APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

1881 *March* 25.

NILCOMUL LAHURI (DEFENDANT) *v.* JOTENDRO MOHUN LAHURI (PLAINTIFF).*

Adoption—Fraud—Adoptive Son claiming Share in Estates already vested in another before the Date of the Adoption.

Shortly before his death in 1862, *A*, by his will, gave his widow power to adopt a son. In consequence of fraud on the part of *B*, the son of a brother of *A*, in suppressing this will and setting up another, the will was not proved until 1874, when the widow exercised the power. *C*, the widow of another brother, had died in 1867, and *B* had succeeded to her estate. The adopted son now sued by his mother to recover a half share in *C's* estate, alleging that his adoptive mother, in consequence of the fraudulent act of *B* in suppressing the will under which the power of adoption was given, and by setting up a false one, was unable to exercise the power of adoption before the death of *C*, and that thus he had been deprived of the opportunity of succeeding to *C's* estate.

Held, that although *B* had committed fraud in suppressing the will and setting up a false one, and had so placed obstacles in the way of the adoptive mother of the plaintiff taking a son in adoption earlier, yet that, as the plaintiff was not in existence at the time the fraud was committed, such fraud was too remote so far as it affected him, and that the Court as a Court of Equity could not disturb the estate which had already vested in *B*.

The right to succession is a right which vests immediately on the death of the owner of the property, and cannot, under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death.

Keshub Chunder Ghose v. *Bishnu Pershad Bose* (1) and *Bhoobum Moyee Debia* v. *Ram Kishore Acharj* (2) followed.

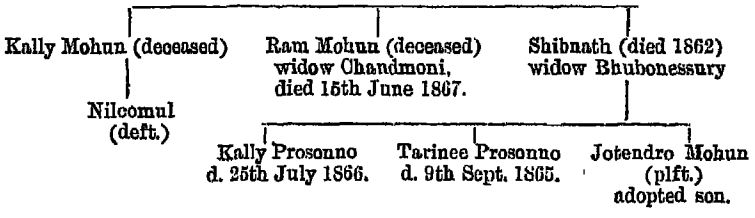
THIS was a suit brought by one Bhubonessury Dabia, as adoptive mother and guardian (leave to bring the suit having been granted her by the Court) of her adopted son, Jotendro

Appeal from Original Decree, No. 82 of 1879, against the decree of Baboo Bhugwan Chunder Chuckerbutty, Subordinate Judge of Rungpore, dated 30th April 1879.

(1) S. D. A. for 1860, p. 340. (2) 10 Moore's I. A., 279.

Mohun Lahuri, to recover an eight-anna share in one Chandmoni's husband's estate, to which the defendant had succeeded.

The following is the genealogical tree of the family :—



The plaintiff, Jotendro Mohun, stated, that Shibnath, by his will, dated 22nd May 1862, gave to Bhubonessury power to adopt, and that, after Shibnath's death, Nilcomul managed Bhubonessury's estate; that, during such management, he obtained Shibnath's will, suppressed it, and set up another, which contained no such power of adoption; that a suit had been brought on the second will, but the Privy Council, in March 1874, eventually held, that the will containing the power of adoption was the genuine one; that, in 1865 and 1866, Shibnath's two sons died; that, since the latter date, Bhubonessury had repeatedly endeavoured to adopt a son, but had always been prevented, because she was unable to produce the original will giving her power to adopt, and that although she possessed copies of the will, people always refused to give their sons in adoption without the production of the original, more especially pending the litigation which was being carried on concerning the two wills; that, in 1867, Chandmoni, the widow of Ram Mohun, died, and Nilcomul, the son of Kally Mohun, succeeded to Chandmoni's estate; that, subsequently in January 1874, Bhubonessury adopted him (Jotendro Mohun, the plaintiff, an infant of the age of five years at the time), and on the 29th September 1877, his adoptive mother brought this present suit on his behalf, claiming a half share with the defendant in Chandmoni's husband's estate, on the ground that the defendant Nilcomul had, by suppressing Shibnath's will containing the power of adoption, fraudulently prevented Bhubonessury from adopting a son, who would, if the adoption had been made in time, have succeeded to a half share in the estate of Chandmoni's husband; and that,

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notwithstanding the fact that he had been adopted subsequently to the defendant's succession, he was entitled to a share in Chandmoni's husband's estate. The defendant contended that the suit was barred, it not having been brought within three years either from the time the alleged fraud became known, or from the time of the adoption; that the estate once having vested in him could not be divested by reason of the subsequent adoption; that he had not fraudulently prevented the widow from adopting; that he had committed no fraud, inasmuch as Chandmoni was alive at the time when fraud was alleged.

