APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

SHRI SITARAM PANDIT *alias* BAPU MAHARAJ (ORIGINAL DEFENDANT), APPELLANT, *v.* SHRI HARIHAR PANDIT *alias* BHAU MAHARAJ AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.* 1910. *August* 2.

Hindu Law—Adoption—Payment of money to adoptive widow by way of inducement to her to adopt a particular boy—Payment is a bribe—Gift by adoptee in consideration of sum paid by his natural father—Gift invalid—Revocation of gift.

C, the natural father of N, paid a sum of Rs. 8,000 to B, a widow, as an inducement to her to adopt N. After the adoption B conveyed by way of gift to C some lands at Chinchwad and got them transferred to his name. Later on, N conveyed in gift the lands in dispute, which formed part of the property belonging to his adoptive father, to his natural brother (the defendant) in consideration of the payment of Rs. 8,000 made by C to B, in exchange for the lands at Chinchwad, and also having regard to the benefit he had derived from his adoption. After the death of N, his sons (the plaintiffs) challenged the gift and sued to recover possession of the lands from the defendant:—

Held, that the transaction amounted to a mere gift which was not supported by consideration; since the payment of Rs. 8,000 to B was vitiated by the fact that it was in the nature of a bribe and as such was illegal according to Hindu Law; and even if it be regarded as a debt contracted by C, it could not bind N, first, because it was contracted for an illegal purpose, and secondly, because, N had by his adoption ceased to be C's son at the date of his gift to the defendant and was under no pious obligation to satisfy C's debts.

Held, further, that even if the deed of gift be regarded as supported by valuable consideration, it could not bind the interest of the plaintiffs, inasmuch as the property conveyed formed part of the joint ancestral estate in which they took a vested interest by their very birth.

Held, also, that if the transaction be regarded as one supported by valuable consideration on account of the exchange of lands at Chinchwad, it could only amount to a sale of the property, and even then it was not competent to N to sell joint ancestral property to the detriment of his sons, except for an antecedent debt which had been contracted for a purpose, neither illegal nor immoral.

Per Curiam.—Where on a Hindu's death an adoption is made by his widow, it must be made by her, without any coercion, free from any corrupt motive, and with an eye solely to the fitness of the boy to be adopted to fulfil the religious and secular duties binding on a son. That object is likely to be frustrated, if she is induced to adopt a boy out of greed for money and

* First Appeal No. 169 of 1907.

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

pecuniary benefit to herself. If she is so induced, the money paid to her is a bribe, which is condemned by all Smriti writers as an illegal payment.

The texts of Hindu Law showing that a gift once made cannot be resumed, if it is to a benefactor or to a father, apply only as between the donor and the donee and relate to property which it is competent for the donor to give away. They cannot affect the joint ancestral estate of a Hindu and his sons. Their rights and liabilities are regulated by special texts dealing with that estate; and such of these special texts as relate to gift form exceptions to the general texts on the subject.

APPEAL from the decision of M. R. Nadkarni, First Class Subordinate Judge at Belgaum.

Suit to recover possession of certain lands.

The lands in dispute were conveyed by way of gift on the 29th March 1888 by one Nana Maharaj (the father of plaintiffs) to his natural brother Shri Sitaram Pandit (the defendant).

The deed of gift came to be executed under the following circumstances.

The Pant Pratinidhi of Aundh had a daughter by name Maika, whom he was anxious to settle well *in life. He selected,* as a suitable bridegroom for her, one Nana Maharaj, a man in humble circumstances of life, whom he proposed to get adopted into a rich family.

One Bala Maharaj had died in 1866 A. D., leaving him surviving a widow named Bhavanibai, and a daughter Taika. The said Bhavanibai was under the influence of the Pant Pratinidhi; but to increase his hold on her, he suggested that if she saw her way to adopt Nana Maharaj, he (the Pant Pratinidhi) would be willing to marry one of his sons to her daughter Taika. She consented. About March—April 1869, two agreements (exhibits 184 *and* 185) were *entered into* between the Pant Pratinidhi and Bhavanibai, evidencing this arrangement. Later on, two more agreements (exhibits 186 and 74) were executed on the 11th and the 12th November 1869 respectively between Chimna Maharaj (the natural father of Nana Maharaj) and Bhavanibai, under which the latter agreed to adopt Nana Maharaj.

