

1891.

IN RE
RAGHUNÁTH
MAKUND.

tions as privies and cesspools have been executed in accordance with sanitary regulations. In the present case, the building has been provided with these accommodations. It is so far complete. We are of opinion that the word "completion" must be taken in its ordinary meaning, and that the Court must not read into the section "in accordance with sanitary regulations" or "sanitary officers' opinions."

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1890.

May 12.

KUVERJI (ORIGINAL PLAINTIFF), APPELLANT *v.* BA'BA'I (ORIGINAL DEFENDANT), RESPONDENT.*

Estoppel—Indian Evidence Act (I of 1872), Sec. 115—Estoppel by conduct—Mistake of law—Adoption—Acknowledgment of adoption.

One Ganpatráv Ráje Shirke was possessed of considerable property both in British territory and in the territory of His Highness the Gáikwár. He died in 1858, leaving three childless widows, Laxmibái, Savitribái and Bábái. Shortly after his death, the plaintiff Kuverji, who was then a minor, was taken to Baroda by Laxmibái, and on her representations as well as those of her co-widows he was acknowledged by the Gáikwár as their adopted son, and as such entitled to succeed to all the estate and privileges enjoyed by the deceased Ganpatráv. For several years afterwards the widows treated the plaintiff as the legitimate heir and successor of Ganpatráv in respect of the Baroda property. With regard to the estate in British territory, the widows at first put forward Kuverji as the adopted son of Ganpatráv. On their application a certificate of heirship was issued under Regulation VIII of 1827, declaring that "the Báis were the widow heirs, and the minor Kuverji the son heir, of the deceased Ganpatráv." In one case the widows obtained a decree as guardians of the minor, on a bond executed in favour of Kuverji as heir to Ganpatráv. When the Bombay Summary Settlement Act (II of 1863) was passed, the widows accepted the summary settlement in respect of the inám holdings of their deceased husband, and thereupon the holdings were entered in their names in the Government records. Finding themselves secure in the possession of their husband's estate, the ladies now dropped the allegation of adoption, and dealt with the property in British territory in their own right, and not as trustees or guardians of the minor Kuverji. In 1871, Kuverji sought to have part of the property in British territory transferred to his own name as the adopted son of Ganpatráv. The widows resisted this attempt and denied his adoption. In 1881, Kuverji made a similar attempt, but failed, the Revenue authorities having eventually resolved to leave the question of Kuverji's title by adoption to be determined by the Civil Court.

* Appeal, No. 80 of 1886.

1890.

KUVERJI
v.
BÁBÁI.

In 1884 Kuverji filed the present suit against the widows of Ganpatráv for a declaration of his adoption by Ganpatráv and for possession of Ganpatráv's estate in British territory. The widows denied the *factum* of the adoption, and disputed its validity. They also contended that the suit was barred by limitation. The Agent for Sardárs in the Dekkhan, who tried the case, dismissed the suit, holding that the plaintiff's adoption by Ganpatráv was not proved, and that the claim was barred by limitation, the widows having been in adverse possession of the property in British territory for more than twelve years.

The plaintiff appealed against this decision to the High Court, contending (*inter alia*) that the widows were estopped by their conduct from denying the plaintiff's adoption.

Held, that the widows were not estopped.

Per BIRDWOOD, J.:—The fact that the plaintiff was put forward by the widows as *their* adopted son in the Baroda territory did not estop them from disputing the plaintiff's allegation that he was adopted by Ganpatráv. Nor was the circumstance that the widows and the plaintiff obtained a joint certificate of heirship to Ganpatráv in British territory conclusive as an estoppel.

Per JARDINE, J.:—There was no estoppel, (1) because there was nothing to show that the plaintiff had been led to alter his position in life through belief in any misrepresentations made by the widows, and (2) because the widows might have been under the same mistake of law as the plaintiff, *viz.*, that the Gáikwár's recognition of his adoption created a status operative everywhere, as well in British territory as in the Gáikwár's territory.

APPEAL from the decision of E. T. Candy, Acting Agent for Sardárs in the Dekkhan, in Suit No. 3 of 1884. The plaintiff sued for a declaration that he was the adopted son of one Ganpatráv Ráje Shirke, and as such entitled to have his name entered in Ganpatráv's place in the Government records, and to recover possession of the whole of Ganpatráv's property in British territory, excepting a portion set apart for the defendants' maintenance.

