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prefer to rest our decision upon the general principle that the only judgment that can be put forward in a Court of Probate in support of the plea of *res judicata* is a judgment of a competent Court of Probate.

We must reverse the order of the District Judge of 31st August 1892 and direct him to restore the application for probate to the file and proceed to dispose of it according to law. Costs of this appeal to be dealt with in the final order.

APPELLATE CIVIL.

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

In Appeal No. 145 of 1890.

1892. December 14, 15, 16. 1893. January 19.

PAPAMMA (DEFENDANT No. 1), APPELLANT,

v.

V. APPA RAU AND OTHERS (PLAINTIFF, DEFENDANT No. 2, AND PLAINTIFF'S REPRESENTATIVE), RESPONDENTS.*

In Appeal No. 148 of 1890.

N. APPA RAU (DEFENDANT No. 2), APPELLANT,

v.

V. APPA RAU AND OTHERS (PLAINTIFF AND PLAINTIFF'S REPRESENTATIVES), RESPONDENTS.*

Hindu Law—Adoption—Competency of step-mother to give in adoption—Adoption of an adult.

In a suit to set aside an adoption, it appeared that the person said to have been adopted was an unmarried man of forty years of age, who had already succeeded to his father's estate for twenty years at the time of the alleged adoption, and that he had been given in adoption by his step-mother without the previous consent of her husband, deceased:

Held, that the adoption was invalid on the ground that under the Hindu law a step-mother cannot give her step-son in adoption.

Semble: the adoption was not invalid by reason of the age of the alleged adopted son or of his having previously taken his patrimony in his natural family.

Per cur: the English law of attainder did not apply in India in 1783.

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* Appeals Nos. 145 and 148 of 1890.

CROSS APPEALS against the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in original suit No. 14 of 1888.

Suit for declaration that the plaintiff was the next heir to a zamindari on the death of defendant No. 1, and that an adoption by defendant No. 1 of the father (deceased) of defendant No. 2 was invalid.

The further facts of this case appear sufficiently for the purposes of this report from the following judgment of the High Court.

The Advocate-General (Hon. Mr. *Spring Branson*) and *Desikachariar* for defendant No. 1 (appellant) in appeal No. 145 of 1890.

Subramanya Ayyar, *Anandacharlu* and *P. Subramanya Ayyar* for respondent No. 2.

Bhashyam Ayyangar and *Gopalasami Ayyangar* for respondent No. 3.

Mr. *P. A. DeRozario*, *Subramanya Ayyar*, *Anandacharlu* and *P. Subramanya Ayyar* for defendant No. 2 (appellant) in appeal No. 148 of 1890.

Bhashyam Ayyangar and *Gopalasami Ayyangar* for respondent No. 2.

Ramachandra Rau Sahib for respondent No. 3.

Krishnamachariar for respondent No. 4.

JUDGMENT.—The property which is the subject of this litigation is the zamindari of Nidadavole in the Godavari district. Rajah Narayya Appa Rau was its last male owner, and on 7th December 1864 he died leaving him surviving two widows named Rajah Papamma Rau, the defendant No. 1, and Rajah Chinnamma Rau who died in 1881. In June 1885 Rajah Papamma Rau adopted Venkata Ramayya Appa Rau, the father of the minor defendant No. 2. The last male owner had two half-brothers named Ramachendra Appa Rau and Narasimha Appa Rau, and the plaintiff Venkatadri Appa Rau was the son of the latter.

The previous history of the family, as shown by the pedigree set out in exhibit XII, is shortly this. One Rajah Narayya Appa Rau was the common ancestor of the plaintiff and the first defendant's husband. He had married five wives and had one son by his third wife, viz., Venkata Narasimha Appa Rau, and two sons by his fifth wife, viz., Ramachendra Appa Rau and Narasimha Appa Rau. Narayya Appa Rau rebelled against the late

