1879
August 29.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

SUKHBASI LAL (PLAINTIFF) *v.* GUMAN SINGH (DEFENDANT).*

Hindu Law—Adoption.

Held that, when an adoption of a son has once been absolutely made and acted on, it cannot be declared invalid or set aside at the suit of the adoptive father.

THIS was a suit in which the plaintiff claimed a declaration that the defendant was not his adopted son, firstly, because he had not been adopted in the manner and according to the ceremonies required by Hindu law, secondly, because the defendant was not a fit and proper person to perform the plaintiff's obsequies, or to make offerings for the benefit of the souls of the plaintiff's ancestors, being devoid of education and religious knowledge and principles, and the associate of thieves, gamblers, and women of immoral character, and, thirdly, because the defendant had failed to perform his part of an agreement, or compromise, in writing entered into by him with the plaintiff dated the 10th January, 1873. In this agreement the plaintiff, amongst other things, agreed on his part to consider the defendant as his adopted son. The defendant set up as a defence to the suit that the plaintiff could not be allowed to deny the validity under Hindu law of the adoption, as in a petition presented by him to the Revenue Court on the 27th April, 1860, he had declared that he had adopted the defendant, and that all the ceremonies of adoption required by the Hindu law had been performed, and that the defendant would succeed to his property on his death, and had confirmed such declaration by his subsequent conduct, and the defendant had been excluded from inheriting his natural father's property; and further that an adoption made according to the Hindu law could not become or be declared invalid for any reason whatsoever. The Court of first instance held that the plaintiff could not be allowed to deny the validity of the defendant's adoption under Hindu law, in the face of the petition dated the 27th April, 1860, and the agreement dated the 10th January, 1873, and that the adoption could not be set aside, whatever misconduct the defendant might have been guilty of towards his father, as, under Hindu law, no adoptive father had authority to set aside the

* First Appeal, No. 99 of 1878, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated 2nd May, 1878.

adoption of a son. The Court of first instance therefore dismissed the plaintiff's suit.

The plaintiff appealed to the High Court, contending that the petition dated the 27th April, 1860, and the agreement dated the 10th January, 1873, did not estop him from denying the validity of the adoption under Hindu law, and the question of its validity should have been determined, and that a father was entitled under that law to exclude an adopted son from inheriting, and could therefore set aside an adoption.

The *Senior Government Pleader* (Lala *Juala* ***Prasad***) and Munshi *Hanuman Prasad*, for the appellant.

The *Junior Government* ***Pleader*** (Babu *Dwarka Nath Banarji*), for the respondent.

The judgment of the Court was delivered by

SPANKIE, J.—The plaintiff, appellant, presented a petition in the Revenue Court on the 27th April, 1860, and personally attested it. In this petition he most distinctly states that he had adopted defendant, and that all the requisite ceremonies had been performed, and that defendant would be the owner and heir of all the petitioner's property at his death. Thirteen years afterwards, the adoptive father and the adopted son being engaged in litigation, the plaintiff filed a compromise in which he says that he will consider the defendant as his adopted son. On the 14th April, 1877, he instituted this suit to invalidate the adoption as having been informal, and to annul the agreement or compromise of the 10th January, 1873.

The plaintiff, having himself affirmed the adoption as having been fully and formally made after the performance of all the ceremonies required by the Hindu law, cannot now disaffirm it and sue for a [illegible]claration that it is invalid. Indeed, when the adoption has once [illegible]n absolutely made and acted on for years, it cannot be cancelled. [illegible] certain that an adopted child cannot renounce the family of his [illegible]tive father. He is entirely separated from his own family when [illegible]atural father disposes of him. The adoptive father in accept[illegible] adopted son is bound by his act, which secures to the adopt[illegible]he rights of a son born to the family. He is as much a [illegible]ad been begotten by his adoptive father.

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SUKHBASI LAL v. GUMAN SINGH.

We are not called upon to consider the point urged in the second place, that a father can, under the principles of the Hindu law, exclude his adopted son, if such son is no longer in a position and fit to perform the religious ceremonies and rites which are the chief object of adoption. We must adhere to the claim as it stands in the plaint.

The compromise of the 10th January, 1873, was filed in a suit which was determined on the terms of the compromise. If the plaintiff has suffered any wrong in consequence of defendant's omission to carry out the terms, and a new cause of action has arisen, he has a remedy, but he cannot renounce an adoption made prior to the compromise and acknowledged by himself as altogether complete and formal in 1860, by pleading now that owing to the refusal of defendant to act up to the terms of the compromise in 1873, he (plaintiff) is at liberty to consider the adoption at an end. The adoption subsists and must do so until the adopted son is dead. We dismiss the appeal and affirm the judgment with costs.

1879
April 29.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

SHEEN AND ANOTHER (DEFENDANTS) v. JOHNSON (PLAINTIFF).*

Suit for infringement of patent—Act XV of 1859, *ss.* 19, 23, 34—"*Public or Actual*" *user—Measure of damages—Particulars.*

Held, by the Court, in a suit, under Act XV of 1859, for the infringement of a patent, where the plaintiff had been in the habit of licensing the use of his invention, that the loss of the amount paid for such licence was the measure of damages.

Per SPANKIE, J.—The meaning of the words "publicly or actually used" in s. 23 of Act XV of 1859 discussed.

Held, per SPANKIE, J.—That, where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification, but was allowed to give evidence that the invention was so used at such places, the plaintiff was not bound be[illegible] trial to have called upon the defendant to supply the particulars as to such [illegible] and such evidence was not admissible.

THE plaintiff in this suit stated in his plaint that Richard[illegible] son was the inventor of a new thermantidote, and had, und[illegible] provisions of Act XV of 1859, acquired the exclusive pr[illegible]

* First Appeal, No. 7 of 1879, from a decree of H. Lushingt[illegible] of Allahabad, dated the 12th December, 1878.