Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sree Narayan Mittro, Guardian of the infant Noggendro Chundro Mittro, v. *Sreemutty Kishen Soondory Dassee, from the High Court of Judicature at Fort William, in Bengal; delivered* 15*th January*, 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE Appellant was the Defendant, and the Respondent, the Plaintiff, in the suit below. The suit was brought against the Defendant for himself and as guardian of his minor son called in the plaint Noggendro Chundro Mittro, to set aside two deeds dated 30 Joistee, 1271, relating to the adoption of the minor above-mentioned.

The Plaintiff was the widow of Dwarkanath Ghose, deceased, who died childless. There was no dispute as to the fact of her having received permission from her deceased husband to adopt a son. The Plaintiff, in her plaint, described the deeds: the one, as a deed by which the Defendant *agreed to give* the said Noggendro Chundro Mittro, his minor son, to her for adoption in the dattaka form; and the other, as a deed by which she *agreed to take* the said child into adoption. The case of the Plaintiff was that, notwithstanding the deeds, the Defendant refused to give the child, and that therefore the form

of adoption had not been complied with. The case of the Defendant (see his written statement) was, that the deeds were not mere agreements, but that the deed executed by the Plaintiff was a deed of adoption, and the deed executed by the Defendant, a deed by which he actually gave his son in adoption, and that the Plaintiff actually took the child, after the completion of the necessary rites and ceremonies. He stated that the Plaintiff could not recede from the deed of adoption, and that he, the Defendant, could not act contrary thereto. He proceeded—"Now, when the said son, by virtue of his having been adopted, has obtained for himself and his heirs the legal proprietorship of the immoveable and moveable property, and has become the undisputed Malik of the estate (referring to the estate of the Plaintiff's deceased husband) for ever, according to the precepts of the shastras, in that case the Plaintiff has no power to ignore the adopted son's rights; for the giving and taking when completed cannot be revoked, and the Plaintiff has no right to undo that which she has done in obedience to the command of her husband, and the Court can not interfere in that which the Plaintiff has already done. Further, he contended that, from the terms of the deed executed by the Plaintiff, it was clear that the child had been adopted, and that the necessary rites enjoined by the shastras had been performed, that the child had ceased to belong to his, the Defendant's, gotra or family, and had been enrolled in the gotra of the Plaintiff, and that the name and family name of the child had been changed from Mittro to Ghose after the family name of his adoptive father.

The deeds in form are certainly not mere agreements to give and take in adoption.

The deed of gift addressed to the Plaintiff commences—"This is a deed whereby the child is given in adoption." Then, after reciting that the Plaintiff's deceased husband, in consequence of his having no issue, had during his life given permission to the Plaintiff to adopt a male child, and that the Plaintiff had asked the Defendant for a child to compensate for the said defect and to perform the funeral rites of the Plaintiff and her husband, &c., proceeded in the operative part of the deed as follows—

"I have willingly given in adoption my second son, Noggendro Chundro Mittro, by my third wife, Sreemutty Monmohinee, under the altered name of Shoshee Nauth Ghose. The said male child with whom henceforth I have no right at all according to shastras, and who has thus become divested of gotra, appertaining to my family, and being equal to the son of your body, has thus become vested with family rights and gotra (lineage) appertaining to your husband's family, under the name of Shoshee Nauth Ghose, will discharge or perform all the secular, as well as all the religious duties of your husband's family, and will be the owner himself and his heirs for ever of all your husband's property, namely, his zemindary, and all immoveable as well as moveable property, and lands paying rent or rent-free, which stand in his own name or in benamee, and which exist at present, or may hereafter be acquired. For this effect, I have executed the deed whereby the child is given in adoption with the following respectable witnesses, that it will prove efficacious in future."