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East India Company in 1783 and his zamindari was declared to be forfeited to the Government, but some time after his death it was granted to his eldest son. The zamindari then consisted of two estates, viz., Nidadavole and Nuzvid, and in 1802 the former was permanently granted under a sannad to Venkata Narasimha Appa Rau, the eldest son by the third wife, and the latter to the eldest of two sons by the fifth wife Ramachandra Appa Rau. No provision, however, being made for the second son by the fifth wife, Narasimha Appa Rau, he and after him his son, the plaintiff, received an allowance for their support from the zamindars of Nuzvid and Nidadavole. Venkata Narasimha Appa Rau had no issue and adopted the plaintiff's natural brother Narayya Appa Rau, and Ramachandra Appa Rau was succeeded by his son Sobhanadri Appa Rau. Rajahs Narayya Appa Rau and Sobhanadri Appa Rau since granted to the plaintiff in perpetuity for the support of his family two mittas, the former, the Mitta of Tangellamudy out of the estate of Nidadavole and the latter, the mitta of Chinnavendra out of the Nuzvid estate. Sobhanadri Appa Rau had six sons and the minor second defendant's father was one of them, and his mother was the sister of the first defendant.

Venkataramayya Appa Rau, the adopted son of the first defendant, died on the 1st January 1888, and was succeeded by his minor son, the second defendant, who is now under the guardianship of the Court of Wards. In June 1888 plaintiff brought this suit to have it declared that the adoption of the second defendant's father was invalid, and that as the nearest reversioner, he (the plaintiff) was entitled to the estate of Nidadavole on the death of the first defendant. The plaint, as originally framed, stated among other things that the plaintiff and the late Rajah Narayya Appa Rau were undivided and that the former was the chief heir to the first defendant, but the plaintiff's vakil has since made a statement to the effect that the plaintiff rested his claim only on his position as reversionary heir and not as an alleged coparcener.

The substantial question, therefore, for determination in this suit was whether the adoption of the second defendant's father Venkataramayya Appa Rau was invalid. In paragraph 5 of the plaint the adoption is impeached on five grounds, viz., (i) that Venkataramayya Appa Rau was at the time of adoption about

forty-three years of age and neither his father nor his mother was then alive; (ii) that prior to his adoption he had instituted a partition suit and obtained a decree for a share in the estate of his natural father Sobhanadri Appa Rau; (iii) that he was not eligible for adoption as even after his adoption, he separately performed the sraddha of his natural father; (iv) that the first defendant had no authority to make the adoption, and (v) that she made the adoption from corrupt motives contrary to the intention of her co-widow Chinnamma Rau.

It was contended for the defendants that the first defendant had her husband's authority to make the adoption, that though Venkataramayya's parents had died prior to his adoption, his step-mother was alive and gave him in adoption, as she was entitled to do under Hindu law, that the plaintiff consented to and acquiesced in the adoption, and that the other objections urged against it were entitled to no weight. Another ground of defence was that the common ancestor Narayya Appa Rau was a proclaimed rebel and the plaintiff who had to trace his relationship to the late zamindar through him could not under the English law of attainder assert his claim as reversioner.

The two issues that relate to the adoption are the 5th and 6th, and the *factum* of the adoption was not disputed by the plaintiff. The Subordinate Judge considered that the first defendant had been authorized by her husband to make the adoption, but he was of opinion that Venkataramayya Appa Rau was not eligible for adoption as his natural parents had died prior to it and as his step-mother was not competent to give him in adoption. He considered further that, although Venkataramayya Appa Rau was forty or forty-one years of age at the time of his adoption, he was unmarried and his adoption could not be impeached on account of his age according to decided cases. He thought however that in the circumstances of this case the adoption was in the nature of an adoption in the *Kritrima* form. He held further that neither plaintiff's consent to the adoption nor his acquiescence therein was proved, and that the other objections urged against it were not tenable. He was also of opinion that the plaintiff was not debarred from maintaining this suit by the rebellion of the common ancestor Narayya Appa Rau. On the ground, however, that a step-mother was not competent to give her step-son in

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adoption, that Venkataramayya Appa Rau was really an orphan at the date of the adoption, and that his adoption was invalid, he decreed the claim. From this decision both defendants have appealed, the first defendant in appeal No. 145 and the second defendant in appeal No. 148 of 1890.

