tions of the accused we have taken into consideration the feud existing in the village. I 74. Malápá bin Kapana and others.

We may, in conclusion, observe that Murgiá might well have been convicted of murder on his own confession, and we do not see that there was any ground for making him an approver. One person has thus escaped. We may also observe that Parápá having pleaded guilty, might also have been convicted of murder, regard being had to Section 237 of the Code of Criminal Procedure. But his case not being before us, we need say no more about it.

We accordingly reverse the convictions and sentences passed upon the accusad who have appealed to us

Conviction and sentences reversed.

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[APPELLATE CIVIL JURISDICTION.] July 22.

Special Appeal No. 307 *of* 1873.

CHITKO RAGHUNATH RAJADIKSH ... ...*Appellant.*

JANAKI, widow of Raghunáth Rájádikshi, and others ... ... *Respondents.*

Hindu Law-Conditional adoption.

Where a Hindu widow in whom had vested by inheritance the whole of her husband's property, moveable and immoveable, agreed to accept a boy in adoption on an express agreement by his father that during her lifetime she should be entitled to such property, subject, however, to the boy's maintenance and education, and upon the faith of such agreement adopted the boy, it appearing that she would not have done so at all if it had not been for such agreement.

Held that the agreement was binding upon the adopted son, and that the son's proprietary right was subject to the interest thereby created in favour of his adoptive mother *Held* also that under the Hindu law the power exercised by a father in giving his son in adoption is not only co-extensive with the power of a guardian, but is more like the power of an absolute proprietor.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge of Ratnágiri, reversing the decree of the Subordinate Judge of Málwan.

The plaintiff sued, on attaining majority, his adoptive mother for possession of certain moveable and immoveable property. He joined two persons in possession of a portion of this property as parties to the suit.

1874.

Chitko Raghunath Rájádiksh v. Jánki.

The mother answered that, *inter alia*, according to the agreement upon the faith of which she had adopted the plaintiff, he was not entitled to the property during her lifetime.

The Subordinate Judge gave a decree to the plaintiff for the immoveable property sued for, but it was reversed on appeal.

The special appeal was heard by NANÁBHAI HARIDÁS and LARPENT, JJ.

Nagindas Tulsidas for the appellant.

Macpherson (with him *Ghanasham Nilkanth*) for the respondents.

NÁNABHAI HARIDAS, J. :—We are of opinion that we must confirm the decree of the court below in this case. The Assistant Judge says: "It is clear that the adoption took place under the knowledge of the agreement and in pursuance of it, when it was actually committed to writing is not very material. I think, however, that it must have been drawn up before the adoption. I find then distinctly as a fact, that the plaintiff Chitko was given and taken in adoption under the agreement contained in this deed, and that his father was a consenting party to the agreement, and gave him in adoption under the terms contained in the deed." This finding we must accept as final. The deed referred to, Exhibit No. 15, contains the following provision: "By virtue of the adoption, this son will have, however, no manner of right over my immoveable and moveable property during my life, even when he is of age; nor will he be entitled to manage the estate. After my death, he is the rightful heir, subject to the following conditions. Till that event, I am to bring him up, to give him food and clothing, and to bear the expenses of his education. The provision of law or *shastra*, should there be any, that when a son has been adopted, the mother cannot have any proprietary right over her estate, should not affect this transac-

tion, for the boy has been adopted on this stipulation only that he would have no right whatever to the estate during my lifetime." The Assistant Judge also says: "There is a mutuality in the agreement. The widow says to the father of the infant 'if you will agree to these terms on behalf of your son, I will adopt him; if not, I will not.'" it is thus found that the father of the boy gave him in adoption, and the lady accepted him, on the express understanding mentioned in the deed, and that, if it had not been for such mutual understanding, the adoption would not have taken place at all. If the father had said, "I do not agree to such a condition," the lady would have said, "then I do not want to adopt your son;" and there is no law which would have compelled her to adopt him or any other boy. Such being the case, unless very strong grounds are shown why we should not do so, we must give effect to the intention of both the contracting parties. Mr. Nagindás has indeed contended that such a stipulation as the above is opposed to the fundamental principles of the Hindu Law of adoption; but he has not pointed out to us any texts, nor cited any cases to that effect. On the other hand, Mr Macpherson has referred us to several cases, which, though by no means determining the question now raised, may yet be regarded as pointing, in some degree, to a contrary inference—[see 6 Bom. H. C. Rep. A. C. J. 229, 230; 7 *Idem* Appx. 21, 22; S. A. 32 of 1871; 2 Macn. 183]. In this state of the authorities it would be difficult for the Court to hold that such a stipulation could not be made. But admitting, of the sake of argument, that it could not, how can it be consistently urged that the boy acquired any rights at all in the family of the adoptive mother? That stipulation is an essential part of the contract of adoption in this case. According to the finding, it was the main consideration moving from the other side, which induced her to adopt. If it is void, the whole contract is affected by its invalidity. If it is merely voidable, the plaintiff must either acquiesce in or repudiate his natural father's act as whole.