The Subordinate Judge held that the suit was not barred, that the defendant had through fraud prevented the adoption from taking place during the lifetime of Chandmoni, and that the plaintiff was, therefore, entitled to recover.

The defendant appealed to the High Court.

Mr. *Jackson* (with him Mr. *M. Ghose* and Baboo *Isen Chunder Chuckerbutty*) for the appellant.—As regards limitation.—Supposing the decision of the Privy Council in 1874 were taken to be the starting point of limitation, the suit is barred, as only three years is allowed from the time when the fraud is discovered. The widow does not say, it does not matter when I adopted, I have still a right to adopt, but says, the original will was suppressed, and that she was prevented through the defendant's fraud from adopting before, and that, in consequence of that fraud, he is estopped from disputing the adoption. As to whether the estate could divest.—An adoption cannot operate to open out the estate after it has once vested in any person. *Kally Prosonno Ghose* v. *Gocool Chunder Mitter* (1). This case is supported by Mayne, 2nd ed., s. 176, p. 166.

Mr. *M. Ghose* on the same side.—An estate once vested cannot be divested, see *Gobind Chandra Sarma Mazoomdar* v. *Anand Mohan Sarma Mazoomdar* (2), and *Moniram Kolita* v. *Keri Kolitani* (3). The plaintiff, in order to say that he has a right of suit because he was not adopted earlier through the

(1) I. L. R., 2 Calc., 295. (2) 2 B. L. R., A. C., 313.

(3) I. L. R., 5 Calc., 776.

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defendant's fraud, must, inasmuch as an adopted son is in the same position as a natural son, go so far as to say that a natural son would have a right of suit against a person who had fraudulently prevented his (the plaintiff's) father and mother from living together for a long period, and so prevented the plaintiff from being born during the time of such separation, at which time the person, so fraudulently acting, had succeeded to an estate to which, had the plaintiff been born, he would have been entitled to succeed. Such a suit has never been attempted, and would not lie, the fraud alleged being too remote. The adoption in this case took place six years after Chandmoni's death. Fraud is not a sufficient reason for a suit to recover property which has already vested in some body else. On whom does the plaintiff allege the fraud to have been practised, if it is against himself, he was not alive at the time, and no fraud can be perpetrated against a person not in existence. The rule of equity that a person cannot take advantage of his own wrong, does not extend to cases of this kind. The lower Court has given a decree to the plaintiff for half of the property claimed, at all events he can only claim a fourth. The defendant cannot be considered to have held as trustee for the plaintiff, and the suit is therefore barred —*Kherodemoney Dossee* v. *Doorgamoney Dossee* (1).

Mr. *H. Bell* (with him Mr. *Doss*, Baboo *Sreenath Doss*, and Baboo *Bungshee Dhur Sen*) for the respondent.—There can be no question of limitation in this case. The plaintiff claims as the adopted son of Shibnath, to succeed to a moiety of the estate of his uncle Ram Mohun. Ram Mohun's widow died on the 15th June 1867, and the plaintiff has twelve years to sue in from that date. The main fact of the defendant having committed a fraud cannot reduce the period of limitation to three years—*Chunder Nath Chowdhry* v. *Tirthanund Thakoor* (2).

On the merits there are two main points for consideration:—*First.*—Is the plaintiff, as the adopted son of Shibnath, entitled to a share of Ram Mohun's estate, his adoption having taken place after the death of Chandmoni, the widow of Ram Mohun,

(1) I. L. R., 4 Calc., 455. (2) I. L. R., 3 Calc., 504.

