which was attached before judgment will alone more than cover these payments. CHINNAM RAJA-MANNAR v. TADIKONDA RAMA-CHENDRA RAO.

In modification, therefore, of the decree of the Subordinate Judge we pass a decree for this amount.

Parties will pay and receive proportionate costs throughout, the memo. of objections included.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Sankaran Nair.

MURUGAPPA CHETTI (DEFENDANT), APPELLANT,

v.

NAGAPPA CHETTI AND ANOTHER (PLAINTIFFS), RESPONDENTS.* 1905 September 7. October 4, 10.

Hindu Law—Adoption—Receipt of consideration by Natural father for giving in adoption does not make the adoption invalid.

Where a boy, being a fit subject for adoption in the Dattaha form, is given and accepted, with the proper ceremonies for such adoption, by persons respectively competent to give and accept him, he acquires the status of an adopted son. The receipt of money by the natural father in consideration of giving his son and the payment of such by the adoptive father, though illegal and opposed to public policy, do not make the adoption invalid, as the gift and acceptance of the boy is a distinct transaction clearly separable from the illegal agreement and payment. Such payment has not the effect of converting the adoption into an 'affiliation by sale,' a form now obsolete.

Manjaneer puthiran is synonymous with Dattaha son.

Bhasha Rabidat Singh v. *Indar Kunwar*, (I.L.R., 16 Calc., 556), followed.

THE first plaintiff claiming to be the adopted son of the defendant instituted this suit, impleading his minor son as co-plaintiff, for partition of the family properties in the hands of the defendant. The defendant pleaded *inter alia* that the first plaintiff did not acquire the status of an adopted son, as in consideration of a sum of Rs. 6,150 paid to the first plaintiff's natural father, he was added as a *Manjaneer puthiran* into the defendant's family and that, as such practice was opposed to public policy, the first plaintiff could

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* Appeal No. 179 of 1903, presented against the decree of M.R.Ry. W. Gopala Chariar, Subordinate Judge of Madura (East) in Original Suit No. 97 of 1901.

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not claim the status of adopted son. The defendant also contended that the properties were his self-acquired properties and were not liable to division. The factum of adoption was proved as well as the fact that the first plaintiff resided with the defendant and was married at the defendant's expense. The payment of Rs. 6,150 was admitted and the Sub-Judge held that it did not vitiate the adoption. The plea of self-acquisition was disallowed and a decree was passed in favour of the plaintiffs. The defendant preferred this appeal.

The Hon'ble Mr. *P. S. Sivaswami Ayyar* and *T. R. Venkatarama Sastri* for appellant.

The Hon'ble Mr. *L. A. Govindaragava Ayyar* for *V. Krishnaswami Ayyar* and *T. V. Gopalaswamy Mudaliar* for respondent.

JUDGMENT.—SUBRAHMANIA AYYAR, Offg. C.J.—The important point for determination in this case is whether the first plaintiff, hereinafter referred to as the plaintiff, is, as found by the Subordinate Judge, the adopted son of the defendant. The oral evidence in the case proves beyond all doubt that the plaintiff was, on or about the 28th October 1887, while a boy of 12 or 13 years of age, formally given in adoption to the defendant and accepted by the latter as his son, and that such gift and acceptance were accompanied by ceremonies usual among the members of the community to which the parties belong, viz., Sudras of the class known as Nattukottai Chetties. That the plaintiff has ever since lived away from his natural home and as a member of the defendant's family is equally well established. It is further shown that the defendant got the plaintiff married and that the issue of that marriage (the second plaintiff) has also grown up as a member of the defendant's family. Mr. Sivaswami Ayyar, on behalf of the defendant, contended that, in spite of all the above circumstances, it should be held that in point of law there was no valid affiliation of the plaintiff as the defendant's son, inasmuch as the natural father of the plaintiff was induced to part with him in consideration of the payment, some short time before the adoption, of the sum of Rs. 6,000 and odd made by the defendant to the natural father. The argument on this point, so far as I followed it, was that the transaction in question was one known to the Hindu Law as the affiliation of a 'son bought,' and as such a form of affiliation is prohibited in modern times, the plaintiff's claim as adopted son must fail.

As regards the texts and the passages from the commentaries cited by Mr. Sivaswami Ayyar their real effect was that a person buying a child had the power, by the very act of purchase, of conferring upon the child the status of a member of his family without the performance of rites or ceremonies prescribed in the case of an *aurasa* son, though the performance thereof was recommended as productive of religious merit. It is not, however, necessary to pursue this matter, it being unquestionable that the relation of a 'son bought' cannot now be validly created, and inasmuch as the intention of the natural father and of the defendant in the present instance was certainly not to follow that mode of affiliation. Now their intention will clearly be seen to have been to make the plaintiff an adopted son of the *Dattaha* form, and, as the party giving was competent to give, the party taking was entitled to take and the plaintiff himself was a fit subject for gift and acceptance in that form, that intention must be given effect to unless there was something attending the transaction, which under the Hindu law nullified the intention of the parties and prevented the springing up of the status which would otherwise have resulted from it. In the deed which was executed on the day of the adoption by the defendant to the natural father and meant to serve as the written evidence of the transaction, the plaintiff is described as *Manjaneer puthiran*, Tamil words meaning literally "saffron-water-son," but used as synonymous with a Dattaha son (see Winslow's Dictionary and compare Mayne on Hindu Law and Usage, sixth edition, page 196 at end of section 154). Further the provisions of the instrument that the adopted boy is entitled to the rights of a son in the estate of the adoptive father and especially the provision that he is to have an equal share with any after-born natural son are most strongly in favour of the above view. The only question then is whether the payment to the natural father of the sum of money referred to, which is admitted invalidates the adoption. No doubt, whether looked at with reference to general policy or with reference to the spirit underlying the rules of the Hindu Law as regards Dattaha adoption, the promise to pay or the payment of money for the purpose of inducing a man to part with his son to another cannot but be reprobated. Still, ought it to be held that the gift and acceptance itself is rendered null and void by the payment of the money? The objections on which stress was laid by Mr. Sivaswami

