

*Privy Council Appeal No. 33 of 1914.*

**Bal Gangadhar Tilak and others - - - Appellants,**

*v.*

**Shri Shriniwas Pandit and another - - - Respondents.**

FROM

**THE HIGH COURT OF JUDICATURE AT BOMBAY.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 26TH MARCH 1915.

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*Present at the Hearing:*

LORD SHAW.

SIR GEORGE FARWELL.

SIR JOHN EDGE.

MR. AMEER ALI.

*[Delivered by LORD SHAW.]*

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This is an appeal from a decree of the High Court of Judicature at Bombay, dated 23rd September 1910, which reversed the decree of the First Class Subordinate Judge at Poona, dated 31st July 1906.

The main question to be determined on the appeal has reference to the validity of the adoption by the widow of the late Shri Vasudeo Harihar Pandit, alias Shri Baba Maharaj, of a son to her late husband. The appellant Jagannath claims to be the duly adopted son. This claim is resisted by the defendants and forms the issue in the case.

The adoption is challenged substantially upon three grounds—first, that it was never com-

pleted in fact. This in argument was reduced to the proposition that the whole transaction had been left at the stage of a proposal to be afterwards carried into effect. As to the adoption itself, it is maintained that there was never a complete giving and taking of the child, and in particular he was not taken upon the lap of the adoptive mother. Secondly, that the religious ceremony of *datta homam*, namely, the sacrificial burning of the clarified butter in accordance with the practice of the Hindu religion, was an essential requisite, and was not performed, and that on this ground also the adoption remained inchoate.

These grounds of challenge affect the completion and formalities of the ceremony itself. The third ground, however, is one of general law. There are difficulties on the pleadings and arguments in placing it within any definite category, and to this allusion will afterwards be made. But it may at least be said that almost every known ground of challenge is imported into the case by suggestion. Allegations amounting to or compounded of fraud, circumvention, coercion, and undue influence are all mixed together. The disentangling of these separate and separable grounds of action must undoubtedly have caused certain difficulties in the court below. But the challenge appeared to their Lordships to preserve even at the bar of the Board this mixed or jumbled character.

The facts of the case, briefly stated, are these: The late Baba Maharaj was a first-class sardar of the Deccan. He died at Poona on 7th August 1897, leaving a young widow, Tai Maharaj.

At the date of his death he made a will appointing five gentlemen as his trustees. One

of these, Ranb Sahib, declined to act; the other four obtained probate of the ~~estate~~<sup>will</sup> on 2nd December 1897. These were Messrs. Tilak, Khaparde and Kumbhar<sup>Chopkar</sup>, the appellants. The fourth, Mr. Nagpurkar, while remaining a trustee, after a time dissociated himself in action from his three colleagues, and was properly convened as a defendant in the suit. The suit itself was brought in defence of the validity of the adoption (the adopted child being, of course, one of the plaintiffs), and ~~for~~<sup>for</sup> the administration of the estate in terms of the will.

In the will the clause material to the questions of adoption and succession is as follows:—

“My wife, Saubhagyavati Shri Sakvarbai, is now pregnant. If she does not give birth to a son, or if the son after birth is short-lived, then, for the purpose of continuing the name of my family with the *Vichare* of the above-mentioned gentlemen, a boy should be given as often as may be necessary in adoption on the lap of my wife in accordance with the *Shastras*, and the above-mentioned *Panch* should, on behalf of that son, carry on the management of the immovable and movable estate until he attains majority.”

On 18th January 1898 the widow gave birth to a son, but he died within two months thereafter, namely, on the 9th March. The circumstances for giving effect to the testator's intentions by his widow performing an act of adoption thus arose. And it is an admitted fact in the case that for a period of over three years she and the four acting trustees made frequent enquiries and numerous efforts towards the securing of a suitable boy. The circle of relations was considerable, but for various reasons, none of which bear upon the present case, a suitable adoptee could not

be found in the Kolhapur or Poona branches of her husband's family.

