Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Fanindra Deb Raikat v. *Rajeswar Dass* alias *Jagadindra Deb Raikat, from the High Court of Judicature at Fort William, in Bengal, delivered 14th February* 1885.

Present :

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

The suit which is the subject of this appeal was brought to recover a large estate called Baikunthpur, situated on the north-east frontier of Bengal, in the district of Jalpaiguri. The largest landed estates in this district are those of Patgram and Boda, belonging to the Rájá of Kuch Behar, and this estate, which became the property of a branch of the Kuch Behar family. It is not included in any Sarkár or Mahammadan division of the country, having been only added to Bengal since the British assumed the government of the country. From Dr. W. W. Hunter's Statistical Account of Bengal, it appears that Rájá Nilambhur of Kamatápur (now a ruin within the present State of Kuch Behar) was the last independent Hindu ruler of the country, and that after his defeat and capture by Husáin Sháh, one of the Afghán Kings of Gaur in the beginning of the sixteenth century, anarchy prevailed for several years, and the land was overrun by wild tribes from the north-east. Among these the Koch came to the front, and founded the Kuch Behar dynasty.

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Of the Kochs, Dr. Hunter says, in the Statistical Account of Darjiling, "this aboriginal "tribe first rose into power about the close of "the fifteenth or the commencement of the sixteenth century under one Hájo, who founded "the Koch kingdom on the ruins of the ancient Hindu kingdom of Kámrup. . . . . "The Koch raj extended from 88° to 93½° east "longitude, and from 25° to 27° north latitude, "Kuch Behar being its metropolis, and its "limits being co-equal with the famous yet "obscure Kámrúp of the Tántrás. Brahmánism "was introduced among the Kochs in the time "of Visu, Hájo's grandson, who, together with "his officers and all the people of condition, "apostatized to Hinduism. A divine ancestry "for the Chief was manufactured by the "Bráhmans. The converts abandoned the despised name of Koch and took that of Rájbansi, "literally, 'of the royal kindred,' and the name "of the country was altered to Behar." From the account of their manners and customs given by Dr. Hunter, it appears that they differ from their Hindu neighbours in various respects. Of the Baikunthpur family, Dr. Hunter says that "Sisu, grandson in the female line of Hájo, is the "original ancestor of the family. It is generally "asserted that he was the son of Jirá, the daughter "of Hájo, but the family themselves allege that "he, as well as Visu (another grandson of Hájo, "and the first of the Kuch Behar Rajas who "was converted to Hinduism), was not the son of "Jirá but of her sister Hirá, and that his father "was the god Siva, on which account all the "members of the family assume the name of Deo, "and return no salute that is made to them by "any person. Sisu, on the conversion of Visu to "Hinduism, took the title of Sib-kumár, or young "Siva. He was appointed hereditary Ráikat, or "the second person of rank in the Koch kingdom,

" and received the Baikunthpur estate as an " appanage."

The plaint of the Appellant (the Plaintiff in the suit) states that Jogendra Deb Ráikat, the possessor of the estate, died on the 10th of March 1878, without leaving any son of his body, and " therefore, according to the " immemorial family custom and practice " descending from generation to generation in " our Raikat family of Baikunthpore and the " Shastras, I have acquired an absolute title in " all the properties left by him, and I am " entitled to recover possession thereof." It then refers to a title by adoption and under a will and agreement (angikar-patra) made by Jogendra Deb, which had been set up on behalf of Rajeswar Dass, who was then a minor, but has since become of age and is the Respondent, by Rani Jagadiswari Debi, the widow of Jogendra Deb. She was sued as the guardian of Rajeswar and executrix. This is followed by a paragraph which says,—" According to the " *kulachar* (family custom) and custom pre- " vailing in our Raikat family from very ancient " times and descending from generation to " generation, no one among the Raikats is com- " petent to adopt or to alter the line of suc- " cession thereby, or by will or any other deed " to give away the kingdom and the raj-guddi. " According to the said immemorial *kulachar*, " no female also is competent to hold property " and the guddi. Consequently the said Jogendra " Deb Raikat is not, contrary to the above " *kulachar* and custom, empowered to receive in " adoption any one competent to hold the pro- " perty, or to give or alienate the rajgi and the " kingdom to the said adopted son or to any " other person, either by will or agreement " (angikar-patra), or by any other deed. In " fact, the above will and agreement (angikar-

