be awarded. [GIBBS, J.:—It was ruled (*d*) so far back as 1858 that there was nothing in the Hindú Law to prevent the court, at its discretion, awarding a widow a separate maintenance.

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TIMMA'PPA' BHAT *et al.* *v.* PARMESHRIAMMA' *et al.*

There was no appearance for the respondents.

PER CURIAM :—The Court confirms the decree of the Court below with costs.

Decree confirmed.

(*d*) *Mulá* v. *Girdharlal*, S. A. No. 3937, decided on 6th July 1858 by *Frere*, *Larken*, and *Harrison*, JJ.

Sep. 8.

Special Appeal No. 305 *of* 1868.

GOVIND RA'MCHANDRA GOKHLE .....*Appellant.*
SHEK AHMED *et al.* .....*Respondents.*

Variance between Plaint and Proof—Admission of Evidence—Discretion of Judge—Special Appeal.

The plaintiff sued upon a written agreement to recover rent from an alleged tenant and his two sureties.

The lower appellate court, holding the agreement not proved, threw out the claim, declining to consider, in proof of the alleged tenancy, payment of rent &c. in previous years.

Held that this was a matter in the discretion of the Judge; and, as there was no error of law in his proceedings, the High Court in special appeal refused to interfere.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnágirí, in Cross Appeals Nos. 486 and 487 of 1867, reversing the decree of Dáji Govind, the Sadr Amín of Ratnágirí.

The plaintiff, Govind Rámchandra, sued Shek Ahmed and his sureties, Báláji Máhadev and Abdul Rahimán, to recover Rs. 29-12-0 as rent due for a piece of land and trees under a written agreement.

Shek Ahmed and Abdul Rahimán answered that the agreement was false, and had never been passed by them.

Báláji Mahádev did not defend the suit.

Bhikáji Rámchandra was joined by the Court as a defendant, as he alleged that he was the owner of the land, and alone was entitled to rent.

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The Ṣadr Amín considered the genuiness of the agreement doubtful, but from other evidence in the case he came to the conclusion that the land had been rented to the defendants by the plaintiff. He, therefore, awarded the claim against the principal and his sureties for the rent of the land, but threw out the claim for the rent of the trees, as not proved.

In appeal, the Acting Senior Assistant Judge, holding the agreement not proved, reversed the Ṣadr Amín's decree, on the ground that, the suit being to recover rent according to a written agreement, the Ṣadr Amín should have confined the investigation to the scope of the suit, and that, when he found the agreement not proved, he should not have awarded the claim on other evidence, such as payment of rent in past years, &c.

The appeal was argued before COUCH, C. J., and NEWTON, J.

Shántárám Náráyan for the appellant.

Dhirajlál Mathurádás for the respondents.

COUCH, C.J. :—In this case the original suit was brought by the owner of the land, to recover rent from the alleged tenant and his two sureties under a written agreement. The lower Court, holding the agreement not proved, threw out the claim, declining to consider payments of rent &c. in the previous years.

It is here urged that the evidence of payment of rent by the alleged tenant should have been given effect to. I do not say that there may not be cases where the plaintiff who fails to prove a lease should not be allowed to recover if his right otherwise is proved, but in this case the lower Court thought it right not to allow it. It might, however, have been justified in making a decree against the tenant alone, and not against his sureties, on the evidence of payment of rent in past years. I agree with Sir Barnes Peacock, that "it is a general rule that a plaintiff must prove his case as laid in his plaint or written statement. If there is a variance between his statement and his proofs, arising from inadvertence or mistake, the Court may allow the issues to be amended; but that is entirely at the discretion of the Court: and we

think that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case, when an issue as to the execution of such document is found against him, and there are good grounds for believing that the document is a forgery" (*Vide* Marshall's Reports, p. 71). But there was no forgery in this case, and, therefore, it might have been that the Senior Assistant Judge would not have done wrong in making a decree against the principal. But that was a matter in his discretion, and, as there is no error in law, we must confirm his decree with costs.

NEWTON, J., concurred.

Decree reversed.

Special Appeal No. 293 *of* 1868.

Sep. 8.

HARI DHANGAR *et al.* .....*Appellants.*
BIRU DASRU *et al.* .....*Respondents.*

Thirty Years' Rule—Ancient Documents.

The rule regarding the proof of documents more than thirty years old is that they need not be proved, provided they have been so acted upon, or brought from such a place as to offer a reasonable presumption that they were honestly and fairly obtained and preserved for use, and are free from suspicion of dishonesty.

THIS was a Special Appeal from the decision of A. C. Watt, Acting Assistant Judge of the District of Sátárá; in Appeal No. 368 of 1866, reversing the decree of Vidyádhar Chintámaṇ, Munsif of Karád.

The plaintiffs sued to establish their right to perform divine service at a temple, and to recover some property attached to it.

The defendants denied the plaintiffs' right.

The Munsif decreed for the defendants.

The Assistant Judge, on appeal, held that exhibit No. 8, which purported to contain an admission in the plaintiffs' favour by persons from whom the defendants derived their