The deed executed by the Plaintiff addressed to the Defendant, commences :—

"This is a deed of adoption. My husband, the late Dwarknath Ghose, died without issue, leaving me his heiress on the 30th June, 1863, corresponding to the 17th Assar of the year 1270. My husband, in consideration of his having no issue in his life-time, gave me permission to adopt a son for the due performance of the funeral rites of himself and of his ancestors, paternal and maternal, and of myself, and for the due observance and continuation of the religious ceremonies and other ancestral duties, and the other rites and ceremonies peculiar to his family, and fitted to his social position, and for the care of his property, &c., and for the preservation of his name and honour, had expressed his desire that the son so adopted might be the exclusive proprietor of all his property and zemindary, and that none else might have any right or title to his property. At present, in obedience to the aforesaid injunctions, and with the unanimous consideration and opinion of myself and my near relations, and members of the family, knowing you to be my sincere and faithful friend, and believing that by means of your respectable family the objects aimed at by myself and my husband will be realized, *I do, with the prescribed rites and ceremonies, adopt as my son, Noggendro Chundro Mittro*, your second son by your third wife, Sreemutty Monmohinee. The said Noggendro Chundro Mittro has thus become divested of all the rights and gotra (lineage) appertaining to your family, and has become vested for ever with the rights and gotra of my husband's family under the name of Shoshee Nauth Ghose. By virtue of which he having become equal to the son of my body is become the owner himself and his heirs of all my husband's ancestral and self-acquired property which stands in his own name or benamee, namely, zemindary and lands, rent paying, as well as rent-free, and gardens, &c., and all the moveable and immoveable property, &c. He will henceforth perform, in the manner described above, the funeral rites, &c., of myself and my husband and of his (my husband's) paternal and maternal ancestors, and shall also perform the religious and family rites and other duties for ever. During his minority I, his mother, shall take care of all his property."

The deeds having been executed and attested were both registered and made over to the Plaintiff's Mooktar.

The case was tried before the Principal Sudder Ameen, and amongst others the following issues were laid down: Whether the adoption of the child was complete or not: that is, whether the requirements of the Hindoo Law were carried out or the gift was not complete and the child not made over. Whether the Defendant refused to make over the child to the Plaintiff or not. Witnesses were examined on both sides and several letters which passed between the Defendant and Soorjonarayan Singh, the brother of the Plaintiff, were put in evidence. The Principal Sudder Ameen found that no religious ceremonies were performed; he also tried as a distinct issue, whether there was a formal delivery and acceptance of the child, and found that issue in the negative in favour of the Plaintiff. He said:—

> "It is true that the language of the instruments convey the idea that there was gift and acceptance, as well as completion of ceremonies; but as the Plaintiff denies them *in toto* a judicial determination on these points becomes necessary. It has been already established that the ceremonies were not performed; therefore it remains to be seen whether there was formal gift and acceptance of the boy, as well as due delivery of deeds. If the witnesses of the Plaintiff are to be believed, and I see no reason to doubt their veracity, from their respectable position, neither was there gift or acceptance of the boy, nor due delivery of the deeds."

It is not very clear what the Principal Sudder Ameen meant by the latter words, "nor due delivery of the deeds," or by the words used in another part of his judgment in which he says: "It has been established that the deeds are void for want of delivery." It is clear that he did not use the word "delivery" in the technical sense in which that word is used in England when applied to the execution of a deed. He probably meant that the deeds were not interchanged; but that was not necessary or important, if the deeds were deeds of gift and adoption and not mere agreements to give and adopt. The deed executed by the Defendant was delivered to the Plaintiff. The fact that the deed executed by the Plaintiff was retained by her and not handed over to the Defendant would rather tend to show that at that time it was considered that the child had been adopted. For, if the child was

adopted, the Plaintiff became his mother and guardian, and would naturally keep the deeds of gift and adoption on behalf of the child as evidence of the adoption, and as part of the muniments of her child's title to his adoptive father's estates. [Be this as it may, however, it is clear that the deeds were executed. They are admitted by the Plaintiff in plaint and by the Defendant in his written statement. Indeed, if they were not executed, the suit was useless and must fail.]

In concluding his judgment the Principal Sudder Ameen said—

"Summing up, therefore, what has been stated above, it is clear that there has not been a due performance of the ceremonies, and the effect of the deeds was that it was agreed that the child should be made over for adoption, but the Defendant has not done what he was required to do, namely, to hand over the child to the Plaintiff; it is, therefore, ordered that the suit of the Plaintiff be decreed, and she be declared to be not bound by the deeds, dated the 30th Joistee, 1271, which are also declared cancelled and inoperative. The costs of the Plaintiff to be paid by the Defendant."

Upon that Judgment the following Decree was drawn up:—

"It is ordered that this case be decreed; that the female Plaintiff may not be required to observe the document dated the 30th Jeyt, 1271, which has been declared null and void; and that the costs of the female Plaintiff be paid by the Defendant."