Ganpatráv belonged to a Marátha family of high rank and position in the Dekkhan. He was related to His Highness the Gáikwár of Baroda, and owned a *págá* or the hereditary right to command a certain number of horse in the service of the Gáikwár. He was possessed of considerable property both in British India and in the Gáikwár's territory. He died in 1858, leaving three childless widows, *viz.*, Laxmibái, Savitribái and Bábái. Within a few months after his death the plaintiff Kuverji, who was then a minor about twelve years old, was taken to Baroda by Laxmibái, and on her representations as well as those of her co-widows the Gáikwár publicly acknowledged Kuverji

1890.

Kuverji

v.
Bábái.

as their adopted son, and as such entitled to succeed to all the honours and privileges enjoyed by the deceased Ganpatráv. Since that time the ladies treated the plaintiff as the legitimate heir and successor to the whole of their husband's estate in Baroda territory.

With respect to the estate in British India, the ladies at first put forward Kuverji as the adopted son of Ganpatráv. On their application the District Judge of Poona granted a certificate of heirship under Regulation VIII of 1827, declaring that "the Báis were the widow heirs, and the minor Kuverji the son heir, of the deceased Ganpatráv." On one occasion they obtained a decree as guardians of their minor son on a bond executed in favour of Kuverji as heir to Ganpatráv.

In 1863, when the Bombay Summary Settlement Act (II of 1863) was passed, the widows accepted the summary settlement in respect of the inám holdings belonging to their deceased husband. And thereupon the holdings were entered in their names in the Government records. Finding themselves thus secure in the possession of their husband's estate, they dropped the allegation of Kuverji's adoption, and began to deal with the property in British territory in their own right, and not as trustees or guardians of the minor Kuverji.

In 1871 Laxmibái died. Thereupon Kuverji applied to the revenue authorities to transfer the property in the Sátará District from her name to his own. Savitribái and Bábái resisted this attempt, and utterly repudiated his status as the adopted son of Ganpatráv.

In 1881 Kuverji made a similar attempt to have the property in the Konkan transferred to his name, but failed, the revenue authorities having finally resolved to leave the question of Kuverji's title by adoption to be decided by the Civil Court.

In 1884 Kuverji filed the present suit against Savitribái and Bábái to establish his adoption, and to recover his adoptive father's property in British India.

The suit was filed in the Court of the Agent for Sardárs in the Dekkhan. Pending the suit, Savitribái died. Thereupon the suit was proceeded with against Bábái alone.

Bábái in her written statement pleaded that the plaintiff was not adopted by her husband Ganpatráv, that Ganpatráv was not competent to adopt the plaintiff, and that the suit was barred by limitation.

The Agent for Sardárs held that the plaintiff's adoption by Ganpatráv was not proved; that even if the ceremony of adoption was performed by Ganpatráv, it was invalid, as he was suffering from sanious leprosy; that the widows of Ganpatráv held the property in British territory in their own right, and not on sufferance from the plaintiff in lieu of maintenance; that since 1873 they utterly repudiated the plaintiff's *status* as the adopted son of Ganpatráv; and that their possession having been adverse to the plaintiff for more than twelve years, the suit was barred by limitation.

With regard to the property at Baroda, the Agent for Sardárs found as follows:—

“It is evident that some months after Ganpatráv's death (27th December, 1858) the eldest widow, Laxmibái, went to Baroda with the present plaintiff, Kuverji, who was then a boy about twelve or thirteen years old, and was related to the Gaikwár; and it is conclusively shown that Khanderáv acknowledged Kuverji as the successor to all the estate and privileges enjoyed by the deceased Ganpatráv. I do not say that it is shown that Khanderáv admitted Kuverji as a son *validly adopted by Ganpatráv*. The presumption is, I think, to the contrary. But it is clear that on Laxmibái's representations, Khanderáv fully recognized Kuverji as the son and heir of Ganpatráv, whether as adopted by Ganpatráv or by Ganpatráv's widow Laxmibái. It may easily be understood that the authorities were not so particular in Baroda in recognizing an adopted son as they would be in British territory. Khanderáv was closely connected with Ganpatráv. He would naturally listen to Laxmibái's request not to let Ganpatráv's important rank and estate lapse for failure of a male successor; and so he recognized Kuverji as son of Ganpatráv, and a few years afterwards married him to Kamábái, the daughter of his brother Malharráv. * * * * *

“In my opinion it is clear that for several years after Ganpatráv's death the three Báis (widows) fully recognized Kuverji as son and heir to Ganpatráv in respect of all the Baroda property; but the property in British territory was entered in their names, and they did not show by their conduct that they considered themselves trustees for Kuverji in respect of the property.”

On these grounds the Agent for Sardárs dismissed the plaintiff's suit.

Against this decision the plaintiff appealed to the High Court, contending (*inter alia*) that the widows of Ganpatráv were

1890.

Kuverji

v.

Bábái.

