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the packing, I think that the plaintiffs would have been bound to do; and under these circumstances I think that the company are protected by the terms of the bill of lading. That bill provides for the contingency of transhipment, and exempts the company from liability arising from damage caused by insufficiency of packing.

Decree reversed without costs.

Attorneys for the plaintiff : *Acland, Prentis, and Bishop.*

Attorney for the defendants : *J. S. Hurrell.*

Oct. 1.

Appeal Suits Nos. 125 *and* 126.

Laksmiba'i, widow of Krishnanáth Morobá ..... *Appellant.*

Ganpat Moroba', Na'ra'yan Moroba', and Satyabha'ma'ba'i, widow of Vináyak Morobá ..... *Respondents.*

Ganpat Moroba' and Na'ra'yan Moroba'. *Appellants.*

Laksmiba'i, widow of Krishnanáth Moroba' ..... *Respondent.*

Hindú Law—Partition—Ancestral Estate—Will—Construction of Hindú Will—Guardian—Family Arrangement—Acquiescence—Adoption of Acts of Guardian—Hindú Widow's Estate.

V., a Hindú, being possessed of property, both moveable and immoveable, which he had acquired by making partition with his brother of their joint ancestral estate, died in 1850, after making a Will in the English language, by which, after various bequests, he disposed of the residue of his said property: one-third to his son V. absolutely; one third to his son L. absolutely; "and the remaining clear third-share to my grandsons K., V., G., and N., the sons of my late son Morobá, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life.

The estate was divided by arbitrators in 1855, after making provision for the testator's widow, in substantial accordance with the Will, and V. and L. immediately entered into possession of their respective third-shares; the third-share allotted to the four sons of M., who were then

infants, represented by their mother and guardian, remained unapportioned until 1856, when, on a suit being filed, the greater part of the moveable property was apportioned. The immoveable property continued unapportioned, the bill stating that it was not for the interest of the minors then to apportion it; and the sons of M. continued to enjoy the rents and profits, living together as an undivided Hindú family, the property being successively managed by the eldest surviving brother. In 1866 the then surviving sons of M., having attained their majority, joined with V., the son of the testator, in conveying to a purchaser a *banglá*, which had been allotted to him as portion of his share under the Will.

In a suit brought by L., the widow of K., against K.'s surviving brothers, and S., the widow of his brother V., in which L. claimed to be absolutely entitled, as heir of her husband (and also as heir of her daughter, who died, after the husband's death, childless and unmarried), to a fourth part of the third-share of the estate allotted by the Award of 1855:

Held, that the surviving brothers of K. had, by their conduct since attaining their majority, adopted the acts of their mother and guardian, and had agreed to treat the Will of the testator as a valid Will, and were accordingly estopped from disputing its provisions.

Held, further, that the language of the testator showed an intention that his grandsons should take the one-third between them in severalty, and as members of a divided family, and that the Will must be so construed.

A Hindú widow succeeding to the immoveable property of her deceased husband, and also claiming as heir to her only daughter, who died after her father, childless and unmarried, is only entitled during her life to a widow's estate. The doctrine laid down in the Division Court that ancestral property after partition can be disposed of by Will, in the same way as self-acquired property, disapproved of, as opposed to the authorities and general spirit of Hindú Law.

THESE were cross-appeals from a decree made by ARNOULD, J., in the First Division Court, on the 19th of August 1867.

The facts of the case sufficiently appear from the judgment of the Court below (*a*), and from the judgment of the Court of appeal. The plaintiff appealed from that portion of the decree which limited the estate taken by her in the one-fourth share of the *immoveable* property to an estate for life, as she claimed as heir, not only to her husband, but also to her daughter Devkúvarbaí, who died, after the husband's death, childless and unmarried.

The defendants appealed generally from the whole decree.

The appeal was argued before COUCH, C.J., and SARGENT, J., on June 19 and 20, and July 9, 1868.

(*a*) 4 Bom. H. C. Rep., O.C.J. 150.

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Pigot and *Marriott*, for the plaintiff appellant:—The Court below has decreed to the plaintiff, Lakshmibái, only an estate for life in the immoveable property; but Lakshmibái is the heiress of her daughter, and so entitled absolutely. By Hindú Law, on the death of a father without male issue, the daughter takes an estate in remainder vested in interest, subject to what may be called the widow's interposed beneficial interest, in her father's immoveable property, and such vested interest upon her death passes to her heirs: *Jamiyatrám* v. *Bái Jamná* (*b*); in this case, as she died childless and unmarried, to her mother: West and Bühler's Hindú Law, Introd., p. 63; *ibid.*, p. 189; Stokes' Hindú Law Books, p. 487.

