APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

MAHABLESHVAR FONDBA (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* DURGABAI AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT No. 1), RESPONDENTS.*

1896. *April* 13.

Hindu law—Adoption—Adoption by widow—Motives of widow in adopting—Adoption from corrupt motives—Presumption.

In Bombay, according to the authorities, if it can be predicated of an adoption by a widow (in a case where the consent of the husband's kinsmen is not required) that the ceremony has been performed, not as a religious duty, but from sinful and corrupt motives, it is on that account invalid, and the authorities appear to impose upon the Court the duty of inquiring into the motives of the adopting widow where her motives are called in question. Whether the presumption that an adopting widow has performed her duty from proper motives ought or ought not to be deemed an irrebuttable presumption, is a question which still remains to be judicially decided.

The fact that the motives of the widow were of a mixed character is not sufficient to rebut the presumption—*Patel Vandravan* v. *Patel Manilal*(1).

The fact that the widow has made terms for herself with the father of the boy to be adopted, or that she has solicited a boy whose father will be likely to accede to her wishes, is not sufficient to render the adoption invalid—*Bhasba* v. *Indar* (2); *Chitko* v. *Janaki* (3).

Where a widow had adopted a son, and it was found by the Courts that unless she had been assured by the father and guardian of the adopted boy that she would receive Rs. 4,000 she would not have adopted him, but it was not found that she had not the special benefit of her husband in view when she made the adoption.

Held, that the presumption that she made the adoption from motives of duty was not rebutted, and that presumption should be allowed to prevail.

SECOND appeal from the decision of E. H. Moscardi, District Judge of Kánara, reversing the decree of Ráo Bahádur Gangadhar V. Limaye, First Class Subordinate Judge of Kárwár.

One Mangesh Purshotam, a separated Hindu, died on the 18th September, 1878, leaving a widow Parvatibai (defendant No. 1), but without issue. Parvatibai subsequently adopted one Mahableshvar Fondba (defendant No. 2).

* Second Appeal, No. 754 of 1894.

(1) I. L. R., 15 Bom., 565. (2) I. L. R., 16 Cal., 556.
(3) 11 Bom. H. C. Rep., 199.

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The plaintiffs, who were the sisters of Mangesh, brought this suit to have the adoption declared invalid, alleging that it had been made from corrupt motives; that they (the plaintiffs) were the reversionary heirs of Mangesh next after his widow Parvatibai; and that, in order to prevent them from succeeding to the property, Parvatibai in collusion with the guardian of Mahableshvar had agreed to make the adoption, and that the guardian had agreed to pay her the sum of Rs. 4,000 for doing so.

The defendant denied the allegation of the plaintiffs.

The Subordinate Judge found that the adoption of defendant No. 2 was not opposed to Hindu law; that he was not adopted by Parvatibai solely in consideration of Rs. 4,000 received by her as alleged, and that the adoption was not invalid. He, therefore, dismissed the suit.

On appeal by the plaintiffs, the Judge reversed the decree and declared that the adoption of Mahableshvar (defendant No. 2) by Párvatibai (defendant No. 1) was illegal and invalid, because it was made from a corrupt motive.

Mahableshvar (defendant No. 2) preferred a second appeal.

Lang (Advocate General with *Ghanasham N. Nadkarni*) appeared for the appellant (defendant No. 2).

Mehta (with *Chimanlal H. Setalvad*) appeared for the respondents (plaintiffs and defendant No. 1).

FARRAN, C. J.:—This appeal involves the consideration of a question of some importance upon the law of adoption amongst Hindus.

The plaintiffs, who are the sisters and next reversionary heirs of one Mangesh Purshotam, deceased, sued to have it declared that the alleged adoption of the defendant Mahableshvar by Parvatibai, the widow of Mangesh, is invalid. The *factum* of the adoption is not disputed. The objection to the adoption which is relied upon is that the guardian and natural father of the boy taken in adoption had agreed to pay the adopting mother Parvatibai Rs. 4,000 after the adoption should have taken place.

The following issue was raised by the Subordinate Judge upon this part of the case:—"Was the defendant No. 2 (Mahabalesh-

by the defendant No. 1 (Pa[illegible]
var) adopted [illegible] received [illegible] (Parvatibai) in considera-
tion of Rs. 4,0[illegible] by her as alleged ?"

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The payment of the Rs. 4,000 to Parvatibai was admitted. The Subordinate Judge considers that it was paid by Fondba, the father of Mahabaleshvar, after the adoption, but that the expectation of the payment exercised a very powerful influence on Parvatibai in inducing her to make the adoption. The Subordinate Judge considers that she el herself unable to manage the property, was badly served by those to whom she entrusted the management, and was continually being thwarted by the kinsmen of her husband; that she was desirous of going on a pilgrimage and performing acts of *dharma*, and that the offer of Fondba to give his son in adoption and to provide her with means of living the life she desired, offered a ready escape from her position. She wished to secure freedom from secular cares and the money required for certain spiritual purposes. "It is conceivable," says the Subordinate Judge, "that a woman whose line of action was thus dictated by prudence and piety should have easily realized the two-fold advantage of Fond's proposal, which, as the proverb goes, had the potency of giving her two eyes when she was seeking only for one." The Subordinate Judge upheld the validity of the adoption.

