

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Chiman Lal v. Hari Chand, from the Chief
Court of the Punjab (P. C. Appeal No. 54
of 1912); delivered the 2nd May 1913.*

PRESENT AT THE HEARING :

LORD SHAW.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

The suit in which this Appeal has arisen was brought on the 19th January 1901 in the Court of the District Judge of Ferozepore by Hari Chand, who is the Respondent here, against Jiwan Mal, now dead, who is represented by Chiman Lal the Appellant. In this suit Hari Chand sought a declaration that he was the adopted son of Jiwan Mal the then Defendant. In his written statement Jiwan Mal alleged that he had never adopted Hari Chand.

Hari Chand and Jiwan Mal were Hindus, and Agarwal Baniyas, of Zira, in the Punjab. Hari Chand was one of the four sons of Ghannu Mal, who was a brother of Jiwan Mal. Chiman Lal, the Appellant here, was a son of Maya Mal, who was another brother of Jiwan Mal. At the time of the alleged adoption Hari Lal was an orphan and was married. No issue was framed by the District Judge as to whether the parties were governed by Hindu law or by

custom, or as to the validity of the adoption if it, in fact, were made. The District Judge held that in the Punjab—

“Non-Agricultural Hindus do not, in matters of adoption, follow Hindu law, and there seems no reason to doubt that a declaration of adoption, together with treatment in accordance with the avowed intention, would be sufficient to establish the validity of an adoption, even though the position of the adopted son were inconsistent with the strict requirements of Hindu law.”

The District Judge found that Jiwan Mal had, in fact, adopted Hari Chand, and on the 23rd March 1903, gave the Plaintiff a decree.

From the decree of the District Judge Jiwan Mal appealed to the court of the Divisional Judge of Ferozepore. The Divisional Judge, on the 10th July 1903, remanded the suit to the court of the District Judge to give the parties the opportunity of proving or disproving the validity of the adoption. On the return to the order of remand the Divisional Judge found, as a fact, that the parties were governed in cases of adoption by customary law, and that in the caste to which the parties belonged “a mere declaration to the effect that a boy has been adopted and his subsequent treatment as a son is sufficient for all intents and purposes to make the adoption a valid one,” and further found on the evidence that Hari Chand had been adopted by Jiwan Mal as his son according to the custom prevailing among the Agarwal Banias of Zira. The Divisional Judge by his decree of the 14th October 1904 dismissed the Appeal.

