right to recover the amount of the note from the first defendant.

On the other hand the plaintiff is entitled to recover the amount from the first defendant as garnishee and therefore these appeals must be allowed and the plaintiff's suit decreed with costs throughout and the second defendant's suit similarly dismissed. The first defendant is in no way liable for these proceedings and his costs in each case must be paid by the unsuccessful party.

DEVADOSS, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, and Mr. Justice Wallace.

TRIPURAMBA AND ANOTHER (DEFENDANTS), APPELLANTS, 1922, December 20.

v.

VENKATARATNAM AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Hindu Law—Adoption—Hindu dying leaving a widow and a son—Death of son unmarried at 25—Power of mother to adopt with sapindas' consent.

A Hindu died leaving a widow and a son who died unmarried at the age of 25,

Held that the attainment of age by the son before his death did not put an end to the power of his mother to adopt a son to her husband with the consent of the sapindas: *Venkappa Bapu* v. *Jivaji Krishna* (1901) I.L.R., 25 Bom., 306 and *Sangappa* v. *Vyasappa* (1896) 8 P.J. of Bom. H.C., p. 684, followed. Dictum in *Madana Mohana Deo* v. *Purushotthama Deo* (1918) I.L.R., 41 Mad., 855 at 860 (P.C.), held *obiter*

* Second Appeal No. 1568 of 1920.

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dicta in *Venkataramier* v. *Gopalan* (1918) 35 M.L.J., 698, and of WALLIS, C.J., in *Ananga Bhima Deo* v. *Kunja Behari Deo* (1919) 25 M.L.T., 204, disapproved.

SECOND APPEAL against the decree of F. A. COLERIDGE, District Judge of Guntur, in Appeal Suit No. 481 of 1916 preferred against the decree of S. VENKATASUBBA RAO, Additional Temporary Subordinate Judge of Guntur, in Original Suit No. 11 of 1916.

The following facts are taken from the judgment of the lower Appellate Court:

"Plaintiff as nearest reversioner of one Subbanna Sastri sued for a declaration that the adoption of second defendant by the first defendant, mother of Subbanna Sastri, is not valid and that he has no right to the properties inherited by first defend ant (from her deceased son).

The first defendant after the death of her son Subbanna Sastri applied to the various reversioners to be allowed to adopt and it is alleged that all refused except two, Subbayya and Venkata Krishnayya by Exhibit III and Exhibit VII. Venkata Krishnayya has been adopted into another family and so his authority would be useless, but the authority given by Subbayya is a registered document and is valid so far as he has power to give authority. This raises the question whether an adoption can take place after a son has died who had attained full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son. It is in evidence that Subbanna Sastri lived to the age of 25 or 26 years and performed the ceremonies of his father."

On these facts the Court of first instance held the adoption to be valid and dismissed the suit. On appeal the District Judge following *Madana Mohana Deo* v. *Purushothama Deo*(1), and *Venkataramier* v. *Gopalan*(2), held the adoption to be invalid and allowed the

(1) (1918) I.L.R., 41 Mad., 855 (P.C.). (2) (1918) 35 M.L.J., 698.

suit. Thereupon the defendants preferred this Second Appeal.

P. Narayanamurthi for appellants.—The object of an adoption is that there must be some one to continue the line of the deceased. Unless and until there is such a person the power of the widow of the last male owner does not come to an end. As in this case the son died unmarried, his mother had power to adopt though he died at the age of 25, i.e., after attaining full age. Reference was made to *Madana Mohana Deo* v. *Purushothama Deo*(1), *Ramkrishna* v. *Shamrao*(2), Mayne's Hindu Law, 8th Edition, paragraphs 115 and 116, *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*(3), *Venkappa Bapu* v. *Jivaji Krishna*(4), *Sangappa* v. *Vyasappa*(5), *Ram Soondur Singh* v. *Surbanee Dossee*(6), *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(7), *Thayammal* v. *Venkatarama*(8), *Padmakumari Debi Chowdhrani* v. *Court of Wards*(9), *Madana Mohana* v. *Purushothama*(10), *Verabhai Ajubhai* v. *Bai Hiraba*(11), *Ananga Bhima Deo* v. *Kunja Bihari Deo*(12).

