persons, who are neither trustees nor managers. There is no prayer for the removal of the managers nor for damages, nor for a decree for specific performance of any act by the managers. It is therefore clear that this suit is not of such a nature that the jurisdiction of the ordinary Courts is ousted or that relief cannot be granted without recourse to the powers conferred by Act XX of 1863 upon the District Court, and consequently it should have been brought in the Court of the Subordinate Judge. *Agri Sharma Embrandri* v. *Vishnu Embrandri* (3 M. H. C. R., 198).

The mistake was not discovered until it was pointed out by the contesting defendants at the final hearing, and the Judge dismissed the suit with costs, on the ground that it was not rightly instituted under Act XX of 1863 in the District Court. The appellant urges that, if the suit could not be entertained in the District Court, the plaint should have been returned for presentation in the proper Court. We assent to this contention. The order of the District Court dismissing the suit is set aside, and the Judge is directed to return the plaint to the plaintiff for presentation in the proper Court, but the appellant must pay the respondent's costs incurred hitherto.

NOTES.

[When there is a claim for the removal of the manager, a declaration that property belongs to an institution and that a mortgage over it is not binding on the institution, may be asked for and made in suit under the Religious Endowment Act, when such declaration is ancillary to the claim for removal :—24 Mad. 243.]

[160] APPELLATE CIVIL.

The 15th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE AND
MR. JUSTICE KINDERSLEY.

Lakshmana Rau.....(Plaintiff) Appellant

and

Lakshmi Ammal and others.....(Defendants), Respondent.*

Hindu Law—Alienation by widow in contemplation of adoption—Title of adopted son.

The power of a Hindu widow, with authority from her husband to adopt, to make *bona fide* alienations, which would be binding on the reversioners if no adoption took place, is not affected or curtailed by the fact that it is exercised in contemplation of adoption and in defeasance of the right of the son who is about to be adopted.

The title of a son adopted by a widow under authority from her husband does not relate back to the death of the deceased.

Sebmle : A minor taken in adoption is not bound by the assent of his natural father to terms imposed as a condition of the adoption.

THE facts and arguments in this case appear sufficiently for the purpose of this report in the Judgment of the Court (TURNER, C.J., and KINDERSLEY, J).

* Appeal No. 22 of 1880 against the decree of T. V. Ponnusami Pillai, Subordinate Judge of Kumbakonam, dated 27th November 1879.

Hon. *T. Rama Rau* for Appellant.

Ramachandrayyar for Respondents.

Judgment :—Venkata Rau, late District Munsif of Mannargudi, died on the 21st February 1879, leaving a widow, the Respondent Lakshmi Ammal, but no issue.

His parents and two brothers, the respondents Krishna Rau and Vyasa Rau, and a sister Venkammal survived him. He had inherited no wealth, but had amassed what was, for a man in his position, a fair fortune. He had supported his parents up to the time of his death, and his brothers until they were in a position to earn their own livelihood, and he had, it would seem, expended money liberally on religious objects.

Having no issue, he had contemplated taking in adoption the appellant, the second son of his brother Vyasa, but deferred carrying out his purpose till he fell ill of his last sickness. The boy was sent for, but did not arrive till after his death.

[161] Disputes then arose between the members of his family respecting his property, his father and brothers being reluctant to allow it to pass into the hands of his widow, under an apprehension that she might no longer continue the assistance her late husband had afforded his family. They therefore took advantage of the circumstance that the family was undivided to advance a claim to the property, which, it is now admitted, was the self-acquisition of the deceased, on the ground that it belonged to the joint family. On the other hand, the widow insisted on her right to a large quantity of jewellery which had been made for her use by her husband as gifts of affection and therefore her stridhanam. It seems also to have been a matter in dispute whether the deceased had given his widow authority to carry out the adoption he contemplated.

On the day succeeding the death of Venkata Rau the mediation of friends was accepted and terms were arranged which were embodied in the agreement, Exhibit I, dated 3rd March 1879.

This agreement was prepared, it is said, by the father-in-law of the widow's brother.