Shortly afterwards, the Pant Pratinidhi's son was married to Bhavanibai's daughter Taika and his daughter Maika was married to Nana Maharaj.

As the said Bhavanibai seemed disinclined to make the said adoption, Chimna Maharaj as an inducement paid her a sum of Rs. 8,000 on the 19th April 1879, and on the 24th April 1879 Bhavanibai adopted Nana Maharaj. About the same time Bhavanibai conveyed as a gift to Chimna Maharaj some lands situated at Chinchwad, yielding an annual income of Rs. 188 odd. The lands were in the Kolhapur State and were transferred to the name of Chimna Maharaj. The latter, however, did not take possession thereof because he was anxious to get in exchange lands in British territory.

Chimna Maharaj had another son Shri Sitaram Pandit (the defendant), who was the natural brother of Nana Maharaj. On the 29th March 1888, Nana Maharaj passed a registered deed of gift in favour of the defendant, whereby he conveyed to the latter some lands forming a part of the estate of Bala Maharaj. The consideration for the gift, as recited in the deed, was natural love and affection for the younger brother, and the trouble taken by Chimna Maharaj in getting him (Nana Maharaj) adopted. Nana Maharaj died on the 30th June 1899.

After his death, his sons (the plaintiffs) disputed the gift to the defendant; and filed, on the 14th February 1903, a suit against him to recover possession of the lands conveyed in gift, alleging that they formed part of their joint ancestral estate, and that the gift having been unauthoritative, illegal and without consideration was not binding on the plaintiffs.

The defendant contended in his written statement *inter alia* that Chimna Maharaj gave Nana Maharaj in adoption to Bhavanibai after many entreaties and at a great expense; that in consideration of the benefit thus conferred on him by virtue of the adoption and also of the return of the lands at Chinchwad, the lands in dispute were given to him by way of gift; and that the consideration for the gift having been adequate and lawful, the gift was valid and binding on the plaintiffs.

The Subordinate Judge found that the deed of gift relied on by the defendant was genuine and proved to have been passed by Nana Maharaj. He held, however, that it was not binding on the plaintiff.

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

The defendant appealed to the High Court.

G. S. Rao, for the appellant, relied on section 25, clause 2 of the Indian Contract Act, 1872, and the Mitakshara, Chapter I, section 1, placitum 28.

Jayakar with *M. R. Bodas*, for respondents Nos. 1—4, cited Mitakshara, Chapter I, section 1, placita 27, 28; Vyavahara Mayukha, Chapter I, section 1, placitum 5; Stokes, Chapter I, section 1, placitum 27; *Bachoo Hurkisondas* v. *Mankorebai*(1); *Rayakkal* v. *Subbanna*(2); *Kamakshi Ammal* v. *Chakrapany Chettiar*(3); W. *B. Thomson* v. *Jehangir Hormasji*(4); *Kachayi* v. *Udumpumthala*(5); *Madhavrao Moreshvar* v. *Kashibai*(6).

C. A. Rele, for *D. V. Belvi*, for respondent No. 3.

G. S. Rao, in reply, referred to Colebrooke's Digest, Volume II, page 174; Ghose's Hindu Law, 2nd Edn., pages 736, 746.

CHANDAVARKAR, J.:—The appellant is the son of Chimna Maharaj, deceased, and the respondents are the sons of Nana Maharaj, also deceased. This Nana Maharaj was the natural born son of Chimna Maharaj but was given in adoption on the 24th of April 1879, to Bhavanibai, widow of one Bala Maharaj. Nana Maharaj made a gift of certain lands, belonging to him in virtue of the adoption, to the appellant on the 29th of March 1888. The respondents brought the suit, which has led to this appeal, to recover possession of those lands, on the ground that they were part of the joint ancestral property of their father and themselves of which it was not competent for the father to make a gift. The claim was resisted by the appellant on the ground that the gift had been made in consideration of the benefit conferred on Nana Maharaj by the fact of his having been given in adoption by Chimna Maharaj, father of the appellant, into the family, to which the lands belonged, and also of the trouble which the said Chimna Maharaj had to undergo and the expenses he had to incur in persuading Bhavanibai to make the adoption by giving her Rs. 8,000. The Subordi-