On the 18th June 1901 a meeting of the trustees was held, at which Tai Maharaj was present, and the facts which were otherwise spoken to by the witnesses are recorded in the minute, the substance of which was that there were no boys available in the Kolhapur family, that of all those available in the Poona family none were approved. The minute in this particular is of importance, because it shows that an anxious search had been made, that deference was paid to the wishes of the widow, and that objection is made to certain suggested adoptees on the ground of their being too old. One boy, the youngest named, of eleven years, being, however, stated to be in point of age suitable, although delicate. The minute then proceeds :—

“The only family which remains, therefore, is that descended from the brother of Shri Siddeshwar Maharaj at Babre. It is not yet known whether there is a boy or not in that family. But if there is a boy of that family, fit in point of age, &c., for adoption, it is our unanimous opinion that one should not be taken from any other family. And Shri Tai Maharaj is of the same opinion.

“Shri Tai Maharaj suggests that Messrs. Bal Gadhar Tilak and Ganesh Shrikrishna Khaparde should both go to Babre, select boys, and return after settling as regards that family.

“Shri Tai Maharaj should go, see boys, and approve.”

It should be mentioned that the trustees were, and had been since the testator's death, duly administering the testator's estate.

What followed upon the proceedings of the 18th June was that Messrs. Tilak and Khaparde accompanied the widow to Aurangabad, where the widow remained; the two trustees proceeded to Nidhone, a place near the Babre village, and selected five boys within the circle

of relationship, and they came back, accompanied by their parents, to Aurangabad. The boys stayed with the widow for several days, being entertained and kept under observation. Certain astrologers, including Durga Shastri, who was one of her suite who had accompanied her to Aurangabad, cast the horoscopes of the children. These proved favourable to the appellant, Jagannath; and her personal likings appeared to point in the same direction.

All this course of conduct pointed to the entire acquiescence on the part of the widow in the testator's wishes and directions, and so far there is no substantial suggestion to the contrary. As to what happened at Aurangabad it is sufficient to say that, in their Lordships' opinion, the sworn testimony is abundant, is clear, and is overwhelming. It amounts to this. The widow's desire, the arrangement of all parties, and the horoscopes of the astrologers all pointing in one direction, on the 27th June a meeting of the Shastris and of other persons in Aurangabad was summoned. The father of the boy being present, it was announced by the trustees that the boy had been selected. The father was taken to the widow; in pursuance of the familiar procedure she asked him to give her his boy in adoption, and he agreed. The fact of the arrangement was announced to the assembled guests, and there and then duplicate deeds of adoption were drawn up, the one being impressed with a *mongali*, and the other with a British stamp, and both intended to be signed and attested by the widow. This deed was in due form and bore that the father gave the son in adoption. The second document was a letter from the widow addressed to the father and agreeing to take the boy in adoption. So far as giving and receiving of the child these

documents were prepared for and pointed to actual adoption in fact.

The preparation of the documents, however, occupied time, and the hour being late the proceedings were stopped, but were resumed early next morning. A gathering was accordingly again held early on the 28th. The deeds of adoption and the letter were duly executed, the boy was given in fact by its natural father to its adopted mother, he was received in fact by her on her lap in performance of the requisite essential in this caste of Hindus on occasion of adoption and—all being completed—the formal ceremonies and festivities were postponed, to take place afterwards at Poona, and the widow left Aurangabad.

The Subordinate Judge of Poona has gone into the circumstances with the utmost minuteness and detail, and he has weighed and considered every argument presented, and he comes to the conclusion that the adoption was in fact completed. Notwithstanding the judgment of the learned judges of the High Court of Bombay, their Lordships have no hesitation whatever in entirely agreeing with the judge of first instance. Reference in a little time will be made to the reasons assigned by the High Court for differing from him. But in the meantime it may be said that it appears to their Lordships that, viewed as a matter of evidence, no other conclusion was possible than that come to by the Subordinate Judge.

Their Lordships do not stop to examine the oral testimony in detail. It is really all one way. Upon the crucial question of whether the boy was received by being taken on the lap of the adoptive mother there can be no doubt. Witness after witness speaks of it. It would be very strange if it had not taken

place, because it is conceded that it is among the very elements of the ceremonial of adoption, and entirely familiar. It is not only that Hindus of various classes were present and saw it, but it has to be borne in mind what the nature of the challenge of the transaction now is. It has come to be one in which the trustees, men of high position, and some of them of learning and legal training, are accused of conspiring by fraud, duress, undue influence, and nearly everything that is improper, to have procured from the widow this act of adoption. It is not to be believed that if such a scheme were afoot, if deeds had been signed, horoscopes taken, and meetings gathered, the scheme would have failed because of the omission of that which was elementary to the knowledge of everybody, namely, the taking of the child upon the mother's lap.

