Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeals of Jagadamba Chowdhrani and others v. *Dakhina Mohun and others (four Appeals consolidated) from the High Court of Judicature at Fort William in Bengal; delivered 9th April* 1886.

Present:

LORD BLACKBURN.
LORD HOBHOUSE.
SIR RICHARD COUCH.

Their Lordships have upon consideration found themselves able to dispose of these appeals upon one of the questions which were argued at the bar very fully, and with great learning and ability, with reference to the law of limitation. And though the cases, which embrace many complicated issues, are very voluminous, the facts material for this decision are few and simple.

Hurro Mohun died childless in April 1846, leaving two widows. That he had given them permission to adopt sons is clear; but in what order of priority the permission was given is one of the many points in dispute. What happened was that each of the widows adopted a son who died, and afterwards each of them adopted another. Of course both adoptions could not be valid, though both might be invalid, as the Plaintiffs contend they were. But during the minority of the adopted sons both were treated as adopted, and after they attained age they agreed to raise no question as between themselves, but

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to enjoy Hurro Mohun's property in equal shares. If therefore either of the adoptions was valid, both of the adopted sons were safe in their possession.

The Plaintiffs in the suits are the persons who, failing adoption, were the heirs of Hurro Mohun at the death of his surviving widow. One suit was instituted by one heir in April 1873, the other by the other heir in August 1874. The Defendant Saroda was adopted in December 1853, the Defendant Jagadamba is the widow of Durga, who was adopted in August 1856. The surviving widow, Radha Sundari by name, died in July 1868. It thus appears that the earliest suit was brought 18 years after the latest adoption, and the latest suit a little less than six years after the death of the surviving widow.

The Limitation Act in force when these suits were commenced is Act XI. of 1871, and it is on the construction of that Act that the question depends. The suits may possibly be considered as falling under one of three articles. They may be considered as suits to set aside an adoption (Art. 129), or as suits for possession of immoveable property by Hindoos entitled to possession on the death of a Hindoo widow (Art. 142), or as suits for possession of immoveable property not otherwise specially provided for in the Act (Art. 145).

The Subordinate Judge of Rungpore who heard the suits in the first instance dismissed them with costs. He decided for the Defendants, not only the ground that one of the adoptions was valid, but also on the ground of limitation. His opinion is found in the Record (No. 38, p. 172) thus expressed, probably with some inaccuracy in the transcription:—

"The Plaintiffs, although they have only sued for possession of the property as heirs-at-law of their deceased uncle Hurro Mohun Chowdhry, but as a fact apparent in itself they cannot

likely succeed unless and until the adoptions of Saroda Mohun and Doorga Mohun be set aside, making the way plain and smooth for the Plaintiffs to enter into possession as heirs of Hurro Mohun Chowdhry. The formation of the plaints can render no advantage to the Plaintiffs. Whatever terms they might have used in framing the plaints and the consequential relief sought for, they are in effect suits to set aside the adoptions, and should have therefore been brought within the time allowed by law, to be reckoned from the dates of the successive adoptions."

That is a clear statement of reasons for thinking that the suits fall under Art. 129, and are therefore each barred by the lapse of 12 years from the date of the adoption which it seeks to set aside.

The High Court reversed the decision of the Subordinate Judge, and gave the Plaintiffs the decree they asked for. On the issue of limitation they say :—

"As regards the plea that the suits are barred by limitation, we would merely remark that the general rule in all cases of this description brought by a reversionary heir to recover possession of family property from one who sets up a title on adoption by a Hindu widow is that limitation is calculated from the time when title of the reversionary heir accrues on the death of the Hindu widow."—Rec. 38, p. 222.

They do not appear to have addressed themselves to the question whether or no Art. 129 governs the case.

The Plaintiffs' Counsel here contended that the case falls under Art. 142, or if not, that it is not specifically provided for and so falls within Art. 145, and that in either case time runs against them only from the death of Radha Sundari. The endeavour to apply those Articles raises several difficult questions of fact and law, but it is not necessary to pronounce any opinion on them if Art. 129 applies to the suits and raises a bar which in each suit is 12 years after the adoption.

It is ingeniously argued for the Plaintiffs that they are suing, not to set aside any adoption, but to recover possession on their *primâ facie* title as heirs, that it is the Defendants who have to allege and prove adoption, and that, on their

failure to do so, it will not be set aside, but taken as never having existed. But the answer is that the Defendants are in possession in the character of adopted sons; the *primâ facie* title is with them, and until that is displaced they ought to retain their possession. It may not make any difference in law, but it does so happen in this case that the Plaintiffs have recognized the adoptees as such for many years in formal instruments and proceedings, and even that parts of the property now sued for have been recovered from the Plaintiffs in suits instituted on behalf of the adopted sons by the manager of their estate during their minority. Indeed in one of the present suits the Plaintiff tells the story of the adoptions, and directly impeaches their validity. In the other the plaint is silent on that point. But whatever the mode of pleading, there is but one issue on the merits of the case, namely, the validity or invalidity of the adoptions, by virtue of which alone the Defendants hold their property. If the validity is proved, the Plaintiffs cannot succeed in their claim. Now Art. 129 of the Limitation Act provides that for a suit to establish or set aside an adoption the period of limitation shall be either the date of the adoption or the date of the death of the adoptive father. And each of the Defendants contends that the true construction of these words is that the validity of his adoption shall not be challenged after 12 years from the later of the two dates assigned as the starting points of time, which in this case is the date of the adoption.