1890,

KOVERJI

v.
BA'BA'I.

estopped by their conduct from disputing either the *factum* or the validity of the plaintiff's adoption.

Jardine (with Ráo Sáheb *Vásudev Jagannáth Kirtikar*) for appellant.

Branson (with *Mahádev C. Apte* and *Vásudev G. Bhandárkar*) for respondents.

The facts of the case and arguments of counsel are fully stated in the judgment of *Jardine, J.*

BIRDWOOD, J.:—The history of this case and the evidence relied on by the parties are fully and carefully set out in Mr. Candy's judgment. On a consideration of the evidence, and of the arguments presented to us at the hearing of the appeal, I am clearly of opinion that his decision is correct. The evidence relied on by the plaintiff to prove the alleged adoption is meagre; whereas, considering the rank of the Shirke family, an event of such importance would, in all probability, if it ever took place, have been established, even after the lapse of twenty-six years, by ampler and better evidence. It certainly weakens the case for the plaintiff that several persons who might have been called to prove it have not been called; while, on the other hand, the defendants call several witnesses who were so closely connected with the family that they would most probably have been able to give evidence regarding the ceremony if it was performed by the deceased Ganpatráv; and yet these persons distinctly deny that there was any adoption by Ganpatráv. The impression left on my mind by a perusal of the evidence is that either the alleged adoption never took place, or that, if it did, it was not performed with such publicity as is claimed for it by one of the witnesses, and, moreover, that Ganpatráv must at the time (9 or 10 P.M. on the 26th December, 1858) have been so reduced in strength by the disease of which he died at 2 P.M. on the 27th December, that, if not unconscious, he was most probably incapable of understanding the nature of his act or indeed of performing any act "requiring the exercise of the powers of judgment and reflection." I have no difficulty, therefore, in holding with the Agent for Sardárs that "the adoption is not proved and was invalid, even if the ceremony was performed."

The argument of the learned counsel for the appellant was, however, mainly directed to the question whether the defendants were not estopped by their conduct from denying the adoption. There can be no question that the plaintiff was put forward by the defendants as an adopted son in the Baroda territory, and that he derived great personal advantage from the recognition by His Highness the Gaikwár of his status as an adopted son of the deceased Ganpatráv. But I see no reason to dissent from the conclusion arrived at by the Agent that it was as a son adopted by the widows of Ganpatráv, not by Ganpatráv himself, that the plaintiff was admitted to the honours and property of the Shirke family at Baroda. There is no evidence to warrant a finding, in the terms of section 115 of the Evidence Act, that the respondent has, by her declaration, act or omission, intentionally caused or permitted the plaintiff to believe that he was adopted by Ganpatráv and to act upon such belief. No such plea was set up on behalf of the plaintiff in the Court below; and it is obvious that, even if the widows did not themselves adopt the plaintiff,—a matter which does not form the subject of inquiry in the present case,—any belief as to such an adoption which they may by their conduct have induced in the plaintiff's mind would not estop them from now denying that the plaintiff was adopted by Ganpatráv. It is not impossible that the plaintiff and the defendants were really acting in concert at Baroda. If that was so, then it would not have been in consequence of any conduct on the part of the respondent, or her co-widows, who are now dead, that the plaintiff consented to give up his rights in his natural father's family in order to secure wealth and position at Baroda.

Nor, again, is the circumstance that the widows and the plaintiff obtained a joint certificate of heirship to Ganpatráv from the Poona District Court under Regulation VIII of 1827 conclusive as an estoppel. The circumstance is susceptible of the explanation suggested by Mr. Candy.

The decision of the Court below must, in my opinion, be upheld on the merits; and I think it unnecessary, therefore, to discuss the point of limitation arising in this case, which has also been decided by the Agent against the plaintiff.

1890.

KUNVERJI
v.
BA'BA'I.

1890.

KUVERJI
v.
BA'BA'I.

The decree of the Court below must be confirmed with costs.

JARDINE, J.:—This suit was filed on the 2nd July, 1884, in the Court of the Agent for Sardárs in the Dekkhan. The plaintiff sets forth that the plaintiff Kuverji was in 1858 adopted by Ganpatráv bin Wághojiráv Ráje Shirke before his death. The cause of action is dated as of the 10th October, 1881. The prayer among other reliefs claims a declaration that the plaintiff is the adopted son of Ganpatráv, and a decree for possession of certain property in the British territories under the Presidency of Bombay. The defendants Savitribái and Bábái, widows of Ganpatráv, contested the whole claim, alleging that the plaintiff was not adopted by Ganpatráv, that Ganpatráv was not competent to adopt, and that the suit was barred by limitation. The learned Agent for Sardárs rejected the claim with costs, for reasons fully set forth in his judgment, holding it to be time-barred and to fail on the merits.

