Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Musammat Lali v. *Murli Dhar, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 9th April* 1906.

Present at the Hearing:

LORD DAVEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The suit in this case was brought by Murli Dhar, the present Respondent, against Musammat Lali, the present Appellant, for possession of immoveable property belonging to the estate of one Dhanraj, deceased. The Appellant is the widow of Dhanraj, and the Respondent claimed the property under a double title; first, as the adopted son of Dhanraj, and, secondly, under the terms of a will contained in a *wajib-ul-arz* alleged to have been duly recorded, in relation to a village forming part of the property, by Dhanraj during his lifetime. The result of the litigation in India was to set aside the adoption as invalid according to Hindu law; but the High Court at Allahabad gave the Plaintiff a decree for half the property claimed, on the ground that the clause in the *wajib-ul-arz* upon which the Plaintiff relied was "a document of a "testamentary nature," under which it was the intention of Dhanraj to make a bequest in favour of the Plaintiff of a half-share in his property, and that this bequest was not contingent upon the validity of the adoption. No

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appeal has been filed against so much of the Judgment of the High Court as relates to the adoption, but the Defendant has appealed on two grounds—first, that the clause in the *wajib-ul-arz* does not constitute a will; and secondly, that if it does, there was no bequest to the Plaintiff apart from and irrespective of his adoption, and a valid adoption was the condition upon which the alleged bequest depended.

The term *wajib-ul-arz* in the North-Western Provinces is applied to what is considered to be the most important document contained in the official records relating to the village administration. Entries therein, properly made and authenticated by the signatures of the officers who made them, have been held by this Committee in the case of *Rani Lekraj Kuar* v. *Baboo Mahpal Singh* (L.R. 7 I.A. 63) to be admissible in evidence under Section 35 of the Indian Evidence Act in order to prove a family custom of inheritance, or, under Section 48 as the record of opinions as to the existence of such custom by persons likely to know of it. In giving their Judgment their Lordships say "These *wajib-ul-arz*, or village papers, are "regarded as of great importance by the "Government. They were directed to be made "by Regulation VII. of 1822," the 9th Section of which enacts that—

"It shall be the duty of collectors and other officers "exercising the powers of collectors, on the occasion of "making or revising settlements of the land revenue, to "unite with the adjustment of the assessment and the investi- "gation of the extent and produce of the lands, the object of "ascertaining and recording the fullest possible information in "regard to landed tenures, the rights, interests, and privileges of "the various classes of the agricultural community. For this "purpose their proceedings shall embrace the formation of as "accurate a record as possible of all local usages connected "with landed tenures, as full as practicable a specification of "all persons enjoying the possession and property of the soil, or "vested with any heritable or transferable interest in the "land."

and it was specially ordered that—

"The information collected on the above points shall be so "arranged and recorded as to admit of an immediate reference "hereafter by the Courts of Judicature."

As this Regulation was passed at the time of the introduction of a regular settlement of the land revenue into "the Ceded and Conquered "Provinces," under which designation the districts afterwards known as "the North-Western "Provinces" were at that time included, the object of the Government appears to have been to obtain a body of reliable contemporary evidence upon matters which might afterwards come into controversy, not only between the landholders and the Government, but between rival claimants to estates.

Regulation VII. of 1822 was repealed, as regards the North-Western Provinces, by Act XIX. of 1873, and it is to be observed that this Act, while providing, in the 62nd and following Sections, for the maintenance of a careful "record of rights" in each mahal, no longer included a record of "local usages "connected with landed tenures" among the particulars to be entered. It was probably considered that, during the fifty years which had elapsed between the passing of the Regulation and the Act, such usages had been sufficiently ascertained, and that it was desirable that reference should be made to the earlier records when the existence of any such usage was asserted. For it is clear from a subsequent Judgment of this Committee in the case of *Uman Parshad* v. *Gandharp Singh* (L.R. 14 I.A. 127) that, in later years, at any rate, attempts have been made by some proprietors to use these records as an indirect means of giving effect to their wishes with regard to the nature of their tenure, or the mode of devolution of their property after their death. When this has been the case, as

Lord Hobhouse observes (*ubi supra* p. 135) these records are "worse than useless, they are "absolutely misleading."

The *wajib-ul-arz* relied on in this case appears to have been verified by Dhanraj on the 2nd of July 1877, and was therefore recorded under Act XIX. of 1873. It relates to a village called Daidana. Under the head of "Inheri-"tance, second marriage, and adoption," the 10th paragraph contains the following statement:—

"I am the only zemindar in this village. I am a "Marwari Brahmin. Seven years ago I adopted my sister's "son, Murli. He is my heir and will be the owner. If, after "this agreement, a son is born to me, half the property will be "received by him and half by the adopted son. If more than "one son are born to me, the property will be equally divided "among them, including the adopted son, as brothers. I have "two wives now. They will receive thair maintenance from "him (Murli) during their lifetime. If there are several "sharers in future, each sharer shall be at liberty to marry a "second wife in face of the existence of his first wife. No "limit is fixed. After the death of a sharer his estate will be "divided in equal shares with reference to the number of "brothers and not with reference to the number of wives. If "one widow has children and the other is childless, the latter "will receive a necessary maintenance. If a sharer dies "without issue, his widow will be the owner of his property. "If there are two widows, both of them will receive equal "shares, and on their death the brothers and nephews of their "husband will own the property according to their rights. A "widow shall be competent to adopt a near relative in the "family of her husband. There is no need for a will by "husband. After the death of that widow her adopted son will "be the owner of her property. If a widow marries again, "she would be entirely excluded from inheritance. A sharer "shall be at liberty to adopt his sister's son, or brother's son or "daughter's son, whomsoever he may like, and after his death "his adopted son will inherit his property."

