APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.

1902. February 24, 25. March 26.

SREERAMULU (PLAINTIFF), APPELLANT,

v.

KRISTAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Widow's estate—Alienation by widow—Subsequent adoption—Right of adopted son to claim property alienated—Limitation—Act XV of 1877, sched. II, art. 144.

Where a Hindu widow alienates part of the immoveable property belonging to her husband's estate and then adopts a son, the son cannot sue to recover possession of the property until the termination of her widowhood.

Where such a suit is brought during the widowhood it is governed by article 144 of schedule II to the Limitation Act, and the starting point for the period of limitation is the date of the adoption.

If the alienation is for a necessary purpose, the adoption does not divest the alience, and the adopted son succeeds only to the remaining portion of his adoptive father's property. If the alienation is not for a necessary purpose, the subject of the alienation is severed from the inheritance only during the widowhood, and the remainder therein vests, at the moment of adoption, in the adopted son, as a vested remainder to fall into possession at the termination of the widowhood.

Observations by Bhashyam Ayyangar, J., on the effect of an alienation by a Hindu widow.

SUIT to set aside an alienation. Plaintiff sued as the adopted son of first defendant to recover possession of 16 acres of land and for mesne profits. The plaint alleged that first defendant had been empowered by her late husband to adopt a son to him, and that she, with the consent of her gnatis, had adopted plaintiff in February 1887, and had performed the upanayanam or thread ceremony. It further alleged that, during the minority of first defendant, her father had sold the land in question to his brother-in-law, defendant No. 8, collusively and without any legal necessity. The date of this sale was stated as 6th March 1879. Defendant No. 8 had, on 19th January 1895, conveyed the

* Second Appeal No. 706 of 1900 against the decree of W. C. Holmes, District Judge of Kistna, in Appeal Suit No. 462 of 1899 presented against the decree of V. Subrahmanyan Pantulu, District Munsif of Guntur, in Original Suit No. 432 of 1895.

property to defendants Nos. 9 and 10. Plaintiff stated that he had been born in October 1875, had attained his majority in October 1893, and he laid his cause of action as having accrued either at the date of his adoption (namely, February 1887), or at the date when he first became aware of the alienation (namely, in 1889), or at the date at which he attained his majority (namely, in October 1893). Defendants Nos. 2 to 7 were the brothers of first defendant,—who remained *ex parte*. The brothers pleaded that they had no concern in the suit and wished to be exonerated. Defendants Nos. 8, 9 and 10 denied the alleged adoption, and pleaded that the land had been sold to defendant No. 8 by the widow in liquidation of debts incurred by her husband and that the sales were *bonâ fide*. They also set up the plea of limitation. The District Munsif, before whom the case first came, found that the land had been sold by the father of first defendant during her minority, to defendant No. 8, on 6th March 1879. He held that plaintiff's right to question the validity of the sale by suit arose within three years of his attaining majority. He said that, at the date on which the suit was instituted, plaintiff was more than 24 years of age, and held that the suit was barred by limitation. The Subordinate Judge reversed this finding on the ground that it had been arrived at merely from an inspection of the plaintiff and without his having been afforded an opportunity to adduce evidence on the point. The suit was remanded, and came before another District Munsif, who found further facts,—among them, that the husband of first defendant died prior to 1878, leaving her a minor; that the affairs of first defendant were managed by her father, who effected the sale in question in 1879, to defendant No. 8, who, in 1895, sold it to defendant No. 9; and that plaintiff's adoption had taken place in 1887, in pursuance of authority given to first defendant by her husband. He held that the suit was not barred by limitation as it had been brought within 12 years of the adoption; that plaintiff was entitled to sue to have the alienation made prior to his adoption set aside; and that it had not been proved that there was legal necessity for the sale. In the result he decreed that defendants Nos. 9 and 10 should deliver up the property to plaintiff.