The Defendant appealed to the Judge upon the following, amongst other, grounds:—

"6. That, according to Hindu law, the Court below was wrong in supposing that more ceremonies than the actual giving and receiving of the child are necessary and essential for the completion of a *Sudra* adoption. The non-observance of any other ceremony does not invalidate a *Sudra* adoption, as will be borne out by Hindu law and decisions.

"7. That, from the judgment of the Court below, it is clear that it has considered adoption in general, and not as a *Sudra* adoption only, which was the sole point for contention in this suit."

The 14th ground of appeal was—

"That the Court below was wrong in deciding that the delivery of the child, and of the two primary documents, were not proved, inasmuch as there was sufficient satisfactory evidence in the case to establish the same."

The Appeal was transferred by the Judge to the

Additional Judge. The latter did not try the issue, whether there was an actual or formal delivery of the child, or not. He said—

"We now come to the merits of the case. The *first* point to be noted is, that the issue in this case has been unnec ssarily widened. Appellant contended that ceremonies had been performed, and brought forward witnesses, *who distinctly swore that not only the giving and taking, but a number of other religious rites were performed.* It was, therefore, quite unnecessary on the part of the Lower Court to enter into the question of what rites are or are not essential to a Hindu adoption. If the Defendant's (Appellant's) witnesses are to be believed, not *only essential* but admittedly non-essential rites were performed. *Defendant (Appellant) must abide by the evidence which he adduces, and and stand or fall with it. His virtual plea is that all or many of the ceremonies were performed. He cannot, in the same breath, urge that one only (that of giving and taking) was performed, and that one only is necessary to the validity of a Soodra adoption.*

"*If the above view is correet, the simple issue* in this case is, whether the ceremonies of adoption have been performed (as alleged by Appellants) or have not been performed.

"The Lower Court has found, after a careful inquiry and weighing of evidence, documentary and verbal, on either side, that *no religious ceremonies of any sort* were performed, and on the numerous grounds recorded in its judgment has expressed an opinion that Defendant's witnesses are not to be believed, whilst Plaintiff's (Respondent's) witnesses are stating the truth when they say that no ceremonies have ever been performed. The Lower Court also lays great weight on certain expressions used in a letter from Appellant, dated 13th Cheyt, 1271, which contains, in the Lower Court's opinion, expressions justifying the inference that, by Defendant's own admission, *no religious* ceremonies had been performed, and consequently no valid adoption had taken place. The question before this Court is, whether the finding of the Lower Court *on the above question of fact* is correct or not. If it is, Plaintiff's (Respondent's) claim for cancelment of documents must be decreed, for it is admtited on all hands that an adoption deed is void in the absence *of a religious ceremony or ceremonies.*

"After a careful consideration of the evidence, both verbal and documentary, adduced on either side, the conduct of the parties, and the various probabilities and improbabilities which have been brought to the notice of the Court by the Counsel on either side, this Court has come to the conclusion that there is no valid reason for disturbing the finding of the Lower Court to the effect, that no ceremonies were performed, and that consequently the deeds of adoption filed in the case are null and void.

"The Appeal is, therefore, dismissed with costs."

The Defendant appealed specially to the High Court.

The fourth ground of appeal was—

"4. If any ceremonies were essential, the legal effect and weight of the evidence show that such had been performed, and such evidence could not be affected by the failure of Defendant's witnesses to prove the performance of other non-essential ceremonies."

That ground of appeal was clearly directed to that part of the judgment of the Additional Judge in which, after saying that, if the *Defendant's* witnesses were to be believed, not only essential, but non-essential rites were performed, "he could not in the same breath say that one only—that of giving and taking—was performed."

It appears to their Lordships that the view taken by the Additional Judge was not correct. The question to be determined was not whether the child was legally adopted or not, but whether there was sufficient ground for setting aside the deeds or declaring them to be void. If the Defendant gave the child, or was willing to give the child, the Plaintiff had no right to sue him in order to have a declaratory decree that the deeds were null and void because certain religious ceremonies necessary to constitute a valid adoption had not been performed.