Appeal No. 145 of 1890 :—As regards this appeal it is urged that the observation of the Subordinate Judge in paragraph 348 of his judgment is irregular and one which he was not at liberty to make. In her written statement the first defendant did not deny or impugn the adoption of the second defendant's father, but alleged that it was made subject to the condition that the first defendant's right as the late zamindar's widow to the enjoyment and management of the estate was *not* to cease on adoption, but that she was to continue to manage the estate during her lifetime with the aid and assistance of her adopted son Venkataramayya Appa Rau.

At the first hearing the first defendant's vakil asked for an issue relating to the condition set up by her, and his application was resisted on the second defendant's behalf on the ground that the question was one which arose between the first and second defendants only and *not* between the plaintiff and the defendants or either of them. The Subordinate Judge was also of opinion that it was not a necessary issue and refused to raise it. In his judgment, however, he referred to her evidence that she was entrapped by a stratagem into making the adoption, and observed with reference to it that her conduct amounted to *res judicata*, that the adoption was effectual against her and that the adoption by a widow, however invalid it may be against her husband's *sapindas*, is binding on her and divests her of the property she had inherited from her husband. These remarks no doubt are too wide and apparently amount to an adjudication on the question of management, but it appears from paragraph 351 that they were not so intended. It is therefore sufficient to say that the question whether the adoption was made subject to the covenant set up by the first defendant was not intended to be and is not adjudicated upon in this suit.

As regards the validity of the adoption, the learned Advocate-General who appeared for the appellant relied on the arguments which might be addressed to us by the second defendant's pleader,

and for the reasons mentioned in our judgment in appeal No. 148 of 1890, we are not prepared to attach weight to those arguments. This appeal must fail and is hereby dismissed with costs; two sets, one for the second respondent and one for the third respondent.

Appeal No. 148 of 1890:—The main question for decision in this appeal is whether Venkataramayya's step-mother was competent to give him in adoption. It is urged on the appellant's behalf that the step-mother Venkataramanayamma Rau had been directed by her husband to give her step-son Venkataramayya in adoption whenever the first defendant should ask her to do so, that the plaintiff was present at and acquiesced in the adoption, and that apart from those facts a step-mother is, in default of natural mother, competent under Hindu law to give her step-son in adoption.

As regards Sobhanadri's authority to give his son in adoption, the step-mother deposed as the ninth witness for second defendant that two or three days prior to his death Sobhanadri sent for her and told her as follows: "The Ranees of Sanivarapet desired me "to give them in adoption Buchi Nayana (Venkataramayya "Appa Rau). I promised them. You should therefore fulfil "the said promise." She stated further that he had insisted on obtaining an assurance from her that she would act in accordance with his directions, and that she had given him that assurance. She went on to state that he had also told her a year or two previously to his death that the Ranees of Sanivarapet wanted him to give Venkataramayya in adoption, and that he promised to do so whenever they desired. On this point, however, the first defendant contradicts her and denies that she had any conversation with Sobhanadri about the adoption. As regards the alleged direction prior to Sobhanadri's death, the twelfth witness supports the statement of the ninth witness, but he is her cousin. His evidence is also open to the remark that though he was then staying with the ninth witness, he did not give his evidence until four days after she had been examined. In paragraph 15 of the written statement the second defendant did not refer to any express death-bed direction on the part of Sobhanadri, but stated generally that he had intended and expressed his intention that his son should be given in adoption.

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At the first hearing the second defendant's counsel refused to state to the plaintiff's vakil whether he intended to prove any express authority from Sobhanadri. Sobhanadri had several adult sons at the time and two of them, who are now alive, the second defendant's thirteenth witness and his brother examined on commission, deny all knowledge of the authority, though they say that they constantly attended on their father during his last illness by turns. It is strange that Sobhanadri should not have communicated his desire to them, and that they should not have been aware of this direction. It is suggested that the step-mother was hostile to the second defendant and withheld the necessary information, but her evidence which is in the second defendant's favour does not bear out this suggestion. It is next urged that Sobhanadri would have actually desired to see both the estates of Nuzvid re-united in his own branch of the family and that this circumstance renders the evidence probable. This mode of reasoning assumes that Papamma Rau was anxious to make an adoption during his life, and there is no evidence in support of the assumption.

