

port, it had been done under a clause in the bill of lading. The consignee must be taken to know the custom of the port; and if he fails to send for his goods within the prescribed time, he must abide by the consequences as regards the insurance. I am of opinion that the finding on the 4th issue should be for the defendant, and there must be judgment for the defendant with costs.

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v.
T. Baker.

Judgment for defendant with costs.

Attorneys for the plaintiffs—*Hearn, Cleveland, and Peile.*

Attorneys for the defendant—*Keir, Prescott, and Winter.*

Original Suit No. 274 of 1869.

August 20

Balvantrav Bhaskar. Plaintiff.

Bayabai, Widow, and Chintaman Maddan. Defendants.

Hindu law—Adoption—Orphan.

According to the Hindu law prevailing in Western India, an orphan cannot be adopted.

The plaintiff in this case stated that one Maddan Jagannath, a Hindu Brahman, on the 4th of January 1864, executed his last will; the material portions of which were as follow:—“The three persons, namely, my wife, Laksh-mibai, Bayabai, widow, the daughter of my deceased elder brother, and my nephew, Balvantrav Bhaskar, are the owners of whatever moveable and immoveable property, ornaments, &c., belonging to me that may remain after me. These three persons are only to use the above-mentioned immoveable and moveable property: they are not to sell it; and after the death of the above-mentioned two females, my nephew, Balvantrav Bhaskar, is the owner in every respect***. Perchance, should he have no issue, and should Chiranjiva Jagannath Janardhan, the son of his elder brother, behave well, then Balvantrav Bhaskar may give the property to him after due consideration; otherwise, he is to spend the same for religious and charitable purposes. And whatever may have to be done by the above-mentioned three owners shall be done

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by them] with unanimity." The power to make certain outlays, and the general management of the property was then reserved to Bayabai during her life, and subsequent thereto to Lakshuibai? and the latter two and Balvantrav. Bhaskar were appointed respectively executrixes and executor of the will.

The testator died on or about the 24th of February 1864, and after his death the will could not be found; but on the application of Balvantrav Bhaskar, the draft of it was admitted to probate on the 17th of December 1868.

Lakshuibai had previously died in December 1865.

The plaint further alleged that the testator died possessed of moveable and immoveable property (comprising *inter alia* a dwelling-house at Breach Candy, in Bombay), and that upon his death Bayabai (the defendant) and Lakshuibai took possession of the property, and since that time, or the defendant, Bayabai alone, on her own behalf, or that of the defendant Atmaram Raghoba, afterwards called Chintaram Maddan, received the rents and profits, or occupied the same, and excluded the plaintiff from all possession or enjoyment thereof, and refused to account to him for the rents and profits: that the defendant, Bayabai, sold, or intended to sell, portions of the moveable property of the testator, and committed wilful waste and damage to the dwelling-house.

The plaintiff prayed: 1, for an account of the property of the testator, and of the rents and profits thereof, in the usual form; 2, that the share of the plaintiff in the rents and profits might be ascertained, and ordered to be paid to him; 3, that proper directions might be given for securing the rights of the plaintiff; 4, that the defendants might be restrained from selling, charging, or wasting the property.

The defendant, Chintaman Maddan put in a written statement, in the third para, of which he stated that after the death of the testator, his widow, Lakshuibai, pursuant to a direction and authority in that behalf, received from her husband before his death, duly adopted him, Chintaman Maddan, as the son of the said Maddan Jagannath, and that

the said Lakshuibai died in the year 1865; that by the said adoption all the property of the said Maddan Jagannath had become vested in him Chintaman Maddan as the sole heir of the said Maddan Jagannath, according to Hindu law.

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The case came on for hearing before COUCH, C. J., on the 16th of August 1869.

Scoble and Green for the plaintiff.

McCulloch and Starling for Chintaman Maddan.

The third issue raised was whether the defendant, Chintaman Maddan, was legally adopted, as alleged in the third paragraph of the written statement.

The witnesses called for the defendant, Chintaman Maddan, to prove the fact of his having been adopted by Lakshuibai gave evidence of his having been an orphan upon whom the ceremony of *upanayan* had been performed at the time when the alleged adoption took place.

COUCH, C. J., intimated his opinion that such an adoption could not be valid, and evidence to prove the fact of the adoption, was not allowed to be then given, and the matter stood over till the next sitting of the Court.

20th August.—COUCH, C. J.:—When the Court last sat I intimated my opinion that, independently of the age of the alleged adopted son in this case, and the performance of the *upanayan* ceremony upon him, the adoption was invalid. Since then I have consulted the authorities. I find a case in the Madras High Court Reports, where it is laid down that an orphan cannot be adopted. The law in this respect is the same here as in Madras, and I shall follow that ruling. The defendant's own witnesses show that the person here alleged to have been adopted was an orphan, and I shall therefore refuse to hear any evidence in respect of the fact of the adoption. The case to which I allude is that of *Subbaluvammal v. Ammakutti Ammal (a)*. To constitute a valid

(a) 2 Mad. H. C. Rep. 129.

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adoption there must be a giving as well as a receiving, which there cannot be in the case of an orphan.

A decree was subsequently made against the first defendant, Bayabai, for an account, as prayed for, but not against Chintaman Maddan, as it was not known that he had inter-meddled with the estate.

Attorneys for the plaintiff—*Dallas and Co.*

Attorneys for the defendants—*Macfarlane and Green.*

In the Insolvent Debtors' Court.

Sept. 13.

In the matter of Ragubhai Ramchandra.

Insolvent—Adjudication in Insolvency—Effect of Imprisonment under Civ. Proc. Code.

Held, that a judgment debtor who had been in prison for two years under the Code of Civil Procedure was liable to be adjudicated an insolvent in respect of the same judgment debt where the Petition for adjudication was presented before he was released from prison under Sec. 278 of the Code.

On the 19th of July 1869 *Ferguson*, on behalf of Appaji Pandurang, constituted attorney of Gopal Krishna Modak, presented a petition to Westropp, J., sitting as Commissioner in Insolvency, praying that Ragubhai Ramchandra might be adjudicated an insolvent, and dealt with according to the provisions of the Act for the relief of Insolvent Debtors in India (11 and 12 Vict., c. 21, sec. 8).

The affidavit of Dhondu Shamrav, upon which the petition was founded, stated that on the 25th of February 1867 Gopal Krishna Modak obtained a decree against Ragubhai Ramchandra in the High Court for the sum of Rs. 12,931-5-4, and, further, interest on that amount at six per cent. per annum and costs. That in execution of that decree, a warrant of arrest was issued on the 26th of March 1867, and that in pursuance of the warrant, Ragubhai, Ramchandra was committed to prison by a Judge's order dated the 15th of July 1867.

At the expiration of his second year of imprisonment, on the 15th of July 1869, Ragubhai Ramchandra was released