possession otherwise than the law had provided; and Rule 6 of that circular had enacted, that, upon resumption of an *inám* in occupation, the possession might be continued to the *inámdár*, whose claim to exemption was disallowed. In the present case Janárdhan was the person so designated, and the Collector's grant could only have the effect of declaring that Janárdhan, as the heir of Bháskar, was the person indicated by that rule to be entitled to remain in possession, so long as he paid the assessment. It granted no new title; it was merely declaratory of the legal right which by law vested in the heir for the benefit of his ancestors' creditors.

Then the appellant, claiming title under Janárdhan, can have no better title than the latter had; and as Janárdhan's title was subject to all valid incumbrances created by his ancestor Bháskar Joshi, the appellant can claim no benefit under his alleged deed of sale in 1858 until the respondent's charge shall have been first satisfied.

Our decision has reference solely to the case of an *inám* in occupation, which this was.

We confirm the decree with costs.

Decree affirmed.

Aug. 3.

Special Appeal No. 286 *of* 1862.

TRIMBAK A'NANT ....*Appellant.*
GOPA'LSHET bin MAHA'DSHET MAHA'DU, a minor, by his guardian SATYABHA'MA'BA'I. *Respondent.*

Hindú Law—Manager—Purchase from Manager of an Undivided Family—**Onus Probandi.**

If a person, dealing with a Hindú representing himself to be the representative and manager of an undivided family comprising infant members, can show that after reasonable inquiry he believed in good faith that the person so representiug himself was entitled to act and was acting for the family, and that the transaction entered into with him by such manager was entered into for some common family necessity, or for the benefit of the infants, such act of the manager is valid and binding on the minor members of the family.

THE appellant originally brought his suit in the Court of the Munsif of Puná, to recover possession of a house which he alleged the defendant, Gopál, who was the uncle of the minor defendant, and manager of the family, which was undivided, had mortgaged to him, in the Shálivåhán year 1779, to secure payment of Rs. 90 which he had advanced to him.

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This deed was one of conditional sale, and provided that if the money secured thereby was not paid by a certain specified date, the house was to be considered as sold to the plaintiff. The term specified in the deed had passed without payment of the money, and the plaintiff claimed possession of the house.

Defendant Gopál appeared and confessed judgment, agreeing to vacate the house sued for within a month. The minor defendant did not appear.

The Munsif of Puná, A'zam Moro Raghunáth, decreed the defendant who had appeared, to pay the amount advanced on the mortgage, and interest.

From this decision the plaintiff, Trimbak, appealed, and the Joint Judge of Puṇá, H. Newton, reversed the decree of the Munsif, and remanded the case for further investigation, with leave to the guardian of the minor defendant to put in an appearance and produce evidence.

The Munsif accordingly took up the case again, and the infant defendant, Mahádu, appeared by his guardian, and set up as his defence that, though defendant Gopál was his uncle, they were divided in interest; that the house in dispute was their ancestral family property, and that his uncle and himself had occupied it in equal shares; that as Gopál was senior to his (defendant Mahádu's) father, the title-deeds of the house had been made out in his (Gopál's) name, but that he had no exclusive title to alienate it, and had gone beyond his powers in mortgaging and selling the whole of the house conditionally to the plaintiff. He also alleged that the transaction was a collusive one.

The Munsif, on a re-hearing of the case, found on the evidence that defendant Gopál and Satyabhámábái, the mother and guardian of defendant Mahádu, had been living separate; that the deed sued on had been executed collusively, to injure the minor; that the share of the latter remained in his guardian's possession; and that, under all the circumstances, he saw no reason to alter his former decision, awarding the plaintiff the amount advanced on the mortgage, and interest, to be recovered from defendant Gopál alone.

The plaintiff again appealed, and the District Judge of Puṇá, T. C. Loughnan, found that the separation of interest between the defendants was not proved, and held that the transfer of the whole of the house in question was not lawful, as, according to the Hindú law, defendant Gopál would not

be justified in selling the whole house, unless there were no other means of supporting the family, or if any great calamity of a public kind arose, or for charitable purposes: that the *onus* of proving such necessity lay on the purchaser: that no such proof had been adduced by the plaintiff, and, therefore, the plaintiff's purchase was valid only to the extent of Gopál's share in the house in question. He accordingly amended the Munsif's decree by adding a direction that the plaintiff should be put in possession of half of the house, unless the amount due to him was paid by defendant Gopál.

The plaintiff preferred a special appeal to the High Court, on the grounds—1*st*, that the District Judge was in error in laying on him the *onus* of proof to show that the transfer by Gopál of the minor's share was legal; that, according to the principle laid down in Special Appeal No. 4338 (Harrington's Reports, Vol. VIII., p. 159), it was not necessary for him to prove this; and, 2*ndly*, according to usage having the force of law, the transfer by the managing member of a Hindú family of property belonging to the family was binding on all the members of the family.

The special appeal was argued before SAUSSE, C.J., and FORBES and WARDEN, JJ.

