

## OPINION.

PER CURIAM:—The facts, so far as they are necessary for the purposes of this reference, are these:—In original suit No. 308 of 1881 a decree was made for the redemption of certain lands on payment by the plaintiff to the defendant of Rs. 30-7-0 and costs within seven months. The date of this decree is not stated in the reference. It was subsequently, on appeal, modified by the Special Judge, substituting Rs. 91-2-6 for Rs. 30-7-0. There was also another modification made which it is unnecessary to notice. This was done on the 23rd September, 1882. Thereafter on the 3rd October, 1885, the parties entered into an agreement, whereby (*inter alia*) the time to pay the above debt was extended to five years from the date of it. This agreement was not made with the sanction either of the Court which had passed the original decree or of the Special Judge. On the 18th February, 1888, after execution of the decree had become barred under the law of limitation, the parties applied to the former Court (Subordinate Judge) to sanction the above agreement of 1885.

The Subordinate Judge asks us whether that agreement requires the sanction contemplated in s. 257 A of the Civil Procedure Code. We are of opinion that it does, and that it is void, for want of such sanction so far as it relates to the judgment-debt, and that the sanction applied for cannot now be given—*Yashwantrao v. Keval Khupchand*(1).

We wish to add that we do not think a Subordinate Judge is justified under s. 617 of the Civil Procedure Code in referring to the High Court a point on which a Division Bench has already once expressed its opinion. That opinion is sufficient authority for him to act upon, whatever his own opinion may be.

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## [56] ORIGINAL CIVIL.

Before Mr. Justice Jardine.

ASSUR PURSHOTAM (*Plaintiff*) v. RATANBAI (*Defendant*).\*  
[25th August, 1888.]

*Adoption—Injunction to restrain adoption—Interim injunction—Practice.*

A., a Hindu, died childless possessed of moveable and im moveable property. After his death, disputes arose between his widow (the defendant) and his father and brother. These disputes were settled by an agreement, one of the terms of which was that the widow, (the defendant,) should not adopt a son, and that certain property which she was to have during her life should after her death go to her brother-in-law, Purshotam. In 1873 Purshotam died, leaving his son the plaintiff him surviving. On the 25th August, 1888, the plaintiff filed this suit, alleging that the defendant in violation of the agreement was about to adopt a son, and praying for an injunction. On presenting the plaint he applied for an *interim* injunction, alleging that the defendant intended to adopt a son the next day (Sunday, 26th August).

The Court refused the *interim* injunction.

[R., 4 Bom. L. R. 893 (906).]

MOTION on behalf of the plaintiff for an *interim* injunction restraining the defendant from adopting a son.

\* Suit No. 343 of 1888.

(1) Printed Judgments for 1887, p. 323.

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The defendant was the widow of one Rowji Jersey, who died childless in 1868 possessed of considerable property both moveable and immoveable. His father and one brother (Purshotam Jersey) survived him. Disputes with reference to the property subsequently arose between them and the defendant, who had been appointed executrix of her husband's will for probate of which she had applied. These disputes were settled in February 1869. One of the terms of the settlement was that the defendant should not adopt a son, and that certain property which Ratanbai was to have during her life should after her death go to her brother-in-law, Purshotam. In 1872, Purshotam died, leaving the plaintiff, his son, him surviving.

On the 25th day of August, 1888, the plaintiff filed this suit, in which he alleged that in violation of the above settlement the defendant was about to adopt a son, and he prayed for a declaration that she was not entitled to adopt, and for an injunction, &c. Immediately on presenting the plaint he applied for an *interim* injunction, alleging that he was informed and believed that the defendant intended to adopt a son the next day (Sunday 26th August).

[57] *Telang*, for the plaintiff :—If the adoption takes place to-morrow, the *status* of the adopted son is created, and the damage to the plaintiff is irreparable. His only remedy will be to sue for damages. The defendant bound herself not to adopt. No evil can result by granting the *interim* injunction. He cited s. 54 of the Specific Relief Act I of 1877.

#### JUDGMENT.

JARDINE, J.—The plaint was filed to-day, and the *interim* injunction asked for is to restrain an adoption which, it is alleged, is to take place to-morrow. The injury apprehended is that if, the defendant adopts, in breach of her covenant with the plaintiff, the adopted son, having acquired that *status*, will acquire rights in the family property, and so the intention of the contract will be defeated. No case of an injunction to restrain an adoption has been shown me, and after consulting my colleague, Mr. Justice Bayley, whose experience is very great, I find he knows of no such case. The serious results, which among Hindus may occur from the prevention of an adoption, ought to incline the Court to proceed with caution. There is no time to hear what the defendant has to say, and the affidavit does not account for the plaint and motion not being made till this day, Saturday. I am of opinion that cause for the delay should have appeared on the affidavit. Following Lord Eldon's decision in *Christie v. Craig* (1), Kerr on Injunction (2nd ed.), chap. 21, 537, I do not think it right, at the time fixed for disposal, to allow fresh affidavits. I, therefore, refuse an *interim* injunction, but, if asked, will grant a rule *nisi*.

Attorneys for the plaintiff :—Messrs. *Mansuklal and Damodar*.