argument; and if Munshi Ram is to succeed on the principle of representation that principle must be fully worked out and he must for all intents and purposes be deemed to be Hans Raj. As the person who is deemed to be Hans Raj was adopted away and has a brother in the shape of Salig Ram he would not succeed even under the custom recorded in para. 48 of Rattigan's Digest. The position therefore is that neither under Hindu law nor under the custom recorded in para. 48 can Munshi Ram succeed to the property of Nanak Chand. We therefore allow the appeal and set aside the decree of the courts below and dismiss the suit of the plaintiff-respondent so far as the property of Nanak Chand is concerned. In the circumstances we also order the parties to bear their own costs throughout as the High Court did.

Appeal allowed.

LAKSHMAN SINGH KOTHARI

v.

SMT. RUP KANWAR

1961

March 22.

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Hindu law—Adoption—Validity—Essential requirements—Ceremony of giving and taking—Delegation of authority.

In order that an adoption may be valid under the Hindu Law there must be a formal ceremony of giving and taking. This is true of the regenerate castes as well as of the Sudras. Although no particular form is prescribed for the ceremony, the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent must receive him, the nature of the ceremony varying according to the circumstances. After exercising their volition to give and take the boy in adoption, the parents may, both or either of them, delegate the physical act of handing over or receiving to a third party.

Consequently, in a case where the natural father merely sent the boy in another's company to the house of adoptive father who received him but there was no delegation of the power to give in adoption or the ceremony of giving and taking,

1961

Lakshman Singh Kothari v. Smt. Rup Kanwar

Held, that no valid adoption had taken place.

Shoshinath Ghose v. *Krishnasundari Dasi*, (1880) I. L. R. 6 Cal. 381, *Krishna Rao* v. *Sundara Siva Rao*, (1931) L. R. 58 I. A. 148, *Vijiarangam* v. *Lakshuman*, (1871) 8 Bom. H. C. R. 244, *Shamsing* v. *Santabai*, (1901) I. L. R. 25 Bom. 551, and *Viyyamma* v. *Suryaprakasa Rao*, I. L. R. 1942 Mad. 608, referred to.

Biradhmal v. *Prabhabhati*, A. I. R. 1939 P.C. 1952, explained.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 430 of 1957.

Appeal by special leave from the judgment and decree dated 27th October, 1953, of the former Judicial Commissioner, Ajmer, in Civil Second Appeal No. 25 of 1951.

C. B. Agarwala, S. S. Deedwani and *K. P. Gupta*, for appellant.

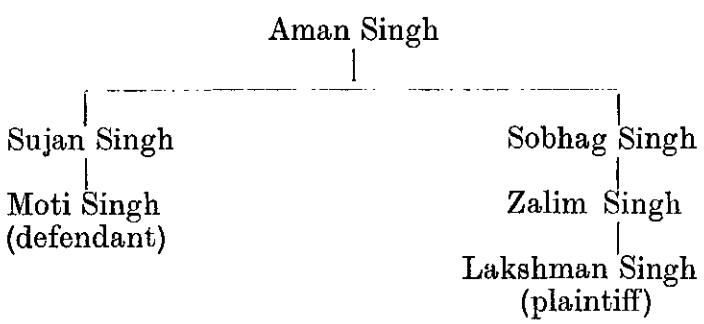
Mukat Behari Lal Bhargava, B. L. Aren and *Naunit Lal*, for the respondent.

1961. March 22. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—This is an appeal by special leave against the judgment and decree of the Judicial Commissioner at Ajmer dated October 27, 1953, confirming the judgment of the District Judge, Ajmer, and setting aside that of the Subordinate Judge, First Class, Ajmer, in Civil Suit No. 48 of 1944.