" patra) are contrary to the prevailing family " custom, the law, and the Hindu Shastras, and " are, indeed, not true." It was contended by the Counsel for the Respondent, in the argument of this appeal, that, by the references in the plaint to the Shastras, the Plaintiff admitted that the family was governed by the Hindu law except where it is modified by custom. Their Lordships do not so construe the plaint. They think the meaning is to insist upon the family custom as being allowed by the Shastras to govern the family. The materiality of this contention will appear when the evidence and the judgements of the lower Courts come to be noticed.

Rani Jagadiswari Debi, the then Defendant, as guardian, by her written statement did not dispute the heirship of the Plaintiff failing the adoption and the angikar-patra, but alleged that Jogendra Deb died after receiving Rajeswar in adoption, and making over to him all the property moveable and immoveable which belonged to Jogendra, and were in his possession, by means of an angikar-patra (agreement) of the 23rd Kartick 1284 B.S. (7th November 1877), and so according to the Hindu law in force and the clear purport of the angikar-patra the Plaintiff had no right to the property claimed. The statement contained other matter in support of this contention, and also asserted that Jogendra Deb, on the 28th Cheyt 1278 (9th of April 1872), gave permission to his wives to adopt another son if Rajeswar was not living at the time of his death, and therefore the Plaintiff's claim for possession ought to be dismissed.

The issues framed by the Court were:—

1. Is adoption contrary to the customs of the Julpaiguri family?
2. Was Rajeswar's adoption valid, *i.e.*, was he an only son or not?

3. Had Raja Jogendra power to make away the property of the raj by will, or deed, or gift?
4. Can the power of adoption conferred by the Raja on his widows be exercised by them, and can a son adopted by virtue of that power succeed to the property?
5. Can the widows hold the property for the adopted son?
6. Is the angikar-patra of 22nd Kartick 1284 a valid document, and one which confers any right on Rajeswar?

At the instance of the Defendant this issue was added:—

Can the Plaintiff inherit during the lifetime of Jogendra's widows, and can he now sue; also can Plaintiff's claim take effect against Sarbá Deb's self-acquired property?

Subsequently, the Court added another issue, namely, if Rajeswar was adopted, was he adopted in 1280 or 1284 B.S.? The Judge of Rungpore (Mr. Beveridge) before whom the suit came for trial, in the first instance and as on preliminary objections, decided the 4th, 5th, and 7th issues in the Plaintiff's favour, and held that he as heir-at-law was entitled to succeed at Jogendra's death if his title were not defeated by the adoption of Rajeswar or by the angikar-patra in his favour. A quantity of evidence was then produced on both sides, and on the 11th September 1879 the Judge, in an able and well-considered judgement in which all the material evidence is noticed, decided the 1st, 2nd, 3rd, and 6th issues in the Plaintiff's favour, and gave him a decree. This was on appeal reversed by the High Court at Calcutta, and the suit was dismissed with costs.

Their Lordships, after hearing the Counsel for

the Appellant, desired the Respondent's Counsel to address them first upon the questions whether, by the law or usage by which this family is governed, it was lawful for Jogendra Deb to adopt a son who would succeed to the estate in preference to the Plaintiff; and if it was not lawful, has the angikar-patra any effect upon the succession to the estate. Having heard these questions argued, they have come to a conclusion which makes it unnecessary for them to hear any argument upon the 2nd issue, namely, whether the adoption of Rajeswar was valid.

The first of these questions was raised by the 1st issue, and the Judge of Rungpore thought that the burden of proof on that issue was upon the Plaintiff. After some introductory matter, he says, "The Plaintiff contends that there are two "more customs, namely, one prohibiting "adoption;"—the other relates to the alienation of the estate. "The Defendants deny the exist- "ence of these two customs. With these "remarks I proceed to decide the issue about "adoption, as to which of course the burden is "wholly on the Plaintiff. The first mode in "which the Plaintiff has endeavoured to prove "the existence of the custom is by showing "that there never has been an instance of "adoption in the family."