The defendant Savitribái died before the decree was passed. Kuverji has appealed here, making Bábái the sole respondent.

Towards the end of the hearing, Mr. Wásudev for the appellant faintly argued that if this Court were to hold the adoption by Ganpatráv unproved or invalid, the appellant is entitled to succeed on proof that, after the death of Ganpatráv, his widows or one of them adopted Kuverji at Baroda, which adoption had been recognized as valid by Khanderáv Gáikwár of Baroda, the prince in whose territories this adoption occurred. This point is also taken in the petition of appeal. But in opening the case for the appellant, Mr. Jardine, his counsel, practically repudiated this ground, resting his client's case on the adoption by Ganpatráv and describing the Agent's finding about the acts done at Baroda as setting up a new case, his own being that these acts were not an adoption there and then, but evidence and recognition of the adoption made in Ganpatráv's life-time. It appears to us clear, from the pleadings and proceedings, that the parties went to trial on the question of an adoption by Ganpatráv : and following the rule of decision *secundum allegata et probata* we must confine the appeal to that question.

The adoption by Ganpatráv is alleged to have been made at his house at Kadve, in the territory of the Pant Sachiv, which is

in the Dekkhan. It is not disputed that Ganpatráv died on the 27th December, 1858, in the day time. The adoption is said to have occurred during the previous night.

Ganpatráv was a man of high family and rank. He held a lucrative hereditary command of horse under the Gáikwárs of Baroda and other property in the Gáikwár's territory, to which it is admitted Kuverji has succeeded without opposition. Ganpatráv had a sister married to Sayáji Gáikwár: and a daughter married to Khanderáv Gáikwár. Khanderáv admittedly recognized Kuverji as son of Ganpatráv and got him married in 1867 to the daughter of Malharráv, who succeeded to the *gádi* of the Gáikwár's State. It was Laxmibái, the senior widow of Ganpatráv, who soon after his death took Kuverji to Baroda. It is not denied for the respondent that all the widows assented to what the Gáikwár Khanderáv did on Kuverji's behalf: but when we pointedly put the question, to the appellant's pleader, he did not deny that what happened at Baroda was substantially to Kuverji's advancement in life, a matter important with regard to what was contended here, that the respondent is bound by estoppel.

In the Court of Agent for Sardárs it was contended that the widows (defendants) had in documents and by acts and conduct admitted the status of plaintiff as Ganpatráv's adopted son: but although no issue about estoppel was raised below, it was urged in the appeal that these admissions and conduct amounted to estoppel under section 115 of the Indian Evidence Act, precluding them from denying the fact or the validity of the alleged adoption by Ganpatráv. Much of this evidence relates to Kuverji's time of residence at Baroda and to the affairs transacted there and the property in the Gáikwár's territory about which the Gáikwár had power to pass orders. The Agent states his opinion that the widows treated Kuverji as an adopted son, *quá* Baroda affairs and the property under the Gáikwár's power: but did not recognize Kuverji's rights, as adopted son, except for a short period, *quá* the property in British India, most or all of which was held of the British Government.

The Agent for Sardárs may be expected to have a considerable acquaintance with the past policy of the Government as regards

1890.

Kuverji

BABA I.

1890.

KUNVERJI
v.
BĀBĀL.

the recognition of adoptions in families in hereditary possession of ináms and allowances granted by the Peshwás and other predecessors of the British Government. I agree with the Agent in the surmise he puts forth after discussing the proceedings before the Inám Commission in Ganpatráv's time and his death—Exhibits 262, 263, 49, 88, 264, 266, 82, and 241. The widows, he thinks, had reason to fear that the British authorities would refuse to recognize any alleged adoption of a son by Ganpatráv, because it had not been formally sanctioned by the Government. The previous policy was reviewed by the Government of Bombay and a strict practice directed for the future under the orders of the Court of Directors in 1855 as appears from the official records on Captain Cowper's minute about adoptions and the statement of Sir J. P. Willoughby, a distinguished member of the Bombay Government, in his discussion of the Ahmednagar State case—Bombay Government Selections, New Series, Vol. XII, page 188, and Vol. XXVIII, page 61.

In the absence of evidence regarding motive, the Court can only state it as a surmise that the widows or their advisers may also have had reason to apprehend that the Government might in the absence of a male heir resume then, or on the widows' deaths, all or some of the property held of the Government. Whether the allegations were true or false, they may have thought that it suited the family interests to put forward a male heir,—that is, by alleging that Ganpatráv had adopted a son. It may also be surmised that one reason for dropping action on the allegations made by the widows' agent Chimnáji in Exhibit 88 and on the certificate of heirship, Exhibit 82, in 1860 may have been the levity or indifference of the Government which refrained from resumption of the property as is shewn by orders dated 1862 and 1863.