The agreement, after reciting that, in accordance with a consent given by Vencata Rau, the widow had determined to adopt the second son of Vyasa and that the adoption had been made that day, witnessed that it had been agreed that a sum of Rs. 3,000 should be set apart for the maintenance of a charity that had been conducted by Venkata Rau in his lifetime ; that the widow should make such use as she liked of the jewels that had been worn by her ; that Krishna and Vyasa should receive Rupees 4,000, and thereout provide for the maintenance and funeral expenses of their parents ; that the residue of the property should be given to her adopted son ; that the widow and the adopted son should be maintained from the income, and that, if the adopted son should, after attaining majority, act in contravention of the widow's wishes, he and the widow should divide the residue equally and severally maintain themselves out of the income ; and that on the death of the widow the moiety so taken by her should revert to the adopted son. There were also provisions for the management of the charity to which it is unnecessary to refer.

It appears that the widow's brother took part in the negotiation which led to the arrangement of these terms, and that other friends

[162] were present on her part. The evidence is conflicting as to whether or not the deceased had actually given authority to the widow to adopt, or whether he had merely communicated to her his intention and she had signified her assent to it. The circumstances that he was a religious man, that he had long contemplated the adoption, and that at the desire expressed by him on his death-bed the boy had been sent for that he might be adopted, make it probable that he would give his wife power to carry out his wishes, and it is in evidence that it was represented at least to one of the mediators that authority had been given. On the 11th day after the death of Vencata Rau, and when the ceremonies for purification had been performed, the agreement was executed and the adoption followed. Subba Rau, the father of the deceased, although he did not execute the agreement, has fully acquiesced in it.

Subsequently a dissension arose between Venkammal the sister of the deceased, and the widow, which induced the former to institute this suit in the name of the appellent with a view to set aside the agreement. It was contended on behalf of the appellant that he became by adoption heir to the deceased, and that the agreement was executed in fraud of his rights.

The Subordinate Judge found that the execution of the agreement preceded the adoption; that it was made with the consent of the father of the appellant—at the time his natural guardian—and to secure his adoption; and that, under the circumstances, it was binding on the minor.

In appeal it is argued that the title of the appellant relates back to the death of Vencata Rao; that the agreement is void in that it was made in contemplation of the adoption in defeasance of the rights the son would thereby acquire; that the consent of his natural father could give it no validity; and that it was nullified by the admission of the widow that it had been extorted from her.

The widow has, it is true, in her reply to this suit stated she had no authority from her husband to adopt the appellant; that she was induced to accede to the proposed arrangements when she was in a state of distress and unable to procure competent advice; and that her object was to secure her own property and her husband's acquisitions.

[163] But it appears that the arrangements to which she acceded were not suggested by the members of her husband's family, but by friends who were invited to give their advice to heal the dissension which had arisen in the family. It also appears that an interval of some days elapsed between the date on which the arrangements were proposed to her and the date on which effect was given to them by the execution of the agreement and the adoption; that throughout the widow had the assistance of her brother; and that friends were present from whom she might have sought counsel. These are, therefore, grounds for the conclusion that her consent was freely given, and, since she filed her written statement, she has not persisted in the repudiation of her acts.

We are disposed to think that a child taken in adoption cannot be bound by the assent of his natural father to terms imposed as a condition of the adoption, and that, like other agreements made on behalf of minors for other than necessary purposes, it would lie with the minor, when he came of age, to assent to or repudiate them. This we understand to be the effect of the ruling of the Judicial Committee in *Ramasami Aiyar* v. *Vencataramaiyan* (L. R., 6 I.A., 196), 14th June 1879, in which the judgment of the learned Judges of the Bombay High Court in *Chitko Raghunath Rajadiksh* v. *Janaki* (11 Bom. H. C. R., 199) was noticed, but in the view we take that the agreement can be supported on other grounds, it is unnecessary for us to decide the point.

The question on which the decision of this case must turn is as to the competency of the widow to make the agreement.