The District Judge, on appeal, dealt with the question of limitation. He stated it thus:—"The first question is whether, when the guardian of a minor widow sells certain property of the

widow's late husband, purporting to do so for necessary purposes, and when, subsequently, the widow adopts, the adopted son is allowed by the law of limitation a period of 12 years, from the date of sale or from the date of adoption, to bring a suit to set aside the sale on the ground that the sale was collusive and without consideration ?" Considering this question he said :—"It is contended for the plaintiff respondent, that article 144 of the second schedule of Act XV of 1877 is the article that governs the case. The only other article that could possibly apply would be article 142. Article 142 would only be applicable if the word 'plaintiff' as used in the first column of the schedule under article 142 included not only the adopted son, but also the adopting widow. If it does, the suit is barred. If article 144 applies, the question is whether the word plaintiff in the third column of the schedule under article 144 includes not only the adopted son, but the adopting widow. Thus, whether article 142 or article 144 governs the case, the question whether the suit is or is not barred depends on the meaning to be attached to the word 'plaintiff.' Plaintiff is defined in section 3 of the Act and includes, unless there is something repugnant in the subject or context (which is not the case here) 'any person from or through whom a plaintiff derives his right to sue.' The question then reduces itself to this,—should it be held within the meaning of section 3 of the Limitation Act of 77 that the 'right to sue' of the adopted son is derived from or through the adopting widow. The widow had a right to sue to set aside the sale made by her guardian on the ground that it was collusive and without consideration. On the instant the adoption was completed by her the right to sue to set aside the sale ceased to exist in her, and at the same instant a right to sue to set aside the sale came into existence in the adopted son. The question is, does the adopted son *derive his right to sue* from the adopting mother within the meaning of section 3 of Act XV of 1877." He discussed the point at length and decided that the suit was barred by limitation, on the ground that the period of limitation should be reckoned from the date of the alienation, and that plaintiff had derived his right to sue from or through his adoptive mother.

Against that decree plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Mr. *Joseph Satya Nadar* for respondents.

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BHASHYAM AYYANGAR, J.—It is found that the plaintiff was adopted in 1887 by the first defendant in pursuance of authority given to her by her husband who died prior to 1878. The lands mentioned in the plaint were sold in March 1879, during the minority of the first defendant, by her guardian and father, to the eighth defendant. This suit was instituted in 1895 (September), more than three years after plaintiff had attained his age of majority, to eject the eighth defendant and those claiming under him and recover possession of the lands on the ground that the alienation thereof was not made for purposes which will bind the inheritance in the hands of the reversionary heirs of the first defendant's husband. The District Judge dismissed the plaintiff's suit as barred by limitation, either under article 142 or 144, on the ground that the period of limitation should be reckoned from the date of the alienation, *i.e.*, 1879 and not from the date of the plaintiff's adoption, 1887, and that within the definition of the word "plaintiff" in section 3 of the Limitation Act, 1877, the plaintiff in the present case, notwithstanding that he claims the lands as the heir of his adoptive father, should be regarded as one who derives his right to sue from or through his adoptive mother, the first defendant.

The first defendant, after attaining the age of majority, did not repudiate the alienation made by her guardian and the case has been argued before us on the footing that the alienation of 1879 should be regarded as one made by the first defendant herself. The learned pleader for the appellant contends that the suit is not barred by limitation, as it has been instituted within 12 years from the date of the plaintiff's adoption and the District Judge is wrong in his view that the plaintiff should be regarded as deriving his right to sue from or through his adoptive mother, the first defendant. The learned pleader was also required to argue on what principle he maintained that the plaintiff was entitled to eject the vendee during the lifetime of the first defendant.

Regarding the alienation in question as one made by a widow, who had authority from her husband to make an adoption, which authority was exercised and the adoption made only subsequent to the alienation, I am of opinion that, if the plaintiff were entitled to maintain this suit during the lifetime of the widow, the period of limitation should be computed only from the date of the plaintiff's adoption and not from the date of the alienation, but that the

vendee, having prior to the plaintiff's adoption acquired under the alienation in question an estate in the land during the lifetime of the widow, the adoption of the plaintiff cannot divest him of that estate and that consequently this suit is not maintainable during her lifetime.