(1) (1907) 31 Bom. 373.
(2) (1892) 16 Mad. 84.
(3) (1907) 30 Mad. 452.
(4) (1866) 3 B. H. C. (O. C. J.) 66.
(5) (1905) 29 Mad. 58.
(6) (1909) 34 Bom. 287.

nate Judge, who tried the suit, disbelieved the story as to the trouble and the expenses, and held that, even if the story were true, the consideration for the deed of gift in dispute was opposed to public policy. He, accordingly, allowed the claim.

Certain facts in the case relating to the adoption are admitted by both parties. The Pant Pratinidhi of Aundh had a daughter, whom he was anxious to give in marriage to Nana Maharaj. But as this Nana Maharaj belonged to a poor family, the Pant conceived the idea of arranging for his adoption into the more well-to-do family of the deceased Bala Maharaj, whose widow Bhavanibai was under his (the Pant's) influence. In the months of March and April 1869, an arrangement, evidenced by exhibits 184 and 185, was arrived at to that effect between the Pant and Bhavanibai. In the month of November of the same year, mutual agreements (exhibits 74 and 186) passed between her and Chimna Maharaj that the former should take and the latter give in adoption his son, Nana Maharaj. The marriage of Nana Maharaj with the Pant's daughter followed soon after the arrangement and agreements of 1869; nevertheless the adoption itself was delayed for ten years and took place so late as the 24th of April 1879.

The cause of this long delay is accounted for by each party according to his own version. The appellant's case is that Bhavanibai procrastinated, because she wanted money from Chimna Maharaj before making the adoption, and the latter, who was poor, had to borrow and give her Rs. 8,000 and Rs. 1,000 to her Kárkúns to induce her to adopt his son. On the other hand, the respondents' version is that it was not Bhavanibai but Chimna Maharaj, who was the cause of the delay. They allege that he asked from time to time for the fulfilment of some conditions before he would give his son in adoption and that it was only after all his conditions had been agreed to that he gave the boy.

The Subordinate Judge has disbelieved the version of the appellant, but on grounds, which, we think, are not satisfactory. The story is supported by the evidence of four witnesses (exhibits 57, 64, 131 and 127), who all depose that Bhavanibai received

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

Rs. 8,000 from Chimna Maharaj as a motive for adopting his son. Further, the appellant has produced a receipt, dated the 19th of April 1879, purporting to have been passed by Bhavanibai to Chimna Maharaj acknowledging the receipt of Rs. 8,000. The Subordinate Judge thinks that the attestations on the receipt and its writing are fabricated, and he has arrived at that conclusion by comparing the handwriting on the receipt with the handwriting admittedly genuine of other documents put in for comparison. We are unable to agree with the Subordinate Judge after a careful examination of the handwritings. In our opinion, the receipt is a genuine document. What appears to have mainly influenced the Subordinate Judge in disbelieving the appellant's story as to the payment of Rs. 8,000 by Chimna Maharaj to Bhavanibai is that the latter was under the "thumb and influence" of the Pant Pratinidhi of Aundh and that, therefore, "it appears quite unworthy of reliance that she had a sordid pecuniary motive set up by the defendant and testified to by his witnesses Nos. 56, 57, 61, 63, 64, 127, 137, to screw out Rs. 8,000 from Chimna Maharaj for her adoption of Nana Maharaj." This view of the probabilities of the story overlooks the actual situation of the parties concerned during the period to which the story as to Rs. 8,000 relates. It is indeed true that the person who was most anxious that Bhavanibai should adopt Nana Maharaj was the Pant Pratinidhi of Aundh. He wanted to give his daughter in marriage to the boy, but as the boy's father was, comparatively speaking, poor, he hit upon the idea of adoption. He agreed to the marriage of Bhavanibai's daughter with his own son. The Pant was, therefore, able to induce her to adopt Nana Maharaj. So far it may be allowed that she was under what the Subordinate Judge calls "the thumb and influence" of the Pant. But the situation changed after she had agreed to adopt and after, in consequence of her agreement, the Pant had given his daughter in marriage to Nana Maharaj, the boy to be adopted, and after the Pant's son had married her daughter. She was then in a position to hold her own and dictate her own terms. The Pant's necessity had become all the greater to see the adoption put through, because his daughter had become the boy's wife. No such necessity existed to make Bhavanibai