The High Court also thought that the onus was on the Plaintiff to prove a custom which prohibited adoption. This appears from the following passages in their judgement:—"The claim of the "Plaintiff rested on the allegation that by a "kulachar or old family custom no adoption "could be made by a member of the Raikat "family. . . . . If, therefore, the Plaintiff "could succeed in proving the custom which he "set up by which adoption was prohibited in the "family, he, as being admittedly the next legal "heir to Jogendra Deb Raikat, would be entitled

" to a decree for the estate without further " inquiry into the merits of the adoption. . . . " We find ourselves quite unable to agree with " the Lower Court on the main questions raised " in the suit, viz., as to the existence of a family " custom prohibitive of adoption, and as to the " insufficiency of the adoption made of the " Defendant." They said they had no doubt that the family is now governed by the Hindu law.

Looking at the origin and history of the family, it appears to their Lordships that the question is not whether the general Hindu law is modified by a family custom forbidding adoption, but whether with respect to inheritance the family is governed by Hindu law, or by customs which do not allow an adopted son to inherit. The onus of proving that the adoption was lawful was upon the Defendant, who relied upon it to defeat the Plaintiff's title. If the family was generally governed by Hindu law he might rely upon that, and then the onus of proving a family custom would be on the Plaintiff.

The origin of the family has been already mentioned. The estate after twelve successions was, in 1809, in the possession of Sarbá Deb, who had succeeded his father Jayantá. His title was disputed by his uncle Prátap on the ground that, by the family usage, a brother succeeded a brother in preference to surviving sons. In 1811, Prátap brought a suit in the Provincial Court of Moorshedabad against Sarbá, by the name of Surrup Deb, which was decided in 1818 by the Sudder Dewanny Adawlut in favour of the latter. The case is reported in 2 S. D. A. Reports, 250. The judgement states that the right of the Respondent (Sarbá) to the estate was clearly established both by the family usage and by the consent of the Appellant. The High Court has referred to this case as showing that the family was treated as one governed by Hindu law, quoting a passage at p. 251—" the Appellant,

" moreover, was unable to show by whom the " custom alleged by him so contrary to the " Shastras was introduced into the family, at " what time, and for what reasons," as the ground upon which the suit was dismissed. This passage immediately precedes the judgement, and seems to be part of the statement of the case. It may have been the contention of the Respondent, but the ground of the decision is stated to be the family usage and consent of the Appellant. In January 1848, Sarbá died, and Dr. Campbell, the then Superintendent of Darjiling, having on the 14th of January received information of his death from his two dewans, and that it was probable there would be a disturbance in the household among his sons, went to Julpaiguri, arriving there on the 15th. In his report to the Government of Bengal, dated the 20th January 1848, which is in the evidence in this suit, he says:—

" I shall now record the information I have gained on the spot, under the most favourable circumstances for doing so, of the state of the Raja's family, &c. It may facilitate decisions regarding it, obviate litigation to the ruin of the family, and tend to early settlement of the mode of properly managing the estate, a point of very great consequence to the quiet of the frontier, and to the satisfactory performance of my own duties. The Raja's territory forms the northern part of Rungpore. It has a frontier along Bhudtán of about 50 miles, and an equal extent with Sikim. Of both borders I am in charge, and I have concurrent powers as Magistrate in the whole of it."

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" The Raja could not properly be called a Hindu, although ambitious of being considered within the privileged pale. His family is of the Koch tribe, now however designated Rajbungsis, and affecting to be equal to Chhettris, although retaining many usages and habits quite irreconcileable to their pretensions. Probably Hindu law would not be the just medium for a decision on this succession, and I find that the election of the boy has the approval of many people here as a legitimate succession. This may have referred to some previous case in the family, but the formal installation, and the performance of the obsequies by the boy, are considered to raise his claims above all the others. Under the Hindu law I believe that all the sons would be considered illegitimate, in which case the senior Rani might secure a life tenure of the raj."