The next question that arises is with respect to the right of Vásudev Vishvanáth to make a Will; and this depends on the effect of the partition between him and his brother in 1823. After that partition we contend that the share of Vásudev, in the absence of a Will, would have descended as separate property. There is no express authority for this proposition, but there are strong *dicta* to that effect. Lord Justice Turner, delivering the judgment of the Lords of the Privy Council in *The Rájah of Shivagunga's Case* (*c*), says that "when property belonging in common to a united Hindoo family has been divided, the divided shares go in the general course of descent of separate property." To the same effect are the remarks of Westropp, J., in *Narottam Jagjivan* v. *Narsandás Harikisandás* (*d*). If, then, the course of descent of ancestral property is altered by partition to that which prevails with respect to self-acquired property, it seems logically to follow that the other incidents of self-acquired property should also attach to it, one of which is the right to dispose of it by will: *Nagalutchmee Ummal* v. *Gopoo Nadaraja Chetty and others* (*e*), *Vallinávagám Pillái* v. *Pachché* (*f*). If the contention on the other side is correct, it would have the result of introducing a third kind of property into Hindú

(*b*) 2 Bom. H. C. Rep. 11. (*c*) 9 Moo. Ind. App. 609.
(*d*) 3 Bom. H. C. Rep., A.C.J. 6; *vide infrá*, p. 136 *in notis*.
(*e*) 6 Moo. Ind. App. 309; and see p. 345. (*f*) 1 Mad. H. C. Rep. 326.

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Law, neither ancestral nor self-acquired; but none such is mentioned by the authorities. Then as to the construction of the Will, the intention of the testator must be looked to: *Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick* (*g*). That case is almost precisely similar to the present. From the use of the words "their *respective* heirs," and "share and share alike," the testator must have intended to give his grandsons separate estates. In English Law these words would create a tenancy-in-common. Even supposing the testator had no right to dispose of his property, as he has done by his Will, the parties, by their subsequent acts and conduct, have acquiesced in the disposition of the property made by the testator: and in all those acts the infants were sufficiently represented by their mother and guardian, and since their attaining majority they have ratified these acts: *Nallappi Reddi* v. *Balammal* (*h*); 1 Daniell's Chancery Practice, p. 77 (2nd ed., 1845); *Morrison* v. *Morrison* (*i*). Lastly, there was no re-union in this case, as re-union cannot take place except between the persons who were parties to the partition: *Vishvanáth Gangádhar* v. *Krishnáji Ganesh* (*j*).

The Honorable L. H. Bayley (Advocate General) and *White* (with them *McCulloch*), *contra*:—The principle of a son being equally entitled with his father to ancestral property seems to pervade the whole Hindú Law. By adopting a son the father loses his power of disposing of ancestral estate: *Rungama* v. *Atchama* (*k*), *Ayyavu Muppanar* v. *Niladatchi Ammal* (*l*). The Court will decree a partition of ancestral property at the suit of the son: *Beer Kishore Suhye Sing* v. *Hur Bullub Narain Sing* (*m*); Macnaghten's Hindú Law, Ch. I. In places where the Mitákshará does not prevail, the act of a father disposing of ancestral property, though not void, is sinful: Strange, Ch. 12. The authorities lay down the proposition broadly. On the other side

(*g*) 6 Moo. Ind. App. 526. (*h*) 2 Mad. H. C. Rep. 182.

(*i*) 4 Myl. & Cr. 215, and per Ld. *Cottenham*, p. 225.

(*j*) 3 Bom. H. C. Rep., A.C.J. 69. (*k*) 4 Moo. Ind. App. 1.

(*l*) 1 Mad. H. C. Rep. 45. (*m*) 7 Calc. W. Rep., Civ. R. 502.

