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For these reasons I would hold that copies furnished under section 141A do not come within article 24 of schedule I of the Stamp Act, 1899.

CROWE, J.:—I am of opinion that no stamp is necessary under article 24 of Act II of 1899 in the case mentioned.

Under section 141A of the Civil Procedure Code the party producing the entry is entitled to file a copy of the entry. The Court is required to cause the copy to be examined, compared and attested. It was not certified by or by order of any public officer to be a true copy or extract when so produced.

FULTON, J.:—I concur.

FULL BENCH.

APPELLATE CIVIL.

Before Mr. Justice Fulton, Mr. Justice Crowe, and Mr. Justice Chandavarkar.

1902. *March 20.*

RAMKRISHNA RAMCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, v. SHAMRAO YESHWANT AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu Law—Adoption—Grandmother succeeding to her grandson—Divesting of estate by adoption.

Where a Hindu grandmother succeeds as heir to her grandson who dies unmarried, her power to make an adoption is at an end.

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.

SECOND appeal from the decision of Ráo Bahádur A. G. Bhave, First Class Subordinate Judge, A. P., at Sholápur, confirming the decree passed by Khán Sáheb R. M. Gimi, Subordinate Judge of Bársi.

* Second Appeal No. 199 of 1901.

The plaintiff, as the adopted son of one Sitabai, sued to recover certain property of Sitabai's of which the defendants, as cousins of her deceased husband Ramchandra, had taken possession on her death. The defendants denied the plaintiff's title, contending that his adoption by Sitabai was invalid.

Sitabai's husband Ramchandra died in the lifetime of his father Anandrao, leaving his widow Sitabai and a son Sakharam him surviving. Anandrao died in 1878 and his estate passed to his grandson Sakharam. Sakharam died in 1886, leaving a widow Gangabai and a son Dattatraya. Then Gangabai died and subsequently Dattatraya died unmarried. On his death his grandmother Sitabai succeeded to his property.

On the 12th April, 1894, Sitabai adopted plaintiff and executed a registered deed of adoption on the 23rd April, 1894.

Sitabai died in 1895 and the defendants, who were cousins of her husband, took possession of a portion of her property.

Thereupon the plaintiff, as her adopted son, filed this suit.

The defendants denied (*inter alia*) that the plaintiff's adoption by Sitabai was valid.

The Subordinate Judge dismissed the suit, holding that the plaintiff's adoption was not valid. In his judgment he said:

Now the question is whether this adoption of the plaintiff by Sitabai is valid. I hold it is not. The last full owner was Dattatraya, and Sitabai, who was his grandmother, had not by the Hindu law the legal authority to adopt (*Payapa* v. *Appanna*, I. L. R. 23 Bom. 327; *Krishnarav Trimbak* v. *Shankarrav*, I. L. R. 17 Bom. 164). The adoption being thus invalid, the plaintiff does not obtain any interest in the property in dispute by that adoption.

This decree was confirmed on appeal by the First Class Subordinate Judge, A. P.

The plaintiff appealed to the High Court.

The appeal came on before Candy and Fulton, JJ., who referred the following question to a Full Bench:

Whether a grandmother, succeeding as heir to her grandson, who dies unmarried, can by Hindu law make a valid adoption.

The case came before a Full Bench consisting of Fulton, Crowe and Chandavarkar, JJ.

M. B. Chaubal for the appellant (plaintiff).

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G. S. Mulgaonkar for the respondents (defendants).

The following cases were cited:—*Krishnarav* v. *Shankarrav*(1); *Padma Coomari* v. *The Court of Wards*(2); *Thayammal* v. *Venkatarama*(3); *Bhoobun Moyee Debia* v. *Ram Kishore*(4); *Raja Vellanki Venkata* v. *Venkata Rama*(5); *Venkappa* v. *Jivaji*(6); *Bykant Monee Roy* v. *Kisto Soonderee Roy*(7); *Manik Chand Golecha* v. *Jagat Settani*(8); *Tarachurn Chatterji* v. *Suresh Chunder Mookerji*(9); *Gavdappa* v. *Girimallappa*(10); *Shri Dharnidhar* v. *Chinto*(11); *Amava* v. *Mahadgauda*.(12)

CHANDAVARKAR, J.:—The plaintiff in this case claims as the son adopted by Sitabai, widow of Ramchandra, who predeceased his father Anandrao leaving a son named Sakharam. When Anandrao died the estate passed to his grandson Sakharam, who in turn died, leaving a widow Gangabai and a son Dattatraya. Gangabai predeceased Dattatraya, who died unmarried, leaving his grandmother, Sitabai, as heir to the property. Sitabai is alleged to have adopted the plaintiff, and the question is whether the adoption is valid according to Hindu law.