As observed by the Subordinate Judge there is no writing to show that Sobhanadri ever contemplated the adoption by the first defendant of one of his sons. Considerable stress is laid on Venkataramayya Appa Rau's ear-boring ceremony being deferred till 1872, and reliance is placed on it as corroborative evidence. It appears, however, from the evidence that the ceremony was so deferred because there was a vow to perform it at Tirupati, and that a pilgrimage was undertaken to that place only in that year. It is also in evidence that in the case of several other sons of Sobhanadri the ear-boring ceremony was likewise deferred. Venkataramayya Appa Rau's natural brother, the second defendant's thirteenth witness who gives evidence on the subject traces no connection between it and the adoption. Further, the adoption took place in 1885 and the ceremony was performed in 1872. We do not consider that the delay in its performance has any value as corroborative evidence. We are of opinion that the Subordinate Judge was right in refusing credit to the story about Sobhanadri's authority to give his son in adoption after his death.

As regards the plaintiff's alleged consent to the adoption and his acquiescence in it, the Subordinate Judge discusses the evi-

dence on the subject in paragraphs 293 to 342 of his judgment. The second defendant's case on this point is that the plaintiff was present during the adoption, offered a present, and gave a blessing to the adoptee, and that he thereby acquiesced in the adoption. The Subordinate Judge found that the plaintiff was present at the ceremony owing to the pressure put upon him by the Rajah of Pitapur, but that he made no present and offered no blessing and that there was no acquiescence in or consent to the adoption. The evidence is set out at length and carefully considered by him and we entirely concur in the conclusion arrived at by him. It is urged on behalf of the appellant that the plaintiff's presence during the ceremony, though it may not amount to an estoppel, shows that the plaintiff did not then think that the adoption was improper. Assuming that the plaintiff then believed that a step-mother could give her step-son in adoption, this would surely be no bar to his now contending that the adoption is invalid. Further, the belief imputed to the plaintiff is inconsistent with his conduct both at the time of the adoption and subsequent to it. It is true that the suit was brought in 1888 whilst the adoption took place in 1885, but this cannot deprive him of his legal right to set aside the adoption if it is bad in law.

The next question for consideration is whether in default of the natural mother, a step-mother is competent under Hindu law to give her step-son in adoption. On this point the appellant's contention in the Court below was that Venkataramayya Appa Rau was not an orphan in the sense in which the word is understood in English law, that his step mother took the place of his natural mother on the death of the latter, and that she was therefore competent to give him in adoption. After discussing the question at considerable length in paragraphs 139 to 195 of his judgment the Subordinate Judge holds that a step-mother has no property in her step-son, and that she is therefore incompetent to dispose of him by gift in adoption. It is argued on appellant's behalf that the word used in all the texts is mother, that the word mother is a generic term and includes step-mother, and that she is therefore competent to give her step-son in adoption. It is further urged that in theory gift is prescribed in the case of adoption by reason of parental authority, that that authority is real only so long as the son is a minor, that when he attains majority he is

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sui juris, that his mother has no independence of action, and is practically under his control if his father happens to die, that gift is then necessary in the case of his adoption as a mere matter of form by reason of the legal fiction, and that it is sufficient if the step-mother gives her step-son in adoption.

As far as we are aware, there is no Smriti which deals expressly with the step-mother's power. There are, however, three principal Smritis which define an adopted son, and the definitions show that a mother has power to give in adoption, and that she has the power because she gave birth to her son.

Vasishtha says:—"A son formed of seminal fluids and of blood "proceeds from his father and mother as an effect from its cause; "both parents have power to give or sell or desert him. Let no "man give or accept an only son, since he must remain to raise up "progeny for the obsequies of his ancestors. Nor let a woman "give or accept a son without the assent of her lord." (Madras Edition, Colebrooke's Digest, vol. II, book V, chap. IV, ver. 273.)

It is conceded that the received interpretation is that either parent has power to give, and that the mother's power is restricted only during the lifetime of her husband.

Manu declares:—"He is called a son given whom his father or "mother affectionately gives as a son, being alike (by class) and "in a time of distress, confirming the gift with water." (Manu, chap. IX, 168.)

Yajnyavalkya says:—"He whom his father or his mother gives "for adoption shall be considered as a son given."