The following genealogy will be useful to appreciate the contentions of the parties:



It is not necessary to give the other branches of the genealogical tree. It will be seen from the genealogy that plaintiff Lakshman Singh's grandfather, Sobhag

Singh, is defendant Moti Singh's paternal uncle. In the year 1923, Sujan Singh was aged about 70 years, and Moti Singh was about 50 years, and Moti Singh's wife, Rup Kanwar alias Rup Kanwar Bai, the respondent herein, who was subsequently brought on record in place of Moti Singh after his death, was about 45 years old. Moti Singh had no son and, therefore, Sujan Singh was anxious to have a boy well-versed in vedic-lore to be adopted to his son Moti Singh to perpetuate his line. On February 14, 1923, the plaintiff was brought from his father's house to the house of Sujan Singh in Ajmer by one Hira Lal and left there. On March 28, 1923, the plaintiff was admitted as a student in an institution called Gurukul Kangri. He was educated in that institute from the year 1923 to 1936. On March 19, 1936, after completing his studies in the Gurukul, the plaintiff came back to Moti Singh's house. As he was not accorded the treatment expected of an adoptive father to an adopted son, he grew apprehensive of the intentions of Moti Singh and filed Civil Suit No. 48 of 1944 against Moti Singh in the Court of the Subordinate Judge, First Class, Ajmer, for a declaration of his status as an adopted son of the defendant, Moti Singh. Moti Singh in his written statement denied that the plaintiff was his adopted son and pleaded that the suit was barred by limitation. The Subordinate Judge, on evidence, held that the plaintiff was the adopted son of the defendant and that the suit was not barred by limitation. On appeal, the District Judge, on a review of the evidence, came to the conclusion that the plaintiff was never in fact adopted by the defendant and that the ceremony of "giving and taking" did not take place. He further found that the suit was within time. On second appeal, the learned Judicial Commissioner, Ajmer, accepted the findings of the learned District Judge and dismissed the appeal. Hence the appeal.

Learned counsel for the appellant contended that the Judicial Commissioner has not correctly appreciated the ingredients of the ceremony of "giving and taking" and that he should have held that Hira Lal's

1961

Lakshman Singh Kothari
v.
Smt. Rup Kanwar

Subba Rao J.

bringing of the boy at the instance of his natural father to the house of Sujan Singh, and Moti Singh receiving the boy by putting his hand on his head were sufficient compliance with the Hindu Law doctrine of "giving and taking" and, therefore, the adoption was valid.

Before adverting to the legal aspect of the question raised, it would be convenient at the outset to ascertain clearly the relevant facts in regard to the alleged handing over of the plaintiff-appellant by his natural father to the adoptive father. In the plaint the plaintiff did not give any particulars of his adoption; neither the date of the adoption was mentioned nor the manner in which the necessary ceremony of "giving and taking" was performed was stated. The only allegation found in the plaint was that ".....on the 2nd June, 1926, Kothari Sujan Singhji executed a document announcing the plaintiff by virtue of his adoption by the defendant to be the only and sole heir and successor to all his property after the defendant." The defendant in his written statement denied the factum of adoption. On October 24, 1942, the trial court directed the plaintiff to give further particulars about the date of the alleged adoption and to amend his plaint. On November 3, 1942, he filed a statement of further particulars alleging that he was taken in adoption between February 13, 1923, and February 23, 1923. Only during the course of the trial and particularly at the time of arguments it was suggested that he was taken in adoption on February 14, 1923, when Hira Lal brought him to the house of Sujan Singh. It is, therefore, clear that till a very late stage of the suit, the plaintiff did not at any rate think that he was taken in adoption on the date when Hira Lal brought him to the house of Moti Singh.

The documents filed in the case did not establish that any ceremony of "giving and taking" took place on February 14, 1923. Ex. P/I dated October 21, 1922, is the letter written by Sujan Singh, the father of the defendant, to Zalim Singh, the father of the plaintiff. Therein it was stated that Lakshman Singh would be sent to Gurukul for his admittance there..

It was also mentioned that, as Zalim Singh wished that permission of Moti Singh was required, Moti Singh would go to Gurukul for getting Lakshman Singh admitted in the institution and his name would also be entered as the guardian and father of Lakshman Singh. This letter only indicates that Sujan Singh was anxious that Moti Singh should take Lakshman Singh in adoption and it does not show that actually any ceremony of "giving and taking" took place or indicate that any such ceremony would take place on any particular date. Ex. P/2 is a post-card dated January 31, 1923, written by Moti Singh to Zalim Singh. Therein Moti Singh asked Zalim Singh to send Lakshman Singh, as he had to be admitted in Gurukul on February 20, 1923. There was a specific statement in the letter that "Cocoanut ceremony was not being done before as the boy may or may not be admitted into Gurukul". The following statement in that letter is very instructive:

> "After qualifying from Gurukul, he will of course remain. He is being educated at Gurukul with a view to adopt."