Dhanraj died on the 3rd April 1885, without having made any other disposition of his property, and leaving him surviving, beside the adopted son Murli Dhar, a natural-born son named Nand Lal, who died childless in November 1887. No question now arises as to the family custom with regard to adoption alleged in the *wajib-ul-arz*, both Courts in India having held

that the evidence adduced by the Plaintiff fell far short of establishing such a custom. Moreover it was decided by this Committee, in the case of *Bhagwan Singh* v. *Bhagwan Singh* (L. R. 26 I. A. 153), that under the general Hindu law applicable to the twice-born classes, the adoption of a sister's son is wholly void. The Plaintiff's title to succeed as an adopted son to the property of Dhanraj is no longer suggested.

The only point remaining for consideration is whether the clause in the *wajib-ul-arz* can be treated as a will, under which the Respondent is entitled to take, as a *persona designata*, independently of the adoption. It is unnecessary, and it would be incorrect, to lay down, as a general proposition, that a recital in a *wajib-ul-arz* cannot operate as a will in the case of a Hindu. In *Mathura Das* v. *Bhikhan Mal* (I. L. R. 19 All. 16), where the *wajib-ul-arz* contained these words, "Musammat Sohni, "wife of my son Salig Ram, shall be regarded "as the owner (*malik*) after my death," both parties agreed that the statement amounted to a testamentary bequest in favour of Sohni, and the High Court gave effect to it. The weight to be given to such statements must depend, in each case, on the circumstances in which the entries were originally made, and the corroboration they receive from extrinsic evidence.

Looking at the words used in the *wajib-ul-arz* in the present case, and assuming for the moment that it should be treated as a will (in order to take the point of view most favourable to the Respondent, who was not represented by Counsel at the hearing of this Appeal), their Lordships have to consider whether it was the intention of Dhanraj to make the boy whom he had adopted his heir irrespective of adoption, or whether "the assumed fact of his adoption was

" not the reason and motive of the gift, and " indeed a condition of it" (*Fanindra Deb Raikat* v. *Rajeswar Dass*, L. R. 12 I. A. 72, at p. 89). " The distinction," as Sir Richard Couch observes, in giving the Judgment of this Committee in the case just quoted, " between what is descrip- " tion only, and what is the reason or motive of " a gift or bequest, may often be very fine, but " it is a distinction which must be drawn from " a consideration of the language and the sur- " rounding circumstances."

In the present case, their Lordships have come to the conclusion that the words used are descriptive only. The right of Murli Dhar to inherit is based entirely on the fact that he was an adopted son, adopted seven years previously in virtue of a special custom which is thus stated " A sharer shall be at liberty to adopt " his sister's son or brother's son or daughter's " son, whomsoever he may like, and after his " death his adopted son will inherit his " property." This is not a similar case to that of *Bireswar Mookerji* v. *Ardha Chunder Roy* (L.R. 19 I.A. 101), in which the will was made prior to adoption, and the bequest was to the lad by name, for reasons independent of adoption though likely to lead to it; nor does it come within the ruling of this Committee in the case of *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee* (L.R. 3 I.A. 253) in which it was held that there was a gift of his property by the testator to a designated person (the words being " I declare that I give my property to Koibullo " whom I have adopted "), and that this gift was not dependent on the performance of certain ceremonies by his widows. In the present case, their Lordships are of opinion that it was the intention of Dhanraj to give his property to Murli Dhar as his adopted son capable of inheriting by virtue of the adoption; and that as

the adoption was invalid according to the general Hindu law, and not warranted by family custom, it gave no right to inherit, and the gift therefore had no effect upon the property.

The learned Judges of the High Court appear to have been influenced in coming to their decision by the fact that, under the *wajib-ul-arz*, Murli Dhar was to get half the property, and that this was "more than a "validly adopted son would get. This is an "indication," they say, "that the adoption was "not the reason or motive of the bequest." But what are the words used? "If, after this agree- "ment a son is born to me, half the property "will be received by him, and half by the "adopted son." This is not a gift to Murli Dhar personally, but a division of the estate according to the family custom which Dhanraj was endeavouring to establish, and according to which the adopted son was to take an equal share with natural-born sons.

In the opinion of their Lordships the claim of Murli Dhar wholly fails, and they will humbly advise His Majesty that the Appeal ought to be allowed, and that the Decrees of the Subordinate Judge and the High Court ought to be reversed, and the Plaintiff's suit dismissed, with costs in both the lower Courts. The Respondent must also pay the costs of this Appeal.