The plaintiff claims to recover possession of the land as the legal representative of his adoptive father and he, therefore, derives his right to sue from or through his father and he cannot be regarded as deriving such right from or through the first defendant, merely by reason that his status as the adopted son and legal representative of the deceased father is the immediate result of her action in adopting him, which act of hers, however, would have been inefficacious but for the authority conferred on her by the husband. Though the inheritance is fully vested in a widow as the legal representative of her deceased husband, yet it has been definitely established by judicial decisions in *Srinath Kur* v. *Prosunno Kumar Ghose*(1) with reference to article 141 of the Indian Limitation Act, 1877, and the corresponding article 142 of Act IX of 1871, that in the case of her making an alienation of her husband's property or even of her being dispossessed by a trespasser, she does not represent the inheritance for purposes of limitation and that limitation does not begin to run during her lifetime, against any reversionary heir of her husband. The case of a son adopted by the widow is not specifically provided for in the Limitation Act as are those covered by articles 140 and 141 of the Limitation Act, 1877. It will be straining the language of article 140 to include the adopted son in the term 'reversioner' occurring therein. That term applies only to a donor or his representative to whom the remainder of an estate reverts, such remainder not having been disposed of by the donor. The case of an adopted son claiming during the lifetime of the widow falls, therefore, under article 144 and possession can be adverse to him only from the date of adoption. If the widow does not represent the inheritance for purposes of limitation as against the reversionary heirs of her husband, it will be unreasonable to hold that it would be otherwise as against a son adopted by her, when he claims under his adoptive father. I concur in the decision of the Bombay High Court in *Moro Narayan Joshi* v. *Balaji Raghunath*(2) so far as it bears on the

(1) I.L.R., 9 Calc., 934. (2) I.L.R., 19 Bom., 809.

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question of limitation arising in this case and, differing from the District Judge, hold that the suit is not barred by the law of limitation.

The other question which has now to be considered is really one of first impression and presents greater difficulty. In the few reported cases in which a son adopted by a widow brought a suit during her lifetime to set aside alienations made by her prior to the adoption, the decision proceeded on the assumption that he would be entitled to recover possession of the property alienated, unless the alienation was made for a purpose which would be binding upon a reversionary heir. In all the cases in which the alienation was set aside at the instance of the adopted son, the decision proceeded only on the ground that the widow exceeded her lawful power in making the alienation. In none of them was the question distinctly raised and considered, whether the vendee would not in any event be entitled to retain possession during her lifetime as the widow of her deceased husband.

The solution of the question mainly depends upon the nature of a widow's estate under the Hindu Law and the rights of a son adopted by the widow, in his adoptive father's property. According to the Hindu Law a widow who succeeds to the property of her husband does not take merely a life-estate therein; the whole estate is for the time being vested in her and she represents the inheritance for many purposes. She holds an estate of inheritance to herself and the heirs of her husband, but she has only a qualified and restricted power of disposition over the inheritance. This is fully recognised by judicial decisions (*Moniram Kolita* v. *Kerry Kolitany*(1)), and unless an alienation made by her is for a necessary purpose according to the standard of Hindu Law, it will not bind the reversionary heirs, or, in their absence, even the Crown (*The Collector of Masulipatam* v. *Cavaly Vencatanarrainapah*(2)). The texts of Hindu Law, however, do not deal with a widow's power of alienation of her husband's estate at her will and pleasure, for the term of her life or for any shorter period, but she is enjoined by those texts to restrain her personal expenditure within the modest limits which were considered suitable to her bereaved condition. But it has now long been established by judicial decisions that a Hindu widow has an absolute right to the fullest beneficial interest

(1) L.R., 7 I.A., 115 at p. 154. (2) 8 M.I.A., p. 529.