It must, however, be borne in mind that against a body of evidence of 10 or 12 witnesses, 5 witnesses are produced for the defendants. It is sufficient to say of this evidence that most of it was entirely irrelevant to any issue in the case, and such of it as was not was disbelieved by the judge of first instance, a verdict with which the High Court saw no ground for interfering.

It may be added that when the party returned to Poona, Mr. Tilak wrote out a full account of the transaction, which was recorded in the minutes, and the trustees who had not taken part in the mission to Aurangabad were communicated with, to the effect that the adoption was complete. The sworn evidence is entirely in accordance with what has now been stated. Here and there, there are expressions in the letters out of which it may with ingenuity be possible to suggest a doubtful

meaning; for instance, that the words "selected" and "decided" refer to something in the future. And it is also undoubtedly true that both the minutes of the trustees, and the letters, date the adoption as the 27th, whereas in point of fact, as has been seen, it began upon the 27th and was concluded on the 28th. But so far as oral evidence goes, their Lordships see no reason to doubt that it represented the truth, and that the fact of adoption was by it proved.

The Subordinate Judge says :

"Here there was a clear direction of the husband to this wife to adopt, the wife after his death was anxious to carry out the direction. There is no evidence to prove that any effort or cajolery was practised upon her, or that there was any suppression or concealment of facts from her; the plaintiffs had no personal interest whatever."

In another passage of his judgment he remarks :

"The evidence clearly shows, and it is undisputed, that on the 27th there was selection and verbal gift, and acceptance, and preparation of necessary documents. On the 28th there was execution of documents under corporeal acts of giving and taking."

In their Lordships' view these conclusions are well justified.

It is an admitted fact in the case that neither the trustees nor any of the witnesses for the plaintiffs had any interest whatsoever in the subject-matter of the suit, and that no motive can be reasonably suggested for them maintaining or testifying that the adoption of the boy mentioned was made, except that this represented the actual truth which occurred.

It is in these circumstances that their Lordships have viewed with surprise the charge which is made not only against the



trustees, but against the whole body of the plaintiffs' witnesses, 10 or 12 persons in all.

"The account unquestionably, to my mind,"

says Mr. Justice Chandavarkar,

"given by the witnesses appears to be a true account of  
"many of the series of events, and a false account of at  
"least one, and that the most important"

This event is the taking of the child on the lap. Later on in his judgment he states:

"We are driven to believe that a considerable number  
"of men of good position have conspired together to give  
"false evidence."

The conclusion thus made is of the most serious character, amounting to a plain judicial finding of conspiracy and of perjury.

Their Lordships will presently refer to one or two circumstances accompanying such a verdict, but meantime they will only observe that they do not think that one word of it is justified by the evidence in the case. Referring to Messrs. Tilak and Khaparde, Mr. Justice Chaudavarkar observes that—

"they were men of mature years, of exceptional education  
"and mental qualities, lawyers and men of affairs of great  
"repute and good standing, and both men of dominating  
"personality."

Some of the witnesses who gave evidence for the plaintiffs are also persons of considerable standing. It is *a priori* difficult to understand how these men, with no object to gain and no interest to serve, could be supposed to have entered into the conspiracy and committed the perjury which the High Court judgment found. Their Lordships think the conclusion come to by the learned judges to be entirely unwarranted on the facts.

Their Lordships find themselves constrained to observe upon certain procedure in the case,

the result of which was to introduce into it large masses of irrelevant matter.

It should be mentioned that, subsequent to the adoption at Aurungabad, the widow, upon returning to Poona and after having been a party to certain communications naturally following the adoption which had been made, fell under other influences, and in the month of July expressed a change of mind. And on the 19th August she went through the form of another adoption, viz., of Bala Maharaj—a married man older than herself—as her son. It is unnecessary to make any observations upon his claim. The widow, who, while she was a litigant, maintained that adoption, died on 30th September 1903. Her daughter who was, on her death, admitted to the suit as defendant, challenges not only the first adoption, but the second adoption also—her interest being to maintain that the provisions of the testator's will with regard to adoption had failed, that the widow became the owner of the estate as heiress to her infant son who died, and that the property passes in this way to her heir.