The District Judge raised the following issues, *viz.*:—"(2) Was the adoption made solely as a means of acquiring Rs. 4,000?" and "(3) Is the adoption invalid?" After discussing the evidence he says:—

"On the whole, therefore, I come to the same conclusion as the Subordinate Judge, *viz.*, that the Rs. 4,000 was paid to defendant No. 1 or at any rate promised to her as an inducement to take defendant No. 2 in adoption, and that she adopted him in consideration of such payment or promise of payment, and that but for such payment or promise she would not have adopted him. Whether the payment formed the sole consideration for the adoption, or whether she also had the spiritual benefit of her deceased husband in view, it is not easy to say, but I altogether dissent from the theory of the lower Court that she must be held to have adopted him from religious motives, because nominally the money was to be devoted to the payment of alleged debts due by the estate, and to religious purposes. I do not consider it proved that a single rupee of the amount was devoted to any but secular purposes, and without believing the evidence of 48,

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I do not believe, in the absence of better p[roof] than Fondba's word, that any of the money was spent in paying off debts."

He found on the issues "(2) it is not proved that the adoption was made solely as a means of acquiring Rs. 4,000;" and "(3) the adoption is invalid, because it was made from a corrupt motive."

The result would, therefore, appear to be that mixed motives of various kinds impossible to fathom operated upon the mind of this lady, who appears to be of a religious turn of mind and inapt for the duties of an ordinary mundane life, and induced her to make the adoption, but that she would not have made it had she not received the Rs. 4,000 for her own purposes. Is this in law sufficient to invalidate the adoption? It is, we believe, the first occasion which has come before this Court in which an adoption has been set aside on such grounds. It must be at once manifest that, if the view of the District Judge is correct, the Court in every case of disputed adoption may be led into abstruse ethical discussions as to the motives which induce a Hindu widow to adopt, and the validity or invalidity of such an adoption will depend upon a consideration, not of facts, but of the feelings, which actuate the Hindu female mind at the time of adoption—feelings, which, even if truthful, she would herself probably be unable to define. In almost every case of adoption a widow in possession of the estate of her husband must have internal struggles of mind whether she will relinquish it by adopting a son, or retain it by remaining sonless. If the certainty of not being left without the means of support or dependent upon the caprice of the adopted boy turns the scale, is the adoption to be set aside because she was partially influenced by a consideration of her own future well-being? The problem is a difficult one for a Court of justice to solve. The task would seem to be better fitted for a Court of conscience.

The basis upon which the law upon this subject is founded is the following passage in the judgment of the Privy Council in the *Ramnad Case*[1]. The question which their Lordships there had to consider was what assent of kinsmen was requisite to

(1) 12 M. I. A., 397.

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validate an adopt... ...dow in the Dravida Country where there was no father-in-law in existence. Their Lordships say: "It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is that there must be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bonâ fide* performance of a religious duty and neither capriciously nor from a corrupt motive. In this case no issue raises the question that the consents were purchased, and not *bonâ fide* obtained. The rights of an adopted son are not prejudiced by any unauthorized alienation by the widow, which precedes the adoption which she makes; and though gifts improperly made to procure e assent might be powerful evidence to show no adoption needed, they do not in themselves go to the root of the legality of an adoptio n." In subsequently considering this passage in *Rajah Vellanki Ve... ...nkata* v. *Venkata Rama*(1) their Lordships, after observing that the ... ...vidence required was not of the widow's motives but of the asse... ...nt of the kinsmen, say: "Their Lordships think it would be very da... ...ngerous to introduce into the consideration of these cases of adop... ...tion nice questions as to the particular motives operating on the mi... ...nd of the widow, and that all which this Committee in the form... ...er case intended to lay down was, that there should be such pr... ...oof of assent on the part of the sapindas should be sufficient to s... ...upport the inference that the adoption ...as made by the widow, no... ...t from capricious or corrupt motives, or in order to defeat the in... ...terests of this or that sapinda, but upon a fair consideration by w... ...hat may be called a family council, of the expediency of substituti... ...ng an heir by adoption to the deceased husband. If that be so, ...here seems to be every reason to suppose that in the present case ... there was such a consideration, both on the part of the widow... ...v and on the part of the sapindas; and their Lordships think th... ...at in such a case it must be presumed that she acted from the prope... ...r motives which ought to actuate a Hindu female, and that, at all e... ...vents, such presumption should be made until the contrary is sho... ...wn."

Mr. Mayne (Hindu Law, Pl. 116) commentin... ...g on this passage thinks that even now it is not quite clear wheth... ...er their Lord-

(1) L. R., 4 I. A., p. 14.

