ORIGINAL JURISDICTION.

Original Suit, No. 748 *of* 1873.

O. GOOROOVA BUTTEN and another..................*Plaintiffs.*

versus

C. NARRAINSAWMY BUTTEN and two others.......*Defendants.*

1874. *March* 18. *O. S. No.* 748 *of* 1873.

This was a suit for a declaration that the 2nd plaintiff, as the daughter of C. Chenchoo Rama Butten, deceased, was his sole legal representative, and, as such, entitled to his estate ; and for delivery to the plaintiffs of such portion thereof as, on an account being taken, might be proved to have come into defendant's hands.

The plaintiffs were husband and wife. C. Chenchoo Rama Butten died in the year 1859 leaving his widow Kamatchee Ummall, and the 2nd plaintiff, his daughter by his first wife, him surviving. In 1860, Kamatchee Ummall obtained letters of administration to the estate of the deceased. She died on the 8th July 1873, and the 1st defendant, her father, the 2nd defendant, her mother, and the 3rd defendant, her brother-in-law, with whom she resided, took possession of the estate of C. Chenchoo Rama Butten, left by Kamatchee Ummall. The defendants alleged that whatever estate C. Chenchoo Rama Butten left, his widow took and disposed of as his only rightful representative. They set up a will executed by Kamatchee Ummall on the 24th April 1862, whereby she appointed the 1st defendant her sole Executor, and bequeathed the whole of her property to the 2nd defendant. On the 21st July 1873, the will was proved by the 1st defendant, and probate thereof was granted to the 2nd defendant on the 8th December 1873. The defendants denied the 2nd plaintiff's right to her father's estate, pleaded that she had released her claim to such estate, and that her present claim was barred.

Mr. Spring Branson, for the plaintiffs, contended that the widow, Kamatchee Ummall, had only a life interest, and, therefore, she could not dispose by will of the property which, immediately upon her death, vested in the 2nd plaintiff as the daughter and only legal representative of Chenchoo Rama Butten.

Sooba Moodelly v. *Auchalay Anny.* (1)

Pránjivandás Tulsidás v. *Dekúvarbai.* (2)

Macnaghten's H. L., 19—22.

1 Sir T. Strange's H. L., 134—234.

As to the alleged release, the defendants are bound to show most clearly that the 2nd plaintiff was fully aware of all her rights, and unequivocally and absolutely waived them. As 2nd plaintiff's cause of action accrued on the death of Kamatchee Ummall, and as that event took place only six months before this suit, the Statute of Limitations does not apply.

Mr. Johnstone for the defendants gave up the contentions as to the release, and the Statute of Limitations, but contended that the personalty left by a divided Hindu without male issue, vested in his widow.

Pránjivandás Tulsidás v. *Devkúvarbai.* (2)

Jamiyatrám v. *Bâi Jamna.* (3)

Ramasashien v. *Akylandummal.* (4)

Gopaula Putter v. *Narraina Putter.* (5)

1 Sir T. Strange's H. L., 246—247.

(1) Madras Sadr Rep. for 1854, p. 153.
(2) 1 Bom. H. C. Rep., (O.C.J.) p. 130.
(3) 2 Ib., (A.C.J.) p. 11.
(4) Sadr Dewany Rep. for 1849, p. 115.
(5) Ib. for 1850, p. 74, (at p. 77).

1874.
March 18.
O. S. No. 748
of 1873.

HOLLOWAY, J.—The theory of the will of a Hindu is an anomaly and ought, therefore, not to be pressed. I am of opinion that the authorities cited are inapplicable. Those were suits between persons who would be co-parceners and the widow of a childless, divided Hindu. 'Childless widow' does not mean that the woman is childless, but that her husband was. Here the widow had a daughter, and had no power to dispose of the estate of her deceased husband by will. Principles of law should be followed to their logical conclusions, but where an exceptional law is introduced, such as this of Wills among Hindus, it should not be carried further than the anomaly introduced requires. It is not law that all that a Hindu may dipose of *inter vivos* can be disposed of by him by mortuary instrument. That has never been decided by the Court, but, on the contrary, has been distinctly found against in a late case from Mangalore.(a) I must give judgment for Rs. 1,445, the admitted value of the jewels. The enquiry into the houses will stand over till to-morrow, and the question of costs, is reserved.

Appellate Jurisdiction.(b)

Referred Case No. 49 *of* 1874.

KANDOTH MAMMI

against

NEELANCHERAYIL ABDU KALANDAN and another.

Defendants appeared in the French Court at Mahé, defended a suit, and made no objection to the jurisdiction. In a suit upon the decree of the said Court, defendants pleaded want of jurisdiction. *Held*, that a man who has thus taken the chances of a judgment in his favor which would, if obtained have relieved him from all liability, is equitably estopped from afterwards pleading want of jurisdiction.

1875.
January 22.
R. C. No. 49
of 1874.

THIS was a case referred for the opinion of the High Court by K. Kunjan Menon, the Subordinate Judge of North Malabar, in Suit No. 687 of 1874.

"1. This is a suit for recovery, with costs and further interest, of Rs. 346-13-7 being the amount due under a decree of the Mahé Court, dated 15th April 1874.