in her husband's property for her life and that she has a personal right therein, which she can exercise at her will and pleasure, by giving, selling or transferring the estate to another for her own life (*Kamavadham Venkata Subbaiya* v. *Joysa Narasingappa*(1), *Gobinda Mani Dasi* v. *Sham Lal Bysak*(2), see also *Moniram Kolita* v. *Kerry Kolitany*(3)), or speakin more accurately, for the term of her widowhood (*Mussummat Bebea Sahodra* v. *Roy Jung*(4), *Murugayi* v. *Viramakali*(5), *Koduthi* v. *Madu*(6), *Matungini Gupta* v. *Ram Rutton Roy*(7), *Rasul Jehan Begum* v. *Ram Surun Singh*(8), *Vithu* v *Govinda*(9), and Act XV of 1856). If, prior to adoption, she makes an alienation for a necessary purpose, it is undoubtedly binding on the adopted son; the adoption will not divest the alienee and the adopted son will succeed only to the remaining portion of his adoptive father's property. But if the alienation had been made not for a necessary purpose, it will undoubtedly be valid during the term of her widowhood. But would an adoption subsequent to the alienation divest the alienee of even this limited estate? Though the inheritance is fully vested in the widow, yet by operation of law she is divested of the same by her adopting a son to her deceased husband and the inheritance thenceforth vests in the adopted son (*Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiat*(10)). But if a portion of the inheritance has been lawfully severed therefrom and transferred to a stranger, whether absolutely, as would be the case if the alienation was for a necessary purpose, or only during the term of her widowhood, as would be the case if the alienation was not for a necessary purpose, the adopted son could on principle succeed only to the remaining inheritance which was vested in the widow at the time of the adoption. In the former case, the remaining property will be the estate left by the adoptive father, *minus for ever* the portion alienated; in the latter case, the portion alienated will not be severed permanently from the inheritance but only *temporarily*, during the term of her widowhood, and the remainder in such portion of the inheritance will, at the moment of the adoption, vest in the adopted son

(1) 3 Mad. H.C.R., 116.
(2) Bengal Law Reports, Full Bench ruling, p. 48.
(3) L.R., 7 I.A., at p. 146.
(4) L.R., 8 I.A., at p. 214.
(5) I.L.R., 1 Mad., 226.
(6) I.L.R., 7 Mad., 321.
(7) 19 Calc. at p. 291.
(8) 22 Calc. at p. 595.
(9) 22 Bom., 321 at p. 331.
(10) 3 M.I.A. at p. 242.

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as a vested remainder, to fall into possession on the death of the widow or the termination of her widowhood. The same principle regulates the rights of a son adopted by the father himself. By the mere act of adoption, the adopted son becomes a joint owner with the father in respect of all ancestral property then possessed by the latter. If, prior to the adoption, the father had alienated, either permanently or for the term of his life or of his wife's life, any portion of the ancestral property, the son becomes a joint owner only in respect of the remaining ancestral property. When the alienation was only for a term, the son becomes *joint owner* with the father, so far as such property is concerned, in the reversionary interest therein. The only difference in the case of an adoption by a widow is that the adopted son becomes *sole* owner, and not joint owner with the widow, of the inheritance as it then vests in the widow. If, prior to the adoption, a portion of the inheritance had been alienated for a necessary purpose, or the widow, in exercise of her absolute personal right, carved out of such portion, in favour of a stranger, an estate for the term of her widowhood, the adopted son can succeed to the inheritance only as it exists at the time of the adoption. In the former case, it is undoubted that the adoption cannot have the effect of divesting the alienee and it is difficult to see on what principle the adoption can operate so as to divest the alienee in the latter case. The learned pleader for the appellant contends that the adoption must be taken to relate back to the date of the adoptive father's death and that the rights of such adopted son will be those of a posthumous son. If such were the position of a son adopted by the widow, the widow could have no personal right of enjoyment or of disposition over her husband's estate and the inheritance cannot be regarded as vested in her even until the adoption. Her powers will only be those of a guardian of a minor in existence or in the womb and in fact she will be accountable to the adopted son for the income derived from the estate until the adoption. It is impossible to maintain this proposition and it was virtually exploded long ago in an elaborate judgment of the Sadar Court of Bengal, which was appealed against and adopted in its entirety by the Privy Council and which has ever since been considered as having settled the question (*Bamundoss Mookerjea* v. *Mussamut Tarinee*(1).