It appears that the widow and Bala Maharaj left no stone unturned in the way of litigation. In July proceedings were begun to revoke the probate granted to the trustees, and subsequently criminal proceedings were instituted in respect of perjury. Their Lordships regret to observe that not only are the circumstances with regard to the criminal proceedings referred to in the present litigation by the parties, but that the depositions therein become matter apparently of materiality in the judgment of the learned judges of the High Court.

In the opinion of the Board this was an irregularity of a somewhat serious character. They refer particularly to the depositions in

the criminal case, which seem to have been imported in bulk into the present. There is a risk by such procedure of justice being perverted. A civil cause must be conducted in the ordinary and regular way, and judged of by the evidence led therein. Under section 33 of the Indian Evidence Act, 1872, evidence given by a witness in a judicial proceeding in a criminal trial is relevant for the purpose of proving in a subsequent proceeding the truth of the fact which it states, but this only, as the section proceeds—

“ when the witness is dead, or cannot be found, or is  
 “ incapable of giving evidence, or is kept out of the  
 “ way, &c.”

Not one of these circumstances was proved in the present case, and the depositions could not have been used with propriety even to support the evidence of the plaintiffs, which they appear to have done. But there appears to have been no warrant whatsoever for using them for the purpose of either contradicting or discounting the evidence of the witnesses, given in this suit, unless the particular matter or point had been placed before the witness as one for explanation in view of its discrepancy with the evidence then being tendered. It was stated to their Lordships that the prosecution for perjury had in the end completely failed. With that their Lordships have nothing to do. The judgment now given is pronounced irrespective of the result of the criminal suit. Successful or unsuccessful, the introduction and use in this civil action of these criminal proceedings, as above described, were illegitimate.

A further mischance in point of procedure must now be mentioned. As already stated, the testimony of the plaintiffs' witnesses is not contradicted orally, and is internally a consistent

body of evidence. But various minutes and documents are the subject of minute analysis, observation, and comment by the learned judges of the High Court with a view to rebutting it. Their Lordships think it right to observe that in view of the serious nature of the verdict of the High Court, they have considered it within their province themselves to peruse the documents. Having done so, they are of the opinion that, taken together, they completely confirm the case made in the witness-box, and that there is no ground, in fact, for the conclusion that they either contradict the testimony or cast any reasonable doubt upon it.

But they must also record their dissent from the view that the use made of these documents in this case was justified by law. On general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity, if documents are to be used against him, to tender his explanation and to clear up the particular point of ambiguity or dispute. This is a general, salutary, and intelligible rule, and where a witness's reputation and character are at stake the duty of enforcing this rule would appear to be singularly clear.

Fortunately the law of India pronounces no uncertain sound upon the same matter. By section 145 of the Indian Evidence Act, 1872, it is provided that—

“A witness may be cross-examined as to previous  
 “ statements made by him in writing or reduced into  
 “ writing and relevant to the matters in question without  
 “ such writing being shown to him or being proved ; but  
 “ if it is intended to contradict him by the writing his  
 “ attention must, before the writing can be proved, be  
 “ called to those parts of it which are to be used for the  
 “ purpose of contradicting him.”

Their Lordships have observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed. The verdict of the High Court is an inferential verdict—none the less sweeping on that account—but an inferential verdict actually of perjury. What are the premises upon which this inference proceeds? In no inconsiderable degree they consist of documents, statements, even turns of expression, which are used to confound the spoken word. Had the safeguards set up by the law with respect to the use of documents been observed? Not at all. Not only have documents been used for the purpose of contradicting witnesses without obeying the injunctions prescribed by law, but the inference thus derived, and improperly derived, from these documents has resulted, as stated, in an inferential verdict of perjury.

Heaton, J., deals elaborately with this portion of the case, and one example taken from his judgment will suffice. One letter out of many is taken, passages are cited from it, and a minute argument proceeds as to the expressions used, and why this was mentioned and that other omitted. Mr. Tilak was for five days under cross-examination before the Subordinate Judge; but not one of these things was put to him; and he was not asked in the witness-box to give one single explanation with regard to any of those expressions or omissions which are now alleged to compromise him. On this point of the case no more need be said.

