speaking, to be strictly construed in favour of the right to proceed, and unless the objection on the ground of limitation is clearly established, a legitimate claim of a creditor should not be lightly rejected.

For the reasons given above, this appeal fails and is dismissed, but in the peculiar circumstances there will be no order as to costs in this Court.

R. S.

APPELLATE CIVIL

Before Mehar Singh and K. L. Gosain, JJ.

LAL SINGH AND OTHERS,—*Appellants*

versus

ISHAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 621 of 1955

1959

Dec., 22nd

Custom—Ludhiana District—Adoption of a sister's son—Whether valid.

Held, that there is no prohibition amongst the agriculturists of Ludhiana District with regard to the adoption of a sister's son as is clear from the answer to Question 67 of the Customary Law of that district. The Jats of Ludhiana District have undoubtedly got the power of adoption and the matter of choice whether it relates to the question of degree of relationship or of the adoptee being a kinsman of the adopter or belonging to a particular *got* or caste or creed is certainly a matter, the regulation of which should not, generally speaking, be considered to be mandatory.

Second Appeal from the decree of the Court of Shri Harbans Singh, District Judge, Ludhiana, dated the 9th day of May, 1955, modifying that of Shri Badri Parshad Puri, Additional Sub-Judge, 1st Class, Ludhiana, dated the 23rd June, 1954, (granting the plaintiffs a decree for a declaration to the effect that the adoption of defendant No. 2 by defendant No. 1 and the gift by defendant No. 1 in favour

of defendant No. 2 would not effect the reversionary rights of the plaintiffs after the death of defendant No. 1 so far as the property which had been held to be ancestral was concerned and dismissing their suit with regard to the non-ancestral property) to the extent of dismissing the plaintiffs suit in its entirely and leaving the parties to bear their own costs throughout.

The appeal filed by the plaintiffs was dismissed.

H. R. SODHI AND D. R. MANCHANDA, for Appellants.

H. S. DOABIA AND A. L. BAHRI, for Respondents.

JUDGMENT.

Gosain, J. GOSAIN, J.—There are two second appeals against the decree of the learned District Judge, Ludhiana, dated the 9th May, 1955, setting aside that of the trial Court, dated the 23rd June, 1954, and dismissing the plaintiff-appellants' suit in its entirety.

The last male holder of the property in dispute was one Sham Singh who adopted his sister's son Ishar Singh, defendant No. 2, as his son and who also made a gift of the property to him. The plaintiffs-appellants brought the suit giving rise to this appeal for a declaration that the adoption and gift would not affect their reversionary rights. They alleged that the property in dispute was ancestral *qua* them and that Sham Singh had no power to make a gift in respect of the same. They further alleged that the adoption of Ishar Singh, defendant, had in fact not been made by Sham Singh and that, at any rate, the said adoption was contrary to custom and was, therefore, not binding on the plaintiffs. The suit was contested by Sham Singh and Ishar Singh who denied that the plaintiffs were collaterals of Sham Singh and that the property in suit was ancestral *qua* the plaintiffs. It was averred by defendant No. 2 that he was validly adopted and that the plaintiffs were estopped by their act and conduct from bringing the

present suit. The gift was alleged to be binding on the plaintiffs. The trial Court framed the following six issues:—

(1) Whether the plaintiffs are the collaterals of defendant No. 1? If so, within what degree?

(2) Whether the property in suit is ancestral *qua* the plaintiffs in the hands of defendant No. 1?

(3) Whether defendant No. 2 was validly adopted? If so, what is the effect?

(4) Whether the plaintiffs are estopped by their acts and conduct?

(5) Whether the gift in question is valid and its effect?

(6) Relief.

On issue No. 1 the Court came to the conclusion that the plaintiffs were collaterals of Sham Singh in the third degree, and this finding was not either assailed in the lower appellate Court, or before us. On issue No. 2 it was found that a part of the land was ancestral and the rest of it was not ancestral. On issue No. 3 it was found that defendant No. 2 was validly adopted and that the said adoption could not be assailed by the plaintiffs. Issue No. 4 was decided in favour of the plaintiffs. On issue No. 5 it was found that the gift in question was valid *qua* the non-ancestral property but invalid *qua* the ancestral part of it. In the result, the trial Court granted a decree for a declaration in respect of the ancestral property only. Both the parties went in appeal before the learned District Judge, Ludhiana. He found that

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some of the property held by the trial Court to be ancestral was not actually proved to be so and that some other property found by the trial Court not to be ancestral was actually proved to be ancestral. On the finding that the adoption was valid according to custom he dismissed the plaintiffs' suit in its entirety.