The Raja left seven sons, and the boy referred to was Rajrajendra Deb, his sixth son. His title was disputed by Makarand, the second and favourite son of Sarbá Deb, who brought an action under Act XIX. of 1849, and was put into possession by the Civil Court of Rungpore. This was followed by a long litigation, in which Rajendra claimed the property on the ground that Makarand was illegitimate. It ended in favour of Makarand, who remained in possession till his death in 1853, when he was succeeded by Chunder Shikhur, the elder of his two sons. He died in 1865, and was succeeded by his brother, Jogendra. The report of Dr. Campbell appears to their Lordships to be important evidence of the position of this family, and, in their opinion, it shows that, although they affected to be Hindus, they had retained and were governed by family customs which, as regards some matters, were at variance with Hindu law. The evidence of Makarand, given when he was Raikat and was examined with reference to a dispute in another branch of the family, supports this view.

The question to be determined being, therefore, what was the custom of the family with respect to adoption, their Lordships will now notice the evidence upon which they have come to the conclusion, without regarding any burden of proof, that it is not lawful for the Ráikat to adopt a son who would succeed to the estate. Before doing so it may be observed that in Rajah Bishnath Singh *v.* Ram Churn Majmoodar, 6 Bengal S. D. A. Reports, 20, the Sadr Court allowed that, even in a Hindu family, there might be a custom which barred inheritance by adoption, and remanded the case for further investigation on that question.

From the report in the 2 S. D. A. Reports, which has been referred to in the suit as con-

taining a correct history of the family, it appears that, of twelve Raikats who successively had possession of the estate prior to Sarbá Deb, three were succeeded by a brother and one by a nephew. Two of them died leaving no sons; one had a son born after his death, and another had a son whose legitimacy was doubtful. Thus, there are two occasions on which, if it was allowed by the custom of the family, it is most probable there would have been an adoption, and one, the case of the posthumous son, where an authority would probably have been given to the widow or widows of the Raikat to adopt a son. There has been no adoption in this family until one which is said to have been made by Chunder Shikhur, who was succeeded by his brother Jogendra. A boy who was named Purno Deb appears to have been taken in adoption by Chunder Shikhur, but no ceremonies were performed. The explanation given by the Plaintiff's witnesses is that Chunder Shikhur, who was educated at Calcutta under the care of the Court of Wards, did not know the family customs when he took the boy, but that he afterwards became acquainted with them. The succession of Jogendra is in the Plaintiff's favour, whether Chunder Shikhur desisted from completing the adoption or Porno Deb was adopted and did not claim to succeed to the estate.

The next evidence is a statement by Sarbá Deb. Another branch of the family were the owners of the zemindary of Panga, and, some time before 1840, a suit was brought by Parbut Narain Koer against Karindra Narain and others in the Court of the Principal Sudder Amin of the district, to obtain possession of it. In that suit it was asserted by the Plaintiff that adoption was contrary to the custom of the Panga family. Sarbá Deb was asked by the Court

to submit a kyfiut (answer to questions) as to the customs in his branch of the family. The record of the suit in which the kyfiut was filed could not be found, and a copy of the kyfiut tendered by the Plaintiff was rejected by the Judge of Rungpore on the objection of the Defendant that it was a copy of a copy. The evidence of two witnesses of its contents was then received,—Parbati Nath Roy, who was at the time of its submission to the Court employed as assistant to the mokhtars of the Raikat, and Gungadhur Das Bukshi, who then served him as a mohurir. Their evidence was substantially the same. The former said he made a copy of the kyfiut before it was filed, to be kept in the mokhtar's serishta, which copy had been destroyed when the mokhtar's house was burnt. The latter, who called Sarbá the Raja of Jalpaiguri said he wrote the draft at the dictation of the Raja, and a fair copy was made and signed and sealed by the Raja to be filed in Court. "The kyfiut was asked "for to ascertain the family custom of "the Rajas of Panga, Behar, Bigni, and "Baikuntpore. There were ten or twelve ques- "tions in that perwana. I do not remember "them all. The first question was this, 'Can "'a son be adopted or not?' The answer to "this question was, 'In our family the custom "'of adopting a son does not prevail; a "'daughter's son cannot become the Raja; a "'woman is not an heir; the Raja cannot in "'his lifetime give away the rajgi to his son or "'to anybody else; on the death of the Raja the "'eldest of his sons born of his wedded wives "'succeeds to the rajgi, and in default of a son "'a uterine brother succeeds to it.' I remember "these facts were written." Bijni was another branch of the family. The High Court has said the kyfiut must be dismissed from consideration.

