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FA'ZULBHOY MEHRALI CHINOY v. THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY, LIMITED.

STARLING, J.:—I agree with the judgment just delivered so far as it decides that the words "any difference" include differences which may arise in the future as well as those which have already arisen, and that "naming" of the arbitrator in the agreement is sufficiently effected by his being described by an official title. I also agree that in the present case it cannot be said that the arbitrators are in any way named in the agreement. With regard to the main point in this case, whether the agreement in question can be filed under section 523 of the Civil Procedure Code, I had written a judgment deciding that question in the affirmative, but the perusal of the judgment just delivered has made me doubt the correctness of the arguments in support of my decision. At the same time it has not convinced me of the correctness of the judgment on this point, and I am in doubt as to how the judgment ought to go. As, however, this is a point of practice, and two members of the Bench agree as to the order to be passed, I do not intend to occupy the public time by going into the grounds of my doubts.

Attorneys for the plaintiff:—Messrs. *Payne, Gilbert and Sayáni.*

Attorneys for the defendants:—Messrs. *Crawford, Burder and Bayley.*

TESTAMENTARY JURISDICTION.

Before Mr. Justice Candy.

1895. *September* 21 *and* 26.

GHELLA'BHAI A'TMA'RA'M, PLAINTIFF, *v.* NANDUBA'I, DEFENDANT.*

Probate—Application for probate—Executor—Arbitration—Reference by executor to arbitration—Award—Power of executor to refer to arbitration—Effect of award—Jurisdiction—Jurisdiction of Testamentary Court to decide question of award.

An executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor). The plaintiff (executor) contended that the Court as a Court of Probate had no jurisdiction to try any question as to the award, but was limited only to the question of the execution of the will.

* Suit No. 21 of 1893 (Testamentary).

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Held, that the Court had jurisdiction to determine the question as to the award.

Held, also, that the award was binding on the executor.

APPLICATION for probate. The plaintiff on the 23rd September, 1893, applied for probate of the will, dated the 3rd April, 1890, of one Godáwaribái, widow of Bhowan Dewa Dáve, of Bombay, alleging that he was the sole executor according to the tenor of the said will.

The petition stated that the deceased left a daughter named Ambábái, who was an imbecile and unmarried, and the petitioner, who was a paternal cousin of the husband of the testatrix, as her next of kin according to Hindu law.

By the alleged will the testatrix appointed the said Ghellábhai Átmáram to be her heir and to have the management of all her property and "after him the whole caste shall carry on the same."

On the 26th October, 1893, the defendant, who was the sister of the deceased Godáwaribái's husband, filed a caveat, and the matter was registered as Suit No. 21 of 1893 (see section 83 of Act V of 1881). She alleged that the property referred to in the alleged will was the ancestral property of the husband of the deceased, and had come to the deceased as his widow, and she denied that Godáwaribái had executed any will.

While the above suit was pending, the parties thereto, on the 30th October, 1893, by a writing duly signed, referred their dispute to arbitration. The caveatrix consequently did not take any steps to proceed with the caveat and did not file her affidavit in support thereof, (as required by the rules of Court,) within eight days. The caveat was accordingly dismissed on the 14th December, 1893. The "submission" to arbitration was as follows:—

"To Bhangsáli Kálidás Rámji. Written by us the undersigned. By this instrument we give to you in writing as follows: In the matter of an application presented by Ghellábhái A'tmárám Tambuwála to obtain 'power' (probate) from the High Court for the administration and enjoyment between us two persons of the property of Bái Godáwari, the widow of Darji (tailor) Bhowan Dewa Dáve. I, Nandubái, the wife of Mulji Mála, having raised an objection have got a caveat registerred in the High Court. In the matter thereof we the said plaintiff (and) defendant have appointed you an arbitrator to bring about a settlement of the said dispute. As to whatever 'award' you may make and give on arriving at a decision, the same is to be agreed to and abided by us two persons. In this matter we each other agree and consent to

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act according to your 'award.' This submission paper we of our free will and pleasure and in sound mind and consciousness have made and delivered after having read and got read and understood the same. It is agreed to and approved by us and our heirs and representatives in Court (and) the Darbár, Bombay, the English date the 30th of October in the year 1893."

