

Privy Council Appeal No. 14 of 1923.

Oudh Appeal No. 24 of 1919.

Rawat Sheo Bahadur Singh - - - - - *Appellant*

v.

Beni Bahadur Singh - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 1ST JULY, 1926.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD ATKINSON.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

The parties to this litigation are Hindus subject to the law of the Mitakshara. Under this law the widow is entitled to adopt a son to her deceased husband provided he has left her permission for that purpose.

The suit in this case relates to the validity of the alleged adoption of the defendant by a Hindu lady of the name of Musammatt Sukhraj Kuar. There is no question that in 1913 she made the adoption. The only question is whether her husband Jageshar Bakhsh Singh, a man of substance and position in the Rae Bareilly District of the United Provinces in India, had left her permission to adopt a son to him. Jageshar Bakhsh Singh died in December, 1907. He had been suffering from diabetes for some years. In

the early part of 1907 he is said to have had a paralytic stroke. It is the case of the defendant that Jageshar Bakhsh Singh got over his attack and was quite able to move about and look after his work ; and that in July, 1907, he wrote out a will in his own handwriting, to which he obtained the attestation of two persons, one being Lalta Prashad, who was *ziladar* in charge of his estate, the other, Bans Bahadur, another employee. It is also alleged, on the defendant's behalf, that soon after the attestation of these two persons, Jageshar Bakhsh Singh went to a friend, a taluqdar of position named Mujib Haidar Khan, and got him also to attest the will. The plaintiff, Sheo Bahadur Singh, charges the will to have been fabricated after Jageshar's death. If this contention be right, his widow Sukhraj would have no power to adopt.

Apparently the defendant was about 5 years of age when he was adopted, and when this suit was instituted in 1915, he must have been only seven. A guardian *ad litem* was appointed for him by the Court, and the suit is being defended on his behalf by the guardian.

As already stated, Sheo Bahadur Singh, the plaintiff, questions the validity of the adoption and denies the authenticity of the will. The defendant in his written statement set out the facts connected with the execution of the will and his own adoption. A replication was filed by the plaintiff in answer to the facts alleged in the written statement. On the evidence in the case it is fully established that the plaintiff and the other agnatic relations of Jageshar Bakhsh Singh lived in the same village or township, Panhona, where Jageshar Bakhsh Singh lived, and where he died, and where his widow, Sukhraj Kuar resided until her death ; and although the plaintiff says in his evidence that during Jageshar Bakhsh Singh's illness from paralysis he frequently visited him, no mention was made in the replication about his total incapacity urged in the later stages of the proceedings to write or to do the acts alleged in the written statement.

The case went to trial before the Subordinate Judge of Rae Bareli. The plaintiff examined a certain number of witnesses to establish his relationship to the deceased. The case for the defendant was opened some time in June, 1916, and on his side a number of witnesses were examined to establish the fact that the will was written and signed by Jageshar Bakhsh Singh, and was duly witnessed by the witnesses whose names are borne on the document. The Subordinate Judge believed the witnesses for the defendant, and considered that the plaintiff and his witnesses gave false testimony in the case, and accordingly dismissed the suit.

On appeal before the Court of the Judicial Commissioner of Oudh, there was a difference of opinion. The First Judicial Commissioner, Mr. Kanhaiya Lal, was of opinion that there was considerable suspicion attached to the execution of the document

in question, and held that its execution by Jageshar Bakhsh Singh was not sufficiently proved. He accordingly held that the claim of the plaintiff should succeed. The Second Judicial Commissioner, Mr. Daniels, was of a different opinion, and agreed with the Subordinate Judge that the plaintiff's case was false, that the execution of the will was conclusively proved, and that the suit should be dismissed. A decree was accordingly made dismissing the claim.

The plaintiff has appealed from this order to His Majesty in Council, and the arguments urged before the Subordinate Judge and in the Court of the Judicial Commissioner have been repeated before their Lordships.

