is placed upon the judgment of this Board in *Jumoona Dassya* v. *Bamasoondari Dassya*, I.L.R. 1 Calc. 289, where it was held that an authority to adopt given by a husband who died at the age of 15 or 16 was valid, he having attained "an age which according to the law prevalent in Bengal is to be regarded as the age of discretion." In *Veerabhai Ajubhai* v. *Bai Hiraba*, 30 I.A. 234 (*supra*), it was contended that an adoption by a widow after the death of her son at the age of 15 or 16 was invalid on the ground that he had "attained ceremonial competence." Lord Lindley, in delivering the judgment of the Board, says:—

> "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."

It is, at least, noticeable that no suggestion seems to have been made in that case that the age of ceremonial competence meant no more than the age of discretion, and that among the " great number of authorities cited " the case from I.L.R. 1 Calc. did not find a place. The contention has been raised in several other cases in India, but their Lordships have been referred to none in which it has prevailed.

An interesting note by Mr. Colebrooke is appended to the translation of the " Dattaka-Mimansa," Section IV, v. xxiii, a well-recognised treatise on the law of adoption. In it he enumerates the ceremonies which are requisite in the case of the twice-born classes. Of these the best known are that of the *tonsure*, which is performed in infancy, and the *upayana*, or investiture with the sacred thread. The latter, which marks the second birth, can apparently be performed at any age between the fifth and the sixteenth years, and can therefore hardly be regarded as the test of ceremonial competence as a synonym of " full legal capacity." To these Mr. Colebrooke says, must be added " the ceremony which precedes conception and marriage, which is the last of these sacraments." He then refers to certain other post-marital ceremonies, but says that " these are not essential " (Stokes's Hindu Law Books, p. 576 note).

If their Lordships can regard this as authoritative, they would be inclined to the view that full ceremonial competence could hardly be attained without marriage, but it is not necessary for them so to decide in the present case. If the question ever becomes of importance hereafter, Hindu lawyers may quite possibly be able to throw further light on the matter. It is sufficient for their Lordships to say in the present case that neither the age of discretion nor such ceremonial competence as a Hindu boy may have acquired at 16 is an adequate interpretation of " full legal capacity to continue the line," as used in the judgment of the Board. There is certainly nothing in the case to suggest that any question as to ceremonial competence was raised before the Board, nor, apparently, had it been considered in the High Court (*see* the case reported in I.L.R., 38 Madr., 1105).

But in the second place, their Lordships think that the words " full legal capacity " cannot be dissociated from the rest of the passage cited, and that they cannot be taken as indicating a particular moment in the son's life when the mother's power is extinguished. The qualification that follows them shows that the continuance referred to is a continuance in one of two defined ways, " *either* by the birth of a natural son, *or* by the

adoption to him of a son by his own widow" ; and the test is to be whether these conditions exist at the time of the son's death. The passage under consideration is, in their Lordships' opinion, clearly intended to be a re-statement in a more critical form of the conclusion to which the Bombay Court had come, and which was affirmed in the same sentence only a few lines before, viz., that the power of adoption would be extinguished on the son's death by the survival of either a grandson or the son's widow. There was no reason and, their Lordships think, no intention, to go beyond this. There is nothing in the judgment to suggest that the Board had in mind the case of a man who had died without leaving either a son or a widow, or that Lord Haldane was devising a formula which would cover such a case. It would be obvious that other considerations might come in and other authorities have to be considered.

The question had in fact arisen in Bombay very shortly before the Full Court case, and one of the Judges who sat on the Full Court had been a party to the decision. There the son had died without issue at the age of 30, his wife having predeceased him, and it was held that on his death the mother could adopt. The argument now advanced as to the attainment of full age and ceremonial competency was urged against the adoption, but was held to be of no weight : *Venkappa Bapu* v. *Jivaji Krishna* I.L.R. 25 Bomb. 306. It was cited along with other cases in the argument before the Full Court, but no reference was made to it in the judgment, nor is there any word to suggest that its authority was questioned. Their Lordships are certainly not prepared to hold that this and other decisions of a like nature, none of which were referred to even indirectly in Lord Haldane's judgment, were intended to be overruled by him. Moreover, in *Bhoobun Moyee's* case, which was the foundation of the decision in the Bombay Full Court, Lord Kingsdown made it clear that if Bhowanee Kishori, who died at the age of 24, and was evidently regarded as having attained full ceremonial competence, had not left a widow, the adoption by Chundrabullee would have been good. This dictum has stood unquestioned for well over half a century and it is too late now to suggest that it was merely *obiter*, and can be disregarded.

One more case must, their Lordships think, be referred to : *Tripuramba* v. *Venkataratnam*, I.L.R. 46 Madr. 423. There one Venkata Somayajube died leaving a widow and a son Subanna, who apparently succeeded to his father's estate. Subanna having died unmarried at the age of 25, his mother, with the consent of sapindas adopted. The validity of the adoption was challenged by the nearest reversioner of Subanna. The trial Judge held it to be valid. His decision was reversed by the District Judge on the ground that Subanna had attained full legal capacity to continue the line within the meaning of Lord Haldane's judgment. On second appeal to the High Court, the Chief Justice, Sir W.

Schwabe, was of opinion that the passage relied on by the District Judge was merely *obiter dictum*, and he held that the only test was whether the property was vested in the adopting widow. It is unfortunate, their Lordships think, that *Pratapsingh's* case was not referred to in this connection. Wallace J. thought that there could be no attainment of full legal capacity without marriage, and that the mother's power would only be brought to an end if the son left a son or a widow. "The purpose of adoption," he said, "is to perpetuate the line, and if the only son dies without leaving anyone to perpetuate the line, there seems no good reason for restricting the power of his mother to perpetuate it in the only way she can by adopting a son to her own husband." With this last citation their Lordships find themselves in complete agreement. They think that there is no foundation for the contention that a mother's authority to adopt is extinguished by the mere fact that her son has attained ceremonial competence, and they are satisfied that Lord Haldane had no question of this in mind. They are therefore of opinion that the second line of reasoning upon which the judgment of the High Court in the present case has been supported fails equally with the first. In their opinion, the Rani's power of adoption under her husband's authority was not exhausted at the death of Bibhudendra, and the adoption of Amarendra was valid.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court dated the 29th January 1930, and the decree of the Subordinate Judge, dated the 30th November 1925, should be set aside, and the suit instituted by Banamali Singh dismissed. The appellants will be entitled to their costs throughout.

In the Privy Council.

AMARENDRA MAN SINGH BHRAMARBAR RAI
AND ANOTHER

v.

SANATAN SINGH AND OTHERS.

DELIVERED BY SIR GEORGE LOWNDES.

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