inherited to his father twenty years after the latter's death is unusual, but it is under Hindu law no ground of invalidity. Though it is some evidence to show that the motive with which the adoption was made was a desire rather to favour the first defendant's sister's son at the expense of her husband's reversioner, than to secure her husband's spiritual benefit, we cannot set aside the adoption on that ground.

We do not consider it necessary to dwell further on this part of the case, as the objection that the adoption was not made *bonâ fide* is not pressed at the hearing on plaintiff's behalf. On the ground that the adoption made by a step-mother is not valid, this appeal fails and we dismiss it with costs. So far as the vakil's fee is concerned, it is to be divided into four parts, half of it to be awarded to the second respondent and a quarter to each of the third and fourth respondents.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

GOPAL AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

v.

BANK OF MADRAS (PLAINTIFF), RESPONDENT.*

1892. October 28. 1893. January 24.

Transfer in fraud of creditors—Transferee in good faith and for value.

A transfer of property made to certain creditors fraudulently and in contemplation of the insolvency of the transferor is not voidable at the suit of another creditor if the transferees were purchasers in good faith and for consideration.

APPEAL against the decree of T. M. Horsfall, Acting District Judge of North Arcot, in original suit No. 4 of 1890.

The plaintiff was a creditor of defendant No. 1, who had made and delivered to the plaintiff certain promissory notes, and on their maturity had dishonoured them, and about the same time, viz., on 6th May 1889, had ceased to carry on his business as a merchant in Madras and absconded from the original jurisdiction of the High Court. Defendants Nos. 2 and 3 were also

* Appeal No. 143 of 1891.

GOPAL v. BANK OF MADRAS.

creditors of defendant No. 1, and on 12th April 1889 had obtained from him in discharge of their debts, and in further consideration of Rs. 55 paid by them in cash, an instrument, whereby he assigned to them a decree for Rs. 57,000, passed against the Zamindar of Karvetnagar, and whereby it was provided that they, out of the proceeds of the decree, should discharge debts, including their own, to the amount of about Rs. 24,000, and pay a further sum of Rs. 24,000 to the father of the assignor. The plaintiff, alleging that the instrument of transfer had been fraudulently and collusively entered into by the defendants with the object of unduly preferring the debts of the creditors named therein and of delaying and defeating the claims of the plaintiff and the other creditors of the first defendant, now sued for a declaration that it be declared void, or it be declared void as against the plaintiff. The District Judge held that the first defendant had entered into transaction fraudulently, but that defendants Nos. 1 and 2 had taken the transfer in good faith and for good consideration. On this finding he passed a decree declaring the instrument to be void.

Defendants Nos. 2 and 3 preferred this appeal.

Bhashyam Ayyangar and *Gopalasami Ayyangar* for appellants.

Mr. *K. Brown* for respondent.

JUDGMENT.—The suit out of which this appeal has arisen was instituted by the Bank of Madras for a declaration that an instrument, dated 12th April 1889, executed by first defendant to second and third defendants, transferring to the latter a decree held by the former against the Zamindar of Karvetnagar, is void, if not altogether, at least as against the plaintiff's bank.

The plaintiff's case is that the instrument in question was executed by first defendant fraudulently and in collusion with second and third defendants with the object of delaying and defeating the just claims of the plaintiff to whom he was indebted at the time on account of bills executed or endorsed by him amounting to Rs. 25,000. The first defendant has not defended the suit. The second and third defendants pleaded that the transfer in question was neither fraudulent nor collusive, but that it was taken by them in good faith and for valuable consideration.

The District Judge has found that the second and third defendants acted in good faith in accepting the plaint transfer and that they have paid considerable sums to creditors on the strength

of it, but that it is nevertheless void, because the instrument in question (exhibit A) is not really a sale-deed, but a deed of trust in favour of certain preferred creditors, including the trustees themselves (second and third defendants) and "according to "English law a trust evincing an unfair preference of creditors "is bad, no matter what may have been the importunity of such "creditors." He has, therefore, decreed that exhibit A is "fraudulent *on the part of first defendant* and void."

Hence this appeal by defendants Nos. 2 and 3.

The first question is whether the Judge is right in holding exhibit A to be merely a deed of trust and not a sale. By it first defendant makes over absolutely to these appellants a decree under which he is stated to be entitled to a sum of Rs. 57,000 and odd for a sum of Rs. 48,000-11-2, of which Rs. 23,945-6-0 are to be paid to certain named creditors (including second and third defendants) of first defendant (the vendor) and Rs. 24,000 to the vendor's father, the balance Rs. 55-5-2 having been paid in cash to the vendor himself. There is no good reason for holding that the document is merely a deed of trust and not a sale-deed as it purports to be.

Such being the case, is it void simply by reason of its having been executed by first defendant in contemplation of his approaching failure and insolvency? The mere fraudulent intent of the vendor cannot avoid the deed if the purchasers were free from that fraud. *Cf. in re Johnson: Golden* v. *Gillam*(1) at page 394; see also *Motilal Ravichand* v. *Utam Jagjivandas*(2). In the present case it is found by the Judge that second and third defendants are not shown to have acted otherwise than in good faith in accepting the transfer of the decree, and that they have paid considerable sums to creditors on the strength of it. This finding is well supported by the evidence. As observed by the Judge, it is clear that the plaintiff's bank was lending money to first defendant in belief of his solvency until just before he ran away to Pondicherry, and there is nothing to show and no inference can be fairly drawn, that second and third defendants had any better knowledge of first defendant's contemplated act of insolvency. Nor is it shown that the appellants were even aware of first defendant's indebtedness to the plaintiff.

(1) L.R., 26 Ch. D., 389. (2) I.L.R., 13 Bom., 434.

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Under these circumstances the plaintiff is not entitled to a decree declaring the instrument to be void. In addition to the Bombay case above referred to see *Sankarappa* v. *Kamayya*(1), *Gnanabhai* v. *Srinivasa Pillai*(2), and *Pullen Chetty* v. *Ramalinga Chetty*(3).

The decree of the lower Court must be set aside and plaintiff's suit dismissed with costs of second and third defendants in both Courts.

Barclay, *Morgan* and *Orr*, Attorneys for respondent.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Handley.

In Appeal No. 148 of 1891.

1892.
Nov. 15, 16.
December 23.

JAGANNADHA (PLAINTIFF), APPELLANT,

v.

PAPAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.

In Appeal No. 183 of 1891.

BUCHAMMA (DEFENDANT No. 2), APPELLANT,

v.

JAGANNADHA (PLAINTIFF), RESPONDENT.

In Appeal No. 20 of 1892.

PAPAMMA (DEFENDANT No. 1), APPELLANT,

v.

JAGANNADHA (PLAINTIFF), RESPONDENT.*

Hindu law—Adoption by widow—Agreement between adoptive mother and natural father.

A Hindu, who is taken in adoption by a widow, acting under an authority from her husband, is not bound by an agreement entered into by her with his natural father at the time of the adoption.

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(1) 3 M.H.C.R., 231. (2) 4 M.H.C.R., 84. (3) 5 M.H.C.R., 368.

* Appeals Nos. 148 and 183 of 1891 and 20 of 1892.