One other matter of procedure may be mentioned. One of the trustees, Mr. Nagpurkar, dissociated himself from his colleagues, and in July appears to have written a minute of doubt or dissent with regard to certain proceedings.

A letter from him resiling from this position is also produced.

The learned Judges have come to a conclusion which would be in some respect in accord with the so-called dissent. It is a striking circumstance that Mr. Nagpurkar, a relevant witness, intimately acquainted with what had gone on, and with the position both of the trustees and widow as regards adoption, and a party in the case aware of the charges launched against his colleagues, does not appear as a witness to explain the one or to support the other.

In result, their Lordships are unable to agree with the view taken by the High Court on this part of the case.

The next argument is that the adoption was void because it lacked the ceremonial of *datta homam*, which ceremonial is declared to be essential to its legal validity.

*Datta homam* is the service of the burning of clarified butter, which is offered as a sacrifice by fire by way of religious propitiation or oblation. It is admitted that in this case the ceremony was not performed, and it seems to be fairly clear that it was one of those things which it was intended afterwards to carry out at Poona as part of the general ceremonial and festivities which were to be carried through there.

In certain circumstances the point might be the subject of a prolonged and very conflicting argument, as the authorities, ancient and modern, are not in accord on the point as to whether this is a legal as well as a religious requisite. There is a danger, on the one hand, of not paying due respect to those religious rites which are observed and

followed among large classes of Indian belief, while, on the other hand, the danger must also be avoided of carrying these—except when the law is clear—into the legal sphere, so as to affect or impair personal or patrimonial rights. The subject of the requisites for adoption has, in recent years, been the matter of not infrequent consideration by this Board, and their Lordships refer, in especial, to the elaborate examinations of the authorities made by Lord Hobhouse in *Sri Balusu Gurulengaswami v. Sri Balusu Ramalakshamma*, as reported in 26 Indian Appeals, 126, and by Mr. Ameer Ali in *Ramchandra Martand Waikar v. Vinayak Venkatesh Kothekar*, reported in 41 Indian Appeals, 300.

The former case had reference to the validity of the adoption of an only son. From the religious point of view this is, in many writings of great authority, forbidden. There was, however, in India, considerable difference in the view as to whether the religious and legal injunctions on the subject were co-extensive. It must be admitted that if one has recourse to the ancient writings when Brahminical influence was most predominant one finds the ceremonial part of adoption the subject of highly elaborate detail; and it is beyond all question that in the course of ages many of these details have disappeared as essentials within the legal sphere. As Lord Hobhouse observes :

“The further study of the subject necessary for the  
 “ decision of these appeals has still more impressed them  
 “ with the necessity of great caution in interpreting books  
 “ of mixed religion, morality, and law, lest foreign lawyers,  
 “ accustomed to treat as law what they found in authori-  
 “ tative books, and to administer a fixed legal system,  
 “ should too hastily take for strict law precepts which  
 “ are meant to appeal to the moral sense, and should thus  
 “ fetter individual judgments in private affairs, should  
 “ introduce restrictions into Hindu society, and impart to

“ it an inflexible rigidity never contemplated by the original  
“ law-givers.”

The case resulted in the decision that the adoption of an only son is not null and void under the Hindu law.

The question whether the *datta homam* is a legal requisite in Bombay for adoption among the three twice-born classes does not, however, in the view of their Lordships, broadly arise in the present case. It is in no way necessary to canvas or call in question any dicta upon that general point, nor does the question arise whether, for instance, the principle extends to India at large of the decision of the Madras Full Bench in *Govindayyar v. Dorasami* reported in 11 Indian Law Reports (Madras), page 5, or of the Madras High Court in *Singamma v. Venkatacharlu* reported in 4 Madras High Court Reports, 165, both decisions being of value as containing a careful study of the authorities, and affirming that the ceremony of *datta homam* is not essential to a valid adoption among Brahmins in Southern India.

