

Special Appeal No. 14 of 1865.

JAITA bin KA'LU..... *Appellant.*
 BA'LU bin RA'GHU..... *Respondent.*

Abatement of Appeal—Respondent's objections—Act VIII. of 1859, Secs. 102 and 348—Act XXIII. of 1861, Sec. 37.

Where the special appellant died after the High Court had referred for trial, to the court below, an issue based upon objections taken by the respondent under Sec. 348 of Act VIII. of 1859 :—

Held that the appeal must abate, in accordance with Sec. 102 of Act VIII. of 1859 and Sec. 37 of Act XXIII. of 1861 ; and that the respondent cannot require that it should proceed, in order that he may have an opportunity of taking objections to the decree of the court below.

If the respondent desires to secure the right of asking for a decision on his objections, he must file a separate appeal.

THE respondent, in this appeal, had filed a memorandum of objections, under Sec. 348 of Act VIII. of 1859 ; and the court had referred an issue founded thereon, for trial to the lower court.

1866.
 Nov. 12.
 S. A. No. 410
 of 1865.

The appellant since then had died ; and no application had been made by any person claiming to be his legal representative that the appeal might proceed.

Dhirajlál Mathurádás, for the respondent, now asked that time might be allowed him to enter the names of the heirs of the appellant on the record.

NEWTON, J :—Act VIII. of 1859, Sec. 348, provides that “ upon hearing of the appeal, the respondent may take any objection to the decision of the lower court which he might have taken if he had preferred a separate appeal from such decision.” It is only, therefore, when an appeal comes to a hearing, that the respondent can avail himself of this provision.

In the present case, as the appellant is deceased, and no application has been made by any person claiming to be his legal representative that the appeal may proceed, the appeal cannot be heard, but must abate, in accordance with Sec. 102 of Act VIII. of 1859, and Sec. 37 of Act XXIII. of 1861.

1866.
Nov. 12.
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of 1865.

The respondent cannot require that it should proceed, in order that he may have an opportunity of taking objections to the decree of the court below. He should have filed a separate appeal, if he desired to secure the right of asking for a decision on such objections, irrespective of the contingency that the appeal filed by the opposite party might not come to a hearing.

WARDEN, J., concurred.

Application rejected.

Regular Appeal No. 8 of 1864.

COST FERNANDES *Appellant.*
VA'SUDEV SHA'NBOG *Respondent.*

Mutual dealings—Evidence of books—non-production—Limitation—Act VIII. of 1859, Sec. 170—Act XIV. of 1859, Sec. VIII.

In a suit for the balance of an account with interest in a case of mutual dealings between traders, where the High Court had directed the production of the defendants' books of account, and was satisfied, after receiving the report of the District Judge, that there were such books in existence, and that no satisfactory excuse for their non-production was given; and where the defendant had otherwise conducted his case in a very suspicious manner:—

Held (reversing the decree of the District Court) that the plaintiff was entitled to judgment, on a *prima facie* case being made out by him; and that the suit as regards limitation came within the provision of Sec. VIII. of Act XIV. of 1859.

July 4.
R. A. No. 8
of 1864.

THIS was a regular appeal from the decision of F. D. Melvill, Acting Judge of Honore, by whom the following judgment, in which the facts are stated, was recorded:—

“This action was instituted by Cost Fernandes to recover a balance of account—due on the 30th of November 1862 from Vasudev, on account of himself and the other defendants—Rs. 9,979-1-8.

“Vasudev replied that so much of the account as referred to more than three years before was barred by the Limitation