If the Defendant executed the deed of gift, which was admitted, and formally delivered the boy, it was the Plaintiff's own fault if she did not formally accept the child and cause the religious ceremonies to be performed. If she chose to execute a deed, declaring that the child had been adopted by her with the prescribed rites and ceremonies, when in fact the child had not been even given, it was her own fault.

The most important issue in the cause was, whether there was a formal gift of the child, or, in other words, whether there was an actual delivery of the child in addition to the execution of the deeds. That issue was not tried by the Additional Judge.

The Defendant appealed specially to the High Court, and that Court held that it was not necessary to determine whether or not a Sudra can be adopted without the performance of religious ceremonies, and dismissed the appeal upon the ground that there was no actual giving and receiving of the child. They said—

"We see no necessity to go into the question whether or not a

Sudra can be adopted without the performance of religious ceremonies, namely, the offering of the burnt sacrifice, &c.

"The contention of the special Appellant is, that by the execution of two deeds, the one purporting to be a gift, and the other an acceptance of the child by the several parties respectively executing the deeds, there was a valid giving and receiving of the child, so as to make him the adopted son of the person who by these deeds appears to have accepted him as a son.

"We think there is no foundation for the argument of the special Appellant. It appears to us that the giving and receiving of a son in order to constitute a valid adoption, must be an actual giving and actual receiving of the child."

The High Court appears to their Lordships to have been in error in considering merely whether there was any valid adoption or not, instead of considering whether, if there was no adoption, it was owing to the fault of the Defendant, or to the fault of the Plaintiff herself. They also appear to have been wrong in holding on special appeal that there had been no actual giving of the child when the additional Judge had not tried that issue. They say

"By the grounds of special appeal filed, the Appellant does not suggest that there has been any actual giving and taking of the child, but only a constructive giving and taking by the execution of the deeds. We think that, assuming the facts relied upon as regards such giving and receiving to be established, it is not shown that there was in this case any valid adoption. The change of name, supposed to be evidenced by the deeds, is not a sufficient overt act to show that the child was given and received."

With reference to that statement it appears to their Lordships that the fourth ground of appeal to the High Court referred to that part of the decision of the Additional Judge in which he held, that the Defendant could not rely upon the giving and taking alone, and that the only issue was, whether the religious ceremonies had been performed. The word "ceremonies" in the fourth ground of appeal to the High Court was clearly intended to include the actual giving and taking, or delivery and acceptance of the child, for the Judge treated this giving and taking as a ceremony, but as one upon which alone the Defendant could not rely. The judgment of the Judge is far from clear, arising from the use of the words "ceremonies" and "religious ceremonies." He treats the giving and taking as a ceremony, but whether as a religious ceremony is not clear He finds that the decision of the Principal Sudder Ameen that no religious ceremonies were performed

was correct, and afterwards speaks of the same finding as one to the effect that no ceremonies were performed. Looking to the fact that the finding of the Principal Sudder Ameen, that there was no formal giving and taking, was distinct, and, in addition to his finding, that no religious ceremonies were performed, their Lordships think that the Additional Judge did not try or determine the issue whether there was a formal giving and taking notwithstanding the fourteenth ground of appeal to the Judge. This being so, it appears to their Lordships that the High Court were in error in deciding the case upon the ground that there was no actual giving and actual receiving of the child.

In the case of Sreemutty Joymoney Dossee *v.* Sreemutty Sobosoonderee Dossee (Fulton's Reports, 75), it was held by the Supreme Court in Calcutta, that amongst Sudras no religious ceremony except in the case of marriage is necessary.

If the Judges of the High Court considered that this suit was maintainable if there was no valid adoption they ought to have determined whether, in the case of Sudras, any religious ceremonies were necessary to render an adoption valid, and, if they considered that religious ceremonies were not necessary, they ought to have directed the Judge to try whether there was a formal delivery of the child, or whether the Defendant refused to deliver him an issue upon which the Defendant had appealed to the Judge from the finding of the Principal Sudder Ameen. If their Lordships thought that this suit could be maintained they would now do what they consider the High Court ought to have done, but their Lordships do not consider that this suit is under any circumstances maintainable.

The suit is not to set aside the adoption, or to declare that there was no valid adoption, and thus to remove a doubt as to the child's title to the estates. It is merely to set aside the deeds. They were not actually necessary to render the adoption valid, and if they be set aside the Defendant or the child may prove the adoption *aliunde*.