The Sadr Dewani Adalut of Bengal in *Bamundoss Mookerjea* v. *Mussamut Tarinee* (7 M. I. A., 177) carefully examined the authorities as to the date on which the right of a son, adopted by a widow in the exercise of a power conferred on her by her husband, comes into being, and the position of the widow in respect of her husband's property in the interval before the power is exercised. The learned judgment in which the Court treated of these questions went on appeal to the Privy Council, and their Lordships intimated their entire concurrence in the principles laid down in it and expressed themselves able to add nothing to the clearness and force **[164]** of its reasoning (s. c. page 206). It has, therefore, since been regarded as the leading case on this subject. The Sadr Dewani Adalut pronounced that " an authority to adopt a son possessed by a widow does not supersede or destroy her personal rights as widow, and that those rights continue in force until an adoption is actually made," (s. c. page 178), and held that the property is in the widow from the date of the husband's death until the power to adopt is exercised, and that the adoption divests it from the widow and vests it in the adopted son (s. c. page 185). In the interval then between the death of her husband and the exercise of the power, the widow's estate is neither greater nor less than it would be if she enjoyed no such power or died without making an adoption. She has the same power, no greater and no less, to deal with the estate. Such acts of hers as are authorised and would be effective against reversioners will bind the son taken in adoption. Such acts as are unauthorised and in excess of her powers may be challenged by the son adopted or by any other successor to the estate.

The powers enjoyed by a widow to alienate her husband's estate were concisely stated by the Judicial Committee in *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (8 M. I. A, 551).

For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. " To support an alienation for the last, she must show necessity ; on the other hand, it may be taken as established that an alienation by her, which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred."

It can hardly be contended that, if at the time the agreement was made no adoption had been in contemplation, the arrangements respecting the property of the deceased were not such as the widow was competent to make in concurrence with the members of her husband's family, his father, the then expectant reversioner, and his brothers who would have come into the position of expected reversioners, if, as it was reasonable to persume, they and the widow survived the father. She might certainly, with their con- **[165]** sent, have made provision for the continuance of those acts of piety and affection which her husband had in his lifetime initiated, and, on the other hand, it was competent to the expectant reversioners to accept a smaller sum than the whole property in satisfaction of the claim of the family to the present possession of the whole property as joint family property, and to concede to the widow possession of the jewels which had been made for her use.

The decision of the Sadr Dewani Adalut is authority for holding that the widow would not have been deprived of her power by reason that she had received her husband's consent to make an adoption.

Does then the circumstance that the agreement was made in contemplation of an adoption render the arrangements invalid, which would otherwise have been effectual? In our opinion, on the facts established by the evidence in this case, it does not. We desire not to be understood as saying that an arrangement should be supported where, in view of the exercise by a widow of a power to adopt, she and the expectant reversioners collude to strip the estate for their own benefit. In this case the hesitation we have experienced in supporting the agreement arises from the circumstance that a considerable portion has been severed from the estate that will come to the son taken in adoption, but it appears to us that the question of the extent of the alienation is but matter of evidence creating a presumption of fraud, and that, if made under circumstances that would render it invalid, the alienation could not be supported whether it affected more or less of the estate. But where *bonâ fide* claims are made which call for adjustment, where the existence of the husband's consent to the adoption is in question, we consider that the powers of the widow and reversioners may not improperly be exercised to effect a settlement of the claims before an adoption is made, and that their exercise is not affected by the circumstance that the dispute as to the direction or consent conveyed to the widow was at the same time set to rest, and that the arrangements affecting the estate were made in contemplation of the adoption. The widow, although she may have received an express direction to adopt, could not have been compelled to act upon it, and she might have persisted in her denial that she had received authority to adopt, had the reversioners declined to allow her to retain possession of the jewels. On the **[166]** other hand, the reversioners might have persisted in their claim to the property as a joint family property, and although they might have eventually failed, they could have adduced the benefits the deceased had conferred on his parents and brothers to support their assertion that he had associated them with himself in the property he had acquired. We have already intimated a doubt whether the consent of the natural father of a boy about to be adopted could give validity to conditions so as to render them indisputable by the minor after adoption, but the parties who desire to support the agreement may not unfairly refer to the assent of Vyasa as evidence that the arrangements respecting the estate were such as he deemed not unfair. It is true he was personally interested, but his interest was not so great that it would have induced him to sacrifice the interests of his child, if he had thought, by refusing his assent, he could have advanced them. It appears he is a Head Clerk in a Munsif's Court, and, therefore, presumably not unacquainted with his rights and with the rights of a child taken in adoption.