They desire to observe at the very outset of their judgment what they have already mentioned, that the plaintiff and most of the agnatic relations of Jageshar Bakhsh Singh, if not all, who are more or less interested in the subject of the will in dispute, live in the same village, not far from the residence of the deceased and his wife Sukhraj. Sheo Bahadur, the plaintiff, states in his evidence that his house is about "two furlongs" from Sukhraj's house. He says further that he frequently visited the deceased when he suffered from the paralytic stroke in 1907. It is, to say the least, extraordinary that he should have forborne to put in the forefront of his case the allegation that Jageshar at the time when the will is said to have been executed was totally helpless and utterly incapable of executing the document.

As Mr. Daniels, the Second Judicial Commissioner, points out in his judgment, it was only at a very late stage of the case that the genuineness of the will was questioned on the ground of the physical incapacity of the alleged testator. He says as follows :—

"Even when the earlier witnesses of the respondent were examined there was no cross-examination as to the physical condition of the deceased, though these witnesses included Jag Prasad Vaid, the regular medical attendant of the deceased. At this point there was an interval of three months in the hearing of the case owing possibly to the Subordinate Judge's transfer, and it was not until July, 1916, that any serious intention to challenge the testator's physical capacity to execute the will was disclosed. The appellant replies to this that he had not seen the will and did not know that it purported to be in the testator's own hand. The will had been filed in the mutation proceedings consequent on Sukhraj Kuar's death, the adverse order in which was the immediate occasion for the present suit; and though it is true that neither the appellant nor his pleader was in Court on the date on which the will was filed, it seems highly unlikely that he should have launched a suit of this importance without having taken some opportunity of seeing it or ascertaining its nature and contents."

The Subordinate Judge appears to their Lordships to be perfectly right in his observation that the challenge of Jageshar Bakhsh Singh's capacity to write the document or to put his signature to it was an afterthought. As both the trial Judge and the Judicial Commissioner have observed, the will is a natural will. Jageshar Bakhsh Singh was a Hindu; he had the natural

desire that he should have male progeny to duly perform the oblations necessary for his salvation in after-life. The document in dispute is couched in simple language written in the script with which he was familiar. It is not a complicated document, and the testamentary directions are simple and direct, such as a Hindu gentleman of substance would express. In the alleged will the testator recites that he was 54 or 55 years of age and had no hope of having issue of his own, and was, therefore, desirous of adopting a son; that he devised his property to his widow, Sukhraj, and gave her authority to adopt a son to him for the performance of the spiritual duties which would conduce to his benefit in the next world, and that the son was to take the estate after Sukhraj's death. Their Lordships do not see that there is anything improbable in the wishes Jageshar Bakhsh Singh is alleged to have embodied in this document.

Starting with this probability, their Lordships desire to examine the evidence for themselves. The Subordinate Judge, a judge of experience and accustomed to analyse facts, has accepted as true the evidence on behalf of the defendant, and has disbelieved the plaintiff's witnesses. His view has been affirmed by Mr. Daniels, the second Judicial Commissioner, who has closely examined the evidence and has no doubt about the truth of the defendant's case. Their Lordships have given due consideration to the observations of Mr. Kanhaiya Lal, the first Judicial Commissioner. They, however, upon a close examination of their own of the facts and of the evidence in this case, have come to the conclusion that the Trial Judge and Mr. Daniels have taken the right view regarding the execution of the will.

Lalta Prashad was examined on the 24th of July, 1916. He was a servant of Jageshar Bakhsh Singh for many years before his death. He was Jageshar's *ziladar* and naib, a servant of position and trust. The Subordinate Judge speaks of his demeanour in the following words:—

“ It appeared to me that the evidence given by this witness was perfectly straightforward. He admitted straight off that when he attested the will, the names of the other attesting witnesses were not mentioned. He did not seem to be making out as much as he possibly could in defendant's favour, in whose service he even now is. He said that Bans Bahadur was present, in re-examination, when he attested the will, but did not exaggerate matters by saying that the signature of the attesting witnesses was taken in his presence.”

Bans Bahadur was examined on the 20th July, 1916. He says as follows:—

“ Jageshar Bakhsh was the Sarbarakar of the Jamoh estate. I attested the will executed by him, nine or ten years ago. Rawat Jageshar Bakhsh signed the will in my presence. I used to work as his subordinate in his *peshi* and I have seen him write thousands of times. (Original of Ex. B1 shown). This is the will (identifies his signature). Jageshar Bakhsh signed the will in my presence. I attested the will after his signature. Lalta was present when Jageshar Bakhsh signed the will.”