In second appeals it is urged that the finding recorded by the learned District Judge with regard to the validity of the adoption is erroneous. It is urged on behalf of the appellants that the custom prevailing amongst the agriculturists of Ludhiana does not sanction the adoption of a sister's son, and reliance for this proposition is placed on Question 66 of the Customary Law of Ludhiana District by Mr. J. M. Dunnett, Settlement Officer, in 1911. The said question reads as under:—

> "Is it necessary that the person adopted should be related to the person adopting? If so, what relatives may be adopted and what relatives have the preference? Is it necessary that the parties should be of the same tribe, or of the same *got*?

Different tribes of the district gave different answers to the above question, and it appears that there was no specified custom on the point prevalent amongst all the agriculturist tribes of Ludhiana District. The learned author of the Riwaj-i-am collected several instances of custom and mentioned the same under the answer to the above question. Under the sub-heading "Adoption of a daughter's son" as many as 27 instances were given and a perusal of the same shows that in a large number of them the adoption of a daughter's son was held

to be good. In the copies of the Vernacular Riwaj-i-am, exhibits D. 5 and D. 15, also some instances are cited where daughters' sons were allowed to be adopted. Three instances of adoption of sisters' sons are also mentioned in two of which at least the adoption was found to be good. There is in fact only one case in which the adoption of a sister's son was set aside and that is reported in *Ghullu* v. *Mohabat and others* (1). Mr. Justice Plowden who decided the case, however found that the adoption was not in fact proved. There is no doubt that there are obiter remarks in that judgment which shows that in Ludhiana District sisters' sons can be adopted only with the consent of the collaterals, but no authority for the same is cited, and it appeals, that the case was decided on evidence led in the same. A Division Bench of the Chief Court, Punjab, in an earlier case reported in *Dalel Singh and another* v. *Kala Singh* (2), found that a sister's son could validly be adopted amongst the Jats of Jagraon Tehsil of Ludhiana District. A perusal of the printed Riwaj-i-am as also of the copies of the Vernacular Riwaj-i-am produced in the instant case clearly show that there is no prohibition amongst the agriculturists of Ludhiana District with regard to the adoption of a sister's son. The matter is set at rest by answer to Question No: 67 of of the Customary Law of the Ludhiana District referred to above. This question reads as under:—

> "Q. 67. Is there any rule prohibiting the adoption of the son of a woman whom the adopter could not have married, such as his sister's or daughter's son?"

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(1) 92 P.R. 1894

(2) 197 P.R. 1889

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The answer given by all the tribes was as follows:—

> "A. No such rule is known. See the preceding question."

There can be no doubt that the Jats of Ludhiana District have got a power of adoption. It has been recently held by a Division Bench of this Court in *Data Ram and others* v. *Teja Singh and another* (1), that "once the power to adopt is conferred on a person, the matter of choice whether it relates to the question of degree of relationship or of the adoptee being a kinsman of the adopter or belonging to a particular *got* or caste or creed is certainly a matter, the regulation of which should not, generally speaking, be considered to be mandatory." Their Lordships of the Supreme Court in *Hem Singh* v. *Harnam Singh* (2) observed as follows:—

> "It appears to us that the basic idea underlying a customary adoption prevalent in the Punjab is the appointment of an heir to the adopter with a view to associate him in his agricultural pursuits and family affairs. The object is to confer a personal benefit upon a kinsman from the secular point of view unlike the adoption under the Hindu Law where the primary consideration in the mind of the adopter if a male is to derive spiritual benefit and if a female, to confer such benefit upon her husband. That is why no emphasis is laid on any ceremonies and great latitude is allowed to the adopter in the matter of selection."

(1) 1959 P.L.R. 857
(2) A.I.R. 1954 S.C. 581

In view of the above observations, we do not find any force in these appeals which are accordingly dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

MEHAR SINGH, J.—I agree. The evidence in the case does not prove that according to the Customary Law of tehsil Jagraon of Ludhiana District there is prohibition of adoption of sister's son. Indeed there are instances to the contrary as have been referred to by my learned brother. This is enough for dismissal of the appeal.

B. R. T.

FULL BENCH.

Before G. D. Khosla, C.J., Tek Chand and Shamsher Bahadur, JJ.

FIRM DITTU RAM EYEDAN AND OTHERS,—*Appellants.*

versus

OM PRESS CO., LTD., AND OTHERS,—*Respondents.*

F.A.O. No. 81 of 1952

1959

Dec., 24th

Code of Civil Procedure (Act V of 1908)—Order 22 Rule 9—Setting aside of abatement—Ignorence of the death of the deceased defendant or respondent—Whether sufficient cause—Abatement—Effect of.

Held, that law casts a duty upon the plaintiff or the appellant, as the case may be, to bring the legal representatives of the deceased on the record lest a decree should be obtained against a dead person which is of no legal effect. The duty cannot be deemed to be discharged once notice is served on the respondent. A suit or appeal abates automatically after the expiration of ninety days of the death of the deceased defendant or respondent. The