(1) 7 M.I.A., 169.

The whole of the authorities on the point were examined in that case and the Court refused to act upon the fanciful analogy of a posthumous son and laid it down that although a son when adopted, entered at once into the full rights of a natural-born son, his rights could not relate back to any earlier period. Till he was adopted it might happen that he never would be adopted and when he was adopted his fictitious birth into the new family could not be antedated (Mayne's 'Hindu Law and Usage,' 6th edition, para. 197; West and Buhler, pp. 1151-1152; see also I.L.R., 19 Bom. at pp. 814-815). The above decision of the Sadar Court of Bengal, which was adopted by the Privy Council, was acted upon by this Court in *Lakshmana Rau* v. *Lakshmiammal*(1) and explained as follows (at pp. 164-165):—

"The Sadar Dewany Adalat 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,' 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. 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 the 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 decision of the Sadar Dewany Adalat is authority for holding that the widow would not have been deprived of her power by reason that she has received her husband's consent to make an adoption." This view was also acted upon by Subrahmania Aiyar, J., in *Ganapati Ayyan* v. *Savitri Ammal*(2).

In that case the adoptive father made a nuncupative bequest of a portion of his property for a certain charity and he also gave verbal authority to the widow to make an adoption. After holding on the authority of *Ramundoss Mookerjea* v. *Mussamut Tarinee*(3)

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(1) I.L.R., 4 Mad., 160. (2) I.L.R., 21 Mad., 10 at pp. 16 and 17.
(3) 7 M.I.A., 169.

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that "it is too late to question the doctrine that the adopted son's rights arise from the time of the adoption," he upheld the devise as against the adopted son, on the ground that "the title of the adopted son could not affect the right of the charity, for the latter right had vested long before the adopted son's right arose and that his right must, therefore, be held to be subject to that created in favour of the charity by the oral devise." If the title of the adopted son related back to the death of the adoptive father, as that of a posthumous son, his right by survivorship would prevail and the devise made by the father could not take effect. The devise, however, did take effect because the adopted son's right arose only from the time of the adoption, and his adoption, therefore, could not divest an estate which vested in the trustee for the charity, on the adoptive father's death and prior to the adoption. An alienation of her life-interest, made by a widow prior to the adoption must stand on the same footing. The only extent to which, by analogy to the case of a posthumous son, the title of a son adopted by a widow relates back to the death of his father is that he will divest the interest of any person in possession of the property of the father, to whom he would have had a preferable title if he had been in existence at his adoptive father's death (*Babu Anaji* v. *Ratnoji*(1)). A son adopted by the widow will thus divest not only the widow—or widows, if there be more than one, though the adoption was made by only one of them (*Mondakini Dasi* v. *Adinath Dey*(2))—but also either in whole or in part an undivided co-parcener of the father, on whom the estate had devolved by survivorship (*Surendra Nandan* v. *Sailaja Kant Das Mahapatra*(3), *Vithoba* v. *Bapu*(4), *Sri Raghunadha* v. *Sri Brozo Kishoro*(5), *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*(6)).

The question as to how far alienations made by a male holder on whom, by survivorship, the estate of an undivided family had devolved will bind a son subsequently adopted by a widow into the family is suggested by Mr. Mayne in paragraph 198 of his book ('Hindu Law and Usage'—6th edition) and he inclines to the opinion that such alienations will be absolutely binding upon

(1) I.L.R., 21 Bom., 319. (2) I.L.R., 18 Calc., 69.
(3) I.L.R., 18 Calc., 385. (4) I.L.R., 15 Bom., 110.
(5) 3 I.A., 154. (6) I.L.R., 1 Mad., 69.

the adopted son. It is unnecessary, however, to consider or decide that question in the present case.