We express no opinion as to the validity of the condition respecting the arrangement which is to take effect in the event of dissension between the widow and her adopted son. The good feeling of the parties will, we trust, obviate any necessity for a decision on that point.

The only questions we can at present properly determine are those which arise on the stipulations of the agreement which have already taken effect. In the result we consider we should not be justified in disturbing the decision of the experienced Hindu Judge by whom the arrangement has been supported, and that we ought to dismiss the appeal and affirm the decree of the Court of First Instance.

But inasmuch as the arrangements questioned are unusual and the parties to them were manifestly not uninfluenced by considerations of their own interest, we consider the next friend of the appellant was justified in taking the opinion of the Court, and therefore we shall direct that all parties to the appeal do severally bear their own costs.

NOTES.

[I. HINDU LAW—WIDOW'S ALIENATIONS HOW FAR BINDING ON ADOPTED SON—

(i) When the alienation is *proper*, *i.e.*, for necessary purposes, it will bind the son subsequently adopted (1902) 26 Mad., 143 ; (1908) 33 Bom., 88 ; (1904) 14 M. L. J., 310.

(ii) When the alienation is *improper*.

There is a conflict of opinion on this point. BHASHYAM IYENGAR, J., in *Sreeramulu* v. *Kristnamma*, (1902) 26 Mad., 143, expressed the view that alienations by a widow, though they may be improper and made in view of adoption, will yet be binding on the adopted son during her lifetime.

But this view was strongly criticised by CHANDARVARKAR, J., in (1908), 33 Bom. 88, where he holds that such alienations will not be binding on the subsequently adopted boy and that he can dispossess the alienee.

See (1894) 19 Bom. 809 ; (1887) 11 Bom. 609 : 8 Bom. H. C. R. A. C. J. 67.

See also (1904) 32 Cal. 165, where it was held that the cause of action to set aside alienation accrues during his lifetime.

II. AGREEMENTS BY WIDOW BEFORE ADOPTION—

(i) *With the minor* :—

Held valid when it gave her largest possible discretion with regard to management, &c. :—(1887) 11 Bom., 381.

(ii) *With the natural father of the adopted boy* :—

"Natural father not legally incapable to enter into agreement on behalf of the adopted boy, provided the agreement is fair and reasonable and is for the minor's benefit" :—(1904) 27 Mad., 517, *F. B.*=14 M. L. J. 31, where moiety of the interest in her husband's property was reserved to her during her lifetime in case of disagreement between widow and the adopted boy.

III. WHEN RIGHT OF ADOPTED SON COMMENCES—

It was held to commence from the date of adoption and not from the death of the adoptive father:—(1902) 26 Mad., 143 ; (1905) 2 C. L. J., 87=9 C. W. N., 795. See also 7 M. I. A., 169 ; 4 Mad., 160 ; 21 Mad., 10 (16, 17).]

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[167] APPELLATE CIVIL.

The 20th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE MUTTUSAMI AYYAR.

Mahomed Yakub Sahib.....(Plaintiff), Appellant

and

Mahomed Jaffer Ali Sahib.....(Defendant), Respondent*.

Rent Act—Madras Act VIII of 1865, Section 10—Appeal from order—Default.

No appeal lies to the District Court from an order passed on an application to eject a tenant under Section 10 of the Rent Act (Madras Act VIII of 1865).

* C. M. S. A. No. 484 of 1881 against the order of C. G. Plumer, District Judge of North Arcot, confirming the order of D. Buick, Sub-Collector of North Arcot, dated 9th April 1881.