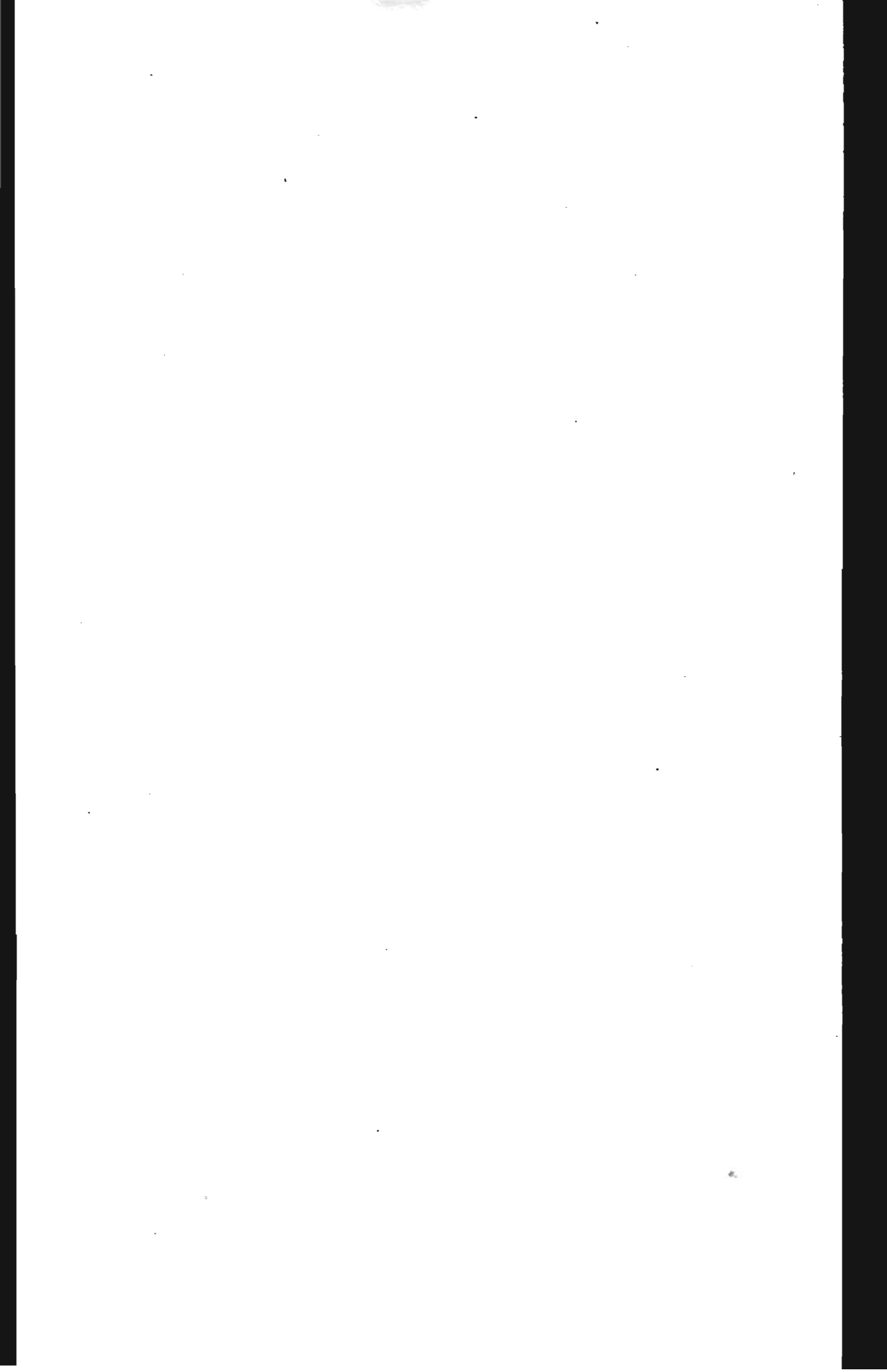
From the decree of the 14th October 1904 of the Divisional Judge Jiwan Mal appealed to the Chief Court of the Punjab. The learned judges of the Chief Court on Appeal carefully reviewed the evidence in the case, and holding that Jiwan Mal had unequivocally designated Hari Chand as his heir and had treated him as his adopted son,

found that the factum of adoption was proved. On the question of the validity of the adoption the learned judges found that the Agarwal Banias of Zira did not follow Hindu law in matters of adoption, and observed that "the really important thing is the unequivocal intention and treatment, and we find both proved here." The Chief Court by its decree dismissed the Appeal.

From the decree of the Chief Court of the Punjab dismissing the Appeal to that Court this Appeal has been brought. In this Appeal it has been contended on behalf of the Appellant so far as is material, that Jiwan Mal did not in fact adopt Hari Chand as his son, and that the alleged adoption was invalid according to Hindu law. Their Lordships consider that the Chief Court and the Divisional Judge have concurrently found that among the Agarwal Banias of Zira the general rules of Hindu law as to adoptions do not apply, and that by the custom applicable to the Agarwal Banias of Zira an unequivocal declaration by the adopting father that a boy has been adopted and the subsequent treatment of that boy as the adopted son is sufficient to constitute a valid adoption; and that in fact Jiwan Mal did unequivocally adopt Hari Chand as his son and treated him as his adopted son. Of the fact of the adoption and treatment there was ample evidence upon which the judges of the Chief Court and the Divisional Judge could find as they did. The evidence upon which it was found that the Agarwal Banias of Zira do not in matters of adoption follow the general rules of Hindu law, and that by the custom applicable to them an unequivocal declaration of adoption followed by subsequent treatment of the person as an adopted son is sufficient to constitute a valid adoption, appears to their Lordships to have been somewhat limited, but their Lordships

consider that as between the parties to this suit and to this Appeal, and those claiming through or under them that evidence was sufficient to entitle the Chief Court and the Divisional Judge to find that the adoption was valid. Their Lordships, however, consider that the present case, owing to the limited nature of the evidence as to custom among the Agarwal Banias of Zira, would not be a satisfactory precedent if in any future instance among other parties fuller evidence regarding the alleged custom of the Agarwal Banias of Zira should be forthcoming. The contention that Chimán Lal had also been adopted by Jiwan Mal is not established by the evidence before this Board.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed and that the decree of the Chief Court of the Punjab should be affirmed. Chimán Lal, the Appellant, must pay the costs of this Appeal.



In the Privy Council.

CHIMAN LAL

o.

HARI CHAND.

DELIVERED BY SIR JOHN EDGE.

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