It is said that the phrase "with a view to adopt" is not a correct translation and the correct translation is "on account of adoption". But the context in which the said words appear leaves no room for doubt that Moti Singh was informing Zalim Singh that no ceremony would be performed as the boy might or might not be admitted into Gurukul. But he assured him that he was being admitted in Gurukul only with a view to adopt him. This letter also proves that Moti Singh did not contemplate any adoption, at any rate till the boy was admitted in Gurukul. Ex. P/3 dated February 9, 1923, is another letter written by Moti Singh to Zalim Singh wherein Moti Singh informed Zalim Singh that the election—meaning selection—of students for Gurukul would take place on February 28 and, therefore, he asked him to send Lakshman Singh at once. Ex. P/4 is an agreement entered into between the authorities of Gurukul Kangri and the parents of Lakshman Singh. In the preamble to that

1961

Lakshman Singh Kothari v. Smt. Rup Kanwar

Subba Rao J.

agreement Lakshman Singh is described as the grandson of Sujan Singh. It does not carry the matter further, as Lakshman Singh being Sujan Singh's brother's grandson, the description would be consistent even if there was no adoption. Ex. P/5 is the application for admission of Lakshman Singh in Gurukul. It is not dated, but it appears to have been put in between January 3, 1923, and February 14, 1923. It was sent by the natural father of Lakshman Singh. This may be explained by the plaintiff that, as on the date of the application the adoption had not taken place, the natural father signed it. Ex. P/26 is a will executed by Sujan Singh wherein he bequeathed his properties to Moti Singh and gave a vested remainder to Lakshman Singh. In the document Lakshman Singh was described as follows: "Lachman Singh the second son of my younger brother Sobhag Singhji's elder son Zalim Singh has been kept for the past about $3\frac{1}{4}$ years". This will was executed at a time when admittedly the relationship between Sujan Singh and Lakshman Singh was cordial. If really the adoption had taken place before 1926, it is inconceivable that the grandfather would not have described Lakshman Singh as the adopted son of Moti Singh. On the contrary, it was stated that Lakshman Singh was kept for the past $3\frac{1}{4}$ years. This is only consistent with the case of the defendant that though adoption was contemplated, it did not take place; but Lakshman Singh was brought to the family of Sujan Singh and was being educated in Gurukul with a view to take him in adoption at a later stage. What is more, whatever doubts there may have been, they are clearly dispelled by a letter written by Lakshman Singh to his father, Zalim Singh, on May 19, 1934, *i.e.*, after disputes arose between the parties. Therein Lakshman Singh told his father, Zalim Singh, that if Moti Singh did not desire to take him in adoption, he also did not wish to be adopted to him. He further proceeded to write to his father: "Please do not worry in the least that at present Ba Sahib has kept, and as to what would happen if uncle Moti Singh does not keep after him (Ba Sahib). After all

none but God can snatch from me the ability which you have conferred on me". This letter establishes two facts, namely, (i) there was no actual adoption, but Sujan Singh had only kept Lakshman Singh—it may be recalled that the word used in the will of Sujan Singh was also "kept"; and (ii) that the adoption had not yet taken place, for, if the adoption had taken place, Lakshman Singh would not write to his father that if Moti Singh did not like to take him in adoption, he was also not willing to be adopted to him. The documentary evidence, therefore, clearly establishes that no ceremony of adoption had taken place, though the boy was taken to the house of Sujan Singh with a view to take him in adoption either after he was admitted in Gurukul or after his education at Gurukul was completed.

The oral evidence in the case is also consistent with the documentary evidence. P.Ws. 1, 2, 4, 5 and 7 speak of a custom in the community to which the parties belong to the effect that in that community the consent of the person giving in adoption and the person taking in adoption and the going of the adopted son from his original family to live in the adoptive family were the preliminary steps to a valid adoption. But no attempt has been made in any of the courts below to sustain the adoption on the alleged custom and, therefore, we do not propose to consider the evidence relating to the alleged custom. P.W. 2, who is a maternal uncle of the plaintiff, further says that the plaintiff was sent to Ajmer with Hira Lal and that Hira Lal was given instructions by Zalim Singh and the father of P.W. 2 to go via Bhilwara and Masooda and on reaching Ajmer to hand over the boy to Moti Singh. But in the cross-examination, he said that he did not know "if the cocoanuts about the plaintiff's adoption have been distributed or not till now" and that he could not give the date of the plaintiff's adoption. This evidence, even if true, does not establish that Zalim Singh delegated his power to Hira Lal to give the boy on his behalf in adoption to Moti Singh. At the most it would show that he sent the boy