anxious in the matter. The adoption, if made, would have deprived her of her widow's estate in her husband's property and she would have relegated herself by her own act to the position of a woman entitled to no more than maintenance out of the estate; she had agreed to adopt, to oblige the Pant; and it was only natural that, when the Pant's daughter had been married to the boy, and the adoption had become to him a matter of urgent necessity, she should take advantage of the situation and delay the adoption till something was given to compensate her for the sacrifices she would have to make, in point of her own ownership over her husband's property, by the adoption. There is, therefore, nothing improbable in the story that she would not adopt unless and until she had received some pecuniary compensation for the loss of her position in consequence of the adoption. And that such must have been the case is proved by the evidence of an unimpeachable document, to which the Subordinate Judge seems to have paid no attention and against the genuineness of which nothing has been urged. In a letter (exhibit 143), dated the 2nd of March 1879, Chimna Maharaj wrote to Gopal Naik, a Kárbhári of the Pant Pratinidhi, that Bhavanibai had agreed to adopt another man by taking from him Rs. 15,000. In that letter Chimna Maharaj asked what was the use of his trying to collect money "for nothing," if the lady had changed her mind. And he requested Gopal Naik "to make arrangements for getting only Nana Maharaj to be adopted." There is a letter (exhibit 183) from a Kárbhári of the Pant Pratinidhi of Aundh to Bhavanibai, written in April 1879, in which the writer explains to her why the Pant was anxious to see the adoption hastened. He says that the Pant's sole object is to see his son-in-law (Nana Maharaj) and his daughter (Nana Maharaj's wife) happy. The writer continues: "There is nothing else in this. And my master has been exerting himself for about 10 years to carry out this object." He refers to a letter of request to her and to his master's angry letters to him. This letter also shows that Bhavanibai was reluctant to adopt and had to be persuaded.

It is true that there is no mention in the deed of gift, executed by Nana Maharaj in favour of the appellant, of the payment

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

of Rs. 8,000 to Bhavanibai by Chimna Maharaj as an inducement to make the adoption. The omission is easily accounted for, if due regard be had to the position of the parties and the nature of the act of payment from the social point of view. Bhavanibai was the widow of a respectable and well-to-do man; Nana Maharaj had been adopted by her; and for him to say in the deed that his natural father had given him in adoption by bribing his adoptive mother, and that she had taken him in adoption, not because she had liked him, but because she had been bribed, would have been to cast odium publicly on and lower himself, her, and his natural father. Therefore he seems to have contented himself with the bare recital in the deed of gift (exhibit 55) that his natural father had "exerted himself greatly in the matter of giving" him "in adoption."