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and after the defendant had succeeded to the inheritance? *Secondly.*—Can the judgment of the lower Court be supported on the ground of the defendant's fraud? Upon the first point it is contended that we are concluded by the case of *Kally Prosonno Ghose* v. *Gocool Chunder Mitter* (1). This case will be found to rest entirely on previous decisions, none of which, when examined, will be found to support the proposition there broadly laid down, that "an estate once vested cannot be divested. "The Privy Council case of *Sri Raghunada* v. *Sri Brozo Kishoro* (2), which was referred to in the decision, is directly to the contrary. In that case an undivided brother succeeded to an impartible zemindari to the exclusion of the widow of the last owner, but after some two years, the widow adopted a son, and the brother's estate was divested. This case, therefore, so far from supporting the decision in *Kally Prosonno's case* (1), is distinctly opposed to it. The other cases referred to are, *Bamundoss Mookerjea* v. *Mussamut Tarinee* (3), which merely decides that a widow with a power of adoption can sue in her own name to recover property belonging to the estate of her late husband. The next case—*Dukhina Dossee* v. *Rash Beharee Mojoomdar* (4)—is so obscurely reported, that it is impossible to say what the facts were. *Gobind Chandra Sarma* v. *Anand Mohan Sarma* (5) merely decides that, in litigation, a widow represents the estate. The Full Bench case of *Kali Das Das* v. *Krishan Chandra Das* (6) turned upon the doctrine of Hindu law with regard to persons excluded from inheritance. The case of *Bhoobum Moyee Debia* v. *Ram Kishore Acharj* (7) merely decided that an adopted son was in no better position than a natural son, and as a natural son could not in that case have succeeded as heir, so neither could an adopted son. See remarks on this case in Mayne's Hindu Law, p. 170.—*Rahmabai* v. *Radhabai* (8). The case of *Gobindo Nath Roy* v. *Ram Kanay Chowdhry* (9) (alluded to in

(1) I. L. R., 2 Calc., 295.
(2) L. R., 3 I. A., 154.
(3) 7 Moore's I. A., 169.
(4) 6 W. R., 226.
(5) 2 B. L. R., A. C., 313.
(6) 2 B. L. R., F. B., 103.
(7) 10 Moore's I. A., 279.
(8) 5 Bom. H. C., A. C., 114.
(9) 24 W. R., 183.

I. L. R., 2 Calc., 307) stands alone, and is questioned in Mayne's Hindu Law, p. 178, and is opposed to the case of *Ramundoss Mookerjea* v. *M. S. Tarinee* (1), and was not followed in the recent case of *Prosononath Roy Chowdhry* v. *Afzolonnessa Begum* (2). The right of a preferential heir to divest an estate which had already vested was never questioned until recent years. When a preferential heir came into existence, he was allowed as of right his inheritance. Take the case of a sister. A sister is not an heir by Hindu law, but a sister's son is an heir; and there is of necessity a suspension of the inheritance until his birth.—Macnaughten's Hindu Law, Vol. II, p. 98, Prec. xiv., Inheritance; *Mussamut Solukhna* v. *Ram Dolal Pande* (3), *Karuna Mai* v. *Jai Chandra Ghose* (4), and *Lakhi Priya* v. *Bhairab Chandra Chaudhuri* (5). The case of a posthumous or of an adopted son is far stronger. Where the father's inheritance has been distributed among the heirs, if a posthumous son is born, a redistribution has to be made: Dayabhaga, Chap. I, sec. 45; Dyakrama Sangraha, VI., 21—24. The whole question was most fully considered by the late Supreme Court in *Gourbullub* v. *Juggernath Pershad Mitter* (6). In that case *A* was adopted by the widow of *B*, who had predeceased his father *C*. On the death of *C*, *C's* estate passed to his sister's son. Some two years after *C's* death, *A* was adopted, and it was held that he was entitled to the estate of *C* to the exclusion of the nephews who had already succeeded. In *Shamchunder* v. *Rooderchunder* (7), *A* left two widows, one of whom adopted a son *B*, and died after the death of the adopted son *B*. The estate passed to *A's* brother's sons; when the second widow adopted *C*, and it was held that *C* was entitled to succeed to his brother *B's* estate to the exclusion of *A's* nephews. This, therefore, is an instance of an estate being divested in favor of a collateral.

With regard to the question of fraud, it was contended that there was no fraud practised on the present adopted son,

(1) 7 Moore's I. A., 169.
(2) I. L. R., 4 Calc., 523.
(3) 1 Sel. Rep., 324.
(4) 5 Sel. Rep., 42.
(5) 5 Sel. Rep., 315, with Suth. Notes.
(6) Mac. Cons. of Hin. Law, p. 159.
(7) 1 Sel. Rep., 2nd Ed. 209; upheld in appeal, 3 Knapps' P. C. C., 55.

