1896.

SULTÁN NAWÁZ JUNG v. RUSTOMJI NÁNÁBHOY.

decree of the lower Court we order that the plaintiff's suit be dismissed with costs throughout.

Suit dismissed with costs.

Attorneys for the plaintiff:—Messrs. *Crawford, Burder & Co.*

Attorneys for the defendant:—Messrs. *Craigie, Lynch and Owen.*

ORIGINAL CIVIL.

Before Mr. Justice Parsons and Mr. Justice Strachey.

1896. *February* 21.

KARAMSI MADHOWJI (ORIGINAL DEFENDANT), APPELLANT, *v.* KARSANDAS NATHA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Adoption directed by will—Will—Bequest—Bequest to the boy named for adoption—Conditional gift on adoption—Adoption a condition precedent to such boy taking under the will.

Where a Hindu testator directed that a boy should be taken in adoption, and added "to this boy, all the things mentioned in my will having been done, I give the residue of my estate as his inheritance and I appoint him as my heir,"

Held, that adoption was a condition precedent, and that the boy not having been adopted could not take under the will.

Bireswar v. *Ardhu Chunder*(1) distinguished.

Shámávahoo's case(2) followed.

APPEAL from Farran, J.

Suit for the construction of a will. The testator Kessowji Jádhowji, a Hindu inhabitant of Bombay, died on the 9th February, 1886, leaving a will, dated the 8th February, 1886, of which he appointed the plaintiff his executor. He left a daughter-in-law, named Ladkávahu, who was the widow of his predeceased son Liládhar Kessowji, and by his will he directed that she should adopt the appellant Karamsi Mádhowji, who was his nephew's son, and he gave the residue of his estate "to this lad as his inheritance."

The will directed large sums to be expended in charities, and made provision for his grand-daughter Kesarbái. It will be found

* Suit No. 185 of 1887. Appeal No. 880.

(1) L. R., 19 Ind. Ap., 101. (2) I. L. R., 12 Bom., 202.

(3) See I. L. R., 12 Bom., 186.

set out at length in the report of the case (see I. L. R., 12 Bom., 184). The clause material to this report was the following:—

"28. There is my nephew, Mádhowji Kachra's son, Karamsi Mádhowji, now (living). He is about nine years of age. It is my wish to adopt him as my son. If I should not be able to do so in my life-time, then my son Liládhar's widow is to take the said Karamsi in adoption. His adoption ceremony (*dattvidhán*) is to be performed. My property, which may remain as a residue, after all the things mentioned in my will have been done, I give to this lad as (his) inheritance. And (I) appoint (him) as my heir. Choru Liládhar's widow Ladkávahu is to get him betrothed (the outlays being made) out of my property. For the same about Rs. 5,000 are to be spent."

The lower Court held that under the above clause Karamsi Mádhowji was not entitled to any part of the testator's estate until his adoption by Liládhar's widow Ladkávahu.

At the date of the decree, Karamsi Mádhowji was a minor and was represented in the suit by his father and guardian. No steps were taken by his guardian to appeal from the decree, and in 1890 Ladkávahu died, and the adoption became impossible.

On attaining majority, Karamsi Mádhowji obtained leave to appeal (see I. L. R., 20 Bom., 104), and the appeal now came on for hearing.

Lang (Advocate General) *Starling* and *Scott* for the appellant:—We contend that the appellant is entitled to the residue even though he was not adopted. The testator intended him to take in any case. He is a *persona designata*. They cited *Nidhoomoni* v. *Saroda Pershad* [1]; *Bireswar* v. *Ardha Chunder* [2]; *Shámávahoo's case* [3]; Theobold on Wills, p. 450.

Macpherson, Inverarity and *Lowndes* for the respondent were not called upon.

PARSONS, J.:—We agree with the learned Judge in holding that, as he has not been adopted, Karamsi is not entitled to the residue of the property. Clause 28 of the will literally translated

(1) L. R., 3 Ind. Ap., 253. (2) L. R., 19 Ind. Ap., 101.
(3) I. L. R., 12 Bom., 202.

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is as follows:—"To this boy, all the things (*kám*, literally business, works, things to be done) mentioned in my will having been done, I give the residue of my estate as his inheritance and I appoint him as my heir." That clearly means that he is first to be adopted, adoption being one of the things mentioned in the will. The words "as his inheritance" show that the residue is left to him, because he is an heir. Clause 46 provides for the case of his dying after adoption. This was the only contingency to be provided for, since nothing was left to him if he was not adopted.

The case of *Bireswar* v. *Ardha Chunder*(1) is quite different. There was clear indication there of the testator's intention before making an adoption to give property to the boy. Here there was no such intention; on the contrary it is clear the intention was only to give it after the adoption had taken place. It was to the adopted boy, and not to the *persona designata*, Karamsi, that the bequest was made. Compare clause 46 of the present will with clause 11 of the will in that case, and the distinction pointed out by their Lordships of the Privy Council at p. 107 will at once appear.

This case is on all fours with *Shámávahoo's case* (2), and the decision of the Judge following that case is correct. We, therefore, confirm the decree with costs.

Decree confirmed.

Attorneys for the appellant:—Messrs. *Little & Co.*

Attorneys for the respondent:—Messrs. *Nanu and Hormasji.*

(1) L. R., 19 Ind. Ap., 101. (2) I. L. R., 12 Bom., 202.