there was an absolute and unqualified disposition of property by way of gift. Here there was a provision merely for the life of the donee with reversion to the settlor and his heirs. We think this document (No. 417 of 1897) is a settlement within the meaning of the Stamp Act.

REFERENCE UNDER STAMP ACT, s. 46.

The other document No. 1364 of 1897 is certainly neither a settlement nor a gift. There was consideration other than that of marriage. We think it must be treated as a conveyance and stamped accordingly.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

SIVA RAU AND OTHERS (DEFENDANTS NOS. 2, 4 AND 6), APPELLANTS,

1898. March 31.

v.

VITLA BHATTA (PLAINTIFF), RESPONDENT.*

Hindu law—Bequest to daughters—Construction of will.

A Hindu testator died leaving three daughters. By his will he gave certain property in equal shares to his younger daughters and their descendants and disposed of the rest for the benefit of his elder daughter S and her son R as follows:—"All the remaining rent should be collected by S and her son R; they shall, "when necessary, let the land to other tenants and have it cultivated, and R shall "pay the assessment and subject to the directions of his mother shall enjoy the "land and shall not in any way alienate the property." R predeceased S:

Held, that the testator's daughter took a life estate with remainder to her son, and that on her death the property passed to the heirs of the son.

SECOND APPEAL against the decree of H. G. Joseph, District Judge of South Canara, in Appeal Suit No. 186 of 1896, affirming the decree of U. Achutan Nayar, Subordinate Judge of South Canara, in Original Suit No. 24 of 1895.

The plaintiff sued as the reversioner of Saraswati Amma deceased, to recover possession of certain immovable property in the possession of defendant No. 1, who was the widow of Saraswati Amma's son who had predeceased his mother. The plaintiff was

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* Second Appeal No. 211 of 1897.

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the son of the brother of Saraswati Amma's husband. Defendants Nos. 2 to 8 were the sisters and nephews of Saraswati Amma. The property in question formed part of the estate of one Karakal Rangappayya who died without male issue leaving him surviving Saraswati Amma, Rukmini Amma, the mother of defendants Nos. 2 to 6, and defendant No. 7, his daughters. The portion of Rangappayya's will, the construction of which was in question in the suit, was in the following terms :—

"My wife having died, and as I have grown old having "attained seventy years of age, I am to live with my daughter "Saraswati and her son Rama Bhatta, and have my welfare looked "after by them; as after my demise my daughter's son, the said "Rama Bhatta, is alone liable to perform my obsequies and the "vaidika and other ceremonies that ought to be performed yearly "on account of me and my wife . . . . The movables are to "be used and enjoyed by my eldest daughter Saraswati and her "son, the said Rama Bhatta, and neither my daughters Rukmini "and Mukamba nor their children have any right to them.

"In the immovable property the rent of the land chitta No. "38 called Karakal Rankappa assessed at Rs. 24-1-7 situated in "Mudu village, Bantval Magne, is 50 muras of rice, 190 cocoanuts "and Rs. 3 in cash excluding Rs. 4 set apart for ceremonies to "deities. From this at the rate of 2 muras of rice should be paid "annually to purohit Bantval Vasudeva Bhatta, and all the "remaining rent should be collected by the said Saraswati and her "son Rama Bhatta; they shall, when necessary, let the land to "other tenants and have it cultivated, and Rama Bhatta shall pay "the Government assessment and subject to the directions of his "mother, shall enjoy the land and shall not in any way alienate "the right to the property."

The rest of the testator's property was given in equal shares to Rukmini Amma and defendant No. 7 and their descendants.

The Subordinate Judge held that Saraswati Amma and her son Rama Bhatta took an absolute joint estate, and that on the death of the latter Saraswati Amma became the sole owner, and that as she was married in one of the approved forms of marriage the plaintiff was her heir and he passed a decree accordingly. The District Judge affirmed his decree.

Defendants Nos. 2, 4 and 6 preferred this second appeal.

Mr. *C. Krishnan* and *Ranga Rau* for appellants.

K. Narayana Rau and *H. Narayana Rau* for respondent.

JUDGMENT.—One thing appears to be clear as to the intention of the testator and that is that the property should be divided and enjoyed in three shares by his three daughters and their respective descendants. It would be inconsistent with this intention to hold that each daughter was to take an ordinary daughter's estate, for in the event of any daughter dying leaving other daughters, the property would go to those other daughters instead of to the deceased daughter's descendants. Nor is the contention that each daughter was to take an absolute estate in accordance with the above intention or with certain express provisions in the will. In the first place in the case of the daughter and son before us the two are coupled together as both taking under the will, and no power of alienation is given to the daughter, while it is expressly prohibited to the son. Though this prohibition may not be valid as against the son, it is a clear indication that no absolute estate was intended to be given to the daughter. It being clear, however, that both the daughter and the son ha it is necessary to determine what was the nature of t We have already shown that the mother's estat been absolute. It seems to us that it was a lif granted to her with remainder to her son. The son was to act under her orders with reference to t of the property shows that his interest was subordi was therefore not a joint interest. The view taken in *Shanteramma* v. *Sadasiva Rau*(1) that the two tenants cannot be maintained, for it was based on *Vydinada* v. *Nagammal*(2), which has since been ov Privy Council (*Jogeswar Narain Deo* v. *Ram Chan* and they were clearly not tenants in common as alrea out. The fact being as we find that the daughter Saraswa only a life estate and not an absolute one, it follows t plaintiffs, who claim as the heirs of Saraswati, must fail. In our view the persons entitled to the property are the heirs of Rama Bhatta her son, who has left a widow surviving. We must therefore allow the appeal, and as against the appellants who are the

(1) Appeal against Appellate Order No. 16 of 1889 (unreported).
(2) I.L.R., 11 Mad., 258. (3) I.L.R., 23 Calc., 670; s.c. L.R., 23 I.A., 37.

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defendants Nos. 2, 4 and 6, we reverse the decrees of the Lower Courts and direct that the suit be dismissed. In the circumstances we make no order as to costs.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Moore.

QUEEN-EMPRESS

v.

TIRUVENGADA MUDALI.*

Local Boards Act (Madras)—Act V of 1884, s. 43—Public servant—Sanitary Inspector.

A Sanitary Inspector appointed by the local board is a public servant within the meaning of the Local Boards Act, Madras, 1884, section 43.

for orders of the High Court, under Criminal section 438, by J. K. Batten, Acting District orth Arcot, in Calendar Cases Nos. 245 and 246 Second-class Magistrate of Arni.

y Inspector of Arni having been obstructed in the is duties prosecuted the person who obstructed him enal Code, section 188. The Sub-Magistrate held cy Inspector was not a public servant and acquitted he Sub-Magistrate gave his reasons for his opinion

estion is whether the Sanitary Inspector of any union ayat is a public servant or not, for the purpose of Indian Code. I consider that he is not, and the Deputy Magis- is of opinion that he is.

"The reasons for my considering him not to be a public servant "are that he is not entrusted with the duty of collection of any tax, "toll or fee as required by section 43 of Local Boards Act and "section 21, clause 10, of the Indian Penal Code.

"Section 43 of Local Boards Act runs as follows:-

Criminal Revision Cases Nos. 119 and 120 of 1898.