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that, on the contrary, if there had been no fraud, some one else would have been adopted; and therefore, if there was fraud, the present adopted son has been the gainer by it. But the fraud was against Shibnath's heir. It is not necessary that it should have been against any particular person. Suppose that a child had been ready for the adoption before Chandmoni's death, and the defendant, knowing that she could not survive, had forcibly carried off the son to be adopted, and kept him in confinement till Chandmoni's death,—it cannot be contended that such son when adopted would not have been entitled to his share in his uncle's estate; or suppose that, instead of carrying off the boy, he had hired assassins to kill him,—can it be contended that the next adopted son would not be entitled to all the rights to which the first boy would have succeeded, if his adoption had not been fraudulently frustrated? So far, therefore, as the defendant is concerned, the adoption must be considered to have taken place at the time the defendant prevented it.—Story's Equity Jurisprudence, p. 256, Phillimore on Jurisprudence, p. 226; *Mestaer* v. *Gillespie* (1), *Luttrel* v. *Lord Waltham* (2) cited, *Huguenin* v. *Baseley* (3), *Middleton* v. *Middleton* (4), *Burkley* v. *Wilford* (5), *Segrave* v. *Kirwan* (6); where the fraud was not against any particular person, but against the next-of-kin. With regard to the share to which an adopted son is entitled, Mayne's Hindu Law, ss. 148 and 49 and *Tara Mohun Bhuttacharjee* v. *Kripa Moyee Debia* (7) were referred to.

Mr. *M. Ghose* in reply.—The case of *Kally Prosonno Ghose* is not opposed to the decision of the Privy Council in *Sri Raghunada* v. *Sri Brozo Kishoro* (8). No doubt, as pointed out by Mr. Mayne (Note c., art. 170, Hindu Law), Mr. Justice Mitter was in error in supposing that, in the case before the Privy Council, the property was not joint family property; but that error does not in any way affect the

(1) 11 Ves., 621.
(2) 14, 290.
(3) *Id.* Ves., 289.
(4) 1 Jac. and W., 94.
(5) 2 C. and F., 102.
(6) 1 Beatty, 157.
(7) 9 W. R., 423.
(8) L. R., 3 I. A., 154.

soundness of his decision. We do not go the length of saying that in no case will a subsequent adoption divest an estate once vested, for it is a well-known rule of Hindu law that the widow herself divests her own estate by adopting a son. But that is an exception, and persons who are in the position of the widow, by operation of the Hindu law, will also come within the exception. The Madras case before the Privy Council referred to an impartible zemindari, and the widow could not possibly have succeeded. Hence the adoption by the widow had the effect of divesting an estate which, under the Bengal school, the widow would ordinarily have taken. It was also a case of lineal succession. This probably accounts for the question not having been raised in the Privy Council case. Mr. Mayne himself, while pointing out the error abovementioned, approves of the principle laid down in *Kally Prosonno Ghose's* case (1). The distinction between lineal and collateral successions in the case of an adopted son is a distinction founded upon reason and Hindu law. The case in 7 Moore decides in the negative the question as to whether a woman, having power to adopt, is in the position of a woman *enceinte*. *Keshub Chunder Ghose* v. *Bishnu Pershad Bose* (1) overrules all the cases in the Select Reports cited by the respondents. The same principle has been laid down in the case of *Rash Beharee Roy* v. *Nimaye Churn* (2). The case further says, that *Sumboo Chunder Roy* v. *Gunga Churn Sein* (3) has been overruled, and further shows that a Hindu widow is not a trustee for unborn children. The case of *Gourbullub* v. *Juggernath Pershad Mitter* (4) was a case of lineal and not collateral succession; the question of vesting and divesting was not touched upon. The defendants there were sister's sons, and therefore, we may take the principle, that sister's sons should have preference to grandsons, to be overruled by the latter cases; the case was not even opposed by the sister's sons, and it comes within the exception quoted by Mayne in art. 176. The case of *Dukhina Dossee* v. *Rash Beharee Mojoomdar* (5),

(1) S. D. A. for 1860, ii, p. 340.
(2) W. R. for 1864, p. 223.
(3) 6 Sel., 291.
(4) Mac. Cons. of Hindu Law, 159.
(5) 6 W. R., 221.