The arbitrator duly proceeded with the arbitration, both parties appearing before him by their solicitors. After hearing the evidence he, on the 18th April, 1894, made and published his award, whereby he found that the alleged will was not executed by Godáwaribái. The following was the award:—

"To all to whom these presents shall come I, Bhangsáli Kálidás Rámji, of Bombay, send greeting. Whereas by a suit in the High Court of Judicature at Bombay, being Suit No. 21 of 1893, wherein one Ghellábhái Atmárám, who had applied to the said High Court on its Testamentary Side for probate of the will of Bái Godáwaribái, widow of Bhowan Deva Dáve, dated the 3rd day of April, 1890, was plaintiff and applied for probate of the said will, and one Nandubái, wife of Mulji Mála, who had filed a caveat to the said application for probate, was defendant and disputed the said will; and whereas by an instrument in writing dated the 30th day of October, 1893, and under the respective hands of the said Ghellábhái Atmárám and Nandubái it was referred to me as a single arbitrator to bring about a settlement of the said dispute. Now know ye that I, the said Bhangsáli Kálidás Rámji, having taken upon myself the burthen of the said reference, and having heard what was alleged by or on behalf of the said parties respectively, and having heard and considered all such evidence, oral and documentary, as hath been produced before me, and having duly weighed and considered all and singular the matters and things to me referred as aforesaid, do make and publish this my award in writing of and concerning the matters as follows. That is to say, I do award and determine that Bái Godáwaribai, widow of Bhowan Deva Dáve, did not execute the said will dated the 3rd day of April, 1890, which was produced and put in evidence before me by the said Ghellabhái Atmarám. In witness, &c."

The defendant subsequently applied to the arbitrator for the award, in order to get it filed, but was informed by him that he had already handed it over to the plaintiff.

On the 27th April, 1894, the defendant through her solicitor applied to the plaintiff for the award, in order that it might be filed in Court. But the plaintiff took no notice of the said letter and retained the award in his possession.

The defendant alleged that she was consequently unable to apply, under section 525 of the Civil Procedure Code (Act XIV of 1882), to have the award filed. She, therefore, applied for letters of administration, which, however, could not be granted to her, as the plaintiff's application and suit (No. 21 of 1893) was still un-

disposed of. Her caveat in that matter had been dismissed as already mentioned. She, therefore, on the 7th December, 1894, obtained a rule *nisi* to set aside the order of dismissal, and on the 28th January, 1895, that rule was made absolute, and leave was given to her to file the necessary affidavits.

The suit accordingly now came on for hearing, and the defendant contended (*inter alia*) that the award was binding on the plaintiff, and that he was not, therefore, now entitled to maintain the suit.

Counsel for the defendant raised the following issues:—

1. Whether by an award dated 18th April, 1894, made and published by one Kálidás Rámji, the arbitrator duly appointed by the parties in that behalf, it was not declared that the will propounded by the plaintiff was not executed by the said Godáwaribai

2. Whether the said award is not binding on the plaintiff?

3. Whether the plaintiff is entitled to the relief claimed?

Counsel for the plaintiff raised the following additional issue:—

4. Whether this Court has jurisdiction to try the question of the award?

5. Whether the will propounded by the plaintiff is not the last will of the said Godáwaribái

It was agreed that the fourth issue should be first argued and decided.

Macpherson (Acting Advocate General) and *Inverarity* for plaintiff:—This case is now before the Testamentary Side of the High Court, and as a Testamentary Court this Court has only to decide whether or not the will propounded by the plaintiff is the will of the testatrix. That is a question not affected by questions as to the award, and these latter questions are not for this Court. The procedure of this Court is limited—sections 238 and 261 of the Succession Act (X of 1865). This is not an ordinary civil suit. It is a suit to obtain probate, and the Court has merely to decide whether the alleged will was duly executed or not. The jurisdiction of the Court in such a suit is limited to that question. There is nothing in the Probate Act (V of 1881) which empowers an executor to submit that question to arbitration. This Court cannot recognize such submissions. Counsel referred to section 47 of the Charter of the Supreme Court—Brown on Probate, p. 1.