The Subordinate Judge, First Class, with Appellate Powers, from whose decision this second appeal is preferred, has held the adoption to be invalid on the authority of the decision of a Division Bench of this Court in *Krishnarav Trimbak Hasabnis* v. *Shankarrav Vinayak Hasabnis*.(1) That decision has put a construction on the decision of the Privy Council in *Bhoobun Moyee Debia* v. *Ram Kishore*(4) which, if correct, would apply to the present case; and, therefore, the real question which we have to decide is whether, apart from the general principles of Hindu law bearing on the subject of a widow's power to adopt a son to her deceased husband, the decision of this Court in *Hasabnis's case* (1) has interpreted the law correctly as expounded by the

(1) (1892) 17 Bom. 164.
(2) (1881) 8 Ind. Ap. 229; 8 Cal. 302.
(3) (1887) 14 Ind. Ap. 67; 10 Mad. 205.
(4) (1865) 10 Moore's I. A. 279.
(5) (1876) 4 Ind. Ap. 1; 1 Mad. 174.
(6) (1900) 25 Bom. 306.
(7) (1867) 7 Cal. W. R. 392.
(8) (1889) 17 Cal. 518 at p. 537.
(9) (1889) 16 Ind. Ap. 166; 17 Cal. 122.
(10) (1894) 19 Bom. 331 at pp. 336-7.
(11) (1895) 20 Bom. 250.
(12) (1896) 22 Bom. 416.

Privy Council in *Bhoobun Moyee's case*[1] and reaffirmed in their later decisions in *Padma Coomari's case*[2] and *Thayammal's case.*[3]

Mr. Chaubal, who has argued this second appeal for the plaintiff, has urged that in these three cases the Privy Council has decided no more than this, that a widow cannot adopt so as to divest her husband's estate when that estate has become vested in some person other than herself as heir. That, according to Mr. Chaubal's contention, is the only condition defining the widow's power to adopt, so that whenever, after the estate has become so vested in that person and subsequently in other persons as his heirs, it comes to the widow herself as his or their heir, her power of adoption to her deceased husband is capable of execution, because in that event she divests no estate but her own. The difficulty of accepting this argument as a correct exposition of the law laid down by the Privy Council in *Bhoobun Moyee's case* and in their two later decisions reaffirming the decision in that case lies both in the language used and the line of reasoning adopted by their Lordships in their judgments in all the three cases. One point is indeed beyond all dispute, viz., that in their Lordships' opinion a widow's power to adopt is limited. In *Bhoobun Moyee's case* the judgment starts with that proposition as the law. That the power would be limited both where a widow had a written authority from her husband to adopt and also where, though she had no such authority, she adopted as a widow can in this Presidency under the law giving her the power of adoption in the absence of express or implied prohibition from her husband, is also clear from the decision of the Privy Council in *Thayammal's case.*[3] Starting, then, with these two propositions, we have to ascertain the nature of the limit assigned by their Lordships to a widow's power to adopt, according to the decision in *Bhoobun Moyee's case.* If Mr. Chaubal's contention be correct, a widow can adopt without any limit as to the period within which such adoption may be made and her power is never at an end—it is only suspended so long as the estate is vested in others, but direçtly it comes to her from those others it is revived. The language of the judgment in *Bhoobun Moyee's case,* however, is so explicit that it is impossible

( ) (1892) 17 Bom. 164. (2) L. R. 8 I. A. 229; 8 Cal. 302.
(3) (1887) L. R. 14 I. A. 67; 10 Mad. 205.

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to construe it otherwise than as meaning that there is a limit to the period within which a widow can exercise her power of adoption, and that once that limit is reached the power "is at an end." That language is repeated and emphasised by their Lordships in their judgments in *Padma Coomari's case*[1] and in *Thayammal's case*.[2] We agree, therefore, with the Division Bench of this Court which decided *Hasabnis's case*,[3] that the language of the Privy Council is "altogether inconsistent with any idea of the right to adopt being merely suspended during the widow's life."