It has been strenuously contended before us for the respondents that the fact that Chimna Maharaj had insisted upon certain conditions and delayed the adoption makes it highly improbable that the long delay of ten years was due to any unwillingness on the part of Bhavanibai. That Chimna Maharaj did ask for certain conditions and that some time was occupied by negotiations in respect of them is proved by some letters produced in the case. One of those conditions related to the Garbhadhana or marriage consummation ceremony of Nana Maharaj's wife. Chimna Maharaj wanted money for it and he was paid by the Pant Pratinidhi of Aundh. There is nothing to show that the money was paid to him for his personal benefit or that it came from Bhavanibai. The presumption is that it was for Nana Maharaj's wife. Bhavanibai had agreed to take him in adoption; it was on the faith of that agreement that the Pant had given his daughter in marriage to Nana Maharaj; the girl had come from a Chief's family; and she was to be the daughter-in-law of Bhavanibai. All religious and social aspects of the case required that her consummation ceremony should take place with proper regard for her position and her father's and also that of Bhavanibai. If the latter had refused to do her duty by the girl on such an occasion consistently with her agreement to adopt and the name and position of her deceased husband, Chimna Maharaj would have suffered in the esteem of his society

for having allowed himself and his son to be treated so indifferently by Bhavanibai. The fact that Bhavanibai did not pay but that the Pant paid shows that the former was not ready to hasten the adoption. As to the other conditions insisted upon by Chimna Maharaj, they all related to securing the property in the adoptive family to Nana Maharaj (see exhibit 108 and exhibit 114). Such a condition would not have been made if Bhavanibai had raised no dispute and tried to have some hold on the property for herself even after adoption.

The fact that Chimna Maharaj delayed the adoption for some time because Bhavanibai would not agree to certain conditions is not only not inconsistent with but renders highly probable the fact that Bhavanibai delayed because she wanted something for herself before adopting. If she was all along willing and ready, where was the occasion for Chimna Maharaj to make certain conditions and for the time occupied in settling them through the Pant Pratinidhi and his Kárbhári? That shows that there was some reluctance on the part of Bhavanibai. Chimna Maharaj was to gain everything by the adoption; Bhavanibai was to lose almost all from the material point of view. And it is incredible that the adoption would have been delayed, for so many as ten years, if all the while Bhavanibai was anxious to adopt.

On the whole of the evidence and the probabilities, then, we have arrived at the conclusion that Chimna Maharaj did pay Rs. 8,000 to Bhavanibai as an inducement to adopt his son. We are not satisfied, however, with the evidence adduced by the appellant to show that the sum of Rs. 13,000, due from the husband of Bhavanibai to the Pant Pratinidhi of Aundh on a mortgage, was remitted by the latter owing to the friendly intercession and at the request of Chimna Maharaj. That the debt was wiped out and the mortgage redeemed without payment is proved. The respondents' *mukhtiar* (exhibit 182) admits it. But he states that the Pant extinguished the debt, because Nana Maharaj had refused to send his wife (the Pant's daughter) to the thread ceremony of her brother unless the mortgage was returned to him. This seems highly probable. The remission

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

took place after Bhavanibai's death. And the Pant must have remitted the debt mainly because the debtor was his own son-in-law. The story that the debt was remitted at the request of Chimna Maharaj stands upon the interested and uncorroborated testimony of the appellant.

It is also the appellant's case that before his adoption Nana Maharaj had promised to Chimna Maharaj that, after adoption, he would grant to the latter in perpetuity lands yielding an annual income of Rs. 1,000. This is deposed to by the appellant (exhibit 231), and by his mother (exhibit 127). Both of them say that the promise was made in writing "for the trouble and expense of the work of adoption." The written agreement is not produced, and the deed of gift makes no reference to it. There are some other witnesses who speak to the promise and it is sought to be proved also by certain letters purporting to be those of Nana Maharaj. Even if there was such an agreement, it is not shown to be supported by any consideration; and even, if it were supported by consideration, it was illegal, because it was made by Nana Maharaj as an expectant heir with reference to property which he *hoped* to get after his adoption by Bhavanibai. Such an agreement is invalid and inoperative according to Hindu Law: *Sham Sunder Lal* v. *Acchan Kunwar*(1), and see *Sumsuddin* v. *Abdul Husein* (2), where other decisions to the same effect are cited. In any case, Nana Maharaj's promise cannot render the deed of gift valid, if it is invalid on other grounds.

