

of acquittal as coming under the revision of the High Court, still the High Court would, for goods and sufficient reason, reverse an order of acquittal, following the ruling of Sir Barnes Peacock in *The Queen v. Gora Chand Gopee*.(1)

1879
EMPRESS
v.
MIRAJI
AHMED.

Per Curiam.—Since the decision in *The Queen v. Gora Chand Gopee* in 1866, referred to by the District Magistrate, the new Code of Criminal Procedure (Act X of 1872) has been passed. Under the Code provision is made for an appeal by Government in cases of improper acquittal. Seeing this, and that section 297 of the Code while it expressly gives power to the High Court to correct errors in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature seems to have been that there should be no interference with an acquittal, except on a formal appeal.

This is the construction most favourable to the liberty of the subject, and it is not likely that the power should have been given to reverse an acquittal without a right on the part of the accused to be heard by the High Court. Cases of improper reversal of a conviction stand on a special footing.

APPELLATE CIVIL.

(34)

Before Mr. Justice Melvill and Mr. Justice Pinhey.

RADHABAI, WIDOW OF TATYARAV (ORIGINAL DEFENDANT), APPELLANT,
v. NANARAV (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Property, ancestral and self-Joint Tenancy—Survivorship

When property is held in co-parcenary, the share of an undivided co-parcener who leaves no issue, goes; according to Hindu law, to his undivided co-parceners, whether the property is ancestral, or acquired by the co-parceners as joint tenants.

THIS was an appeal from the decision of Mr. Sandwith, Judge of Dharwar, confirming the decree of Gopal G. Phatak, Subordinate Judge, First Class, of Dharwar.

The plaintiff Nanarav sued Radhabai, widow of his brother

(1) 5 Cal. W. R. Cr. Rul. 45.
Second Appeal, No. 278 of 1878,

1879
 RADHABAI,
 WIDOW OF
 TATYARAV
 v.
 NANARAV.

Tatyarav, for a declaration of his right to receive from the Collector of Dharwar the sum of Rs. 3,800-10-0, being the proceeds of the *inam* village of Alur while it was under his attachment.

Radhabai claimed a moiety of the sum as the widow and heir of Tatyarav, who, she alleged, died separated from his brother, the plaintiff.

The village of Alur was in 1850 granted in *inam* by the British Government, in the joint names of Nanarav and Tatyarav, for certain services rendered to the state by their late father Krishnarav. Tatyarav died in 1838. The plaintiff alleged that he died in union with him; whereas Radhabai contended that her husband separated from his brother in 1836, and that she had been in separate possession of a moiety of the village ever since her husband's death.

The lower Courts found the alleged separation not proved, and awarded the plaintiff's claim.

Feb. 18.—*Nanabhai Haridas*, Government Pleader, for the appellant.—The village in dispute was not ancestral property in the hands of Tatyarav and Nanarav. It was acquired by them from the Government, and was their self-acquired property within the meaning of the Hindu Law. Tatyarav had a half share in the village, and that share decended to his widow on his death, irrespective of union or separation. The case is analogous to a partnership, the interest of a deceased partner going to his representatives: 2 Macnagh. H.L. 153, case No. 8, see also case No. 14, page 160; West and Buhler 329 (2nd ed.), Grady's H. L. 165.

Manekshah Jehangirshah for the plaintiff.—We admit that the village is not ancestral property. But it is joint property, having been granted to the two brothers in their joint names. The brothers was joint tenants; and on the death of Tatyarav, Nanarav, as the survivor of the two, would succeed to the whole, unless there was a separation in the meantime. The rule of survivorship applies to all joint property, whether ancestral or self-acquired: West and Buhler 42 (2nd ed.) It is not necessary that joint property should also be ancestral in order that the rule of survivorship should apply: Mayne's H. L. 425. The lower Courts have found that Tatyarav died in union with Nanarav, so that the latter is entitled to the whole village.

The judgment of the Court was delivered by

MELVILL, J.—There is no doubt that if half the village can be regarded as the self-acquired property of Tatyarav, his widow succeeds to it, whether there was or was not a division between Tatyarav and the plaintiff (*Katama Natchiar v. The Rajah of Shivganga.*)⁽¹⁾ But we think that it cannot be held that Tatyarav acquired half the village in such a sense that, as between him or his widow and the plaintiff, it can be regarded as his self-acquired property. The grant of the village is not in evidence, but it appears to have been made to Nanarav and Tatyarav jointly, and without and limitation, by words purporting that they were to take it in distinct shares. This would be in English law a joint tenancy, and on the death of one joint tenant the other takes the whole of the joint property by right of survivorship. We think that the result would be the same under Hindu law. The two brothers held the village as co-parceners and the rule of Hindu law is that, when property is held in co-parcenary, the share of an undivided co-parcener, who leaves no issue, goes to his undivided co-parcener. It has been argued that this is only the case when the property is ancestral; but it appears to us that it is equally the case when the property is acquired by two more co-parceners in what, for the sake of convenience, we may call joint tenancy. The reason of the rule is stated in Stephen's Commentaries, vol. I, page 327, (3rd ed.), and it is rested upon general principles, which appear as applicable to Hindu as to English co-parceners.

(His Lordship then proceeded to dispose of other points not pertinent to this report, and in conclusion said:—)

On the whole, we think the Courts below have arrived at a right decision, and there is no such error shown as should compel us to require them so reconsider that decision.

Decrees confirmed with costs.

(1) 9 Moo. Ind. Ap. 539.

1879
 RADHABAI,
 WIDOW OF
 TATYARAV,
 v.
 NANARAV.