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Ayyar certainly warrant the view that the person who agrees to pay or pays, and the person who agrees to receive or receives the money are parties to an unlawful agreement and being in *pari delicto* should be held disentitled to seek any relief in Courts of justice by virtue of such agreement or payment. To go further and lay down that the adopted son's status itself is affected thereby would be to confound two transactions, which in the eye of the law are independent of each other; since the transaction of the gift and acceptance which effects the change in the status of the son is clearly separable from the agreement or payment which the law prohibits. In fact the latter bears only on the motives of the party giving and *Rajah Vellanki Venkata Krishna Row* v. *Venkata Rama Lakshmi Narasayya*(1), and *Mahableshvar* v. *Durgabai*(2), are authorities against the question of the validity of an adoption being complicated by enquiries into the motives of the parties concerned. It is scarcely necessary to say that a gift or acceptance from motives of a questionable character by a person competent of his own choice to give or accept is distinguishable from the case of acceptance by a widow acting under the authority of a sapinda given for a corrupt consideration.

In the latter case the adoption fails because of the absence of *bonâ fide* authority to take, such authority being an essential constituent of a good adoption by a widow not empowered by her husband to make one.

The view that the payment in question would invalidate the adoption would, of course, result in visiting with highly injurious consequences an innocent third party, for persons given in adoption are almost invariably children incapable of protecting themselves in the matter, and liable to be given away, apart from their wishes, in the exercise of parental authority recognised by the Hindu Law. And where disputes arise, as in this case, many years after the child passes from one family to another, to hold that the adoption itself is bad would subject him to irreparable loss in respect of property and involve him in other difficulties incident to the ties he has formed as a member of the adopter's family. That a rule which makes an agreement to pay or the payment of such a consideration as that in question invalidate the adoption itself would strike at the mischief more effectually than

(1) L.R., 4 I. A. 1 at p. 14. (2) I.L.R., 22 Bom., 199.

one which only prohibits the grant of relief in respect of the agreement or the payment, it would be idle to suppose, so long as the sentiments of the people concerned remain what they are. It is abundantly clear from the evidence that in the community to which the parties belong such payments form the rule, and the contrary, the exception. And so long as these men continue to be moved by the desire for the perpetuation of lineage by recourse to the fiction of adoption, the payments will not cease and the consequences of the stricter rule would only be that the payments would be made in secret, and that, when any litigation should ensue with reference to the adoption, it would be attended by the production of untrue evidence, either on the part of persons denying payments that have really taken place or on the part of those who falsely set up such payments. Why the practice of paying money is prevalent largely among these Chetties and is avowed is perhaps not difficult to understand. Their community is a most thriving and prosperous compact little one in this Presidency. Its members are able enterprising traders doing business in India and elsewhere. It is a pride of their community that there is in it none so poor as to depend for his livelihood on the charity of others. Every male child is expected to become an earning man and this expectation is mostly realized. Consequently when a Chetty gives away his son in adoption he is virtually contributing to the wealth of the family of the adoptive father. With the commercial instinct implanted in him, a member of this community sees nothing heinous in a practice which prevents the natural father becoming a loser by giving away his son. It must not, however, be supposed, that the position of the family into which the boy is to pass, the character of his new parents and other considerations bearing on the future welfare of the child are ignored, so as to make the transaction a purely mercenary affair as at first sight it may seem to be to a superficial critic of their institutions. Be this as it may, the view taken by the Judicial Committee in *Bhasba Rabidat Singh* v. *Indar Kunwar* (1) in regard to an improper condition subject to which an adoption takes place is in favour of the conclusion that the validity of the adoption is unaffected by the payment in question.

(1) I.L.R., 16 Calc., 556.

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The conclusion of the Subordinate Judge that the plaintiff is the validly adopted son of the defendant must be held to be right and it is unnecessary to consider the argument that the defendant is estopped from denying the plaintiff's right as adopted son.

As regards, also the other point raised, viz., whether the property in which a share has been decreed to the plaintiff is the self-acquired property of the defendant, the decision of the Subordinate Judge is correct. The allegation of the defendant that though his father had property yet the whole of it was given away by him to a temple and no portion thereof passed to the defendant is a story entirely unsupported by trustworthy evidence. The testimony of the witnesses examined on behalf of the plaintiff proves that the defendant from his infancy was a member of a joint trading family and got on division his share.

The appeal fails and is dismissed with costs.

SANKARAN NAIR, J.—I agree.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Boddam.

1905 September 11, 12.

KRISHNASWAMI AYYANGAR (PLAINTIFF), APPELLANT,

v.

SIVASWAMI UDAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Religious Endowments Act XX of 1863, s. 7—Rules under—Election—Giving consideration in return for votes, what amounts to—Payment by candidate of expenses to voters who had undertaken to vote for him disqualifies candidate.

On general principles, as well as under rule 19 † of the rules framed by the Local Government for the conduct of elections under section 7 of the Religious Endowments Act XX of 1863, a candidate can be held to "give consideration in return for a vote" only when such consideration passes as the result of bargain.

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* Appeal No. 154 of 1901 presented against the decree of G.F.T. Power, Esq., District Judge of Tanjore, in Original Suit No. 5 of 1899.

† *Rule* 19.—Any person proved to have given, directly or indirectly, any valuable consideration whatever, in return for a vote, shall be thereby disqualified from being elected.