The appellant also pleads that the lands conveyed by the deed of gift (exhibit 55) were given to him by Nana Maharaj in exchange for the lands at Chinchwad, situate in the Native State of Kolhapur, and yielding an annual income of Rs. 188 odd, which Bhavanibai had granted by a deed (exhibit 62) to Chimna Maharaj on the day of the adoption. Chimna Maharaj was not satisfied with the grant and desired instead lands situate in British territory. He never took possession of the lands at Chinchwad. But the grant had been followed by directions to the village officers that they should recognise him as owner,

(1) (1898) 25 I. A. 183, at p. 189. (2) (1906) 31 Bom. 165, at p. 174.

enter the khata in his name, and allow him to appropriate the rents and profits. There is no mention of the exchange in the deed of gift (exhibit 55); but the probabilities are strongly in favour of the appellant's case on this point.

The established facts, then, relating to the deed of gift, which is in dispute in this case, are shortly these. After she had bound herself by an agreement to adopt Nana Maharaj, Bhavanibai refused to carry it out unless she was paid a sum of money. Nana Maharaj's natural father, Chimna Maharaj, paid Rs. 8,000 as an inducement to her to adopt his son. Then the adoption took place, and Chimna Maharaj, being poor, obtained lands at Chinchwad, yielding an annual income of Rs. 188 odd for parting with his son. In consideration of the payment of Rs. 8,000 to Bhavanibai and in exchange for the lands at Chinchwad, and also having regard to the benefit he had derived from the act of his natural father in giving him in adoption into a well-to-do family, Nana Maharaj conveyed by way of gift the lands in the deed (exhibit 55) to the appellant, his natural brother.

The transaction, under these circumstances, amounts to a mere gift. It was urged before us that it was supported by consideration, because of the payment of Rs. 8,000 made by Chimna Maharaj to Bhavanibai for the benefit of Nana Maharaj, that is to say, to induce her to adopt the latter as her son. The amount, it is said, was paid by Chimna Maharaj by borrowing; Nana Maharaj was then still the son of Chimna Maharaj and as such it was his pious duty to pay his father's debt.

But the payment to Bavanibai was vitiated by the fact that it was in the nature of a bribe and as such was illegal, according to Hindu Law.

When a Hindu gives his boy in adoption, his act is, according to the Hindu Shastras, in the nature of a sacred gift, voluntarily made. It is on that account that Manu requires the gift to be "confirmed by pouring water" [Vyavahar Mayukha, Mandlik's Edition, page 50]. A daughter *given* in marriage, which is called *kanyadana*, and a son *given* in adoption, which is called *putradana*,

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

stand in this respect on the same footing. Both are gifts for religious and secular purposes. Both acts are attended by religious ceremonies; both require *giving* and *taking*. A boy is adopted by a sonless Hindu for perpetuating his line, paying off his dues to his ancestors, keeping up his name, and securing for him and his ancestors a place in heaven. These are sacred purposes, according to the Hindu Shastras. It is not by the mere birth and existence of a son that these purposes are fulfilled. As Vijnaneshwara points out in the Mitakshara in the chapter on "Rituals," the son must be "well-behaved", of good qualities. That applies to the adopted son equally, because he takes the place of a born son; and he has to be "a reflection" of the latter. Where on a Hindu's death the adoption is made by his widow, it must be made by her, without any coercion, free from any corrupt motive, and with an eye solely to the fitness of the boy to be adopted to fulfil the religious and secular duties binding on a son. That object is likely to be frustrated, if she is induced to adopt a boy out of greed for money and pecuniary benefit to herself. If she is so induced, the money paid to her is a bribe, which is condemned by all *Smriti* writers as an illegal payment. Narada, for instance, says that what has been given as a bribe is "declared as not given (or void)". And he lays down that "*utkocha* (or bribe), which is promised to be given for the accomplishment of any object, should not be given, even if that object be accomplished. But if it has already been actually given, it should be restored by force, and a fine equal to eleven times (its value) should be inflicted according to the followers of Garga." [The Vyavahara Mayukha, Mandlik's Edition, pages 123 and 124.] Vijnaneshwara in his chapter on "the Resumption of Gifts" in the Mitakshara, quotes Narada to the same effect, and defines a "bribe" (*utkocha*) to mean "something paid to a person bound to do an act with the object of removing an obstacle to the performance of his duty." Judged by this definition, the payment of Rs. 8,000 to Bhavanibai was a bribe. At the date of the payment she had already bound herself to adopt Nana Maharaj; and the payment was made to induce her to do what she had already been under an obligation to perform.

