Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kali Komul Mozoomdar and others v. *Uma Sunker Moitra from the High Court of Judicature at Fort William in Bengal, delivered* 30*th June* 1883.

Present :

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This suit was brought by the Respondent against the Appellant to recover certain property which he claimed as an adopted son. The ~~last full~~ owner of the property was Kristonath, who died in 1815, leaving a widow, Bhobani, and a son, who died in the following year unmarried, and a daughter, Hurrosoondery, who was married to Joy Sunker Surma, and died in April 1872. Bhobani died on the 1st of December 1873, and the Respondent claimed to be entitled to the property on her death, as having been adopted by Hurrosoondery, with the permission of her husband, who died in 1843. The Appellants are the sons of Mothooranath, the original Defendant, who died pending the suit. He was the nephew of Kristonath, and took possession of the property on the death of Bhobani.

It was satisfactorily proved that Hurrosoondery adopted the Respondent and performed the

requisite ceremonies in 1854, having previously adopted a son, who died in October 1853, and the questions in this appeal are :—

1. Whether Hurrosoondery had permission from her husband to adopt, which is required by the law of Bengal; and,
2. Whether the Respondent, as an adopted son, can succeed to the property in suit.

The Subordinate Judge held that an authenticated copy of a written permission, purporting to be executed by Joy Sunker, empowering Hurrosoondery to adopt three sons in succession, was admissible in evidence. The Appellate Court held that it was not admissible, as there was no evidence that a search was made for the original. It is not necessary to decide which is right, as their Lordships are of opinion that there is sufficient evidence of the permission without the copy. A hebanama, or deed of gift, executed by Joy Sunker in favour of Hurrosoondery contains a statement that he had executed in her favour a deed of permission to adopt. In the deed by which the first adopted son was given in adoption by his mother to Hurrosoondery there is this passage :—"Your husband, Joy Sunker "Moitra, being without issue, gave you during "his lifetime permission to adopt a son, and "has since died." This deed is witnessed by Mothooranath. And in his deposition taken in the suit he admits that "the Respondent was "treated and acted as a son to Hurrosoondery, "calling her mother, and Bhobani grandmother, "and Mothooranath himself 'mama' or maternal "uncle, and he answered accordingly." There is, therefore, no ground for setting aside the findings of the Lower Courts that there was a valid adoption.

As to the second question, their Lordships have held in Pudma Coomari Debi *v.* The Court of Wards (Law R., 8 Ind. A., 229), that an

adopted son succeeds not only lineally, but collaterally, to the inheritance of his relatives by adoption. In that case the claimant was the adopted son of the maternal grandfather of the deceased, and it was argued for the Appellant that it was distinguishable from this case. But their Lordships laid down that an adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimansa. That this is the Hindu law is shown by the careful examination of the authorities by the learned Native Judge who delivered the judgment of the Full Bench of the High Court, which is the subject of this appeal. The Respondent claims to succeed as being the daughter's son, and consequently the heir of his maternal ~~grandfather~~ at the death of ~~his~~ widow, which he would be if he were a natural born son, and as an adopted son he is in the same position. This is clear from the Dattaka Mimansa, Sect. 6, p. 50, where it is said, "The forefathers of the adoptive mother only "are also the maternal grandsires of sons "given and the rest, for the rule regarding "paternal is equally applicable to maternal "grandsires (of adopted sons)." Their Lordships are, therefore, of opinion that the decree of the High Court in favour of the Respondent is right, and they will humbly advise Her Majesty that it should be affirmed, and this appeal dismissed, and the Appellant will pay the costs of it.