Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimant Rajah Yarlagadda Mallikarjuna Prasada Nayudu Bahadur Zamindar Garu v. *Makerla Sridevamma and others, from the High Court of Judicature at Madras, delivered March 18th,* 1897.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

IN this case the first Defendant, who is the principal Defendant and Appellant, borrowed a sum of Rs. 12,000 out of the funds of a charitable endowment called a choultry, and he gave a promissory note to the founder of the endowment, who was then its manager.

The founder died, and he left the bulk of his estate to his son and heir, but taking notice that the son and heir should have nothing to do with the Rs. 12,000, which were the endowment of the choultry. No doubt his son succeeded him in the management. He died within six months of his father, and his heir was his widow. Then the widow succeeded in the management, and received interest on the Rs. 12,000. She, under a power given her by her husband, adopted a son in the year 1884, but that son was an infant, and the widow remained until after the institution of this suit in the management of the choultry.

The infant brought a suit against his adoptive mother and against his guardian for an account of his adoptive father's estate and for possession,

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and he got a decree, but in making that decree the Court expressly excepted the funds of the choultry. It seems that up to the commencement of this suit in the year 1889 the widow had received interest on the promissory note from the Defendant, and either she or her husband received Rs. 1,000 in payment of principal. In 1889 the widow sued to recover the sum due upon the note, and she was met by two pleas: one was that she could not sue because she had adopted a son, and that son is the heir of his father and entitled to his father's estate. The answer to that plea is that she did not sue in respect of her husband's estate, but as trustee and manager of the choultry.

The second plea was that she had not got such a certificate as is required by law. The Act that is relied upon as necessitating the production of a certificate runs in these terms: "No debtor of "any deceased person shall be compelled in any "Court to pay his debt to any person claiming "to be entitled to the effects of any deceased "person except on the production of a certi-"ficate." That is the Act XXVII. of the year 1860. There is a subsequent Act, which Mr. Mayne says applies to the case, Act VII. of 1889, but that uses exactly the same expressions so far as regards the person suing: "No Court shall "pass a decree against a debtor of a deceased "person for payment of his debt without a "certificate."

Now the question is whether the widow here is suing as entitled to the effects of her deceased husband, or is suing for the payment of the debt of her deceased husband. She is doing neither one nor the other, she represents the endowment, and on that ground the District Judge declared that she was the trustee of this endowment, and that she was entitled to receive the debts, and he gave her a decree. The Defendant appealed

to the High Court, and the High Court took the precaution of suspending proceedings until the adopted son, who, if anybody could dispute the widow's title to receive the debt, would be the person to dispute it, was made a party to the suit. Then in his presence they dismissed the Appeal, and affirmed the decree of the District Judge with some variation as to costs, as to which there is no question now.

It seems to their Lordships that that is perfectly right. The High Court has taken every precaution to protect the Defendant in his payment of the money, and it is absolutely impossible that after that decree anybody can demand the money of him again.

Their Lordships will therefore humbly advise Her Majesty that this Appeal should be dismissed. The Respondent does not appear, and there will be no order as to costs.