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directly decides the question whether succession could be suspended until the adoption. The Judges there do not mean that a widow loses all right to property after twelve years, but that if a widow is dispossessed and choses to adopt after twelve years have passed, her power to adopt is lost. I say that if the widow is in possession, she can adopt at any time during possession. *Kali Das Das* v. *Krishan Chandra Das* (1) supports my argument, that a widow having a power to adopt does not hold as trustee for the son who might be adopted. The case of *Gobindonath Roy* v. *Ram Kanay Chowdhry* (2), alluded to in I. L. R., 2 Calc., 307, was referred to as an authority, that a Hindu widow succeeds, and not as trustee for any body. The allegation of fraud has no bearing on the case; the fraud alleged is against Shibnath's estate in the lifetime of Chandmoni. Fraud must be committed against a person and not an estate, and the person must be in existence at the time; but even allowing it to be possible to commit fraud against an estate, Shibnath had no estate during the lifetime of Chandmoni. The distinction between the English cases and the present is, that (i) those cases refer to fraud against individuals in existence, (ii) that such individuals were deceived by the fraud, and with the immediate view of obtaining the object required, the fraud must lead to a deception; but here the widow knew she had power to adopt, therefore it could not be fraud as against her. Before it can be said that we cannot take advantage of our own wrong, it must be shown, that this was a fraud against Chandmoni, and that Chandmoni was prevented from doing a particular act by our fraud, which otherwise she would have done. It cannot be a fraud against the widow, as the widow's estate remained intact; and it could not be a fraud against the adopted son, as he was not at the time in existence. Even if there was fraud, it is too remote.

The judgment of the Court (MORRIS and TOTTENHAM, JJ.) was delivered by

MORRIS, J.—We understand the real plaintiff in this suit to be a minor, one Jotendro Mohun Lahuri, represented by

(1) 2 B. L. R., F. B., 103. (4) 24 W. R., 183.

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his mother and guardian, Bhubonessury Dabia—otherwise the suit would not lie. The plaintiff then lays claim to the share of the estate left by Chandmoni Dabia, widow of Ram Mohun Lahuri, the uterine brother of his adoptive father, late Shibnath Lahuri.

Chandmoni Dabia died on the 2nd Assar 1274, which corresponds with the 15th June 1867. The plaintiff was adopted on the 10th Magh 1280, which corresponds with 27th January 1874, by Bhubonessury Dabia, under permission granted to her under the will of her late husband; and though the defendant was the sole heir, at the time of her death, to the entire estate left by Chandmoni Dabia, his succession to one-half thereof is contested by the plaintiff in this suit on the ground, that his adoptive mother was unable, in consequence of the fraudulent acts of the defendant, to exercise, before the death of Chandmoni Dabia, the power of adoption which was granted to her by her husband.

The Subordinate Judge of the Court below has given the plaintiff a decree. In his judgment he recites certain facts, which he says are "sufficient in themselves to bring home to the conviction of the Court that plaintiff exerted all her available means to adopt a child while Chandmoni was living, but that the intrigues played by the defendant stood in the way and prevented the adoption taking place till after the death of Chandmoni, in Magh 1280, when she succeeded in adopting the minor Jotendro Mohun." He holds, that the principles of equity should interfere in such a case to deprive the wrong-doer of the rights which he has acquired by the wrongful acts committed by him, and that the effect of the fraud perpetrated by the defendant entitles the plaintiff in equity to obtain the relief which he seeks. Against this decision the defendant appeals. He contends, *first*, that no such act of fraud on his part has been established in evidence as goes to show that Bhubonessury Dabia was prevented from adopting any boy, much less the present plaintiff, prior to the death of Chandmoni Dabia; and *secondly*, that even if it be held that he committed a fraud on Bhubonessury Dabia in suppressing the will of her husband, that fraud is too remote

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to enable the Court to divest in favor of the plaintiff an estate which has already vested for a long time past in him, the natural heir.

Before entering into the question of fraud, it is necessary to notice an argument which has been much insisted on by the respondent's counsel, to the effect that fraud or no fraud, the plaintiff, as adopted son of Shibnath Lahuri, is entitled to his share of the family estate left by Chandmoni Dabia; in other words, the plaintiff, as heir of Shibnath Lahuri, is entitled to succeed both lineally and collaterally to any estate to which Shibnath Lahuri, if alive, could lay claim. This argument has been noticed by the lower Court, and overruled by it on the authority of the case of *Kally Prosonno Ghose* v. *Gocool Chunder Mitter* (1), in which it was decided that a subsequent adoption, after the succession has opened out, cannot confer on the adopted son the right to succeed collaterally and to divest the person in whom the property has already vested as heir to the deceased. Several cases have been cited to us as authority to the contrary, but no single instance has been adduced in which, in a case of collateral succession, an estate once vested has been divested by reason of a person being brought into existence subsequently, who, if he had been in existence at the time when the succession opened out, would have been a preferable heir. The general rule, that the right to succession is a right which vests immediately on the death of the owner of the property, and cannot, under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death, was declared by the late Sudder Dewani Adawlut in the case of *Keshub Chunder Ghose* v. *Bishnu Pershad Bose* (2), and since that date this ruling has been universally followed. The Privy Council recognize it in the case of *Bhoobum Moyee Dabia* v. *Ram Kishore Archarj* (3), and declare the ordinary rule to be, that in no case can the estate of the heir of a deceased person vested in possession be defeated and divested in favor of a subsequently adopted son, unless the