In cross-examination there is no attempt to elicit facts tending to show physical incapacity on the part of Jageshar Bakhsh Singh to write or sign the will. Bans Bahadur states further that Jageshar was in charge of the Jamoh estate; that Jamoh was 8 kos, or 16 miles, from the residence of Jageshar and that the deceased was quite able to move about. He also states that after Jageshar's illness he (Jageshar) went to Jamoh for 20 or 25 days. Jageshar then came back to his house and went again to Jamoh.

Ram Dat who was a Patwari before, and is now a Dewan, in the Panhona estate, which belongs to Jageshar Bakhsh Singh, deposes to the execution of the document in question by Jageshar Bakhsh, and its attestation by Bans Bahadur. The signature of Mujib Haider is proved by his son Thakur Amir Haider, a taluqdar, a man of considerable means and position. He pays to Government Rs. 12,000 a year as revenue. Nothing is suggested in his cross-examination to discredit his testimony; and both the Trial Judge and Judicial Commissioner have accepted his evidence as true.

It appears to have been urged on plaintiff's behalf that the document in dispute was contrived, if not fabricated, by the advisers of Sukhraj, in conjunction with Amir Haider, and that Mujib Haider's signature was put on it by his son. The Subordinate Judge has, after closely examining this evidence, wholly discredited the suggestion and their Lordships fully agree with the learned Judge. As already stated, Amir Haider is a man of position, has absolutely no interest in the case, his father had, and he has, intimate relations with both Jageshar Bakhsh and Sukhraj. After the adoption of the defendant in 1913, at which Amir Haider was present, the document was made over to him by Jageshar Bakhsh's widow for safe custody, and he produced it subsequently in Court. The Trial Judge in his judgment speaks of him in these terms:—

“Lastly, comes the identification by Thakur Amir Haider, of his father's signature. His father Mujib Haider's signature appears on the margin of the will, but as some of the witnesses have stated that this particular signature was made in their presence it is absolutely clear that his signature was obtained after Jageshar Bakhsh had himself signed the will. Amir Haider, when examined, deposed that “the signature on the margin of the will resembled his father's signature. He could have said any more (?) for he stated he could not swear that the signature was really his father signature, because he had not seen him actually signing the document. Nothing was made out in cross-examination tending to shake the credit of this witness, who is himself a Taluqdar.”

The fact that Jageshar Bakhsh himself brought over the will to obtain the signature of Mujib Haider, his old friend, is deposed to by a witness, Onkar Nath, whom also the Subordinate Judge has believed, and on whose evidence he has relied. He was examined on the 20th of July, 1916. He is a zemindar; he was employed by Mujib Haider as a *ziladar* for eight or nine years,

a position he resigned on the death of Mujib Haider. He speaks as follows :—

“ I have some Zemidari. I was employed by Mujib Haider as Ziladar, for eight or nine years. I resigned my post on the death of Mujib Haider. Rawat Jageshar Bakhsh came to Bahna to Thakur Mujib Haider. They met each other and went hand in hand to the *kothi* and sat there, Jageshar Bakhsh said that he had executed a will in favour of his wife and asked him to attest it. The will was produced. Mujib Haider looked at the will and then attested it. I can identify Mujib Haider's signature (Ex. B1 in original shown). This has been signed by him (identifies his signature).”

There is no cross-examination with regard to the physical incapacity of Jageshar Bakhsh to travel on an elephant.

The family priest, Ram Lautan, was examined on the 19th July, 1916. He deposes that the plaintiff was present at the adoption of the defendant in 1913. There is no cross-examination as to the presence of the plaintiff on that occasion, and, if the defendant was adopted in his presence, his silence is a strong piece of evidence that everything was done according to law and custom to give validity to the defendant being taken as a son to Jageshar Bakhsh Singh.

Regarding the production of the will in question after the death of Jageshar Bakhsh, there is the evidence of Chhittan Lal, who states that he made an application for a succession certificate on behalf of Sukhraj Kuar on the 10th August, 1908, in which the will was distinctly mentioned. The objection about the will not being mentioned in the application for mutation of names which took place early in 1908, has been sufficiently dealt with by the Subordinate Judge and Mr. Daniels, and their Lordships are in entire agreement with their view.