1874.

Chitko Raghunáth Rájádiksh v. Jánaki.

To allow him to acquiesce in one part of it and to repudiate another, would be to enable him to perpetrate a fraud upon his adoptive mother by disappointing the expectations raised in her by that act, of which he desires to have all the benefit. As was contended for her, she did not accept him in adoption except upon the faith of, and subject to, the above stipulation; and if the law does not recognize such acceptance, there was no other on her part. There were not then such gift and acceptance in this case as are requisite to constitute a valid adoption, and the boy consequently cannot be said to have acquired any legal status in the family, to which he was transferred by his natural father. In either view of the matter, therefore, this suit must fail.

It has also been contended that the father, as guardian, could not enter into any stipulaion unfavourable to the minor. It does not, however, appear in this case that the contract of adoption, of which the stipulation in question was an essential part, was, on the whole, unfavourable to the minor. Indeed it would rather appear that the contrary was the case. The Assistant Judge says: "In nine cases out of ten, the father acting for his son's benefit would agree to the terms." The boy has thereby acquired in the adoptive family considerable rights, both present and future, which, except for that stipulation, his father would not have been able to secure to him. Besides, it is a fallacy to suppose that, for the purpose of giveng in adoption, the power of a father is only co-extensive with the power of a guardian. In the eye of Hindu Law, when a man gives his son in adoption, he would seem to exercise a power, more like the power of an absolute proprietor than that of a guardian Thus a millionaire may, by such gift, even though all his property be ancestral, transfer one of his sons to a family possessed of no property whatever; and the adoption once duly made so completely changes the boy's status, that ever after he is regarded as the son of the pauper to whom he was given by his natural father, without the least possibility of

his getting back into his natural family: see *Ravibhadra* v. *Rupshankar* (a).

1874.
Chitko Raghunath Rajadiksh v. Janaki.

We think the rights acquired by the plaintiff in consequence of his adoption, are subject to the rights created in his adopitive mother's favour by the stipulation to which in a great measure that adoption itself was due, and must therefore, confirm the decree of the lower court with costs.'

Decree confirmed.

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[APPELLATE CIVIL JURISDICTION.]

July 6.

Sepecial Appeal No. 457 *of* 1873.

TIKAMDÁS JAVÁHIRDAS..... .....*Appellant.*

GANGA KOM MATHURADAS..... ....*Respondent.*

Immaterial alteration in a document–Interest at a peneal rate.

Where a subsequent addition to a document, though unauthorised by the executant, serves only to state explicitly what is already implied in the document, and what the law would infer from it, such addition is immaterial, and does not vitiate the instument. Interest at a peneal rate should not be awarded if there be on demand for it, or for a sum by way of compensation for special damage, on the part of the plaintiff.

THIS was a special appeal from the decision of C. F. Shaw District Judge of Belgaum, affirming the decree of Dayarám Mayárám, First Class Subordinate Judge at the same place.

Gangá instituted this suit against Tikamdás Javáhirdás to obtain a declaration that she was entitled to a certain sum of money left by her late husband, Mathurádás, with the defendant for the maintenace of the plaintiff. She alleged in the plaint that Rs. 1, 000 had been deposited with Tikamdás under a written agreement (Exhibit No. 3), dated the 29th January 1866, to the effect that Tikamdás was to pay Gangá every month Rs 5 from interest due on the deposit, and Rs. 1 from the principal, until she reached the age of 18 years, when

(a) 2 Borr. 650.