WALLIS, C.J., has in the last of the abovementioned cases wrongly understood the *obiter dictum* on page 860 of *Madana Mohana Deo* v. *Purushothama Deo*(1).

P. Somasundaram for respondents.—A widow's power to adopt comes to an end after the husband's estate vests in another. It cannot be exercised if her son dies leaving a widow or dies unmarried after attaining full age. Reliance was placed on *Mussumat Bhoobun*

(1) (1918) I.L.R., 41 Mad., 855 (P.C.).
(2) (1902) I.L.R., 26 Bom., 526 at 530 and 531.
(3) (1865) 10 M.I.A., 279. (4) (1901) I.L.R., 25 Bom., 206.
(5) (1896) 8 P.J. of Bom. H C., 684. (6) (1874) 22 W.R., 121 (C.R.).
(7) (1876) I.L.R., 1 Mad., 174 (P.C.).
(8) (1887) I.L.R., 10 Mad., 205 (P.C.).
(9) (1882) I.L.R., 8 Calc., 302 (P.C.).
(10) (1915) I.L.R., 38 Mad., 1105, 1113.
(11) (1903) I.L.R., 27 Bom., 492 at 499 (P.C.).
(12) (1919) 25 M.L.T., 204, 217 and 219.

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Moyee Debia v. *Ram Kishore Acharj Chowdhry*(1), *Tarachurn Chatterji* v. *Sureshchunder Mukerji*(2), *Madana Mohana Deo* v. *Purushothama Deo*(3), Mayne's Hindu Law, paragraph 111 and *Venkataramier* v. *Gopalan*(4). There is greater laxity in Bombay in this matter. Such previous decisions as go against the latest Privy Council decisions in this matter are wrong.

JUDGMENT.

SCHWABE, C.J.

SCHWABE, C.J.—The facts of this case are, one Venkata Somayajulu died leaving a widow and a son, Subbanna Sastri. The son died 26 years ago unmarried at the age of 25. In 1913, the widow adopted the second defendant with the consent of the sapindas as the son of her late husband The question to be decided is whether this adoption is good or bad.

That a Hindu widow can adopt a son in order to carry on the line and provide for the due performance of the obsequies of her husband, either with the authority of the husband or with the consent of the husband's sapindas, is well established in this Presidency. It is also well established that this power of adoption can be exercised on the death of a son or adopted son, as often as occasion arises; but it is also established that there is some limit to the exercise of this power and that it can become exhausted. It is argued in this case that the limit is reached as soon as a son, natural or adopted, either marries, or attains an age which is put alternatively as that of attaining majority, that is 18, or that of attaining full legal capacity to himself adopt a son, which was held in *Tarachurn Chatterji* v. *Sureshchunder Mukerji*(2), to be sixteen. No direct authority for this proposition can be found in any of the Indian Reports,

(1) (1865) 10 M.I.A., 279 at 310 and 311.
(2) (1890) I.L.R., 17 Calc., 122 at 127 (P.C.).
(3) (1918) I.L.R., 41 Mad., 855 (P.C.).
(4) (1918) 35 M.L.J., 698, 705 and 706.

but it is based on a dictum of the Privy Council in *Madana Mohana Deo* v. *Purushothama Deo*(1), which I will deal with more fully hereafter. The limit to the authority to adopt is stated in the judgment of the Privy Council in *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*(2), which judgment was explained and the principle re-affirmed in *Pudmakumari Debi Chowdhrani* v. *Court of Wards*(3), and *Thayammal* v. *Venkatarama* (4). The principle to be deduced from these three cases is stated in the judgment of CHANDAVARKAR, J., in the Full Bench case of *Ramakrishna* v. *Shamrao*(5), thus:

"where a Hindu dies leaving a widow and a son, and that son himself dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived."