For in the opinion of the Board the necessity does not arise where the child to be adopted belongs to the same *gotra* as that of the adoptive father. It is an admitted fact that this was so in the present case. And their Lordships have come clearly to the conclusion that where this is so in fact then the Law of India is that the celebration of the ceremony of *datta homam* is not an essential to the legal validity of an adoption. It is conceded in argument that certain exceptions to the alleged general rule do exist, but it is maintained that these exceptions are limited to the case of the adoption of a nephew, or of a daughter's son. In decided cases this may have been the relationship in fact, but the principle of all the decisions, and



in their Lordships' opinion, of all the authorities, is that within the same *gotra* the ceremony is unnecessary. They agree with what, in their opinion, is the full and careful judgment of Chief Justice Jenkins, in the case of *Valubia v. Govina Kashinath*, reported in 24 Indian Law Reports (Bombay Series), page 221, the decision being to the effect that among Brahmins in the Presidency of Bombay, the performance of the *datta homam* ceremony is not essential to the validity of the adoption of a brother's son. An examination of the judgment shows that it was not based upon the narrow particular degree of relationship but upon the broad ground of the identity of *gotra*.

Mr. Colebrook's annotation upon Mitakshara 25 is as follows:—

"*Gotraja* or persons belonging to the same general family (*gotra*) distinguished by a common name, these answer nearly to the gentiles of the Roman law."

A good illustration of the point has reference to the law applicable to the Sudra caste. The use of the *datta homam* is not necessary for adoption within that caste, and why? The explanation is given in a sentence by Strange in his "Hindu Law," volume 2, in which it is laid down that—

"Ceremonial adoption cannot be necessary in the case of a Sudra, since by the *datta homam* the adopted son is offered from the stock (*gotram*) of the natural to that of his adopted father; and Sudras have no *gotra*."

It may be added that in the treatment in the same volume, page 104, of the celebration of the Upanayana rite, or the investiture with the sacred thread, this is laid down:

"With respect to the non-eligibility of a person for adoption on whom the Upanayana rites have been performed, it is much disputed. The more reasonable opinion would appear to be that he is eligible if of the

“ same *gotra* (family); non-eligible if of a different *gotra*  
 “ from the adopter; that if of the same *gotra* the *datta*  
 “ *homam*, though proper, is not necessary.”

Their Lordships do not pursue the investigation of the authorities further, adopting, as they do, the survey made in the last-mentioned judgment of the learned Chief Justice Jenkins.

In their opinion accordingly this part of the respondents' case also fails.

What remains is the attack which was made upon the transaction of the adoption itself, an attack in which the various grounds of rescission applicable to contracts in general were alluded to. Their Lordships hold that it is impossible to discover what it is that is really put forward by the defendants. Under the contract law of India, as well as by ordinary principles, coercion, undue influence, fraud, and misrepresentation, are all separate and separable categories in law. It is true that they may overlap or may be combined. But in the present case it is impossible to discover what ground or grounds are really taken up. There is a well-known rule of pleading expressed in the frequently quoted language of Lord Selborne that—

“ With regard to fraud if there be any principle which  
 “ is perfectly well settled, it is that general allegations,  
 “ however strong may be the words in which they are  
 “ stated, are insufficient even to amount to an averment  
 “ of fraud of which any court ought to take notice.”

The law of India is in no way different from this, and it has been decided over and over again, *e.g.*, in *Gupta v. Tiluckram Chowdhry* (15 Indian Appeals, 119).

It is, in their Lordships' opinion, much to be regretted that the rule is not more strictly observed, and their Lordships are of opinion that in the present case much confusion and

contention have been caused, together with much expense to the parties, in consequence of its neglect. No definite issue upon any one of the well-known categories of attack was settled for trial, the only issue on the subject being—Whether the plaintiff, No. 4, is a validly-adopted son of Bala Maharaj. From time to time, in the course of this case, it is clear that specific pleadings in Indian procedure have been abandoned altogether. In short, several of the careful prescriptions of the law and of the Legislature, all of which were intended to bring litigation within definite compass and to make articulate and clear the points of difference between the parties have been lost sight of. Their Lordships, however, are unwilling, confused though the charges be, to dismiss this part of the case on such a ground.

The position upon the facts was this: The will of the testator prescribing an adoption was clear; the wish of the widow and the trustees alike to follow it was clear; the trustees, so long as the testator's wishes were carried into effect, had no interest of any kind as to who the adoptee should be. It was also clear that the testator's will indicated that a minor should be adopted, because express provision was made for the management of the estate till that minor should come of age. It was manifest that every consideration pointed to the advantage of keeping, if possible, within the *gotra*, and it was further clear that the trustees, in advising the widow, should pay due regard to her wishes, and that, so far as this could be accomplished, they and she should act together.