1961

Lakshman Singh Kothari v. Smt. Rup Kanwar

Subba Rao J.

along with Hira Lal to Ajmer. P.W. 7 is a relation of the parties. He said that in 1923 when Lakshman Singh came to Ajmer, he was sitting in the house of Moti Singh, that Hira Lal told Moti Singh that he had brought Lakshman Singh as desired by him and that Moti Singh kept the boy with him and told Hira Lal that he had done well in bringing the boy. This evidence, even if true, only shows that Hira Lal brought the boy to Ajmer and left him with Moti Singh. There is nothing in this evidence to show that Moti Singh received the boy as an adopted son and that Hira Lal handed over the boy to Moti Singh as a delegate of the boy's natural father. The plaintiff, as P.W. 10, described his going to Moti Singh's house thus:

> "At that time my father was residing at Udaipur. He sent me to Ajmer with one Hira Lal Dhabaee. We reached the house of Moti Singh at about 10 a.m. on or about 14-2-1923. Moti Singh came out and received me at the gate. Hira Lal then told him that since he had called me, he (Hira Lal) had come with me to give me in adoption."

Assuming that the plaintiff remembered exactly what all happened when he was only 9 years old, the version given by him does not prove that Hira Lal as a representative of his father gave him and Moti Singh received him as a part of the ceremony of adoption. The events narrated by him only show that Hira Lal brought him to Ajmer so that he might be taken to Gurukul. Hira Lal, as D.W. 4, described the incident thus:

> "In 1923 I brought Lachman Singh to Ajmer. I brought him to the house of Sujan Singh and Moti Singh. I was informed by Zalim Singh that Moti Singh had written to him that Lachman Singh was to be sent to Gurukul with Moti Singh and so I might go and leave him at Ajmer."

In the cross-examination he further elaborated thus:

> "It is incorrect that Zalim Singh asked me to give the plaintiff in adoption to Moti Singh. He had said that the boy was proceeding to Gurukul and I may go to hand over the boy to Moti Singh.....

When I brought the plaintiff to Ajmer, Moti Singh placed his hand on the head of the plaintiff and said that you have come."

The version given by this witness is natural and the last answer given by him stamps the evidence with a seal of impartiality. His evidence is consistent with the entire documentary evidence adduced in the case. He was head-clerk of Raj Sri Medraj Sabha, Udaipur, and he appears to be a disinterested witness. Without any hesitation we accept his evidence. His evidence clearly shows that he brought the plaintiff and left him with Moti Singh in Ajmer as he had to be sent to Gurukul. Ex. D/4 is a copy of a pamphlet circulated by Zalim Singh to Juwan Singh Mehta. It is dated September 6, 1938, *i.e.*, after disputes arose between the parties. Therein he stated what took place on the date when the plaintiff was sent to Ajmer thus:

"Thereupon I sent Chiranjiv Laxman Singh from Udaipur with Dhabaiji Hiralalji who was a respectable Government servant of the Mewar State and reader to the Secretary, Rajya Sri Mahadraj Sabha which post I then held. Sujan Singhji, Shahji Saheblalji Khinvsara and others went up to outside Soorajpol accompanying him (Laxman Singh). I told Dhabaiji Hiralalji that he would give Bapu on my behalf in adoption to Moti Singhji. Respected father was at Mal Okneda near Mander Station in the way. I asked Hiralalji to have Bapu see him (Respected father). Dhabaiji after having Laxman Singh see father took him to Bhai Sahib Moti Singhji and Baba Ba Sahib at Ajmer who were then residing at Kaserganj. He (Dhavaiji) giving him (Laxman Singh) to them returned to Udaipur and informed me and said 'Moti Singhji placed his hand upon the head of Bapu' and said, you have come. Ba Sahib very lovingly made him sit near himself and caressing him with joy, asked of his welfare."