This principle so laid down has the approval of the Privy Council in *Madana Mohana Deo* v. *Purushothama Deo*(1). No subsequent adoption will be allowed, which will divest a right vested by inheritance in some person other than the son or the mother herself as representing the son; so if a son dies leaving either a son or a widow, the mother can no longer adopt as the estate is vested in the son's son or if there be no son, in his widow, she having a right to adopt a son to her husband. There is direct authority that the limit is not reached when the son dies though of age without leaving a son or widow in *Venkappa Bapu* v. *Jivaji Krishna*(6), where a son had attained the age of 30 before his death and had married but left no widow and in *Sangappa* v. *Vyasappa*(7), where he attained the age of 30 and died

(1) (1918) I.L.R., 41 Mad., 855 (P.C.).
(2) (1865) 10 M.I.A., 279 at 310 and 311.
(3) (1882) I.L.R., 8 Calc., 302 (P.C.).
(4) 1887) I.L.R., 10 Mad., 205 (P.C.).
(5) (1902) I.L.R., 26 Bom., 526 at p. 531.
(6) (1901) I.L.R., 25 Bom., 806. (7) (1896) 8 P.J. of Bom. H.C., 684.

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unmarried. This very point was also mentioned in *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*(1), in the judgment of Lord KINGSDOWN, where he stated:

"If Bhowanee Kishore (that is, the son) had died unmarried, his mother would have been his heir and the question of adoption would have stood on quite different grounds. By exercising the power of adoption she would have divested no estate but her own, and this would have brought the case within the ordinary rule."

The ordinary rule referred to there is, as I understand it, the rule subsequently so clearly stated in the judgment of CHANDAVARKAR, J. This statement was obiter but that is a clear indication of the then view of the Privy Council.

Turning now to *Madana Mohana Deo* v. *Purushothama Deo*(2), in that case a widow adopted a son who died leaving a widow, and it was held following the cases quoted above that the right of adoption by the first widow had been exhausted. But after approving the principle laid down in the judgment in *Ramkrishna* v. *Shamrao*(3), their Lordships stated that they were of opinion that

"the principle must be taken as applying so as to have brought the authority to adopt conferred on the first widow to an end when the son whom she had originally adopted died after attaining full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son by his own widow."

It is to be observed that it does not say, "after himself attaining full age or the right to adopt a son." Their Lordships however went on to say that

"they do not desire to be understood to say that, even in the absence of authority in the son's widow to adopt, the

(1) (1865) 10 M.I.A., 279 at 311.
(2) (1918) I.L.R., 41 Mad., 855 (P.C.). (3) (1902) I.L.R., 26 Bom., 526.

succession of the son and his dying after attaining full legal capacity to continue the line would not in themselves have been sufficient to bring the limiting principle into operation and so to have determined the authority of the first widow, who was not the widow of the last owner, and could not adopt a son to him."

I understand this to mean that their Lordships wish it to be understood that they do not give any decision on the point, which is the point in this case, and perhaps indicate that the inclination of their minds was against the contention that such adoption was permissible. But the point was not before the Council and did not arise in that case, and it would be most dangerous to treat a dictum of that kind as an authority.

When a point directly arises for decision it is the duty of the Court to consider the point for itself, giving of course due weight to any words which fell, although *obiter*, from their Lordships. I can find no authority in any decided case and the respondents have been unable to call our attention to any authority from the usual sources for ascertaining Hindu law, in support of the proposition. If there is any such limit, it is not in my judgment, open to us to find it on the material before us. It is to be observed that in *Verabhai Ajubhai* v. *Bai Hiraba*(1), Lord LINDLEY, in delivering the judgment of the Privy Council remarked referring to this point that no authority had been produced before the Privy Council in support of it. I wish to refer to two cases which give some appearance of support to the suggestion of the existence of this limit, viz., *Ananga Bhima Deo* v. *Kunja Bihari Deo*(2), the head note of which runs as follows :

"The power of a widow to adopt is not limited in point of time by the fact that a line of her husband's heirs have in succession come into possession of the estate. The limit to such

(1) (1903) I.L.R., 27 Bom., 492 (P.C.). (2) (1919) 25 M.L.T., 204.

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power is when the husband's adopted son attains full age and so full capacity to continue the line by naturally born sons or by adoption."

That head note is, in my judgment, incorrect, for the case does not decide anything of the kind. It is true that WALLIS, C.J., in his judgment states that the Privy Council in *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Achurj Chowdhry*(1), so decided: but that observation does not appear to be borne out by a study of the judgment of the Privy Council in the case. It was unnecessary for the decision of the case in *Ananga Bhima Deo* v. *Kunja Bihari Deo*(2), and must be treated as *obiter*. In *Venkataramier* v. *Gopalan*(3), the decision in which case appears to be right, both the Judges explained what they understood to have been decided by the Privy Council in *Madana Mohana Deo* v. *Purushotthama Deo*(4). They took the dictum which I have discussed above and read it as though it were a judgment. I do not agree with the observations of either Judge on the true meaning to be attached to the judgment of the Privy Council in that case.