Turning from the state of affairs in British India at the time to that existing in Baroda, I am of opinion that the learned Agent is right in his view that what was done there must be considered in relation with the power of the reigning prince, a factor which could not but greatly influence the conduct of all the members of the family. The Gáikwárs, in those days at least, were not governed by the restraints of constitutional monarchs. If any one

had been brave enough to tell the Gáikwár, as Coke did King James I (case of prohibitions del Rey, 6 Coke R.), that he was inferior to the law, it is likely enough that the Gáikwár would have been greatly offended and said, as King James did, that this was treason. Probably the maxim *rex nil potest jubere nisi per curiam legitime constitutam* did not apply. There is nothing to show that Khanderáv Gáikwár made or caused to be made any inquiry into the fact of an adoption of Kuverji by Ganpatráv. The Agent for Sardárs inclines to think that as his dispositions were favourable to the ladies of the Shirke family, he readily allowed them to adopt a successor to succeed to the valuable property in his territory, a male being required by custom. I concur in the statement of the Agent that Khanderáv acknowledged Kuverji as the successor to all the estate and privileges enjoyed by the deceased Ganpatráv. The evidence relied on by the plaintiff shows that the recognition was made publicly at a Court ceremonial. It was most effectual in its consequences and advantageous to Kuverji, the widows, and probably to all the Shirke family. This solemn act of the Gáikwár cannot, therefore, be treated as outside the range of jurisprudence. It may have led the widows into some mistake about its legal effect on Kuverji's status in British India and on the property in British India. It is necessary, then, to advert to its legal effect as well as to the views which the widows might naturally take of it in order to weigh the subsequent conduct of the widows and to estimate the meaning of their reference to Kuverji in the documents of later date for the purpose of seeing how far the Court can go in treating this conduct and these documents as estoppel or as admissions.

The Agent for Sardárs has, I think, rightly estimated the force of the Gáikwár's act. He has practically treated it as according to Bar (Savigny's Private International Law, Guthrie's Translation, p. 263) the older writers treated legitimation bestowed *per rescriptum principis*, confining its effect to the territory of the grantor. See also the Note on Legitimation and Adoption in Story's Conflict of Laws, 8th Ed., p. 142. I am inclined also to the opinion that in order to give a title to immoveable property in British India it is requisite that the adoption should be valid according to the *lex loci rei sitæ*: Wheaton's International Law,

1890.

Kuverji

v.

Ba'ba'í.

1890.

KUVERJI
v.
BA'BA' I.

Boyd's Edition, p. 118. In applying the doctrine of estoppel where the parties may have been in doubt or under mistake as to the law, the peculiar circumstances must be kept in mind in order to explain the conduct. Here I think an illustration can be found in the law of legitimation. The interest of all parties coincided in getting the Gáikwár to treat Kuverji as a lawful son of Ganpatráv; exactly as the owner of landed estate in both England and Normandy at the time when the Statute of Merton was passed, having a bastard son, might advisedly marry the mother in order to legitimate the bastard *per subsequens matrimonium* under the canon law prevailing in Normandy, so that he might inherit the estate in that country. See *Birtwhistle v. Vardill*⁽¹⁾. There would be more motive for entering into wedlock if the legitimation of the *ante natus* saved those estates from confiscation; and parental pride would be still more deeply engaged if as a further result he were ennobled and admitted by marriage into the princely family. We would rather expect all future mention of the *ante natus* to be affectionate or at least respectful, and at any rate not such as would offend the susceptibilities of the despotic prince who had advanced the boy. In this way, ordinary allusions in letters and ordinary affectionate relations can be explained, and explained as existing, whether or not there was any acknowledgment of right of the son to the property in the other country where the law excluded him from inheritance.

Applying these principles to the facts, I would say that the widows' allusions to the plaintiff's heirship are almost irrelevant in the present suit, unless they distinctly relate to the property in British India: and as regards the law, the widows and their advisers may have been perplexed as to the legal effect of the acts of the Gáikwár. Similar questions as to the effect given by the comity of States have led to different opinions among Jurists and Judges, of which *In re Goodman's Trusts*⁽²⁾ is an illustration. One reason why I would confine the effect of the Gáikwár's recognition to the territory of the Gáikwár is that it does not appear to have been a judicial act. Its effect was that the property there enjoyed by Ganpatráv was not confiscated by the prince.

(1) 5 B. and C., 438; 6 Bing., N. C., 385.

(2) 17 Ch. D., 266.