Their Lordships have carefully considered the reasons which they have given for this opinion, and find themselves unable to agree in it.

A large part of the evidence of the witnesses relates to the adoption of Rajeswar. This it is not necessary to consider. Their Lordships will only refer to such of the evidence about the customs of the family as they think has any weight. Gungadhur Iswar, the son of a daughter of the paternal uncle of Sarbá Deb, said he had heard from Sarbá Deb and Anunt Deb that an adopted son does not succeed to the properties, that females cannot become heirs, and that the raj cannot be transferred by gift. Bhabendra Deb Koer, a great-great-grandson of Darpa Deb, a former Raikat, said the family custom was that an adopted son cannot inherit. He had heard of the family custom from his father's kinsman Anunt Debi and his paternal grandmother Jasoda Debi. The Judge says he relied upon this witness partly because he was a near relative of the family, and because he seemed to be speaking the truth; and that it was also very important to notice that he acted upon his opinions. He was appointed by Jogendra his chief executor by the last codicil, dated in December 1877, and declined to act on the ground that the adoption of Rajeswar was illegal. This, however, seems to have been because he thought Rajeswar had not been properly taken in adoption (see his evidence, page 182, line 27). Hari Pershad Dass, who married Hareswari, a daughter of Sarbá Deb, said he had heard from his father-in-law of the customs of the family; that if any one of the Rajas of Julpaiguri adopt a son, that adopted son does not succeed to the raj, nor does a female become heir; the Rajas cannot transfer by gift the raj-guddi or the raj to anybody. Hara Pershad Dass, who was a

jumma-nuvis in the family during the whole time that Makarand Deb was the Raikat, and succeeded his father in the office, said he was 23 or 24 years old when Sarbá Deb died, and used to read and write in the serishta for four or five years prior to his death; that there is a difference between a Rajbungsi and other Hindus. On the death of the Raja his eldest son, by his married wife, gets the rajgi; in default of a son by a married wife, the son by a wife married in the gandharba fashion succeeds to the rajgi; as, for instance, Makarand Deb got the rajgi though the eldest son Doorga Deb was living. Doorga Deb was the son of a prostitute; an adopted son does not succeed to the rajgi; a wife cannot succeed as heir-at-law; he had heard of the existence of this family custom from Sarbá Deb Raikat. This witness is an honorary magistrate of Julpaiguri. Nobindra Deb Koer, one of the Defendant's witnesses, a son of Doorga Deb, the eldest son of Sarbá, on cross-examination said that adoption was not made nor were the properties obtained by the adopted son; nor is the custom of adoption prevalent; if the Raja wishes to make a gift of the raj he cannot do so; he can give something for maintenance; no female can succeed as heir. On re-examination, he said he had heard from his father that the adopted son does not succeed to the property. This evidence was not met by any on the part of the Defendant. The High Court reversed the finding of the Judge on the ground that the family is now governed by Hindu law, and it lay upon the Plaintiff to show that adoption was prohibited by the custom of the family, which they thought he had failed to do. They also, if their Lordships rightly understand their judgement, put out of their consideration, on the ground that it was hearsay evidence, all the statements as to the custom made by deceased members

of the family to which the witnesses deposed. They refer to Sect. 32 of the Evidence Act, but not to Sect. 49. The latter section is applicable, and where an ancient family usage is to be proved the statements of deceased members of the family are relevant facts. Their Lordships are, therefore, unable to give to their judgement the weight which it would otherwise have deserved.