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ships are of opinion that a widow's m[illegible] [illegible]ng an adoption, provided she has received the assent o[illegible] [illegible]given *boná fide* to the adoption, are material. His view, ho[illegible] that the Judicial Committee did not mean to lay down that such evidence would be material or admissible. To us it appears that their Lordships, feeling how dangerous it would be to introduce into the considerations of cases of adoption nice questions as to the particular motives operating on the mind of the widow, have pointed out that the *Ramnad Case* did not decide that such motives would be material, and have not themselves expressed any opinion upon the question. Their guarded language at the end of the passage which we have quoted leaves the question absolutely open. We have not, therefore, the advantage of knowing what conclusion the ultimate tribunal will arrive at upon it when it comes in a concrete form before them.

Turning to the decisions of this Court we find that in *Rakhmabai* v. *Radhabai*(1) it was decided that in the Marátha country a Hindu widow may adopt without the permission of her husband and without the consent of his kindred if (borrowing the language of the Privy Council in the *Ramnad Case*) "the act is done by her in the proper and *boná fide* performance of a religious duty and neither capriciously nor from a corrupt motive." The result of this decision is referred to and its terms are repeated in *Bhagvandas* v. *Rajmal*(2) without comment, and is again referred to in *Narayan Babaji* v. *Nana Manohar*(3), and again in *Ramji* v. *Ghamau*(4).

The first attempt to be found in the reports of this Court to apply the qualification of a widow's power to adopt, and to upset the adoption on the ground of the widow's motive in making it, is to be found in *Vithoba* v. *Bapu*(5). That was the case of an undivided family. It was almost admitted that the widow's motives in adopting were malicious, but as she had without deceit obtained the consent of the head of the family to the adoption it was upheld. *Patel Vandravan* v. *Patel Manilal*(6) was the case of a divided estate vested in the widow. It was alleged

(1) 5 Bom. H. C. Rep., 181 at p. 191, A. C. J.
(2) 10 Bom. H. C. Rep., 241 at p. 257.
(3) 7 Bom. H. C. Rep., 153 at p. 172, A. C. J.
(4) I. L. R., 6 Bom., 498 at p. 501.
(5) I. L. R., 15 Bom., 110.
(6) I. L. R., 15 Bom., 565.

that her r ... capricious. T ... Sargent, after referring to the *dictum* i ... *nad Case* already quoted and its qualification by the Privy Council in the later case, and adopting Mr. Mayne's view of the result of these decisions, says: "Where, however, the assent of sapindas is not required, as in this Presidency where the family is divided, then there will be only the ordinary presumption that the widow has performed a duty from proper motives, and the *onus* lies heavily on him who seeks to set aside the adoption on the ground of corrupt motive." His Lordship then reviewed the evidence as to motive and came to the conclusion that although it was probable * * * that the widow acted from mixed motives there was no sufficient evidence that she acted from corrupt or malicious motives such as would invalidate the adoption.

Such is the state of the authorities upon this difficult question. They doubtless assume that if it can be predicated of an adoption by a widow (in a case where the consent of the husband's kinsmen is not required) that the ceremony has been gone through not in the performance of a religious duty but from sinful and corrupt motives, it is on that account invalid; and they appear to impose upon the Court the duty of inquiring into the motives of such adopting widow where her motives are called in question. Whether the presumption that an adopting widow has performed her duty from proper motives ought or ought not to be deemed to be an irrebuttable presumption, is a question which still remains to be judicially decided. It is unnecessary for us, we think, to consider it in the present case.

As to the nature of the evidence which will rebut the presumption that the act of adoption has been performed as a duty, there is but little authority to guide us. The judgment in *Patel Vandravan* v. *Patel Manilal* (*supra*) establishes that the fact of the motives being of a mixed character is not sufficient to rebut the presumption. It appears also to be clear that the widow's making terms for herself with the father of the boy to be adopted, or selecting a boy whose father will be likely to accede to her wishes, is not sufficient to render the adoption fraudulent or

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to est[illegible] se or for a purpose foreign to [illegible] O v. *Indar*[1] and *Chitko* v. *Janaki*[2]. That is, howev[illegible] the evidence in this case in the judgment of the District Judge establishes. He finds that unless she had been assured that she would have received the Rs. 4,000 she would not have adopted Fondba's son —possibly (it may be) would not have adopted at all; but he does not find that she had not the spiritual benefit of her deceased husband in view when she made the adoption. The presumption that she made the adoption from motives of duty is not, therefore, rebutted, and that presumption should, in our opinion, have been allowed to prevail.

We reverse the decree of the District Court and restore that of the Subordinate Judge, with costs throughout on respondents.

Decree reversed.

(1) I. L. R., 16 Calc., 556. (2) 11 Bom. H. C. Rep., 199.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896. *July* 13.

BHIMAWA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SANGAWA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Motive in adopting—Adoption made by a widow to defeat the claim of her co-widow to a share in her husband's estate—Validity of such adoption.

An adoption made by a Hindu widow is not invalid merely because it is made with the object of defeating the claim of a co-widow to a share in her husband's property.

SECOND appeal from the decision of R. Knight, Assistant Judge, F. P., at Bijápur.

Suit to set aside an adoption.

One Ramangavda died in 1886, leaving three childless widows, Hanmawa, Bhimawa and Sangawa.

On the 27th June, 1890, Sangawa applied for leave to sue as a pauper to recover her share of her husband's estate.

* Second Appeal, No. 706 of 1895.