It was stated by the Principal Suddur Ameen that the estates of the Plaintiff's deceased husband were of considerable value, paying a rental of 40,000 rupees a year, The suit was valued at only

1,500 rupees. The appeal to Her Majesty in Council was allowed upon the ground that the suit indirectly involved a claim to property of not less value than 10,000 rupees. The Defendant pleaded that the suit was undervalued, but the Principal Sudder Ameen held that, as the pleader of the Defendant had not agued the point, it might be presumed to have been given up. It would have been difficult for the Defendant to contend that the suit, to have the deeds declared void or set aside, was of greater value than 1,500 rupees, The case was accordingly tried as a suit of that value. The consequence was that the regular appeal went to the Judge, and only a special appeal to the High Court. If the suit had been valued at 5,000 rupees the appeal to the High Court would have been a regular appeal in which they, and upon appeal from them, this tribunal could have examined the evidence and determined the issues in fact.

If a decree be made declaring that the deeds are invalid, a suit may still be brought by the infant to try his title to the estates, and in that suit the evidence may have to be weighed by the High Court, and afterwards by the Judicial Committee of the Privy Council. It would be very unsatisfactory if the deeds should be declared void in the present suit, and the adoption should afterwards be upheld in a suit by the infant against the widow, or any other child who, upon the faith of a declaratory decree in this suit, may be given to the Plaintiff in adoption, and be adopted by her.

No fraud on the part of the Defendant has been alleged or proved; all that has been charged against him is that he refused to give the child, or to execute a deed in cancellation of the former deeds.

If the instruments operated merely as agreements to give and accept the child in adoption, as contended by the Plaintiff, the breach by the Defendant of his agreement to give would not render the deeds null and void. The breach of an agreement by one of the parties thereto is a good ground for an action for damages, or for a specific performance, but it does not render the contract void or constitute any ground for setting it aside, or for declaring it to be null and void.

The cause of suit is stated in the plaint to have arisen on the 10th Choitro, 1272, when the Defen-

dant "denied executing," meaning "refused to execute," an Ikrarnamah in cancellation af the Ikrarnamahs aforesaid. One of the Plaintiff's objects, as stated in her plaint, in having the documents set aside, was to throw off the burthen which was on her in consequence of the deeds. The High Court says:—

"There was no adoption. The natural father of the child now refuses to carry out his intention to give his child for the purpose of adoption. But the deeds are capable of being at any time used by him or his son to prove that there was an adoption. Under such circumstances, it is clear that the Plaintiff has a right to come to the Court to ask for relief, and pray to have the deeds declared void. We interfere for the protection of her right to her husband's property over which those deeds would cast a cloud, which it is necessary for the Plaintiff's security to remove."

Their Lordships have already alluded to the absence of any allegation or proof of fraud on the part of the Defendant, and also to the absence of any finding by the Judge upon the issue whether the Defendant formally gave the child, or refused to deliver him, If the child was lawfully adopted, the estates of the Plaintiff's deceased husband vested in him as son and heir, and the Plaintiff ceased to have the estate of a Hindoo widow therein; she also ceased to have any power to adopt another son during the life of the child.

It has been held that under the 15 and 16 Vict., c. 86, s. 50, a declaratory decree cannot be made unless Plaintiff would be entitled to consequential relief if he asked for it (Hooke *v.* Lord Kensington, 2 K. and J. 756). The 15th section Act 8 of 1859, is in similar terms. The Plaintiff, upon the facts found, is not entitled to any relief against the Defendant. It has been shown that, treating the documents as mere agreements between the Plaintiff and the father of the child, the Plaintiff could have no right to maintain the present suit. Treating the instruments as deeds of gift and adoption, which their Lordships consider them to be, there is no consequential relief to which the Plaintiff would be entitled against the Defendant if the deeds be declared void. Though deeds of gift and acceptance are not actually necessary for the validity of an adoption, they are still evidence in support of the child's title as an adopted son, and of his rights consequent upon the adoption.