The test, then, of the principle defining the limit to the period within which an adoption may be made by a widow to her deceased husband does not depend upon the mere vesting of the estate in her at any time. It must be found in other conditions than such vesting, and what those conditions are is explained by the line of reasoning which Lord Kingsdown has used in the judgment in *Bhoobun Moyee's case*.[4] That line of reasoning puts by way of illustration three hypothetical cases, in the first two of which His Lordship holds the widow's power to be at an end, and in the last of which he holds that the power remains. The first case assumed in illustration of the principle defining the limit of a widow's power to adopt is where a Hindu dies leaving a widow and a son, and where through that son the line is continued down to a grandson. In such a case the conclusion is that after the lapse of these several successive heirs the widow cannot adopt. The correctness of the law laid down by Lord Kingsdown in this illustration was, indeed, doubted by a Division Bench of the Calcutta High Court in their decision in *Padma Coomari's case*. That Bench thought that Lord Kingsdown must have said what he had said by inadvertence; but in their judgment in *Padma Coomari's case* the Privy Council, after observing that the judgment in *Bhoobun Moyee's case* must be "treated as a decision upon the law which should be considered as binding," cite the whole of the passage in the judgment which deals with the question as to whether the law would allow a widow to adopt after the

(1) L. R. 8 I. A. 229; 8 Cal. 302.

(2) L. R. 14 I. A. 67; 10 Mad. 205.

(3) (1892) 17 Bom. 164.

(4) (1865) 10 Moore's I. A. 279.

lapse of several successive heirs to her husband such as a son, a grandson and a great-grandson. We must take it, therefore, that the first rule of law laid down by their Lordships in *Bhoobun Moyee's case*[1] is not a mere *obiter dictum*, but a considered rule laid down as governing the principle of the decision in *Bhoobun Moyee's case*—the rule being that where a Hindu dies leaving a widow and a son, that widow cannot adopt after her husband's line had been continued by that son down to a great-grandson and after the lapse of that great-grandson as the last successive heir.

The second illustration used by Lord Kingsdown brings the line down as far as the grandson only. According to it, again, where a Hindu dies leaving a widow and a son, and that son dies leaving his widow and a son, the power of adoption of the former widow is "at an end" the moment the estate passes to the grandson. The third illustration used by Lord Kingsdown was that of the actual facts in *Bhoobun Moyee's case* itself. According to that, where a Hindu dies leaving a widow and a son and that son dies married, leaving a widow as heir, the former widow cannot adopt so as to substitute a new heir to the estate and thereby defeat the vested estate of the latter widow. The language of the judgment, so far as this and the next illustration, which speaks of Bhowani Kishore dying unmarried and his mother Chundrabullee Debia becoming his heir, go, does no doubt lend some support to Mr. Chaubal's argument that all that the Privy Council meant to decide was that a widow could not adopt so as to divest an estate vested in another person. But the same argument was addressed to their Lordships both in *Padma Coomari's case*[2] by the respondent's counsel and in *Thayammal's case*[3] by the appellant's counsel; and yet their Lordships' pronouncement was that the decision in *Bhoobun Moyee's case* went much further than merely holding that a widow could not adopt so as to divest an estate vested in another person—that is, what the case decided was that the vesting of the estate in the widow of the son Bhowani "was a proper limit to the exercise of the power," and the moment that limit was reached the power was at an end. And all the hypothetical cases used by Lord Kingsdown in illustration of the principle

(1) (1865) 10 Moore's I. A. 279. (2) (1881) L. R. 8 I. A. 229; 8 Cal. 302.
(3) L. R. 14 I. A. 67; 10 Mad. 205.

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governing the limit of a widow's power to adopt can be reconciled only by taking that to have been the decision in *Bhoobun Moyee's case*.(1)

From the cases put as illustrations and the reasoning adopted by Lord Kingsdown the principle to be deduced as governing that limit may be stated in these words :

Where a Hindu dies leaving a widow and a son, and that son 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.

It was much pressed upon us that this principle was not in accordance with either the letter or spirit of the Hindu law as expounded in the books or as understood by the Hindus themselves. But it is not open to us to go into that question and we must take the law as it was laid down in *Bhoobun Moyee's case* by the Privy Council and as it was interpreted and reaffirmed in two of their Lordships' later decisions to which we have already referred.

Another argument urged in favour of the adoption was that a grandmother took an absolute estate in her grandson's property and that she could adopt on becoming possessed of such estate. The question whether a grandmother takes an absolute or a limited estate was argued and reference was made at the Bar both to texts and decided cases. But it is unnecessary for us to express any opinion on that point in this case. In the view we take of the law as laid down by the Privy Council—viz., that a widow's power of adoption comes to an end and can never be revived after the inheritance has vested in some heir of her son other than the widow herself—it is immaterial whether the estate which she takes when the inheritance comes to her after that vesting is absolute or limited.

For these reasons we think that the decision of this Court in *Hasabnis's case*(2) correctly interpreted the law as laid down by the Privy Council with reference to the power of a widow to adopt, and we must answer the questions referred to this Bench in the negative.

(1) (1865) 10 Moore's I. A. 279. (2) (1892) 17 Bom. 164.