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Kirkpatrick and *Mánkar* for the defendant:—No question of jurisdiction arises. The question is merely one as to the capacity of parties. We do not dispute that the only question in the suit is as to the execution of the will. But this Court, like every Court, has inherent jurisdiction to determine, and must first determine, whether the parties to the suit are entitled to raise the question which they ask it to try. We say that by the submission and award this suit has been decided, and the executor is now precluded from continuing it and raising the question again. As between him and this defendant the award is binding. No doubt, as between other parties, the will may be again propounded and the same question raised. They cited *Sálig Rám* v. *Jhunna Kuar*[1].

CANDY, J.:—The preliminary question is the fourth issue, *viz.*, whether this Court has jurisdiction to try the question of the award; in other words, whether in any suit on the Testamentary side of this Court the parties can agree to refer the matter in dispute to arbitration, and whether in such a case this Court can recognise such a reference.

It is admitted that the proceedings of the Court in such a case must be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure (section 55 of Act V of 1881); but the contention, as I understand it, is that this provision is confined to the form of the suit (*idem* section 83), and that the present question is not one of form but of jurisdiction.

It was pointed out by the learned Advocate General for the plaintiff that by the Charter of 1823 the Supreme Court on its Testamentary Side was a Court of Ecclesiastical Jurisdiction administering the ecclesiastical law (article 47 of the Supreme Court Charter), and that the same powers have been confirmed to the High Court by the Letters Patent of 1862 and 1865 subject to the provisions of any law made by competent legislative authority. These propositions are correct; and they establish what is not denied, that this Court has jurisdiction to try the present suit. But they do not establish that the parties to such a suit are incapable of referring to arbitration the matters in dispute between them.

(1) I. L. R., 4 All., 516.

The argument of the learned Advocate General, if pressed to its logical conclusion, amounts to this, that when once an executor of a will has asked the Court to grant probate of a will he cannot under any circumstances recede from that position, but he must leave it to the Court to grant or refuse probate. Suppose an applicant for probate finds subsequently to his application that the will of which he asked probate is manifestly not the last will of the testator, can he not withdraw from the suit? Can he not elect to have the suit dismissed in default? If Chapter XXXVII of the Civil Procedure Code (Act XIV of 1882) is not applicable to testamentary suits, is Chapter XXII equally inapplicable? In a word, what the parties are said to have done here does not affect the jurisdiction of the Court. That remains untouched. In what they are said to have done they have exercised the right which belongs to every litigant, a right which must be recognised by every Court whether it be ecclesiastical or not. I find, therefore, on the fourth issue in the affirmative.

The learned Advocate General contended that, if this were the finding, then the suit should be adjourned, to enable the defendant to apply under section 525 of the Civil Procedure Code (Act XIV of 1882) to have the award filed. I hold that this is not necessary. A party is not, under section 525, compelled to apply. He may, if he wishes. Here the defendant does not so wish. He prefers to rely on the award as his defence to the suit. In my opinion he can do so. The case must proceed.

The submission and award were then proved and put in evidence. The plaintiff called evidence (objected to by the counsel for the defendant) to show that the question which the parties really intended to submit to the arbitration was what sum of money should be paid to Nandubái for the purpose of buying off her opposition to the plaintiff's application for probate of the alleged will.

Inverarity with *Macpherson* (Acting Advocate General) for the plaintiff:—The award was not an honest one. We say that the parties never really intended to submit to arbitration the question as to the validity of the will. The parties had arranged beforehand that the arbitrator should award a sum of money

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to Nandubái if she withdrew her opposition to Ghellábhai's obtaining probate of the will, and the only question was as to the amount. That was the question upon which the parties intended the arbitrator to find—Russell on Arbitration, p. 563. The executor could not refer the question of the execution of a will to arbitration—*Hargreaves* v. *Wood*(1).

Kirkpatrick and *Mánkar* for the defendant:—*Hargreaves* v. *Wood* (1) does not apply. There it was sought to make a rule of the Probate Court an agreement to renounce the executorship of a will which, by the agreement itself, was admitted. That Court refused, as it would not enforce such an agreement; but suggested that, if the agreement to renounce were made a rule of another Court, that rule would be recognised and acted upon by the Probate Court. Here the will and the executorship are both denied, and have been found against by the award of the tribunal agreed to by the parties. We do not apply to enforce this award. We merely contend that until it is set aside it binds the parties to it, and that the plaintiff, who falsely pretends to be executor, cannot raise the question of its validity by way of replication—*Thorburn* v. *Barnes*(2); *Bache* v. *Billingham*(3); *Feret* v. *Hill*(4); *Rání Bhagoti* v. *Rání Chandan*(5). We must assume that the parties intended to refer what is stated in the submission paper. They cannot give evidence that they meant something else.