In a case of conflicting evidence, in a suit brought on behalf of the child against an adopting mother in respect of her deceased husband's estate, a declaration by her, whether by deed or word of mouth, that she had adopted the child with all necessary ceremonies, would be strong corroborative evidence in the child's favour. In the present case there was conflicting evidence as to the fact of a formal giving and taking, as well as to the fact of the performance of the necessary religious ceremonies, and even upon the evidence of the Plaintiff's own witnesses, notwithstanding the allegation in the plaint that the child has remained in the house of his natural father, it appears that the child, whether adopted or not, did reside for some time in the house of the Plaintiff. There are also expressions in the letters from the Plaintiff's brother from which it might be inferred that the child had been adopted, and that the Plaintiff was desirous to have the adoption cancelled. Their Lordships express no opinion upon the evidence, with reference to the fact of adoption, as the case is now before them merely upon appeal from a decision of the High Court upon special appeal.

It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for. There is so much more danger in India than here of harassing and vexatious litigation, that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation.

The child is no party to the present suit, and any declaration made in it with regard to the validity or invalidity of the deeds, will not be binding upon him if a suit be hereafter brought on his behalf against the present Plaintiff respecting the estate of her deceased husband; nor would it be binding in any suit between the child and the reversionary heirs of the deceased husband after the death of the Plaintiff; or between the child and any other child who, upon the faith of a declaratory decree in this suit, may hereafter be given in adoption or adopted by the widow, or between the child and his natural brothers, or any other person who

may hereafter claim to exclude him from the heritage of his natural father's property upon the ground that he has been adopted into another family. It appears to their Lordships that, under these circumstances, it would not be exercising a sound discretion even if it could be done, to order the deeds to be cancelled or to set them aside, or to declare them void. The Defendant takes no interest under the deed of adoption, a declaration binding upon him only and not upon the child would be worse than useless, for it would not protect the Plaintiff or any child whom she may adopt, from any claims on behalf of the Defendant's son to the estates; and it might induce some other person to give his son to the Plaintiff in adoption and also induce the Plaintiff to adopt another child when the declaration in the decree could not be of any possible use to them.

If the Defendant's son was adopted the Defendant had no power to cancel the deed of adoption or to give the Plaintiff permission to adopt another son. Nor would his refusal to send back to the Plaintiff her adopted son, or the fact of his harbouring him in his original home invalidate the adoption. Whether the child was adopted or not the Defendant was not bound to execute a deed in cancellation of the former documents, and his refusal to execute such a deed could not give the Plaintiff a cause of action as alleged in her plaint, or rightly subject the Defendant to the costs of the suit which have been awarded against him.

It was suggested that a suit against the father, in his own right and as guardian of his minor son, was tantamount to a suit against the father and the son. But that is not correct. If the son had been made a Co-defendant, it would have been necessary to have a guardian appointed for him. If the child was adopted, his natural father was not his guardian. In a suit by the Plaintiff to set aside the deeds upon the ground that there had been no adoption, the Plaintiff had no more authority to constitute the father the guardian of his son, by suing him as guardian, than the father would have had to constitute the Plaintiff the guardian of the child, if he had sued her for a declaration that the child had been validly adopted.

This is not a mere technical objection. If the

father really refused to give the child in adoption, because he did not desire to have him adopted, he was not a proper person to protect the child's interest, or likely to make the best case on his behalf in a suit to declare the adoption invalid. In making these remarks their Lordships do not desire to impute to the father, in the present case, any neglect of his son's interests, for he appears to have desired to establish the adoption, and to have acted properly in refusing to execute a deed of cancellation when under the belief, whether right or wrong, that the adoption was complete.

The law is clear upon the subject of guardianship of male minors.

By Act No. 40 of 1858, passed before this suit was instituted, it was enacted that the care of the persons of all minors (not being European British subjects), and the charge of their property, shall be subject to the jurisdiction of the Civil Court; and by section 3 it is enacted that, where the property is of small value, the Court having jurisdiction may allow any relative of a minor to institute or defend a suit in his behalf. In other cases a certificate of administration is necessary.

The suit must be treated as one against the Defendant, the father, alone; and for the reasons above given their Lordships will humbly advise Her Majesty that the Decree of the High Court, and the Decrees of both the Lower Courts, be reversed, and that the suit be dismissed, and that the Plaintiff (the Respondent) do pay to the Defendant (the Appellant) the costs of this Appeal and the costs in all the Lower Courts.

It is hardly necessary to add that this decision will be no bar to the trial of the question whether the child was or was not duly adopted in any suit properly framed for that purpose.

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