It must be confessed that the words of the Article are not such as to prevent doubt or difficulty in its construction. The expression "suit to set aside an adoption" is not quite precise as applied to any suit. An adoption may be established, but can hardly be set aside, though an alleged or pretended adoption may be declared to be no adoption at all.

Very early in the argument their Lordships asked to be informed what is meant by setting aside an adoption. The only answer is in the language of the reports, from which it would seem that the phrase "suit to set aside an "adoption" is a short and familiar way of describing a class of suits well known to practitioners and spoken of in those terms with accuracy enough for all ordinary purposes. In the earliest case cited at the bar from the S. D. A. Reports for 1850 it was held that the Plaintiffs had a cause of action when possession was taken under colour of an adoption. Mr. Justice Colvin says, "The plain remedy for the Plaintiff was to sue "to set aside the succession by adoption as de- "clared and perfected. The present plaint is a "mere attempt to evade the consequences of that "neglect, and to bring the adoption to an issue "under colour of a statement" of continued possession of the adopting widow. In the case cited from the S. D. A. Reports for 1856 the suit was for possession of the property; but the reporter styles it "suit to set aside adoption." In the case cited from the 4th Bengal Law Reports the reporter calls the suit one to recover possession and to set aside the adoption. Mr. Justice Kemp calls it a suit to set aside an adoption. Chief Justice Peacock corrects the expression, saying, "Although the suit is said to "be a suit to recover possession by setting aside "the illegal adoption, the suit is, in fact, a suit "by the reversionary heir to recover possession "notwithstanding that adoption." In the case cited from 15th Bengal Law Reports, where the adopting widow was still living, the suit is called one to set aside an adoption. In his judgement Mr. Justice Jackson refers to the case in the 4th Bengal Law Reports as one in which a Full Bench determined "that the cause of action in a

" suit for setting aside the adoption accrues after " the death of the widow."

It thus appears that the expression " set " aside an adoption " is and has been for many years applied in the ordinary language of Indian lawyers to proceedings which bring the validity of an alleged adoption under question, and applied quite indiscriminately to suits for possession of land and to suits of a declaratory nature. It is worth observing that in the Limitation Act of 1877, which superseded the Act now under discussion, the language is changed. Art. 128 of 1877, which corresponds to Art. 129 of 1871 so far as regards setting aside adoptions, speaks of a suit " to obtain a declaration that an alleged adoption " is invalid or never in fact took place," and assigns a different starting point to the time that is to run against it. Whether the alteration of language denotes a change of policy, or how much change of law it effects, are questions not now before their Lordships. Nor do they think that any guidance in the construction of the earlier Act is to be gained from the later one, except that we may fairly infer that the Legislature considered the expression " suit to set " aside an adoption " to be one of a loose kind, and that more precision was desirable.

If then the expression is not such as to denote solely, or even to denote accurately, a suit confined to a declaration that an alleged adoption is invalid in law or never took place in fact, is there anything in the scope or structure of the Act to prevent us from giving to it the ordinary sense in which it is used, though it may be loosely, by professional men? The Plaintiffs' Counsel were asked, but were not able, to suggest any principle on which suits involving the issue of adoption or no adoption must, if of a merely declaratory nature, be brought within 12 years

from the adoption, while yet the very same issue is left open for 12 years after the death of the adopting widow, it may be 50 years more, if only it is mixed up with a suit for the possession of the same property. It seems to their Lordships that the more rational and probable principle to ascribe to an Act whose language admits of it, is the principle of allowing only a moderate time within which such delicate and intricate questions as those involved in adoptions shall be brought into dispute, so that it shall strike alike at all suits in which the Plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the Defendant is in possession.

Considerable stress has been laid upon a passage in the judgement which this Board delivered in the case of Raj Bahadoor Singh *v.* Achumbit Lal, and which is said to be decisive of the present point. The passage is as follows :—

"Their Lordships are clearly of opinion that this provision relating to adoption, though it might bar a suit brought only for the purpose of setting aside the adoption, does not intefere with the right which, but for it, a Plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued, and that they regard as the nature of this suit."

Detached from its context and from the facts of the case, that would seem to be a strong authority in favour of the Plaintiffs in the present case. But when read with what goes before, it has no such effect. The suit in question was brought by the heir of Doorga Pershad to recover possession of his estate after his widow's death. The real contest was whether he had given an absolute interest to his widow which she could transmit to the Defendant. But she had executed an instrument called a deed of adoption, which their Lordships describe thus :—"This "document cannot be seriously treated as an "attempt on the part of the widow to adopt a son

" or sons as heirs to her husband, but is merely " an adoption of heirs to herself, and in fact a " disposition of her property, very much in the " nature of a will, to them after her death. . . . " On the above view of the document the words " of the statute would seem scarcely applicable " to it." And then follows the passage above quoted. It is clear therefore that in that case the Plaintiff was not embarrassed by the widow's adoption of the Defendant. He could recover the estate of Doorga Pershad without in any way disturbing the adoption. And to apply the remarks there made, in somewhat general terms, to a case in which the heir cannot possibly get at the ancestor's property without disturbance of a title and of possession founded on adoption to that ancestor, is to put upon them a meaning they were never intended to bear.

The result is that for the foregoing reasons their Lordships agree with the opinion expressed by the Subordinate Judge on this point. They think that the High Court should have dismissed with costs the appeal from that Judge's decree, and they will now humbly advise Her Majesty to make a decree to that effect.

The Respondents, who are in the interest of the original Plaintiffs, must pay the costs of these appeals.