The learned pleader for the appellant drew attention to a passage in the judgment of this Court in *Jagannadha v. Papamma*(1) in which, adverting to the father's power to dispose of his property as he pleases, before adoption, it was observed that a widow with power of adoption derived from her husband had no *such* power of disposition over the property and therefore cannot impose any condition as to the enjoyment of the property by the adopted son. It will be noted that in this as well as in other cases, also referred to on behalf of the appellant, all that was held was that even prior to the adoption by the widow she had not an absolute or unrestricted power of disposition over her husband's estate. The question as to her limited power of disposition was not raised or decided. In the well-known case of *Moniram Kolita* v. *Kerry Kolitany*(2) in which the nature of a widow's estate under the Hindu Law and judicial decisions was fully considered by the Judicial Committee of the Privy Council, and it was decided that a widow who has once inherited the estate of her deceased husband is not liable to forfeit that estate by reason of subsequent unchastity, there is a dictum which has an important bearing on the question now under consideration. Their Lordships observe that "if the widow's estate ceases upon her committing an act of unchastity, the period of succession will be accelerated and the title of the heirs of her husband must accrue at that period. . . . . If her estate were to cease by reason of her unchastity, the benefit which her deceased husband's brother and the immediate reversionary heir would derive from her fall would give him an interest in direct conflict with his moral duty of shielding her from temptation. . . . . But, further, the widow has a right to sell or mortgage her own interest in the estate. . . . . If the estate ceases by an act of unchastity, the purchaser or mortgagee might be deprived of the estate, if the surviving brother of the husband should prove that the widow's estate had ceased in consequence of an act of unchastity committed by her *prior* to the sale or mortgage." (The italics are mine.) It will be noted that in this passage the Privy Council distinctly assume that even if the widow's estate should cease by her committing an act

(1) I.L.R., 16 Mad., 400 at p. 404. (2) L.R., 7 I.A., p. 115 at p. 154.

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of unchastity and the succession of her husband's heirs should thereby be accelerated, the purchaser or mortgagee, from her, of her own life-interest in the estate, would not be divested of it, if the sale or mortgage had taken place prior to her act of unchastity, but only if it had been *subsequent* thereto. If this be sound law, it would equally hold good in the case of an alienation, made by a widow, of her life estate in the property prior to her making the adoption. If, on the other hand, a son adopted by the widow were to be at liberty, during her lifetime to recover possession of property alienated by her to a stranger, it will follow that a reversionary heir, whose succession is accelerated by her complete withdrawal from the husband's estate, *i.e.*, by the surrender or extinction of the prior interest, namely, her life interest therein, (*Behari Lal* v. *Madho Lal*(1), *Kolandaya Sholayan* v. *Vedamuthu Sholayan*(2), *Marudamuthu Nadan* v. *Srinivasa Pillai*(3)) would be equally entitled to recover, during her life-time, property alienated by her prior to such surrender.

The rule of law deducible from judicial decisions as to the widow's absolute power of alienation of her personal interest in the husband's property and the nature of the estate transferred in exercise of such power, is, by implication, clearly stated by article 125 of the second schedule to the Limitation Act, 1877. The suit therein referred to is one brought by a reversionary heir, during the lifetime of the widow for a declaration that an alienation made by her is void, except for her life or until her re-marriage. This implies that the estate which a widow can convey in exercise of her personal right over the husband's property determines only by her death or by her re-marriage in the meanwhile, and she being lawfully entitled to carve out such an estate prior to her making the adoption, the adopted son can succeed to the property so alienated only after the determination of such estate.

