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allows such delegation. The Public Prosecutor may properly delegate the conduct of the case so far as to take the aid of an advocate exercising his proper function, provided he retains general management to himself.

There seems to have been another misapprehension on the part of the Session Judge caused by the Public Prosecutor. He says in the early part of his report that the Public Prosecutor said he did not instruct Mr. Leith. In the postscript he says that the Public Prosecutor informed him that in signing Mr. Leith's brief he considered that he was handing over to him the prosecution of the case. It is to be regretted that this misapprehension was not cleared up at an earlier stage, for it is in consequence of that he refused to hear the counsel. Section 59 has no decisive bearing on the matter. It was competent to the complainant to engage Mr. Leith as counsel, and for the Public Prosecutor to avail himself of his services.

We direct that Mr. Leith, or any other counsel or pleader for the complainant, be allowed to appear and examine the prosecutor's witnesses-in-chief, or re-examine them, and also to cross-examine the witnesses for the defence.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 349 of 1873.

June 9. IMA'M SA'HEB and others *Appellants.*
KA'SIM SA'HEB.....*Respondent.*

Muhammadan Law—Suit by a legal sharer—Suit by residuaries.

A suit by a Muhammadan widow (legal sharer) against her sons (residuaries) for her share of the property left by her deceased husband, is no bar to a suit being brought by some of the sons against the others for their shares.

THIS was a special appeal from the decision of N. Daniell, Acting Judge of the district of North Kanara, reversing the decree of the Subordinate Judge of Karwar.

One Shekh Sáheb died, leaving a widow, four sons, the present litigants, and three daughters. Kásim Sáheb, who was in possession of his property, was sued first by the daughters, some of whom obtained a decree and recovered their share. He was next sued by his mother, and while the suit was pending, his three brothers brought the present suit for their shares. The Subordinate Judge awarded the principal part of the claim, but the District Judge rejected it *in toto*, on the ground that the sons could not divide, or even put forward any existing right to parental property as residuaries, until the claim of the mother, a legal sharer, was first satisfied.

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The special appeal was heard by WEST and LARPENT, JJ.

Shámráv Vithal for the appellants:—The distinction between sharers and residuaries has no reference whatever to the time of bringing a suit. It is not necessary that the suit of the latter should be postponed till the claims of the former are satisfied. The distinction has reference only to ~~his~~ proportion which each class is entitled to receive: Macn., para 8.

Dhirajlál Mathurádás, Government Pleader, for the respondent.

PER CURIAM :—The District Judge has found in this case that no cause of action had accrued to the plaintiffs (brothers of the defendant), because the widow of their father had filed a suit, against the plaintiffs and defendant both, for her share of her husband's property. The plaintiffs sued on an agreement of partition, but whether they based their claim on this or on their mere right of inheritance, the fact that their father's widow had instituted a suit for her share could not be a good reason for excluding them from enjoyment of their shares of the common property. If it were a reason, then by prolonging the litigation with his father's widow, the defendant might keep the plaintiffs out of their shares for an indefinite period. For any claim that may be established by the widow, they will be answerable in common with the defendant. Subject to that, they are entitled to a proportional enjoyment. The defendant, by keeping them out of

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it, has done them a wrong (assuming that they can prove what they affirm), and this wrong constitutes a cause of action. We, therefore, reverse the District Judge's decree, and remand the cause for retrial and a new decree. In such retrial, it will be expedient, if possible, that advertence should be had to the rights which the widow may meanwhile have established in her suit against the parties to this cause, or that the requisite steps should be taken for enabling the Court to pronounce at the same time upon the conflicting claims of the several parties, setting up an interest in the property to be administered. Costs to follow the final decision.

[APPELLATE CIVIL JURISDICTION.]

June 15.

Special Appeal No. 515 of 1873.

KRISHNARA'V RA'MCHANDRA and another... *Appellants.*

MA'NA'JI BIN SAYA'JI and another..... *Respondents.*

Jurisdiction—Small Cause Court—Act XI. of 1865, Sec. 6, Exception 4—Special Appeal—Suit for arrears of rent—Regulation XVII. of 1827, Section 31, Clause 3—Payment by a lessee to one of several joint lessors—Pleading.

The expression "or former year" in Regulation XVII. of 1827, Section 31, Clause 3, does not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a Revenue Officer, when Act XI. of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature.

Payment of rent by the lessee to one of several joint lessors, and at his request, discharges the debt as to all; as also payment made at his request to one of several joint creditors. Where one of several joint-creditors, who has no rights separate from those of the others, refuses to join in the suit as plaintiff, and there is no averment of collusion on his part with the defendant, he cannot rightly be joined as a defendant.

THIS was a special appeal from the decision of R. F. Mac-tier, District Judge of Satara, affirming the decree of the First Class Subordinate Judge, Krishnarāv Vithal Vin-churkar.