(1) I. L. R., 2 Calc., 295. (2) S. D. A. for 1860, ii, p. 340.
(3) 10 Moo. I. A., 279.

adoption is effected by the direct agency of the former heir with his or her express consent. The cases of *Gourbullab* v. *Juggernath Pershad Mitter* (1) and *Sri Raghunada* v. *Sri Brozo Kishoro* (2) cannot be said to be in opposition to this rule. In the one case a grandson, and in the other case a son, took by adoption lineally the estate of the grandfather and of the father, as against a nephew and a half-brother. These cases are no authority for holding, that if succession to an estate collaterally had opened out before the adoption, either the nephew or the half-brother could have been divested in favor of the subsequently adopted grandson or son. The only ground, therefore, on which, it seems to us the plaintiff can lay claim to the property in suit, is by asking the Court as a Court of Equity to place him as heir of Shibnath Lahuri in the position which, but for the fraud of the defendant, he would have obtained. That a fraud was committed by the defendant on Bhubonessury Dabia in suppressing the will of Shibnath Lahuri and setting up a false will and thereby putting obstacles in the way of her taking a son in adoption, cannot, we think, be doubted. On this head we are disposed to agree with the finding of the lower Court. The only question is whether the present plaintiff, standing as he does in the position of heir to Shibnath Lahuri, is entitled to say that the defendant is estopped by his fraud from relying on the adoption of the plaintiff being of a date subsequent to the death of Chandmoni Dabia. Various cases, such as *Luttrel* v. *Lord Waltham* (3), *Middleton* v. *Middleton* (4), *Segrave* v. *Kirwan* (5), *Bulkley* v. *Wilford* (6), have been cited to us as authority in support of the proposition that Courts of Equity will, on proof of fraud, divest property once vested in favor of the rightful heir. But none of these seems to us to meet a case like the present, where, as we judge from the evidence, the heir, that is the present plaintiff, was not even in existence when the fraud was

(1) Macnaghten's Cons. of Hin. Law, p. 159.

(2) L. R., 3 I. A., 154.

(3) 14 Ves., 290.

(4) 1 Jac. and W., 94.

(5) 1 Beatty, 157.

(6) 2 C. & F., 102.

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committed by the defendant. So far as the plaintiff himself is concerned, it may be said that, but for the opposition made by the defendant to the will of Shibnath, which his widow set up, the presen tplaintiff would never have inherited his estate at all. If the evidence is to be believed, Bhubonessury Dabia was foiled by this opposition of the defendant from adopting in the interval between the death of her last surviving son, and the death of Chandmoni, some boy other than the plaintiff. It is also apparent that the fraud of the defendant was not concealed in any way from Bhubonessury Dabia; she was from the first, that is from the time of the death of her husband, aware of the existence of the will in her favor, which empowered her to adopt a son, and it may, with some justice, be said, that between Srabun 1273, or July 1866, the date of the death of Kally Prosonno Lahuri, her last surviving son, and Assar 1274, or June 1867, the date of the death of Chandmoni, Bhubonessury had ample opportunity to adopt a son; and that the mere circumstance of persons, who were applied to, being unwilling to give their sons in adoption by reason of the counter-will set up by the defendant, is not a sufficient ground for holding that Bhubonessury Dabia could not adopt a son. The difficulties which stood in her way were no more than natural difficulties, such as might be encountered by any one whose right to adopt was disputed *bonâ fide*, and therefore, the defendant, as sole heir of Chandmoni at the time of her death, became legally vested in her estate. It seems to us, therefore, that the fraud, committed by the defendant so far as it affects the plaintiff, is of too remote a character for this Court, as a Court of Equity to disturb the estate which naturally vested in the defendant as sole heir of Chandmoni at the time of her death.

We, therefore, set aside the decree of the lower Court, and dismiss the suit of the plaintiff, Jotendro Mohun Lahuri, with costs in both Courts.

Appeal allowed.