The District Judge in this case took the interpretation put up on the words in *Madana Mohana Deo* v. *Purushothama Deo*(4), by this Court in *Venkataramier* v. *Gopalan*(3), and therefore held that this adoption is bad. For the reasons stated above I think his conclusion is wrong.

The appeal will be adjourned a fortnight for further consideration and for enquiries to be made as to what took place in the Court below, so that we can decide whether to enter judgment or to send the case back to the District Judge. The respondents must pay the costs throughout.

(1) (1865) 10 M.I.A., 279.
(2) (1919) 25 M.L.T., 204.
(3) (1918) 35 M.L.J., 698.
(4) (1918) I.L.R., 41 Mad., 855 (P.C.).

WALLACE, J.—The respondent relies, as the District Judge has relied, on the phraseology in certain passages in the Privy Council judgment in *Madana Mohana Deo* v. *Purushothama Deo*(1), and on the interpretation of those passages by a Bench of this Court in *Venkataramier* v. *Gopalan*(2).

2. The first passage is that the mother's authority to adopt must have come to an end when the son she originally adopted died, after attaining full legal capacity to continue the line either by the birth of a natural born son (as distinguished from an adopted son) or by the adoption to him of a son by his own widow. The events which put an end to the mother's power to adopt to her husband in that view are either that her son or adopted son should have a legitimate son or should leave a widow, that is, the essential prerequisite is not the attainment of his majority or even his succession to the estate, but that he has or has had a wife with the result that he leaves either a son to her or that she survives him as his widow. The common result in either event is that the deceased son's estate is on his death vested not in his mother but in his son or widow. Therefore their Lordships, I consider, are not propounding any new principle but are taking their stand on the old principle enunciated by the Privy Council in *Atchama* v. *Ramanadha*(3), and *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*(4), namely, that when the estate is vested in some heir succeeding to, but directly from the deceased son, his mother will not be allowed to adopt to her husband so as to divest that heir.

3. The second passage in their Lordship's judgment relied on does not seem to me to carry the case any further. It is to the effect,

(1) (1918) I.L.R., 41 Mad., 855 (P.C.).
(2) (1918) 35 M.L.J., 698.
(3) (1846) 4 M.I.A., 1.
(4) (1865) 10 M.I.A., 279.

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"that their Lordships do not desire to be understood as saying that even in the absence of any power in the son's widow to adopt, the succession of Brozo Kishore (that is the son) and his dying after attaining full legal capacity to continue the line would not in themselves have been sufficient to bring the limiting principle into operation, and so to have determined the authority of Adikonda's widow, who was not the widow of the last male owner, and could not adopt a son to him."

Here again the phrase "succession to Brozo Kishore" does not to my mind mean anything more than that he has come into the estate. Had it meant attainment of his majority, that simpler phrase would have been used. I note further that succession in itself is not sufficient to have determined the authority of Adikonda's widow, but that it must be coupled with the capacity to continue the line as previously explained, that is, coupled with a legal marriage. It is only from such a marriage that there will emerge a heir to continue the line in legitimate descent and, therefore, until such marriage, the full legal capacity to continue the line is not consummated. That marriage itself is not the whole test, but such a marriage as leaves a heir, a son or a widow, to the deceased, has been laid down in *Venkappa Bapu* v. *Jivaji Krishna*(1).

4. That I think is the meaning of *Madana Mohana Deo* v. *Purushothama Deo*(2) in which their Lordships were dealing with a case where the adoption pleaded before them would have divested the adopted son's widow of the estate, it not having been shown that the son's widow herself had no power to adopt to her husband, and the Board purported to follow and were in full agreement with the decision in *Ramakrishna* v. *Shamrao*(3), based on *Mussamat Bhoobun Moyee Debia*

(1) (1901) 25 Bom., 306. (2) (1918) I.L.R., 41 Mad., 855 (P.C.).
(3) (1902) I.L.R., 26 Bom., 526.

v. Ram Kishore Achraj Chowdhry(1), *Padmakumari Debi Chowdhrani* v. *Court of Wards*(2) and *Thayammal* v. *Venkatarama*(3) and held that the principle laid down in this case determined that case also. I find nothing in *Madana Mohana Deo* v. *Purushothama Deo*(4) on which to find a principle that the mere attainment of majority by the son or the adopted son divested his mother of the power to adopt to her husband in the event of that son's death without heir. Under the Hindu Law a minor can marry, beget legitimate sons and his widow can adopt to him; so that even a minor may fulfil the tests laid down in *Madana Mohana Deo* v. *Purushothama Deo*(4) though he has not yet come into full disposing possession of his estate.