It is for the first time the idea of delegation has been introduced and, in our opinion, it was done presumably on some legal advice. This is an attempt to give a legal flavour to an ordinary act of sending a boy

1961

Lakshman Singh Kothari v. Smt. Rup Kanwar

Subba Rao J.

with an elderly gentleman to another place. We cannot act upon the self-serving statement made by this person in 1938. It is impossible to conceive that the necessary ceremony of adoption, that is, "giving and taking" would be done in such a casual manner and that the natural father or the natural mother or the near relations would not have gone to the place of the adoptive father if a ceremony was scheduled to take place on a particular date. We, therefore, hold, on the evidence, oral and documentary, that Sujan Singh and Moti Singh wanted to take the plaintiff in adoption either after the boy was admitted in Gurukul or after he finished his education therein, that Hira Lal, on the request of the plaintiff's father, accompanied the boy to Sujan Singh's house at Ajmer and left him there, that Moti Singh welcomed the boy as was expected of him and thereafter sent him to Gurukul and that no formal ceremony of "giving and taking" had taken place.

Even so, it was contended that the fact that Zalim Singh sent the plaintiff through Hira Lal to Moti Singh's house and that Moti Singh received him in his house would be sufficient compliance in law with the requirement of "giving and taking" as understood in the Hindu Law, when those events took place pursuant to the settled intention of the parties to take the plaintiff in adoption. A natural father, the argument proceeded, need not physically hand over the boy to the adoptive father, but he could validly delegate the physical act of handing over the boy to a third party as Zalim Singh is alleged to have done in the present case.

To appreciate this argument it is necessary to notice briefly the law of adoption vis-a-vis the ceremony of "giving and taking". Golapchandra Sarkar Sastri in his book on Hindu Law, 8th edn., succinctly describes the ceremony of "giving and taking" thus at p. 194:

> "The ceremonies of *giving* and *taking* are absolutely necessary in all cases. These ceremonies must be accompanied by the *actual delivery* of the child; symbolical or constructive delivery by the mere parol expression of intention on the part of the

giver and the taker without the presence of the boy is not sufficient. Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption, nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose."

Much to the same effect it is stated in Mayne's Hindu Law, 11th edn., at p. 237:

"The giving and receiving are absolutely necessary to the validity of an adoption. They are the operative part of the ceremony, being that part of it which transfers the boy from one family into another. But the Hindu Law does not require that there shall be any particular form so far as giving and acceptance are concerned. For a valid adoption, all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose."

The leading decision on this subject is that of the Judicial Committee is *Shoshinath Ghose* v. *Krishnasundari Dasi* (1). That was, like the present, a case of adoption among Sudras. There, it was contended, *inter alia*, that there was a formal adoption by giving and taking, and in the alternative it was contended that even if there had been no formal adoption as alleged, the deeds of giving and taking, executed in 1864, were sufficient to bring about the adoption and that was all that was essential in the case of Sudras. Sir J. W. Colvile, speaking for the Board, rejected both the contentions. He accepted the finding of the lower courts that there was no formal giving and taking, and rejected the argument that the documents themselves operated as a complete giving and taking of the adoptive boy. The learned Judge observed at p. 388 thus:

"There is no decided case which shows that there can be an adoption by deed in the manner contended for; all that has been decided is that, amongst

(1) (1880) I.L.R. 6 Cal. 381.

1961

Lakshman Singh Kothari
v.
Smt. Rup Kanwar

Subba Rao J.

Sudras, no ceremonies are necessary in addition to the giving and taking of the child in adoption..... .....It would seem, therefore, that, according to Hindu usage, which the Courts should accept as governing the law, the giving and taking in adoption ought to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption."

That a formal ceremony of giving and taking is essential to validate the adoption has been emphasized by the Judicial Committee again in *Krishna Rao* v. *Sundara Siva Rao* (1). But in practice many situations had arisen when it became impossible for a natural father to hand over the adoptive boy physically, or to an adoptive father or mother to receive the adoptive boy physically due to physical infirmity or other causes. In such cases Courts have stepped in and recognized the delegation of the physical act of giving and taking provided there was an agreement between the natural and adoptive parents to give and receive the boy in adoption. The scope of the power of delegation has been clearly stated by West, J., in *Vijiarangam* v. *Lakshuman* (2) thus:

"The gift and acceptance in such a case must, as Sir T. Strange has observed be manifested by some overt act; and here Yeshvadabai did not in person hand over her son to Savitri. But she commissioned her uncle to do this, being at the time too unwell to attend the ceremony herself. The Hindu Law recognizes the vicarious performance of most legal acts; the object of the corporeal giving and receiving in adoption is obviously to secure due publicity (Colebrook's Digest, Book V. T. 273, commentary), and Yeshvada's employing her uncle to perform this physical act, which derived its efficacy from her own volition accompanying it, cannot, we think, deprive it of its legal effect. We hold, therefore, with the learned Judge, that the adoption is proved and effectual."