CANDY, J.:—I now proceed to consider the remaining issues in the above case.

I find the following facts. By petition filed on 27th September, 1893, Ghellábhai applied for probate of the will of a widow by name Godáwaribái who died on 28th May, 1891, the alleged will being dated 3rd April, 1890. Ghellábhai was executor according to the tenor of the will. The usual citations were issued, and on 27th October, 1893, Nandubái, sister of the deceased husband of Godáwaribái, filed a caveat through her solicitor Mr. Mantri. In the meanwhile negotiations were going on for a settlement of the dispute between Ghellábhai and Nandubái. Kálidás was appointed by both sides to be arbitrator to settle the matters in dispute.

(1) 2 Sw. and Tr., 602.
(2) L. R., 2 C. P., 384.
(3) L. R. (1894), 1 Q. B., 107.
(4) 15 C. B. (O. S.), 207.
(5) I. L. R., 11 Calc., 386.

Kálidás says that the first interview with him on the subject was on 28th October, 1893; but it is clear from the deposition of Tribhowan Jethá, brother-in-law of Ghellábhai (who lives at Surat), and of Tribhowan's son Jivráj, supported as these are by the post cards (Exhibits A, B, F) and by the telegrams, that negotiations for a settlement must have been commenced as far back as 19th October, 1893.

It is equally clear, notwithstanding Kálidás's denial, that the idea of Ghellábhai and his relatives Tribhowan and Jivráj, who looked after Ghellábhai's affairs in Bombay, was that Nandubái was to be bought off by payment to her of a lump sum of money. She wanted Rs. 5,000. Ghellábhai says that when Tribhowan and Kálidás came to Surat on 31st October bringing the stamped agreement already signed by Nandubái by which Kálidás was appointed arbitrator to settle the matters in dispute, Kálidás then told him he would settle Nandubái's claim for Rs. 2,000, and that he would want Rs. 200 for his own trouble. It is clear from the telegrams that Tribhowan wanted his relative Ghellábhai to come down from Surat on 25th October, 1893, bringing Rs. 200, but Ghellábhai refused to do this, and apparently he did not pay the Rs. 200 or any other sum to Kálidás when the latter with Tribhowan came to Surat and obtained his (Ghellábhai's) signature to the agreement to refer the dispute to the arbitration of Kálidás. This agreement had been signed by Nandubái in Bombay on 30th October, 1893, (the date the document bears) and by Ghellábhai at Surat on the following day. Nandubái's man Náráyan instructed her solicitor Mr. Mantri to withdraw the objection to the grant of probate to Ghellábhai (see Mr. Mantri's letter of 2nd November, 1893, to Mr. Málvi, Ghellábhai's solicitor).

The case was thus left in the hands of the arbitrator. Though Mr. Mantri had been instructed by Náráyan to withdraw the objection to Ghellábhai's obtaining probate, yet it is clear that Ghellábhai's solicitor Mr. Málvi took no further steps at that time to obtain probate. No affidavit having been filed by Nandubái in support of her caveat, the caveat was dismissed on 14th December, 1893. No further steps, however, were taken in Court,

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and the solicitors of both parties applied themselves to the duty of appearing before the arbitrator and arguing the genuineness of Godáwari's will. It is clear that neither Mr. Málvi nor Mr. Mantri had any idea that the only question between the parties was as to how much money should be paid to Nandubái. Both solicitors *bonâ fide* believed that the question at issue was whether Godáwaribái had duly executed the will propounded by Ghellábhai. Mr. Málvi for Ghellábhai adduced the evidence of the attesting witnesses to the will, and on that evidence the arbitrator Kálidás came to the conclusion (so he says) that due execution of the will by Godáwari was not satisfactorily established. His award to that effect was dated 18th April, 1894. Ghellábhai says that Kálidás falsely told him that the award was in his (Ghellábhai's) favour, and so induced him to pay the arbitrator's costs (Rs. 297) and take out the award. Kálidás denies this. It is impossible to say which man is speaking the truth. But, even if Kálidás did do as alleged by Ghellábhai, the fact would not invalidate the award.