To sum up this part of the case: their Lordships find that through 16 devolutions of the estate there has been no instance of a succession by adoption, though in three instances the circumstances were such as usually move Hindus to make an adoption; that there has been one instance of an attempt at adoption, and that, whatever its exact issue may have been, it failed to carry away the succession from the collateral heir; that there is a considerable amount of family tradition against the practice; and that of counter evidence there is absolutely none. Whether, if the Bykunthpur family were shown to have become Hindus out and out saving only special customs, such evidence would be sufficent to prove a special custom, need not be discussed here. The family is in a totally different position. And their Lordships have no hesitation in holding that whatever Hindu customs may have been introduced into it, the custom of succession by adoption has not been introduced.

It is now to be determined whether the angikarpatra has any effect upon the succession to the estate. The facts stated in the introductory part of it were disputed, and in their Lordships' opinion some of them were not proved, but for this purpose they may be taken as proved. It is dated the 23rd Kartick 1284 (11th November 1877), and is in these terms, Jagadindra Deb

Kumar being the name given to Rajeswar on adoption :—

"To Jagadindra Deb Kumar. This angikar-patra, executed in the year 1284 (1877) by Jogendra Deb Raikat, zemindar of pergunnah Baikuntpore, &c., inhabitant of Awas station and zillah Julpaiguri, showeth,—

"That your father, the late Rangu Barua, in his lifetime and in the presence of his agnatic relations, Nilkomul Barua and Nend Barua and my kinsman Buddun Chunder Das Rajjamata and others, and also in the presence of the late Kant Deb Surma, purohit, gave you away to me for adoption both verbally and under a written deed. I accepted the gift and duly received the son (in adoption) ; but I have not hitherto made this fact known to any person in the hope that a son may be born to me of my loins. I have in the meantime supported you and educated you. Besides, to provide against the contingency of my dying without leaving behind me any son born of my loins or taken by me in adoption, I, on Cheyt 1278 (9th April 1872), executed a will with permission for adoption, wherein I authorized Srimati Rani Jagadiswari Debi and Srimati Rani Jagneswari Debi, and Srimati Rani Japeswari Debi, to take sons in adoption, each of these Ranis to exercise this right on the death of the other. Subsequently, on 10th Falgoon 1279 (20th February 1873), I executed a codicil to that will, and in that codicil I appointed the Ranis as principal executors, and I appointed other men assistant executors to assist the Ranis in the management and protection of the estate during the minority of any son who might be born to me or of any son who may be received in adoption either by me or by the Ranis. At present I am suffering from many diseases, and to this day no son has been born to me of my loins. The body is frail; who can say what [ill] (which God forbid) may befall me. Wherefore I have thought it proper to disclose the fact of my having taken a son in adoption, and accordingly I have received you in adoption this day publicly, agreeably to the gift made by your father, and I made you over to Srimati Rani Jagadiswari Debi, who is your sister by your former step-mother. I authorize you by this *angikar-patra* to offer oblations of water and *pinda* to me and my ancestors after my death by virtue of your being my adopted son. Moreover you shall become the proprietor of all the moveable and immoveable properties which I own and which I may leave behind; you shall become entitled to my *dena-pawna* (debts and dues), and you and your sons and grandsons shall enjoy and own them agreeably to the custom of the family. During your lifetime, and as long as son or grandson of yours is alive, the Ranis shall not be able to take any other son in adoption under the terms of the will. But should you die leaving behind you neither a son begotten of your loins nor an adopted son, and without leaving a permission for adoption (which God forbid),

in that case the Ranis may take a son in adoption under the terms of the will, and shall thereby protect the estate."