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two dicta only are cited, which were unnecessary for the decision of the cases in which they occur. In *Shivagunga's Case* the question was with reference to the descent of separate property possessed by one of several coparceners : see page 625 of the report. In *Narottam Jagjívan* v. *Narsandás Harikisandás* the person suing was separate in estate from the testator, and the nature of the property was not ascertained. That case was probably decided on the authority *Nagaluchmee Ummal* v. *Gopoo Nadaraja Chetty* (*suprà*); and the decision merely amounts to this, that the Will was good in the absence of any one to make a claim. The answer to both *dicta* is, that the question we are considering was not present to the minds of the Judges. [COUCH, C.J. :—The ground of the disability to make a Will has not in general been sufficiently kept in view, namely, the right of some person other than the testator to claim to share in the property. When property is divided each parcener can make a Will ; but when sons are born their interest intervenes.] Here the sons had vested rights in 1823 : distribution is made between the brothers ; but what is there to divest the right of the sons to share with the father ? Their *title* is unaffected. The separation of the brothers does not separate the rest of the family. The member of an undivided property cannot make a gift of his share, or leave it by Will : *Gangubái kom Sidhappá* v. *Rámanná bin Bhimanná* (*n*). It is said he may sell it ; but even this has never been solemnly decided.

It is admitted that the Will, if it were made by an Englishman, would create a tenancy-in-common, but being made by a Hindú member of an undivided family, it must be construed with reference to the usages, customs, and circumstances of the testator : *Sreemutty Rabutty Dossee* v. *Sibchunder Mullick* (*o*), *Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick* (*p*). [SARGENT, J. :—The same reason that induced English lawyers to favour a tenancy-in-common would induce lawyers here to favour a joint tenancy, as that particular mode of enjoyment is best suited to the Hindú

(*n*) 3 Bom. H. C. Rep., A.C.J. 66. (*o*) 6 Moo. Ind. App. 1.
(*p*) 6 *Ibid.* 526.

family exigencies.] Yes; and here the children being minors, it is probable that the testator desired there should exist amongst them the *jus accrescendi*.

We have not, however, acquiesced in the provisions of the Will. A large portion of the moveable property has been divided, but what has been done in respect to the immoveable property does not even show an intention to divide. Except as to the Equity suit, the family has always dealt with the property as undivided; and, as that amounts at most to a mere proposal to divide, the widow cannot enforce partition: *Timmi Reddy* v. *Achamma* (*q*); but we contend that even an agreement to divide is not tantamount to a partition, or to a deed constructively dividing the property: *Praunkisson Mitter* v. *Sreemutty Ramsoondry Dossee* (*r*). [SARGENT, J., referred to *Lalla Mohabeer Pershad* v. *Mussamut Kundun Koowar* (*s*).]

What estate does the widow take? Here we support the finding of the Court. The case cited on the other side, Bái Jamná's case, is founded on a misapprehension of a passage in Strange, 2 Strange H. L. 204. It is difficult to give a definition that conveys an adequate conception of the estate a widow takes; but, whatever it is, she is incapable of alienating it, except for certain causes, and yet she succeeds *quâ* heir to the whole estate, and until her death it cannot be determined who the heirs of her husband are: Miták., Ch. 2, Sec. 1, para. 39; 2 Mor. Dig., p. 329, Sec. 183. Even if a widow could be said to take as heir of her daughter, there can be no enlargement of her estate. That is a doctrine unknown to the Hindú law. A widow inheriting from her son takes just the same estate as if she inherited from her husband: *P. Rachiraju* v. *Venkatappadu* (*t*); *Vinayek Anundrao* v. *Luxumeebaee* (*u*); *The Collector of Masalipatam* v. *Cavaly Vencata Narainapah* (*v*); *Kantoo Lall* v. *Greedharee*

(*q*) 2 Mad. H. C. Rep. 325.
(*r*) Fulton R. 310.
(*s*) 8 Calc. W. Rep., Civ. R. 116.
(*t*) 2 Mad. H. C. Rep. 402.
(*u*) 1 Bom. H. C. Rep. 117; in the Privy Council, *ib.* 126, and 9 Moo. Ind. App. 516.
(*v*) 8 Moo. Ind. App. 529.

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Lall (*w*); *Raja Ram Tewary* v. *Luchmun Pershad* (*x*); Miták., Chap. I., Sec. 1, paras. 28 and 29, and Sec. 9, para. 2; Strange, H. L., pp. 20, 190; *Lalla Ruseedhur* v. *Koonwar Rinde Seree Duth Sing* (*y*); *Prankinsin Paul Chowdry* v. *Mothooramohun Paul Chowdry* (*z*); and *Bodh Mal* v. *Gouree Sunkur* (*a*), were also cited.

Pigot was heard in reply.

Cur. adv. vult.