The parties then remained *in statu quo* for some months. Nandubái made no attempt to file the award (section 525 of the Civil Procedure Code, Act XIV of 1822), and Ghellábhai took no step to have it cancelled. After some time, Nandubái applied for letters of administration of Godáwari's estate, but found that the present testamentary suit was an obstacle to her obtaining them. She, therefore, on 7th December, 1894, obtained a rule to set aside the former dismissal of her caveat. This was made absolute on 28th January, 1895.

On 21st September, 1895, the case came on for hearing, the preliminary question argued being whether this Court had jurisdiction to try the question of the award, that is, whether this Court on its Testamentary Side could recognise an agreement to refer to arbitration the question as to the due execution of a will. On 21st September, 1895, I decided that this Court had jurisdiction; and the case came on again for hearing on 26th and 30th of September. Mr. Inverarity for Ghellábhai referred to the case of *Hargreaves* v. *Wood*[1] as a case which he could have quoted on 21st September had it then been brought to his notice.

(1) 2 Sw. and Tr., 602.

I merely allude to the case now, as I think it right to state that it does not, in my opinion, support the argument which was on 21st September put forward on behalf of Ghellábhai. In that case the Court directed the issue between the parties (as to due execution of the will) to be tried before the Judge of Assize; the question came on for trial, and a verdict was taken by consent upon terms agreed upon, that a verdict should be entered for the plaintiffs (four executors who expounded the will), and that two of the defendants who were also executors of the will should renounce probate and disclaim the trusts of the will and codicil. Counsel then moved the Probate Court to direct that the said order of *nisi prius* be entered and made a rule of the Court of Probate, and counsel for the defendant dissented thereto. But Sir C. Cresswell said that there was by the practice of the Court of Probate an objection to granting this motion: "I am not aware of any instance in which this Court or the Ecclesiastical Courts have recognised a bargain or agreement made by an executor to renounce probate ..... I should have a difficulty in enforcing an agreement to renounce probate. I do not want to make a rule of this Court binding executors to renounce probate." So counsel at the suggestion of the Judge altered the form of his motion and moved for probate of the will and codicil to be granted to the four executors, and probate was decreed accordingly.

In this case there has been no agreement to renounce probate. There was simply an agreement to refer to arbitration the matter in dispute, and solicitors for both parties before the arbitrator treated the matter in dispute to be the due execution of the will. As I said before, I see no reason why any Court, whether Ecclesiastical or not, should not recognise such an agreement.

Mr. Kirkpatrick quoted the case of *Thorburn* v. *Barnes*[1] as authority for his contention that Ghellábhai could not object to the award by replication in the present suit, but that he must, if he wishes to avoid the award, make a separate motion to set it aside. But that case was in 1867. Now, in England, as all equitable defences may be relied on, the conduct or mistake of

(1) L. R., 2 C. P., 384.

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the arbitrator might probably be pleaded as a defence (Russell on Awards, 7th Ed., page 550). This is, in effect, what Ghellábhai pleads in his replication. Nandubái sets up the award and pleads that it is binding on Ghellábhai, and that thus he is barred from propounding the will in question. Ghellábhai replies that he would be bound by the award if it had been an honest one, but he contends that the intention of the parties really was that Nandubái should receive a sum of money and withdraw all objection to the probate of the will being granted.

Can he, on the facts which I have found, so plead and avoid the award? I think not. Whatever may have been the original intention of the parties when they signed the submission paper, it is impossible to ignore the proceedings before the arbitrator. The parties before him were represented by solicitors who insisted on the question as to the genuineness of the will being tried. The evidence may have been all one way in favour of the will. The arbitrator deposes that it did not satisfy him, and so he found against the genuineness of the will. Unless actual misconduct or mistake can be proved against the arbitrator it is impossible to avoid the award. The finding may have been perverse and in the teeth of the evidence. But, unless there is some direct evidence from which we can deduce actual misconduct on the part of the arbitrator, we should, by holding the award to be not binding on the parties, be really reviewing in appeal the decision of the judge whom the parties themselves have chosen, and the risks attending whose judgment they have taken on themselves.