The domicile of the plaintiff appears to have been in the Pant Sachiv's country, until he went to Baroda after Ganpatráv's death.

After this endeavour to state the peculiar circumstances of the family, I now advert to the evidence on various questions of fact which have been fully argued.

As to the *factum* of the ceremony of adoption by Ganpatráv, I agree with the Agent for Sardárs that it is not proved. The three eye-witnesses, Báherji (witness 135), father of the plaintiff, Tanáji (witness 107), brother of Báherji, and on his own statement next heir to Ganpatráv, and Vithal Náráyan (witness 140), a family priest, are in some points discrepant with each other. This Vithal and Kashirám Khanvalkar (witness 134) live at Baroda and are dependents of the plaintiff. If, as one of these witnesses says, there were above hundred people present when the sugar was given, more witnesses ought to have been called. As the Agent notices, there is no trace of any letter to the Agent for Sardárs announcing the adoption. There is also no written announcement suggested to the Gáikwár of Baroda, nor to the prince in whose territory at Kadve the alleged adoption occurred, the Pant Sachiv, nor to any of the relatives or acquaintances of rank.

The alleged ceremony is placed at Kadve during the night preceding the day of December 27th, 1858, during 8 to 10 P.M. During the appeal it was pointed out by Mr. Branson for the respondent, that it is also the plaintiff's case that Ganpatráv died on the 27th December at 2 P.M. This is admitted. He urges that the discrepancy changing the date of the adoption to the 26th December is designed with a view to leave a reasonable time of consciousness between the ceremony and the death. Mr. Vásudev, for the appellant, tried to explain the matter as follows:— The witnesses have adhered to one native date, Mángashirsh, Vadya 8th; and he produced a native almanac of the year 1858 to show that this Vadya 8 begins according to native computation some time in the night following our day 26th December. But he did not show or argue that Vadya 8 began so soon as 10 P.M. of the 26th December; and, therefore, I do not think the discrepancy is explained, nor is there any sufficient reason to

1890.

KUNVERJI

BA'BA'LI

1890.

Kuverji

v.
Ba'bal.

suppose that the witnesses compute time in the exact manner we were asked to presume.

On considering the meagre and discrepant evidence above noticed, the absence of the usual announcements to the British Government, the Gáikwár and the Pant Sachiv, the shortness of time before the death, and the serious illness of Ganpatráv, I incline to the opinion of the Agent for Sardárs that it is not proved that Ganpatráv was of sufficient capacity at the time to understand the nature of such an act as adoption—*Tayammaul v. Sashachalla*⁽¹⁾.

The Agent for Sardárs has recorded a finding that even supposing the plaintiff was adopted by Ganpatráv, the adoption was invalid because Ganpatráv was suffering from sanious leprosy. Evidence was taken on the subject, and the point was argued below and here. But it is contended for the appellant that this Court ought not to act on this finding, as there was no issue about sanious leprosy, nor any allegation in the pleadings; the only issue at all applicable being couched in these general terms. "Is the plaintiff the lawfully adopted son of the deceased Ganpatráv?" If it were necessary to decide the question of sanious leprosy, I am of opinion that we would use a right discretion by referring an issue for trial, following the Judicial Committee of the Privy Council in the case cited to us, *Oolagappa Chetty v. Hon. D. Arbutnot*⁽²⁾, where their Lordships say of a general issue "that issue was too general; it involved several mixed questions of law and fact, and did not sufficiently direct the attention of the parties to the main question of fact necessary to be decided."

The evidence about what Khanderáv Gáikwár did in regard to the plaintiff's status, is meagre. The plaintiff's witness, 137, Hari Vithal, makes statements to the effect that the Gáikwár assented to the senior widow Laxmibái returning to Dekkhan to adopt Kuverji and to obtain the sanction of the British Government. After consideration I agree in the view taken by the Agent for Sardárs and stated in different paras. of his judgment. There is no evidence that the Gáikwár made inquiry about the

⁽¹⁾ 10 M. J. A., 429.⁽²⁾ L. R., 1 Ind. Ap., 268 at p. 316.

fact of the ceremony or its validity. There is evidence of what the British Resident, in 1871, calls a sanction; or what may be called a recognition of Kuverji's status as heir. Some accounts of May, 1860, show payments on account of an adoption already past "*dattak ghetlya badal*;" but the terms used are concise and ambiguous, as may be expected in mere accounts. The recognition and its results depended on the mere will of the prince: Kuverji was his relation, and his legitimation of Kuverji was tantamount to abstaining from confiscating the property to the benefit of his own exchequer. If Khanderáv looked on Kuverji and his family with affection, it suited him and the friends of Kuverji as well as the widows who looked for maintenance that the property should be continued to Kuverji.