COUCH, C. J.:—In this case, two brothers, Vásudev Vishvanáth and Mádhavji Vishvanáth, on the 20th of November 1823, made a partition by deed of all the property, moveable and immoveable, which had come to them from their father, Vishvanáth Vithu. At the time of the execution of the deed of partition, Mádhavji was without male issue, and Vásudev had five sons, all then infants, namely, Vithobá, Vishvanáth, Rámchandra, Morobá, and Lakshuman. Vishvanáth, about the time of the execution of the partition deed, was adopted by Mádhavji, and on his death inherited, and has ever since enjoyed, Mádhavji's share. Rámchandra died intestate, and without issue, in his father's lifetime, leaving a widow. Morobá also died in his father's lifetime, intestate, but leaving a widow, Anpurnábái, and four sons, Krishnanáth, Vináyak, Ganpat, and Náráyan. Krishnanáth and Náráyan have since died, the former leaving the plaintiff, Lakshmibái, his widow, and the latter the defendant Satyabhámábái his widow. On the 23rd of December 1850, Vásudev Vishvanáth died, having, on the 14th of November 1850, made a Will in the English language, by which, after making various bequests to different members of his family, and constituting his widow, Lakshmibái the elder (who is still living), executrix and manager of all his estate for her life, he disposed of the residue as follows:—"And on the death of my said wife, I give, devise, and bequeath all the said rest, residue, and remainder of my property, estate, and effects, real and personal, in the manner following, that is to

(*w*) 9 Calc. W. Rep., Civ. R. 469.
(*x*) 8 Calc. W. Rep., Civ. R. 15. (*y*) 10 Moo. Ind. App. 454.
(*z*) *Ibid.* 403. (*a*) 5 Calc. W. Rep., Civ. R. 16.

say, one clear third part or share thereof to my son Vithobá Vásudevji, his heirs, executors, administrators, and assigns; another clear third part or share thereof to my son Lakshuman Vásudevji, his heirs, executors, administrators, and assigns: and the remaining clear third part or share thereof to my grandsons, the sons of my late son Morobá Vásudevji deceased, Krishnanáth, Vináyak, Ganpat, and Náráyan, their and each of their respective heirs, executors, administrators, and assigns, share and share alike."

By the law of the Mitákshará, the sons of Vásudev Vishvanáth had, at the time of the partition, a vested interest in the property which was the subject of it, and it was competent to any of them to have disputed the validity of this Will: Miták., Chap. 1, Sec. 2, para. 6; Sec. 5, paras. 5, 9, 10, 11; *Nagalinga Mudali* v. *Subbiramaniya Mudali* (*b*); *Konth Narain Singh* v. *Premlal Paurey* (*c*). In the view we take of this case it is not necessary to determine whether the Will was a valid one. It is sufficient that its validity might fairly have been questioned; but, as the learned Judge in the Division Court has held it to be valid, and the question has been argued at great length before us, we think it right to state our opinion that it was not a valid Will. "Partition (vibhága) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate:" Miták., Chap. 1, Sec. 1, para. 4; and we do not see any principle upon which it can be held that Vásudev Vishvanáth acquired by the partition a greater dominion, as against his sons, over the share which he took under it, than he previously had over the whole of the property. It was still property which had descended to him from his father. The adjustment of the rights over it cannot be held to amount to a new acquisition by the brothers. It does not appear to us to follow from the decision of the Privy Council in *The Rajah of Shivágunga's Case*, quoted in the judgment of the Division Court, that "the divided shares go in the general course of descent of separate property," that there is the

(*b*) 1 Mad. H. C. Rep. 77. (*c*) 3 Calc. W. Rep., Civ. R. 102.

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same power of alienation by gift, or disposal by Will, as in the case of separate property. In the case before Mr. Justice Westropp, also quoted, the person disputing the Will was a remote kinsman, and the opinion that there is in all cases the same power of disposition over property obtained on partition as over self-acquired property, must be considered as extrajudicial. We cannot give the same effect to it as we should if it were an express decision upon the point in dispute in that case, though, when this question has to be determined, it must receive all the consideration which the learning and experience of the learned Judge entitles it to.* The opinion we now express is likewise extrajudicial, and we only give it in order that we may not be supposed from our silence to concur in this part of the judgment of the Division Court.