If an alienation made by or on behalf of a widow is invalid against the widow herself and does not bind her, the right of action to set aside the same will at once vest in the adopted son, on the adoption, and the law of limitation applicable to any suit which he may bring during her lifetime to recover possession of property so alienated will be the same as would be applicable to a

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(1) I.L.R., 19 Calc., 236. (2) I.L.R., 19 Mad., 337.
(3) I.L.R., 21 Mad., 128.

suit brought for the purpose by the widow herself without having made an adoption. A suit brought after the death of the widow by a son adopted by her to recover possession of immoveable property alienated by her, prior to adoption, for a purpose not binding upon the adopted son, would be governed by the 12 years' period of limitation prescribed by article 141, to be reckoned from the date of her death.

The proposition that a son adopted by the widow cannot, before the termination of her widowhood by death or re-marriage, recover possession of any portion of his adoptive father's estate which she might have alienated prior to the adoption, is not only sound in principle, but is in consonance with justice and equity. A widow, having authority from her husband,—however imperative such authority may be—is not bound to exercise the same and it is entirely optional with her to adopt or not as she may choose. Even when the alienation has in fact been made for a necessary purpose, a purchaser from the widow, or his representative in interest, is, in not a few cases, unable to adduce the requisite legal evidence for discharging the onus, which the law casts on him, of establishing the necessity for the sale—especially when the question is raised on the death of the widow, many years after the alienation. The purchaser may know nothing of the authority given her by the husband to make an adoption and even if he is informed of the same, the widow may represent to him or lead him to believe that she will not make an adoption. Even in the absence of any authority from the husband, the widow can make an adoption at any time with the consent of her sapindas. A person dealing with a widow reasonably calculates that the alienation will hold good, at any rate, during her lifetime, and except of course in the rare case of a re-marraige, this will be ensured by the conclusion herein arrived at even when an adoption takes place subsequent to the alienation. When the widow has made an alienation prior to the adoption, the parties concerned will, before giving the boy in adoption, be fully aware of the same and of the extent of the property remaining with the widow, which will immediately come into the possession of the adopted son and the extent of property which will come into his possession only after the lifetime of the adopting widow—provided such property had not been alienated for a necessary purpose. I need hardly add that any contrivance which, in anticipation of an adoption by her, may be made to secure

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to herself an estate for life in her husband's property or any considerable portion thereof exceeding what may be a reasonable provision for her maintenance, or any conveyancing device intended to secure to her directly or indirectly a beneficial interest for life in such property will be legally inefficacious against the rights of the adopted son.

The second appeal fails and the decree appealed against is affirmed except in respect of costs, but only on the ground that the suit as now brought is premature.

Under the circumstances of the case, it is ordered that each party do bear his or their own costs throughout.

DAVIES, J.—I have nothing to add to my learned colleague's judgment, with which I entirely agree.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar.

1902. March 24.

ABDULLA (PETITIONER), DEFENDANT,

v.

MAMMOD (RESPONDENT), PLAINTIFF.*

Contract—Transfer of license to collect ferry charges—Validity as between renter and transferee where transfer is contrary to terms of license.

Where, by the terms of a lease of a ferry, the renter should not transfer or sub-rent the ferry, but such a transfer or sub-lease is not prohibited by Statute, or by a Rule framed under a Statute, a transfer of it will be valid as between the renter and his transferee, though it may be invalid as against Government.

SUIT to recover the balance due under an agreement by which plaintiff assigned his license to collect ferry charges to defendant. Defendant denied the assignment and his liability under the alleged agreement. The Subordinate Judge (sitting on the Small Cause side), found in plaintiff's favour on the agreement, and held that it was valid in law, though the receipts had been made out in plaintiff's favour, because the Revenue authorities would regard an assignment as invalid. He decreed the amount claimed.

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* Civil Revision Petition No. 361 of 1901, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of K. Krishna Rau, Subordinate Judge of South Malabar at Calicut, dated 29th day of July 1901, in Small Cause Suit No. 160 of 1901.