Mr. Inverarity relied on the fact that the arbitrator was positive when giving his deposition that he had examined Nandubái as a witness in the presence of the solicitors of both the sides. When Mr. Inverarity called for the arbitrator's notes of evidence, and Kálidás brought them, I thought it right that Kálidás should have the opportunity of looking at them and correcting his statement if necessary. He did so. I cannot from this fact assume that Kálidás did really examine Nandubái behind the backs of the parties and that in this respect he was guilty of misconduct.

Let us suppose that the arbitrator had really decided what apparently Ghellábhai, Tribhowan and Jivráj thought he was going to decide, *viz.*, how much money should be paid to Nandubái. I doubt whether an award to that effect would have been a lawful award. For the main question in dispute between the parties as raised by Ghellábhai's petition for probate and by Nandubái's caveat was the due execution of Godáwaribái's will. If the parties secretly agreed that the genuineness of the will should not really be contested, but that an arbitrator should be appointed so as to give colour to the arrangement by which Nandubái was to receive a sum of money, I doubt whether the Court could recognise such an arrangement (see *Maule* v. *Maule*[1] and Russell on Awards, 7th Ed., p. 517). Here—holding, as I do, that Ghellábhai was under the impression, when he signed the submission paper, that the result of the arbitration would be simply the payment of a sum of money to Nandubái—had the case rested at this point I might well have decided that Ghellábhai was entitled to avoid the submission paper. But his solicitor brought the matter before the arbitrator as one resting solely on the genuineness of the will. It is impossible to suppose that Tribhowan and Jivráj were ignorant of what was going on before the arbitrator. Mr. Inverarity argued that the question of the genuineness of the will was pertinent to the real question as to how much money should be given to Nandubái. If so, then it was open to the arbitrator to find that the will was not genuine, and, therefore, nothing should be given to her. Whatever may have been the object of the parties in not telling their solicitors of the negotiations which resulted in the submission to the arbitration, the Court must, I think, be guided by the fact of what took place before the arbitrator. There may be some ground for suspecting that official of corruption. But mere suspicion is not enough. The parties, knowing the risk they ran, chose their tribunal, and they must abide by the result.

I find on the issues :—

1. In the affirmative.
2. In the affirmative.
3. Plaintiff is entitled to no relief. Suit dismissed with costs.

(1) 2 Dow., 363.

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I ought to add (at the request of Mr. Kirkpatrick) that counsel for defendant objected to plaintiff's adducing any evidence with a view to explain or contradict the written submission paper or award (section 92, Evidence Act). In the view which I have taken of the case it is unnecessary for me to make any remarks on this point.

Suit dismissed.

Attorneys for the plaintiff:—Messrs *Chitnis, Motilál and Málvi.*

Attorney for the defendant:—Mr. *K. J. Mantri.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

1895. *January* 24.

SHRI DHARNIDHAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* CHINTO (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Adoption—Adoption by a daughter-in-law—Adoption divesting an estate which had already vested in another person—Consent of such person to adoption.

One Shri Dharnidhar, a separated Hindu, died in 1852 childless, leaving three widows and a daughter-in-law Venubái, the widow of a predeceased son Chintáman. Dharnidhar's estate was taken, on his death, by his widows and ultimately became vested in Laxumibái, the survivor of them. In 1871, while she was in possession, Venubái adopted the plaintiff. In 1874 a decision was passed against Laxumibái, in execution of which a large portion of her deceased husband's property passed into the possession of one Chinto. In 1886 the plaintiff filed this suit against Chinto, claiming, as the adopted son of Venubái, to be entitled to all the estate of his adoptive grandfather Shri Dharnidhar (Venubái's father-in-law).

Held, that he could not recover. His adoption by Venubái, which could only be to her husband Chintáman, could not divest Laxumibái of the estate which had come to her as heir of her husband Shri Dharnidhar.

On Dharnidhar's death the estate had vested in his widows with remainder to his collateral heirs, and even if Laxumibái had assented to the subsequent adoption of the plaintiff by Venubái, his claim would not stand against the rights of Dharnidhar's collaterals who would succeed on Laxumibái's death.

From the moment that Dharnidhar died, and his estate vested in his widows, the right of his daughter-in-law Venubái to adopt for the purposes of representation was at an end.

* Appeal No. 9 of 1890.