5. There is therefore nothing in that case to support the District Judge's interpretation of it as meaning that the full legal capacity to continue the line is equivalent to attaining majority, in a case where the son has attained age but dies unmarried. In this matter there appears to be no virtue in law in the attainment of majority and hence, when that is the only bar pleaded, there seems no reason for distinguishing between a mother's power to adopt to her husband when the minor son or adopted son has died, from the power to adopt to him when the major son or adopted son has died leaving no heir to himself who will be ousted from the estate by such adoption. [See again *Venkappa Bapu* v. *Jivaji Krishna*(5).]

6. Hence the mere attainment of majority introduces into the problem no new factor on which the respondent can rely for its solution. The purpose of adoption is to perpetuate the line, and if the only son dies

(1) (1865) 10 M.I.A., 279. (2) (1882) I.L.R., 8 Calc., 302 (P.C.).
(3) (1887) I.L.R., 10 Mad., 205 (P.C.). (4) (1918) I.L.R., 41 Mad., 855 (P.C.).
(5) (1901) I.L.R., 25 Bom., 306.

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without leaving any one to perpetuate the line, there seems no good reason for restricting the power of his mother to perpetuate it in the only way she can by adopting a son to her own husband. No direct authority to the contrary has been produced by the respondent while there is much authority in its favour.

7. I therefore agree with the view of the learned Chief Justice.

This second appeal having been posted for further consideration the Court delivered the following

JUDGMENT.—This matter coming up for further consideration, we think that judgment should be entered for the defendants in the suit.

The question was raised before the Subordinate Judge as to whether the sapindas have in fact consented to the adoption or whether they or some of them must be taken to have consented. The Subordinate Judge decided that issue in favour of the defendants and the question formed part of the grounds of appeal before the District Judge. The District Judge's notes show that it was argued before him that these sapindas had no power to authorize the adoption. It also appears from his notes that the question covered by the first issue, namely, whether the relations or persons who were described as remoter reversioners could authorize adoption, was argued before him, for we find his notes on issue I, contain reference to the question whether the reversioners were invited and reference to the defendant's witnesses 1, 3 and 4 and a suggestion that the witnesses 4 and 5 were interested witnesses. I can see no reason why this matter has been gone into at all before him unless it was on the question whether or not the sapindas had duly authorized this adoption. Further I find in the judgment itself of the District Judge (paragraph 2) a passage in which he discusses whether the

consent of two of these reversioners was in fact given, and in answer he finds that in respect of one of them, as he had been adopted himself into another family his consent was unnecessary, and as to the other one, after examining the exhibits, he finds that he had power to give authority to adopt. This is enough in my judgment to show that the learned judge did dispose of the question of fact before him, and of course, on that question of fact, no second appeal lies.

I therefore think that the whole matter has been disposed of and Judgment must be entered for the defendants. The respondents must pay the costs throughout.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Devadoss.

DRONAMRAJU RAMA RAO AND 3 OTHERS (DEFENDANTS NOS. 1, 2, 4 AND 11), APPELLANTS,

1922, December 9.

v.

VISSAPRAGADA VEDAYYA AND 6 OTHERS (PLAINTIFF AND DEFENDANTS NOS. 5 TO 10), RESPONDENTS.*

Registration—Mortgage deed fraudulently registered in wrong district by including land not intended to be mortgaged—Registration invalid to affect lands, but good as regards personal covenant.

Where land not intended to be mortgaged was included in a mortgage deed merely to get registration of the deed before a particular registering officer who would otherwise be incompetent to register it.

Held, (1) that the registration of the deed was a fraud on the Registration Law and did not affect the immoveable properties

* Second Appeal No. 2078 of 1920.