All the leading commentaries in Southern India adopt the definition. See Mitakshara, chap. I, s. XI, placitum 9; Smriti Chandrika, Krishnasami Aiyar's Translation, Chap. IV, placitum III, 2; Sarasvati Vilasa, Foulkes' Translation, placitum 359, and Madhaviya, Burnell's Translation, p. 20. There can, therefore, be no doubt that after the father's death the mother has power to give her son in adoption. Does the word 'mother' include step-mother?

As argued on appellant's behalf the term 'mother' is no doubt generic, but in its primary sense it connotes only natural mother, and the word 'step-mother' is used when the father's wife is intended to be denoted. Etymologically also the word *matha* refers to the natural mother, and means 'maker' that is,

the maker of the child in the womb (Monier-Williams' Sanskrit Dictionary). In offering funeral and annual obsequies, the Sanskrit word used to denote step-mother is '*sapatni matha*' that is to say co-wife-mother. It is true that in a secondary sense it includes step-mother. So it does in the chapter on allotments made for widows: Mitakshara, chap. I, sec. VII, and in the chapter on sapinda relationship. But there must be a special reason either in the subject-matter of the text or in the context for departing from the ordinary meaning. In the case before us there is reason to conclude that the word is used in its primary sense only. Vasishtha's text shows that besides the father, the natural mother has alone property in the son, and without ownership there can be no power to give in adoption. Again, adoption is prescribed for determining the filial relation arising from birth, and creating a new filial relation by gift, and the very nature of the subject indicates that the father and, on his default, the natural mother must be the persons competent to determine it. It is also unreasonable to hold that a step-mother can dispose of her step-son by adoption, for when she has sons of her own she is likely to exercise the power in favour of her own sons and to the prejudice of her step-son. That parental affection which ordinarily prevents a father or mother from giving the son in adoption when it is not to the son's advantage is, as a general rule, wanting in the case of a step-mother.

We are not prepared to accede to the contention that after the son attains his majority the gift in adoption is only a formal act and it may be made by the step-mother. If so why should not a brother or maternal or paternal uncle be likewise competent to give?

The Indian Majority Act has nothing to do with the Hindu law of adoption, and the true theory is that the filiation arising from birth does not cease until and unless it is lawfully determined by the father or mother. If the appellant's contention were to prevail, the adoption would practically amount to the adoption of a son self-given, which is forbidden by Adityapurana cited in Dattachandrika in the note 7 to section 9, the *aurasa* and the *dattaka* being the only two classes of sons recognized in the present age. It is true that when among brothers one brother has sons, Manu says that they are the sons of all the brothers. This

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does not mean that a brother who has no son is not at liberty to adopt when he has nephews, but it is intended to denote that brothers' sons are to be preferred to strangers for adoption. It is next urged that when a step-son is alive, no adoption is permitted, though his father may have married several wives, and that he is considered to be the son of all. This is because a widow can only adopt for her husband and under his authority. The author of the Dattaka Mimansa notices both the above mentioned objections and concludes in section II, plac. 67 and 70 that among sapindas a brother's son must only be affiliated, and that the step-son is the son of all the step-mothers, because he originated from portions of their husband, whilst the brother's son is not so connected by containing portions of either the husband or the wife. The author of the Dattachandrika comes to the same conclusion in section I, plac. 25 to 27. The principle appears to be this:—that the power to give in adoption is either with the father or natural mother, with whom alone the son is connected by containing portions of his or her body.

As regards authority, we are referred to no decided case which is on all fours with the one before us. Several of the decisions referred to by the Subordinate Judge throw light however on the principles which ought to guide our decision.

In *Kumaravelu* v. *Virana Goundan*(1) it was held that a step-mother is not entitled to succeed to her step-son in preference to a sapinda. The ground of decision is that the very reason assigned in Mitakshara, chap. II, sec. 3, for the preference of the mother over the father shows that the natural mother is intended in that passage. This decision is only authority for the proposition that when the reason of the rule excludes its applicability to the step-mother, the step-mother is not to be taken as coming within that rule. The second case is that of *Muttammal* v. *Vengalakshmiammal*(2). It is only an authority for the proposition that a step-mother is not an heir in preference to the paternal grandmother. The ground of decision is that the name of the latter is, whilst that of the former is not, specified among the heirs mentioned in the Mitakshara. The third case is that of *Mari* v. *Chinnammal*(3). It was held that a paternal uncle excludes the step-mother, and the principle laid down in it was