The payment of Rs. 8,000, illegal in its inception, may have been made by Chimna Maharaj after borrowing the amount from third parties. But even regarded as a debt contracted by him, it could not bind his sons, because it was contracted for an illegal purpose, which was its payment as a bribe. Further, Nana Maharaj by his adoption had ceased to be Chimna Maharaj's son at the date of his gift to the appellant and was under no pious obligation to satisfy Chimna Maharaj's debts.

Nana Maharaj's deed of gift was, it is urged, supported by valuable consideration, because it was to his natural brother out of love and affection, in consideration of the benefit conferred by his natural father by giving him in adoption, and in exchange for the lands at Chinchwad. But the question is whether such a deed relating to joint ancestral property binds the sons of its executant, who, according to Hindu Law, took a vested interest in it by birth. A Hindu father is not competent to make a gift of such property, if it is immoveable and is joint ancestral estate. Citing certain texts, Vijnaneshwara says that the passages quoted by him "forbid a gift of immoveable property through favour; they both relate to immoveables which have descended from the paternal grandfather." [The Mit., Ch. I, sec. 1, pl. 21.]

Certain texts of Hindu Law have been relied upon by Mr. Rao, for the appellant, showing that a gift once made cannot be resumed, if it is to "a benefactor," (Colebrooke's Dig., Vol. I, p. 449), or to a father, (Ghose's Hindu Law (2nd Edn.), p. 736 and p. 748). These texts apply as between the donor and the donee and relate to property which it was competent for the donor to give away. They cannot affect the joint ancestral estate of a Hindu and his sons. Their rights and liabilities are governed by special texts dealing with that estate; and such of these special texts as relate to gifts form exceptions to the general texts on the subject.

If the transaction evidenced by the deed (exhibit 55) is to be regarded as one supported by valuable consideration on account of the exchange of lands conveyed by it for the lands at

1910.

SHRI SITARAM PANDIT v. SHRI HARIHAR PANDIT.

Chinchwad, given to Chimna Maharaj by Bhavanibai on the day that she adopted Nana Maharaj it could only amount to a sale of the property. But a Hindu father is not competent to sell joint ancestral property to the detriment of his sons, except for an *antecedent* debt, which had been contracted for a purpose neither illegal nor immoral. In the present case, there was no debt at all; in fact, even if there had been an antecedent debt of Chimna Maharaj, Nana Maharaj had ceased to be his son legally liable. For these reasons the decree appealed from must be confirmed with costs.

HEATON, J:—I concur.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

1910. *September 27.*

RANCHODLAL VANDRAVANDAS PATVARI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Evidence Act (I of 1872), section 115—Estoppel—Acquiescence—Both parties equally conversant with true state of facts—Vague allegations—Real controversy to be ascertained by the Judge.

Where parties make vague and loose allegations, it is always essential to the correct determination of the suit that the real controversy between them should be ascertained by the Judge by questioning their legal advisers as to what is exactly their position in the matter.

Where both parties to a suit are equally conversant with the true state of facts, it is absurd to refer to the doctrine of estoppel.

In the year 1871 Government granted to the defendants' predecessor-in-title a certain plot of land situate at Dhandhuka. The grant expressly stated that a strip of land belonging to Government was the southern boundary of the plot so granted. This statement was repeated in a mortgage-deed executed by the

* First Appeal No. 169 of 1909.