"2. Plaint recites that one Chembangádan Mússa, to whom the defendants stood indebted under a bond dated 9th November 1869, transferred the said bond to plaintiff, that he (plaintiff) sued the defendants on that bond in the Mahé Court and obtained a decree against them; and that the amount as per this decree is still unpaid. The plaintiff, therefore, now sues upon this decree in this Court on the

(a) The principal case above reported, p. 6.
(b) Present:—Sir W. Morgan, C.J., and Holloway, J.

g ound that the defendants are living within the jurisdiction of this Court.

"3. Defence is that the Mahé Court had no jurisdiction to make a binding decree against the defendants who lived always in British Territories; and that the cause of action also arose in British Territories.

"4. The Court after perusing the evidence adduced, and hearing the arguments on both sides, adjourned the case for further consideration, subject to the decision of the High Court upon the following case :—

"5. The admitted or proved facts of the case are, that the defendants were, and have always been, permanent residents in British Territories; that the bond upon which they were sued in the French Court at Mahé was executed in British Territories and upon a British Stamp; that the Chembangádan Músssa to whom it was executed, and by whom it was subsequently assigned to the plaintiff, was a resident of both British and French Territories, though, in the bond, he is described as a resident of the latter only; and that the bond stipulates that the defendants should take the money to him and pay him within a fixed time.

"6. The defendants contested the suit in the Mahé Court on the merits, and failed. The question of want of that Court's jurisdiction which they now raise was not there raised.

"7. The plaintiff now maintains that that Court had jurisdiction over the cause, though not over the defendants, because the cause of action arose within that Court's jurisdiction, inasmuch as Mahé must be taken to have been the place intended by the bond for payment, the non-making of which was the cause of action.

"8. The bond does not say where the payment should be made. It merely says, 'we will bring the amount due to you and pay you' without mention of any particular place to which the money was to be brought. The plaintiff's argument then is, that because the obligee is stated in he bond as a resident of Mahé, therefore Mahé must be

1875.
January 22.
R. C. No. 49
of 1874.

taken as the expected place for the production and payment of the money and that the cause of action consequently arose there; while the contention on the other side is, that because the obligee had also a residence in British Territories (a fact well established by various records to which I referred), and because the transaction was entered into in British Territories with British subjects, and subject to British laws, therefore the intended place for the discharge of the bond was the obligee's residence in British Territories, and that, consequently the cause of action did not arise in Mahé.

" 9. Beyond asking me to draw inferences on this point from the aforesaid circumstances, neither party has adduced any evidence *aliunde* to establish that any particular place for payment was intended. As to the inference derivable from circumstances it does not in my opinion favour one party more than the other. Under these circumstances I think it is unsafe to hold that the Mahé Court had jurisdiction, but, at the request of both parties, I beg to submit for the decision of the High Court the question—Whether the French Court at Mahé had jurisdiction."

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—This is a suit upon a judgment of a French Court, and the question is whether the plea that the French Court acted without jurisdiction is sustainable.

The facts are that the defendant appeared in the Court at Mahé, defended the suit and made no objection to the jurisdiction. Whether in such circumstances the objection can afterwards be taken in an action upon the judgment is a point stated to be still open by Blackburn, J. in *Schibsby* v. *Westenholz* (1) but the opinion of the learned Judge is plainly that it cannot.

We think that justice requires us to hold that a man who has thus taken the chances of a judgment in his favor

(1.) L. R., 6 Q. B., p. 155 (at p. 160).

1875. *January* 22. *R. A. No.* 49 *of* 1874.

which would, if obtained, have relieved him from all liability is equitably estopped from afterwards setting up the objection. It becomes unnecessary therefore to consider the rather nice question when by the contract of the parties a jurisdiction may be created which would not otherwise exist. The recent case of *Copin* v. *Adamson* (2) is an example of discordance of view upon the point.

We answer that the Subordinate Court has jurisdiction.

Appellate Jurisdiction.(a)

Regular Appeal No. 81 *of* 1874.

(Civil Miscellaneous Petition No. 21 *of* 1875.*)*

KALLAVETTI KURIYIL KUMHOLEN KUTTY..... { *Appellant. (Defendant.)*

NILAMBUR THACHARAKAVIL MANA VIKARAMEN *alias* THIRUMULPAD.......................... ... { *Respondent (Plaintiff.)*

He who seeks a declaration of matters not necessary to the immediate relief sought, must sustain the burden of making out the abstract proposition which he has volunteered to support, and it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem.

Suit brought for a declaration of title to a considerable tract of country on account of a trespass committed by defendant on a particular hill. *Held*, that as to that particular hill, the plaintiff's claim was sustainable, and that that disposed of the only question which it was necessary to decide.

1875. *January* 25. *R. A. No.* 81 *of* 1874.

THIS was a Regular Appeal against the decision of I. K. Ramen Nair, the Subordinate Judge of South Malabar, in Original Suit No. 45 of 1873.

The suit was brought to establish plaintiff's jenm right to, and to obtain possession of, the hills mentioned in schedule A attached to the plaint, and valued at Rupees 6,000; to procure the demolition of the shed (kuttipura), valued at Rupees 10, wrongfully erected by the defendant on hill No. 11, and to recover 8 logs of timber, or their value Rupees 180, felled by the defendant.

(2) L. R., 9 Ex., p. 345.

(a) Present :—Sir W. Morgan, C.J., and Holloway, J.