(1) I.L.R., 5 Mad., 29. (2) I.L.R., 5 Mad., 32. (3) I.L.R., 8 Mad., 107.

approved. The fourth case is *Subbaluvammal* v. *Ammakuttiammal*(1). It was held in that case that an orphan cannot be adopted, and it is an authority for the proposition that to constitute an adoption there must be a giving as well as a receiving, and that in the case of an orphan there is no one competent to give. The fifth case, viz., that of *Narayanasami* v. *Kuppusami*(2) in which it was held that a widow cannot give her only son in adoption and she is competent to give in adoption where her husband is legally competent to give, and where there is no express prohibition from him. It is an authority for the proposition therein laid down, viz., that three principles appear to regulate the power to give in adoption (i) the son is the joint property of the father and mother for the purpose of a gift in adoption, (ii) when there is a competition between the father and the mother, the former has a predominant interest or a potential voice; and (iii) after the father's death the property survives to the mother. The sixth case is that of *Bai Daya* v. *Natha Govindlal*(3). It was held in that case that a step-son is under no legal obligation to support his mother independently of the existence of family property in his hands. Adverting to Manu's text "a mother, a father, in "their old age, a virtuous wife and an infant son must be main- "tained," the Court observed that the word used in the text is '*matha*,' that the primary meaning of *matha* is natural mother, that it is only in a secondary or figurative sense that it could mean step-mother, and that the conclusion that it is intended to be used in the latter sense must be drawn from the context or comparison of cognate texts. The seventh case is *Bashatiappa Bin Baslingappa* v. *Shivlingappa Bin Ballappa*(4), and it was there decided that a gift in adoption by the brother, made after the death of the father and mother, though made with the previous assent of his father, is invalid. The ground of decision was that the Hindu law does not permit a man after the decease of his father and mother, either with or without the authority of both or either of them, to give his brother in adoption. We are of opinion that there is no warrant either in the Smritis or in the decisions for the contention that a step-mother is competent to give her step-son in adoption.

(1) 2 M.H.C.R., 129.
(2) I.L.R., 11 Mad., 43.
(3) I.L.R., 9 Bom., 279.
(4) 10 B.H.C.R., 268.

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The next question argued before us is that raised by the eighth issue, and the Subordinate Judge has fully discussed it in paragraphs 72 to 131 of his judgment, and we agree in the conclusion at which he has arrived. We also think that the old English law of attainder did not apply in India in 1783, and that, even if it did, there was no formal conviction for treason nor judgment of outlawry.

The resumption of the zamindari was an act of State and the law applicable to the case is that laid down in the *Mayor of Lyons* v. *East India Company*(1). There the question for decision was whether that portion of the English law which incapacitates aliens from holding real estate and transmitting it by descent or otherwise extended to Calcutta, and the Privy Council held "where a foreign settlement is obtained in an inhabited country "by conquest or by cession from another power, the *lex loci* "applies and the law of the country continues to apply until the "Crown or the Legislature changes it." Attainder was feudal in its origin and was an incident of the relation of lord and vassal, and *not* of sovereign and subject, and in this sense it was unknown to Hindu law.

There is no other ground of objection argued in support of this appeal. Though Papamma Rau's authority to adopt was denied in the plaint, the Subordinate Judge considered it proved and there is sufficient evidence to warrant the finding. Again the second defendant's father was at the time of adoption forty or forty-one years of age, but he was unmarried. In Dattachandrika, section II—33, the commentator, after discussing the question, concludes thus: "the practice of the ancients, even in respect to "the adoption of a son unlimited to a particular time, is upheld."

We are unable to hold that Venkataramayya Appa Rau's adoption is invalid by reason of his age. Nor is the fact that he obtained a share in Sobhanadri's estate prior to adoption fatal to its validity. It is true that adoption severs one from one's natural family, but there is no text to the effect that the taking of a share in one's patrimony fixes one in the natural family so as to render him subsequently ineligible for adoption. It is true that the adoption of a person who is forty years old and who has

(1) 1 M.I.A., 273.

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.