It appears to have been the opinion of this Committee that such an estate as this of Baikunthpur might by family custom be inalienable (Anund Lal Sing Deo *v.* Maharaja Dheraj Gurrood Narayun Deo, 5 Moore I. A., 103; Rajah Udaya Aditya Deb *v.* Jadul Lal Aditya Deb, Law R. 8, I. A. 253). There is some evidence in this case of a family custom forbidding alienation by gift, and consequently by will, but their Lordships do not propose to enter into the question whether there is sufficient proof of it, as they have come to the conclusion that, as Jogendra had no power to adopt a son who would succeed to the estate, it did not pass to Rajeswar by the angikar-patra. Their Lordships feel no difficulty about Rajeswar being sufficiently designated as the object of the gift, although the adoption may not be valid. They think the question is whether the mention of him as an adopted son is merely descriptive of the person to take under the gift, or whether the assumed fact of his adoption is not the reason and motive of the gift, and indeed a condition of it. The words are,—"I authorize you by this angikar-"patra to offer oblations of water and pinda to "me and my ancestors after my death, by virtue "of your being my adopted son. Moreover, you "shall become the proprietor of all the moveable "and immoveable properties which I own and "which I may leave behind; you shall become "entitled to my dena-pawna (debts and dues), "and you and your sons and grandsons shall "enjoy them agreeably to the custom of the "family." He is to make the offerings by virtue of being an adopted son and "moreover" he is to become the proprietor. This is to be the consequence of the adoption. In fact the angikar-patra only states what would have

happened without it. The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. If a man makes a bequest to his "wife A. B.," believing the person named to be his lawful wife, and he has not been imposed upon by her, and falsely led to believe that he could lawfully marry her, and it afterwards appears that the marriage was not lawful, it may be that the legality of the marriage is not essential to the validity of the gift. Whether the marriage was lawful or not may be considered to make no difference in the intention of the testator. It is difficult to suppose a case similar to the present coming before the English Courts. In Wilkinson *v.* Joughin, Law R. 2, Equity, 319, a testator bequeathed his real and personal estate to trustees, upon trust to permit his wife Adelaide to receive the net annual income thereof during her life, and after her death, if no child of his should attain twenty-one, or be married, in trust for his step-daughter Sarah Ward (the daughter of the supposed wife) for her absolute use. The supposed wife and the testator went through the ceremony of marriage, she having represented herself to the testator as and he having believed her to be a widow, her husband being then alive. It was held by the Vice-Chancellor that the bequest to her was wholly void, but the bequest to the daughter was valid. This was apparently on the ground of the intention, the Vice-Chancellor saying, "In my opinion there is no warrant for "saying, where the testator knew this infant "legatee personally, and intended to benefit her "personally, that the language of the will is not "a sufficient description."

In Nidhoomoni Debia *v.* Saroda Pershad Mookerjee, Law R. 3, I. A. 253, a childless Hindu, by his will, directed as follows :— "And as I am desirous of adopting a son, "I declare that I have adopted Koibullo "Pershad, third son of my eldest brother, "Saroda Pershad. My wives shall perform the "ceremonies according to the Shastras, and bring "him up, and until that adopted son comes of "age those executors shall look after and "superintend all the property moveable and "immoveable in my own name or benami left "by me, also that adopted son. When he comes "to maturity, the executors shall make over "everything to him to his satisfaction." The ceremonies of adoption had been performed by one of the widows only, and the other brought a suit to recover half of the property. This Committee held that she could not do so, that there was a gift of his property by the testator to a designated person, and it would be an altogether erroneous reading of the will to suppose that he intended the taking of his property by Koibullo to be entirely dependent on whether the wives chose or did not choose to perform the ceremonies. The intention of the testator appears to have been the ground of decision in this case also, but both the words of the instrument and the nature of the property were very different from the instrument and property now in question. In the present case their Lordships are of opinion that it was Jogendra's intention to give his property to Rajeswar as his adopted son, capable of inheriting by virtue of the adoption, and the rule that it is not essential to the validity of a devise or bequest that all the particulars of the subject or object of the gift should be accurate is not applicable. As the adoption was contrary to the

customs of the family and gave no right to inherit, the angikar-patra had not any effect upon the property. It is, therefore, unnecessary to decide whether Rajeswar was an only son or whether he was duly given in adoption, about which there was the usual conflict of evidence.

In their Lordships' opinion the decree of the Judge of Rungpore was right, and they will humbly advise Her Majesty to reverse the decree of the High Court, and to dismiss the appeal to that Court, with costs. They order the costs of this appeal to be paid by the Respondent Jagadindra Deb Raikat.