Mádhavráv Krishṇá and *Páṇḍurang Balibhadra* for the appellant.

Gaṇesh Hari for the respondent.

SAUSSE, C. J., delivered judgment:—The question presented for the decision of the Court is, upon whom rests the *onus* of proof as to the legality or otherwise of the alienation by defendant Gopál of the infant defendant Mahádu's share in the house in question? It was insisted that it lay not upon the purchaser, but upon the minor, who questions the validity of the sale. The plaintiff claims the house by virtue of a deed of conditional sale executed in his favour by the defendant Gopál: his nephew Mahádu, a minor, represented by his mother, Satyabhámábái, resists that claim, on the ground that the transaction was collusive, and one beyond the power of Gopál to effect. The Judge has also held that the transfer of the minor's share is invalid, as it was not shown to have been made for any of the purposes set forth in the Shástras. We consider, however, that the Judge has not correctly framed the issues for trial, and that the case must go down for re-trial.

It seems to us clear that where there is an undivided Hindú family comprising infant members, there must of necessity be

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some person to manage its concerns, and if the manager sell family property to carry on the trade, if such an act be necessary and for the general good, it will be valid. This is a case in which the manager sells the family house. It is an act of a very strong character, and, according to the Shástras, some strong necessity must be shown to justify it. No sufficient exigency has been made out upon the case as it stands: but we do not think it has been properly investigated, and will, therefore, reverse the decree of the District Judge, and remand the case for re-trial upon the following issues :—

1*st*—Was there collusion between the plaintiff and the defendant Gopál with reference to the assignment of the house in the plaint mentioned ?

The Munsif states that it was a collusive sale got up to injure the minor. If the Judge find that there was such collusion, it will end the case, but if he does not find collusion, then he should determine the following points :—

2*nd*—Did the plaintiff, after reasonable inquiry, believe in good faith that the defendant Gopál was entitled to act, and was *boná fide* acting as representative and manager of the undivided family at the time and for the purposes of the borrowing and mortgage in the plaint mentioned ? And if so,

3*rd*—Did the plaintiff, after reasonable inquiry, believe in good faith that the money borrowed by the defendant Gopál was *boná fide* borrowed for, and intended by the latter to be expended upon, some common family necessity, or common benefit and use of the undivided family, or any and what portion for the particular benefit and advantage of the minor, Mahádu ?

4*thly*—Was the money borrowed, or any and what portion thereof, so expended ?

The *onus* of proof to be upon the plaintiff upon the second and third issues, and upon the defendant on the first issue, with liberty to the defendant Mahádu to produce evidence generally. The District Judge is to pass a decree on the merits. Costs to follow the final decision.

The effect of this decision will be that if the plaintiff after reasonable inquiry did in good faith believe that Gopál was manager, and wanted the money for family purposes, he will be entitled to recover. A purchaser from a manager is only bound to inquire whether the money was borrowed for a legitimate purpose; and if satisfied that it was, he will be entitled

to protection against the claim of any member of an undivided family who was a minor when the transaction took place; the latter must be held bound by the acts of his manager.

Decree reversed.

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NOTE.—As to the burden of proof in cases of the sale by the manager of the property of an undivided Hindú family, see further 2 Bom. H. C. Rep., pp. 23, 306, 348, 2nd ed.; 4 Bom. H. C. Rep., A. C. J. 169, and cases there cited.—ED. 2nd ed.

Special Appeal No. 155 *of* 1863.

Aug. 4.

GOPA'L, GOVIND, and NA'RA'YAN, the sons of SANTU..*Appellants.*

NA'RA'YAN bin TUKA'JI and MAHA'DU SAKHA'-RA'M ....*Respondents.*

Separation—Evidence—Recital in Deed of Mortgage.

A recital in a deed of mortgage granted by one of two undivided brothers to a third party, that a division had taken place between the mortgagor and his brother, is no evidence of separation as against the latter or his representatives.

NA'RA'YAN and Mahádu, respondents, the plaintiffs below, instituted this suit in the Court of the Munsif of Kaḍá, in the Ahmednagar District, against Santu, the father of the appellants, to recover possession of a house which they asserted one Yessu, the brother of Santu, had mortgaged to them by a deed bearing date the 13th of Bhádrapad Vadya Shake 1779. One of the stipulations in this deed was that if the amount advanced on the mortgage was not repaid within six months from the date, the mortgage should merge into a sale; and that period had passed without redemption of the mortgage.

Santu having died subsequent to the filing of the suit, the names of his sons were entered as defendants. The defence set up was that no division of interests had taken place between Yessu, the grantor of the mortgage, and defendants' father, Santu; that, therefore, Yessu could not by his sole act alienate the property in dispute; and that Yessu was imbecile at the date of the mortgage and conditional sale.

The Munsif of Kaḍá, A'zam Anandráv Rájárám, found the plaintiffs had failed to prove payment of any consideration for the mortgage; that they had never been in possession of the mortgaged property, and had not brought forward the claim during the lifetime of Yessu: he, therefore, rejected the claim with costs.