It is in these circumstances a strange situation that the adoption should be challenged upon the ground, nebulously stated as it is, of fraud. There is no evidence, says the Subordinate

Judge, to prove that any fraud or cajolery was practised upon her, or that there was any suppression or concealment of facts from her. With this judgment it does not appear that the High Court differs, and their Lordships entirely agree with it. It was for some reason, however, held that the general issue above quoted did include allegations of coercion and undue influence. Coercion is by admission out of the case. There was nothing of the sort ; and this is not now maintained. What remains accordingly is the judgment of the High Court to this effect that—

“ The question here is difficult, she was indeed willing  
 “ to adopt, but was she a free agent when she adopted  
 “ the fourth plaintiff, assuming that she adopted him, or  
 “ was she forced into it against her will by unconscientious  
 “ means used by the first two plaintiffs, that is, Messrs.  
 “ Tilak and Khaparde, and unfair advantage taken by them  
 “ of her ignorance and youth, and of other fiduciary  
 “ relations between them.”

The citation just made is from the notes of Mr. Justice Chandavarkar. With much respect to the learned judge, it is, notwithstanding the protracted argument before their Lordships, even now somewhat difficult to gather what are the legal categories under which the attack upon this transaction is made. Unconscientious means are mentioned and ~~in fact~~ *unfair* advantage is mentioned. It is needless to ask whether this implies fraud because their Lordships are of opinion that no sort of unconscientious means was employed by these trustees from beginning to end of the transaction, and that no unfair advantage was either taken or meant throughout their whole course. It is true that the adoptive mother was a young widow, probably easily guided, and that the trustees are admitted to have been men of great influence and strong personality, but their

Lordships are of opinion that these were used in no respect unduly, but with propriety and entirely in the interests of the proper administration of the estate. Their Lordships cannot approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. If it were so, then the result in India would be to import *pro tanto* a disqualification and disability into the position of reputable men.

A reference is made in the Court of Appeal to the fiduciary relations in which the trustees stood to the widow, and in one part of the judgment impropriety of conduct upon the part of the trustees is alleged to lie in this, that they failed in their duty of informing her as to her rights. Upon inquiry as to what was meant by this, their Lordships were informed that the reference was to this effect, that if the widow had failed to adopt, then by doing so she would herself have come into the position of being heiress to her infant deceased child. The meaning of this is accordingly as follows:— Among Hindus the ceremony of adoption is held to be necessary not only for the continuation of the line of the childless father, but as part of the religious means whereby a son can be provided who will make those oblations and religious sacrifices which would permit of the soul of the deceased passing from Hades into Paradise.

The widow in the present case is said to have been injured because she had not been informed that she could win for herself his temporal estate, by violation of her husband's dying wishes, and at the price of sacrificing his soul's happiness. Their Lordships are not of opinion that it was any part of the duty of the trustees to suggest this infamous alternative to her mind. Their duty was to give effect to

his wishes, and his wishes were in accord with the religious belief of Hindus in regard to adoption. It is to be recorded further that the widow herself did not put forward, during her life, any plea or suggestion of this sort; she was as anxious as the trustees that an adoption should be made.

Only a word need be said as to the argument put forward on behalf of the daughter, that neither the first nor second adoption was valid. The only separate point put forward was to the effect that the trustees' consent had not been unanimous, one trustee out of five having declined to act. In their Lordships' opinion his consent in these circumstances was not required. Of the acting trustees it was said that one, Nagpurkar, dissented. Whether he did so or not, the question would remain as to the action of the majority of the trustees; but in their Lordships' opinion that question does not arise; because he did in fact not dissent, but consent. His dissent, or alleged dissent, was subsequently made under circumstances in which it is not necessary to inquire.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, the decree of the High Court set aside, and the decree of the Subordinate Judge restored. The appellants will have their costs here and in the Courts below.



In the Privy Council.

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BAL GANGADHAR TILAK AND  
OTHERS

v.

SHRI SHRINIWAS PANDIT AND  
ANOTHER.

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DELIVERED BY LORD SHAW.

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