I now turn to the evidence relied on as admissions of the alleged adoption, and as constituting estoppel. It has been argued for the appellant that the respondent cannot urge that Kuverji has the status of adopted son in the Gáikwár's territory, and has not that status in British India. But the analogous case of the *ante natus* shows this argument to be unfounded. A large number of letters have been put in by the plaintiff in which he is mentioned by the widows in terms which it is said presume close relationship, *e.g.*, the word "*chiranjiv*" which is a diminutive with a mixed sense of respect and endearment like the Italian "*signorino*." There occur also a good many formal blessings. But considering that Kuverji was by birth a relation, and by status an adopted son at Baroda where he usually dwelt, these words might reasonably be used to him; they are not restricted to sons. It has been pointed out also by Mr. Branson that in none of them is he called there adopted son and seldom their son. It followed from the recognition of Kuverji by the Gáikwár that he should perform such family *shradhs* as were required to be done, he performing them at Baroda; while there is one document at least which suggests an inference that the widow meant to perform a *shradh* herself.

As regards the plaintiff and the widows living and eating together, I take these facts as evidence of familiar relationship, but not as admissions that the plaintiff was entitled to the property in British India. I concur generally in the conclusions drawn by

1890.

 KUVERJI
 v.
 BA'BA L.

1870,

Kuverji

Bábái

the Agent for Sardárs regarding the memorials and correspondence between Government, the Resident and the Darbár in 1871 and 1872 which are sufficiently set forth in the judgment below. I do not infer that the respondent admitted the plaintiff's adoption by Ganpatráv or his title to the British India property: and to be relevant the admissions must relate to these facts.

I now turn to this part of the admissions. Exhibit 88, dated the 5th January, 1860, is a very plain admission in a petition to the Inám Commissioner of the alleged adoption. The certificate of heirship, Exhibit 82, dated the 14th August, 1860, which is worded in extraordinary terms, coincides therewith. The Judge who issued it could only have supposed Kuverji to be a "son heir" by supposing him to be an adopted son. In 1862 the Government intimated that it would continue the estate: and so far as the widows are concerned, it may be assumed that they got what they wanted, and did not care to press for a recognition of the adoption. I see no reason to differ from the Agent's statement of this part of the case. It is clear that in 1860 the respondent relied on the fact of the adoption. This explains the filing a suit in 1863 in Kuverji's name on a bond executed in his favour in 1859. But this piece of evidence is slight and isolated: it is also neutralized by the fact of other proceedings being taken in the name of the widows about this time.

It is to be remarked about the money transaction, the petitions and other matters of business, that Bábái and, doubtless, the other widows were *pardá* ladies and must have relied on what their advisers told them. Their position was one of some difficulty, as they may have been informed that an unrecognized adoption would not avail either before the Government of Bombay or the Gáikwár: and we may not safely assume that all their statements have been true or always made in good faith. In *Tayam-maul v. Sashachalla*, the Judicial Committee take into consideration the experience of our Courts, that the doings of Hindu females in matters of legal business are not always the results of personal knowledge.

The power of attorney (Exhibit 49) is much relied on by the plaintiff in connection with the certificate of heirship. It is only

a copy of an uncertified copy of some original of the foreign State of the Pant Sachiv. I do not think it is proved, and even if it were, I would not draw any important inference from it.

In August and September, 1884, after this suit had been instituted, Savitribái seems to have made written admissions of the plaintiff's adoption—Exhibits 100, 101 and 103—and to have been promised maintenance. It would appear from these papers that the plaintiff's status as adopted son has not yet been recognized by the Pant Sachiv or his officers. The value of these documents as admissions is reduced by the repudiation in Exhibit 112, and by Savitribái giving no evidence about them, being too feeble when put in the witness box. The evidence about the mortgage in 1879 discloses a sort of admission by the respondent. But, as pointed out by the Agent for Sardárs, *pardánishin* ladies are very much in the hands of their agents, and it is familiar experience that such people are very often induced to make statements or do things in order to get a present advantage, which statements and acts are used against them in later litigation as admissions, and complicate the evidence that comes before the tribunal.

I think the various admissions are capable of the explanations suggested, and that they do not impair the impression arising from the other evidence that there was no adoption. If there had been, there would have been plenty of written announcements and evidence of numerous eye-witnesses. The plaintiff has not even called his own brother, who is said to have been present. It is vain to ask the Court to infer an adoption of so public a kind from the vague allusions in letters written about other matters, from forms of compliments, and such doubtful things.