The validity of the Will being then at least liable to be questioned, on the 10th of November 1854, articles of agreement were made between Lakshmibái, the widow of Vásudev, Viṭhobá, Lakshuman, and Anpurṇábái, the widow of Morobá, and as the guardian, according to Hindú law, of his sons Krishṇánáth, Vináyak, Ganpat, and Náráyaṇ, who were therein stated to be all infants under the age of twenty-one years. By these, after reciting that Vásudev Vishvanáth duly made his Will, and after giving certain legacies and bequests therein specifically mentioned, gave and bequeathed the remainder of his property to his sons and grandsons in the shares therein specifically mentioned, and declared that the said grandsons should be considered of age, and have posses-

* Previously to the decision in this case, the remark of Mr. Justice Westropp in *Narottam Jagjivandás* v. *Narsandás Harikisandás*, that it is difficult to assign any sufficient reason why the power of disposition by will should not exist with regard to separate, as well as with regard to self-acquired property, was quoted in a recent case before him at the Original Jurisdiction side of the Court, and he said that the expression was not sufficiently guarded, and must be considered as limited to a state of facts similar to those in *Narottam Jagjivandás* v. *Narsandás Harikisandás*, where the party denying the power of testamentary disposition was a remote kinsman of the testator, and separate from him in estate; and that the Court had not then any intention of expressing an opinion upon the question whether a testator, possessed of separate property which was ancestral, and leaving sons or other male issue, could bar them by devise.—ED.

sion of the property so bequeathed to them, on their attaining the age of twenty-one years; and that Lakshmibái had duly proved the Will in the Supreme Court of Bombay, and had paid all the legacies; it is recited as follows:—"And whereas the parties hereto so entitled to the said property of the said Vásudev Vishvanáthji, deceased, *as aforesaid*, being desirous of effecting a partition and division among them of the same, some disputes have arisen as to the manner in which the same should be divided, and which, in consequence more especially of the infancy of the said Krishṇanáth Morobá, Vináyak Morobá, Ganpat Morobá, and Náráyaṇ Morobá, it is difficult to settle amongst themselves." It is then agreed to refer all the said matters in difference, with reference to the division of the property of Vásudev Vishvanáth to the arbitration of Mr. Rimington and three Native gentlemen, it being stated that Mr. Rimington was appointed arbitrator on behalf more particularly of the grandsons. On the 17th of May 1855, the arbitrators made their award, and possession was taken of the shares awarded accordingly. On the 10th of July 1856, a suit was instituted on the Equity side of the Supreme Court, in which Ganpat Morobá and Náráyaṇ Morobá, therein stated to be Hindú infants under the age of sixteen years, by Vishvanáth Mádhavji, their next friend, and Vináyak Morobá, were plaintiffs, and Krishṇanáth Morobá, and Sonábái, widow of Sadáshiv Raghunáthji, the sister of the plaintiffs and Krishṇanáth, were defendants. The bill stated the Will of Vásudev Vishvanáth, his death, and that Lakshmibái, his widow, proved the Will, and paid the debts and legacies, and that the family continued for some time after his death to live together as an undivided Hindú family in food, religion, and estate, under the management of the executrix, Lakshmibái, until the Award. It then stated the reference, and set out the Award, so far as it related to the share of the grandsons, and stated the death of Anpurnábái in June 1855; and after stating that it was not for the benefit of the infant plaintiffs, nor the wish of the plaintiff Vináyak Morobá, that any immediate partition should be made of the immoveable property, it prayed that an immediate partition might be made of the moveable property, and that

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Krishnanáth Morobá might be ordered to account annually for the share of the infant plaintiffs of the immoveable property. What followed is stated in the judgment of the Division Court, and need not be repeated here; but there is one material fact which does not appear to be noticed.

By a deed dated the 11th of January 1866, a piece of land with a bungalow upon it at Breach Candy, which formed part of the share allotted to Vithobá Vásudev, was conveyed by him to Berámji Jijibhái, who had purchased it. The present plaintiffs, who had then attained their majority, joined in this conveyance, and in it are recited the Will and probate of it, the reference to arbitration, and the Award.

