1871.

RATANJI H. BOTTLEWALLA *v.* EDALJI H. BOTTLEWALLA.

This notice removes, as Lord Justice Knight-Bruce says in *Jacomb* v. *Knight* (n), all objections to the mandatory form of the injunction—by which I understand the learned Judge to mean, deprives the defendant of all right to complain of its particular form.

I, therefore, find the fourth, fifth, sixth, seventh, and ninth issues for the plaintiff, and order that an injunction issue, restraining the defendant from allowing the building in question to remain. The defendant to pay the costs of the suit.

Attorneys for the plaintiff: *Jefferson and Payne.*

Attorneys for the defendant: *Keir, Prescot, and Winter.*

Suit No. 194 *of* 1870.

Dec. 4.

PURSHOTAM SHA'MA' SHENVI ....*Plaintiff.*
VA'SUDEV KRISHNA' SHENVI ....*Defendant.*

Adoption—Adopted Son—Purchaser for Value—Right of Father to will away self-acquired Property from Adopted Son.

An adopted son does not stand in a better position, with regard to the self-acquired immoveable property of his adoptive father, than a natural-born son would occupy; and there is nothing in the Hindú law in this Presidency to prevent a father from disposing by will of his self-acquired immoveable property, and so defeating the rights by inheritance of his adopted son.

THE plaint in this suit alleged that one Shámá Shivrám Shenvi died, on the 6th of October 1869, possessed of considerable property both moveable and immoveable; that in the year 1848 the deceased and his wife, Sakhubái, had adopted the plaintiff as their son; that Sakhubái died in 1863 intestate, leaving the plaintiff her only son and personal representative; that the deceased and Sakhubái his wife had performed the *munj* and *lagna* ceremonies of the plaintiff, and had always treated him as their son; and that the defendant had, upon the death of Shámá Shivrám Shenvi, possessed himself of all Shámá's property, immoveable as

(n) 32 L. J. Ch. 601.

well as moveable, and refused to give it up to the plaintiff. The suit was brought to recover such property from the defendant.

The plaintiff also claimed to recover from the defendant the *strídhan* of his adoptive mother, Sakhubái, which, the plaintiff alleged, had come into the possession of the defendant.

Shámá died without natural-born male issue, and possessed of a house in Lohár Chál Street, and some moveable property of trifling value.

The defendant relied upon a will of the deceased, dated the 18th of August 1869, whereby Shámá, after reciting that he had adopted the plaintiff as his son, and had expended much money upon his education and upon the purchase of jewels for his wives, and that the plaintiff had not behaved in a becoming manner towards him, devised his house in Lohár Chál Street to the defendant, bequeathed his moveable property to the plaintiff, and appointed the defendant executor of his will. The defendant set out a list of the moveable property of Shámá which had come to his hands, and which before suit he offered to hand over to the plaintiff. He denied that he was in possession of any *strídhan* left by Sakhubái. The execution of the will by Shámá was not disputed, and it was admitted that the property left by him was his self-acquired property. The case was heard by SARGENT, J., on the 10th and 11th of November 1871.

The only issue raised which is material for the purpose of the present report was the first—

"Whether Shámá Shivrám Shenvi could make a will, after the adoption of the plaintiff, so as to pass his self-acquired immoveable property away from the plaintiff, and so to defeat the plaintiff's rights of inheritance."

Atkinson, Serjeant, and *Bál Mangesh Wágle*, for the plaintiff, contended that after adoption a father has no power to disinherit his adopted son: Morley's Digest, Inheritance, Vol. I., p. 308, Sec. 27; Strange's H. L., Addenda xliii. (Madras ed.); Morley's Digest, Vol. II., p. 133; Strange,

1871.

PURSHOTAM S. SHENVI v. VA'SUDEV K. SHENVI.

p. 330, Addendum to 4th Madras edn. An adopted son is a purchaser for valuable consideration. The agreement implied in such a case is in the nature of an ante-nuptial settlement. No father would give his son in adoption unless the adopted son were entitled to succeed as of right to his adoptive father.

The Honorable A. R. Scoble and *Latham*, for the defendant:—The idea of an adopted son being a purchaser for value is repugnant to all Hindú notions. The effect would be to deprive the adoptive father of all power of dealing with his own property. An adopted son may be in a worse, but certainly is not in a better, position than a natural son, and a father's right to dispose of his self-acquired property, whether moveable or immoveable, has long been established as law in this Presidency. The point now raised was assumed, if not decided, in favour of the defendant by a Full Bench at Calcutta in the case of *Sudanund Mohapatha* v. *Bonomallee* (a).

Cur. adv. vult.

4th December 1871. SARGENT, J.:—This was a suit brought by an adopted son seeking to set aside a will made by his father by adoption, and to have it declared that the devise of his immoveable property therein contained was void, and praying that the defendant, who was the executor appointed by the will, might be decreed to make over to the plaintiff the property left by his father. There was also a claim for the *strídhan* left by the wife of the testator, but that question was abandoned at the hearing, and the only remaining matter for consideration resolves itself into this, whether the testator was competent to make a will of self-acquired moveable and immoveable property so as to defeat the rights of the plaintiff, his adopted son. The matter seems to have been treated as clear by the High Court of Bengal. The question arose in a case of *Sudanund Mohapatha* v. *Bonomallee* (*ubi suprà*), where the point at issue was as to the validity of the adoption of a second son after a son's adoption. It was, however, treated by the court in that case as

(a) Marshall's Calc. Rep. 317.

plain, that a father could dispose of his self-acquired and personal property so as to defeat the claim of his adopted son. That case came before a Full Court, and the point was again treated as being beyond all doubt. Indeed it would appear not even to have been argued. When we pass to the Hindú authorities, there can be no doubt upon the subject. An adopted son is in the same position as a son born, at least unless a son be subsequently born. Sir Thomas Strange, at page 97 of his work, after citing a passage from Jagannáth, says :—"Adoption being a substitution for a son begotten, its effect is by transferring the adopted from his own family to constitute him son to the adopter with a consequent exchange of rights and duties," and that is fully borne out by all the authorities cited by the author. In *Narasammal* v. *Balarama Charlu* (b) Holloway, J., lays down the same proposition.

The argument by which it was contended that an adopted son must be considered to be a purchaser for valuable consideration is opposed to all the authorities on the subject of adoption. They all treat it as the case of a gift of the son by the natural father, which is assented to and received by the adopter, and there is not a trace of any restriction on the adopter's power of alienation more extensive than in the case of a natural son.

It is clear, therefore, as the property was admittedly self-acquired, that the plaintiff has no claim to the house in Lohár Chál Street. The plaint must be dismissed, and, as I see no grounds for saying that the costs should come out of the estate, dismissed with costs.

Decree for the defendant with costs.

Attorney for the plaintiff: *Shámráv Pándurang.*

Attorneys for the defendant : *Jefferson and Payne.*

(b) 1 Mad. H. C. Rep. 420-425.