A great deal of stress has been laid on the non-production of the document in dispute when called for by the Court of Wards. There is one piece of evidence in connection with this question of non-production which seems to their Lordships to be significant and should not be overlooked.

Pandit Ganga Dhar Avasthe, who was in 1913 manager of the Court of Wards at Rae Bareli, states that in June, 1913, the mother of Kanhaiya Bakhsh Singh made certain allegations, in an application to him, as to the desire of Sukraj Kuar to make an adoption to her husband. He thereupon deputed the Sarbarakar (sub-manager) of Tiloi to make enquiries. The Sarbarakar's statement to him should be given in the manager's own words :—

“ I issued copy of Thakurain's application to Sarbarahkar Tiloi who was in charge of the Panhona estate also, and ordered him to go to the spot himself and institute local inquiries and report the result and if the contents of the petition were found correct he should make the widow of Thakur Jageshar Bakhsh Singh understand that she should not do anything of the kind, and submit to me whatever she might say in reply. This order was given by me on 14th June, the day on which the application was presented. The Sarbarahkar made a report to me to the effect that he had called upon the widow of Rawat Jageshar Bakhsh Singh but could not get an interview. She being a *pardanshin* lady, he had a conversation with her Mukhtar-am

and with her other servants and they had told him that everything was ready for the performance of the adoption ceremony and that the ceremony could not be deferred, it was what Thakurain Sukhraj Kuar had directed her servants, and *mukhtar-am* to be communicated to the Sarbarahkar, her servants would have told the Sarbarahkar as recorded in his report that the adoption ceremony was being carried through on the basis of a will of Rawat Jageshar Bakhsh Singh."

In their Lordships' opinion the statement made to him by the Sarbarakar that the officers of Sukhraj Kuar distinctly told him that the adoption could not be postponed as everything had been done for that purpose and the ceremony could not be put off, is a significant circumstance. Had there been a nefarious plot for the purpose of foisting on the family of Jageshar Bakhsh an invalidly adopted son, the parties who were promoting such an act would have naturally hesitated to carry it to completion, and would have been frightened by the action of the Court of Wards. Instead of that, they distinctly told the Sarbarakar that the matter had proceeded far and could not be postponed. They also mentioned to him that the adoption was "being carried on the basis of a will of Rawat Jageshar Bakhsh Singh." There was no concealment or evasion as might be expected in a case where a forged document was being used.

There are two other pieces of evidence to which their Lordships think it necessary to refer. One is that of Raja Chandra Chur Singh. He states in his evidence in chief that the signature on the will does not resemble that of Jageshar Bakhsh Singh. His evidence, to say the least, is extraordinary. He would not pledge himself to any definite statement, and the Subordinate Judge let him down very gently with the following remark:—

"I am inclined to think that the resemblance between the admitted signature and that on the will was so obvious that the Raja's idea must have been misimpression."

On the other hand, there is the evidence of Raja Inder Bikram Singh. Raja of Itaunja. Jageshar Bakhsh was his maternal uncle. Sukhraj was his maternal aunt by marriage. He is vague about the time of her visit to show him the will, but he swears that the signature on it is the signature of his uncle. The Subordinate Judge believes his statement, and their Lordships are of opinion that the view expressed by him is well founded.