It remains to deal with what the plaintiff's counsel relies on here more than on the evidence of the *factum*, *i.e.*, estoppel. Now this was not set up in the pleadings below. I do not think it is shown that the plaintiff has been led to alter his position in life through belief in any misrepresentations made by the widows or at least by Bábái. He has not appeared as a witness or deposed to that effect. It is not clear that he has

1890.

 KUVENJI
 v.
 BA'BA'L.

1890.

KUNVERJI

BABA L.

left his natural family or lost any estate there. His going to Baroda must have been with the consent of his parents and relatives; his father has lived for years at Baroda. All that can be positively determined is that the Gáikwár Khanderáv, being a sovereign prince whose will was law, determined to treat him as heir to Ganpatráv. He could have done this whether there was an adoption or not; he might have conveyed the property to the plaintiff by a new gift; such matters depended on the will of the Gáikwár, except so far as the British Government might in its mere grace interfere diplomatically. Malharráv followed the same line of conduct. The plaintiff has thus gained largely in wealth and rank. What he has done may, therefore, be referred to his self-interest and the advice of his natural family and the patronage of the princes. He made no attempt to get the alleged adoption by Ganpatráv recognized by the British Government till 1871. He has not got his name entered in place of Ganpatráv as a sardár of the third class. He does not appear to have sought or obtained recognition by the Pant Sachiv. He appears to me very much in the position of an *ante natus* whom his family with natural pleasure might have seen recognized and advanced by the sovereign of Normandy or Aquitaine, and who might under bad advice set up those facts as estoppel to defeat the heir to real estate in England. The conduct of all parties can be accounted for without supposing that the plaintiff's advancement in life is due to any belief in misrepresentations of Bábái; and on the view I take of the effect of the Gáikwár's recognition as a matter of comity, I do not see how the plaintiff's rights in his natural family can be adversely affected thereby, at least as regards British India and probably as regards the Pant Sachiv's State. If the plaintiff has suffered loss in either territory, he ought to have given evidence thereof. But then he did not rely on estoppel at the trial. It is also to be remembered that Bábái may have been under the same mistake of law as the plaintiff. His pleader argues that the Gáikwár's recognition created a status operative everywhere, which is the effect given by the Courts in France and Germany to legitimation granted by a foreign sovereign—Savigny's Private International Law, p. 264. The widows may have

thought the same, and in such case there is no estoppel—*Gopee Lall v. Mussamat Sree Chundraolee Buhoojee*⁽¹⁾; *Vishnu v. Krishnan*⁽²⁾; *Jhinguri Tewari v. Durga*⁽³⁾. For these reasons, I would confirm the decree of the Agent for Sardárs with costs.

1890.

KUVERJI
v.
BA'BA' L.

Decree confirmed.

(1) 19 Calc. W. R., 12.

(2) I. L. R., 7 Mad., 3.

(3) I. L. R., 7 All., 878.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

AHMEDBHOY HABIBBHOY (ORIGINAL DEFENDANT), APPELLANT, v. BA'KRISHNA MUKUND AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1894.

June 14.

Vendor and purchaser—Landlord and tenant—Sale by landlord subject to rights of tenants—Notice to purchaser of such rights—Suit by tenants to enforce rights against purchaser—Civil Procedure Code (Act XIV of 1882), Sec. 30.

Section 30 of the Civil Procedure Code (Act XIV of 1882) authorizes some of the rayats of a village to sue the proprietor of it for themselves and the other rayats for a declaration of their general rights, and for an injunction restraining the proprietor from interfering with their enjoyment of those rights.

Phillips v. Hudson⁽¹⁾, *Smith v. Earl Brownlow*⁽²⁾ and *Mayor of York v. Pilkington*⁽³⁾ followed.

Hallows v. Fernie⁽⁴⁾ referred to and distinguished.

In 1806 the East India Company granted a village to Ardeshir Dady, subject to the rayats' customary rights and privileges which were embodied in Regulation I of 1808, but the deed of conveyance was not passed until 1819, and it was then executed to the executors of Ardeshir, who had died in the meantime. This deed made no reference to rights and privileges of the rayats. In 1868 the defendant purchased the village from its legal owners. In 1889, plaintiffs sued defendant for themselves and on behalf of the other rayats of the village to enforce their rights. The defendant pleaded that as the deed of conveyance of 1819 made no mention of these rights, he was not bound by them.

Held, that as at the time of the conveyance of the village to the defendant, the lands were in the occupation of the rayats, the defendant ought to have made inquiry as to their rights. Having failed to do this he was bound by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him.

* Second Appeal, No. 570 of 1892.

(1) L. R., 2 Ch., 243.

(3) 1 Atk., 282.

(2) L. R., 9 Eq., 241.

(4) L. R., 3 Ch., 467.