Now upon these facts we are of opinion that there is evidence of a family arrangement to give effect to the Will, which the Court ought to uphold. The defendants, if not bound by the reference to arbitration and the Equity suit, have, since they attained their majority, adopted and confirmed the act of their mother and guardian. In order to constitute a binding family arrangement it is not necessary that there should be any formal contract between the parties, and if sufficient motive for the arrangement is proved, the Court will not consider the quantum of consideration: *Williams* v. *Williams* (*d*). The fact that, by their agreement, the parties have avoided the necessity of legal proceedings, is a sufficient consideration to support it: *Partridge* v. *Smith* (*e*), *Naylor* v. *Wynch* (*f*). From the time of the death of Vásudev Vishvanáth, until the dispute between the present plaintiff and defendants arose, the validity of the Will does not appear to have been ever questioned. The Court must, therefore, consider the Will as a valid one, and we are of opinion that the language of the testator clearly shows an intention that the grandsons should take the one-third between them, in severalty and as members of a divided family, and that the Will must be so construed. The words "share and share alike" are not, to our minds, the only words which show

(*d*) Rep. 2 Ch. App. 294. (*e*) 9 Jur. N. S. 742.
(*f*) Sim & S. 564; 2 L. J. Ch. 132.

that intention; and the argument for the plaintiff in the Division Court, that those words must be construed as creating a tenancy-in-common, with all the incidents to it by English law, appears to have gone further than was necessary. Such being the nature of the estate which the grandsons took under the Will, it follows that, although there has been no division of the third-share awarded to the grandsons, by metes and bounds, upon the death of Krishnanáth without male issue, his widow, the plaintiff, became entitled to his share for such an estate as a widow has by Hindú law in the property of her husband so dying, and not being a member of an undivided family. It is difficult to find a term by which this estate can be accurately defined. In the decree it is called an estate for her life; but we think it will be better to substitute for the words "to an estate for her life" the words "during her life to a widow's estate."

The decree passed by the Division Court, after declaring the plaintiff entitled to an estate for her life, according to Hindú law, proceeds "with remainder to those who at her decease may be the heirs of her said deceased husband;" and an application was made to the learned Judge to alter the minutes, on the ground that Lakshmibái claimed as heir, not only to her husband, but also to her daughter, Devkúvarbái, who died, after her husband's death, childless and unmarried. This was refused, and the plaintiff has appealed against the decree, on the ground that the plaintiff, as the heir of her daughter, has become absolutely entitled to the property. In support of this, the case of *Jamiyatrám* v. *Bái Jamná* (*ubi suprà*) has been cited, in which it was held, on the Appellate side of this court, that "when a separated Hindú dies, leaving landed property, and no sons or sons' sons, his widow on his death takes for her life; and the daughters, on his death, subject to the widow's life-estate, take estates in remainder, vested immediately in interest, but not coming into the possession of themselves or their sons, as the case may be, until after the death of the widow." The law thus laid down is opposed to a long current of authorities, of which one of the earliest is the judgment of Chief

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Justice East in *Cassinath Bysack* v. *Hurroosoondry Dossee* (*g*); and recent ones are *Nátama Natchiar* v. *The Rajah of Shivagunga* (*suprà*); *Mussumat Boobun Moyee Debai* v. *Ram Kishore Acharj Chowdhry* (*h*); *and Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty* (*i*), per Peacock, C.J.

The declaration in the decree, that the remainder is to those who at the decease of the plaintiff may be the heirs of her deceased husband, is in accordance with these authorities; and the learned Judge, who was himself one of the Judges by whom the case of *Jamiyatrám* v. *Bái Jamná* was decided, having refused to alter the minutes, we think we cannot treat that case as an authority binding us to alter his decree. Opposed as the decision is to such high authorities, and not ourselves concurring in it, we do not feel bound to apply it in this case. The decree appealed from, ought, in our opinion, to be amended in the manner we have mentioned, and in other respects to be confirmed; and, as each of the appellants has failed in his or her appeal, we think each should bear his or her own costs.

Decree as amended confirmed.

Attorney for the plaintiff: *Shámráv Pándurang.*

Attorneys for the defendants: *Dallas and Co.*

(*g*) 2 Mor. Dig. 198—210. (*h*) 10 Moo. Ind. App. 279, 311.
(*i*) 9 Calc. W. Rep., Civ. R. 505, 508.

July 17.

Referred Case.

HA'SAM KA'SAM *et al.* .....*Plaintiffs.*
GOMA' JA'DAVJI *et al.* .....*Defendants.*

Conversion of Ornaments Pledged—Measure of Damages.

In an action of damages for the detention of ornaments pledged with the defendant which the defendant has wrongfully converted to his own use, the measure of damages is the value of the ornaments less the sum for which they have been pledged.

CASE stated for the opinion of the High Court, pursuant to Sec. 55 of Act IX. of 1850, and Sec. 7 of Act XXVI.