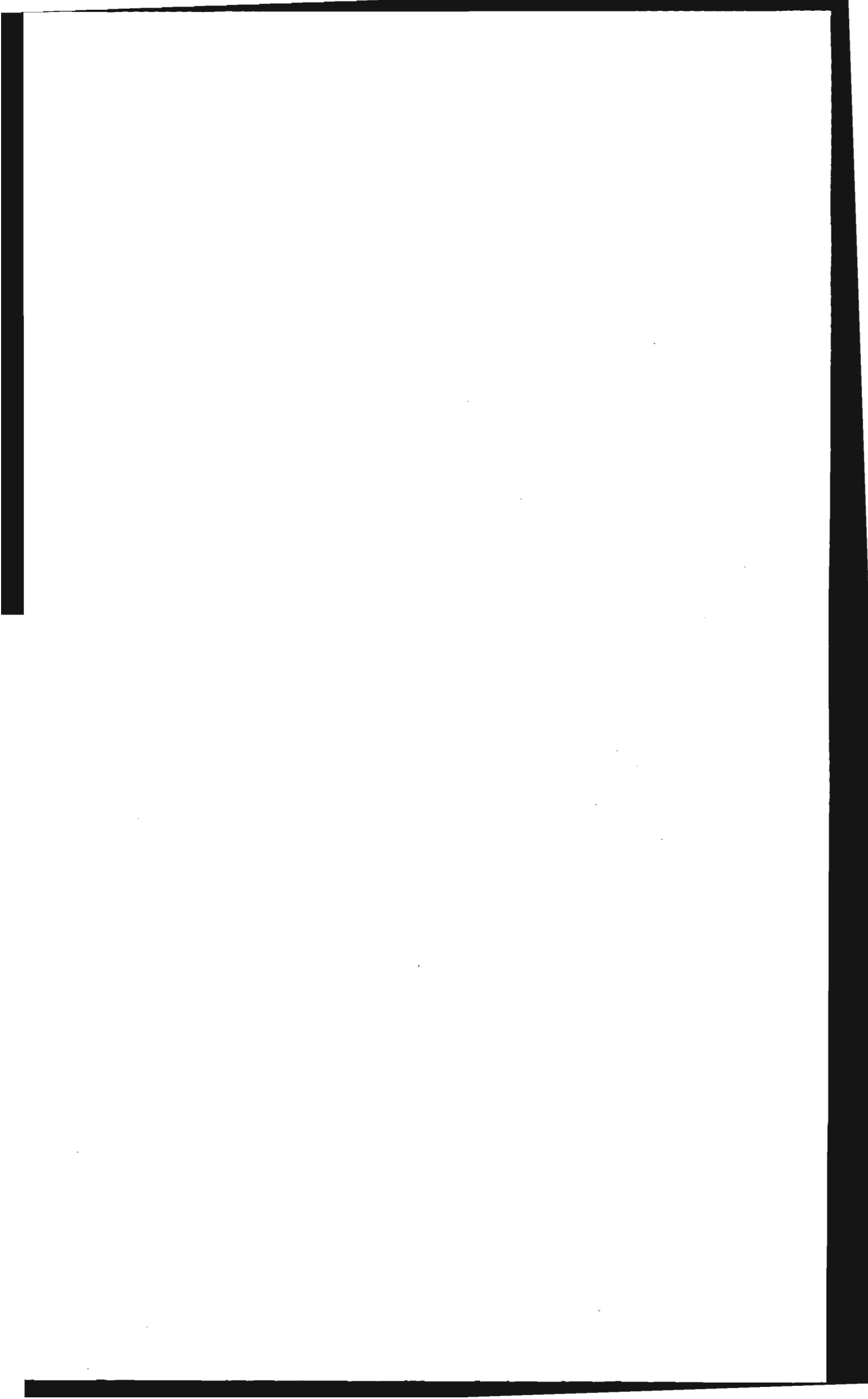
Their Lordships consider that the affirmative evidence regarding the capacity of Jageshar to write the will and its due execution and attestation is overwhelming.

Some point was made on the delay on the part of Sukhraj Kuar in making the adoption. Under the Hindu Law when power is given to the widow to adopt there is no obligation on her part to make the adoption at once. It is well known that it takes time and trouble to select a suitable boy. Horoscopes have to be consulted and the opinions of *Laudets* taken. There is nothing in this case to show that there was any undue delay in making the adoption, if delay can, under the law, be taken into consideration.

A great deal of time appears to have been taken up in the Courts in India by speculative theories built on medical books without any facts " established by the evidence in the case " to use Lord Watson's condemnation in the case of *Sajid Ali v. Ibad Ali*, L.R. 22, I.A. 171.

Before the Board, Counsel very wisely abstained from the course which was reprehended in the judgment just cited. Their Lordships refer to it in order to help the Indian Courts to economise time in the trial of similar cases.

On the whole, their Lordships are of opinion that the judgment of the Subordinate Judge, affirmed by the Second Judicial Commissioner, is right, and they will accordingly humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

RAWAT SHEO BAHADUR SINGH

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BENI BAHADUR SINGH.

DELIVERED BY MR. AMEER ALI

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