This view was approved by the Bombay High Court.

(1) (1931) L.R. 58 I.A. 148. (2) (1871) 8 Bom. H.C.R. 244.

in *Shamsing* v. *Santabai* (1). A division bench of the Madras High Court in *Viyyamma* v. *Suryaprakasa Rao* (2) applied the principle to a converse case of an adoptive father delegating his power to accept the adoptive boy to another. Sir Lionel Leach, C.J., in extending the rule of delegation to a case of receiving says at p. 613 thus:

> "If this were not so, what would be the position when through accident or illness the natural father or the adoptive parent could not be present in person to do what is necessary? There could be no adoption."

Further citation would be redundant. It is, therefore, settled law that, after the natural and adoptive parents exercised their volition to give and take the boy in adoption, either of them could, under certain unavoidable compelling circumstances, delegate his right to give or the right to receive the adoptive son, as the case may be, to a third party.

Strong reliance is placed by learned counsel for the appellant on the decision of the Judicial Committee in *Biradhmal* v. *Prabhabhati* (3). There a widow executed a deed of adoption whereby she purported to have adopted as son to her deceased husband a boy. The Sub-Registrar before whom the document was registered put to the boy's natural father and to the widow questions whether they had executed the deed. The boy was also present at that time. The Judicial Committee held that, under the said circumstances, there was proof of giving and taking. The question posed by the Privy Council was stated thus: "The sole issue discussed before their Lordships was the question of fact whether on 30th June, 1924, at about 6 p.m. when the adoption deed was being registered the boy was present and was given by Bhanwarmal and taken by the widow". The question so posed was answered thus at p. 155:

> ".....their Lordships think that the evidence that the boy was present at the time when the sub-registrar put to his father and to the widow the

(1) (1901) I.L.R. 25 Bom. 551. (2) I.L.R. 1942 Mad. 608.
(3) A.I.R. 1939 P.C. 152.

1961

Lakshman Singh Kothari
v.
Smt. Rup Kanwar

Subba Rao J.

questions whether they had executed the deed is sufficient to prove a giving and taking."

This sentence is rather laconic and may lend support to the argument that mere putting questions by the Sub-Registrar would amount to giving and taking of the adoptive boy; but the subsequent discussion makes it clear that the Privy Council had not laid down any such wide proposition. Their Lordships proceeded to observe:

> "Even if the suggestion be accepted that the auspicious day ended at noon on the 30th and that the deed was executed before noon and before the boy arrived at Ajmer, it seems quite probable that the registration proceedings which were arranged for 6 p.m. would be regarded as a suitable occasion for carrying out the very simple ceremony that was necessary."

These observations indicate that on the material placed before the Privy Council—it is not necessary to say that we would come to the same conclusion on the same material—it held that there was giving and taking of the boy at about 6 p.m. when the document was given for registration. The Judicial Committee, in our view, did not intend to depart from the well recognized doctrine of Hindu Law that there should be a ceremony of giving and taking to validate an adoption.

The law may be briefly stated thus: Under the Hindu Law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The

exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.

In the present case, none of the aforesaid conditions has been satisfied. The High Court found that Zalim Singh and Moti Singh did not decide to take the boy in adoption on February 14, 1923. The High Court further found that their common intention was to take the boy in adoption only after he was admitted in Gurukul or thereafter. The documents filed and the oral evidence adduced in the case establish that the adoptive father did not delegate his power to give the boy in adoption to Moti Singh to Hira Lal and that Moti Singh did not receive the boy as a part of the ceremony of adoption, but only received him with a view to send him to Gurukul. We, therefore, hold that the ceremony of giving and taking, which is very essential for the validity of an adoption, had not taken place in this case.

In the result, we hold, agreeing with the Judicial Commissioner, that the appellant was not adopted by Moti Singh. The appeal fails and is dismissed with costs.

Appeal dismissed.