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IN THE MATTER OF NARMADÁBÁI AND ANOTHER.

*K. T. Telang* (with *Shántárám Náráyan* and *S. V. Bhándárkar*) for the appellants.—The order of the District Judge is contrary to law. The District Court became *functus officio* after the death of the minor. The order, therefore, calling upon the administratrix for an account of the property entrusted to her charge was *ultra vires*.

WEST, J.—The mother, appointed administratrix to a minor's estate under Act XX of 1864, section 6, is not bound, as is a curator or other person appointed on the ground of fitness, under section 9, to present accounts, unless a suit should be instituted for the purpose under section 19 by a relative during the minority. No such application can be made after a minor's death, though his representatives are, as such, entitled to an account. When the minor is dead, the Court is no longer capable of representing the minor under the Act. The only way of calling the administratrix to account is a suit instituted by a person interested. We, therefore, reverse the order of the District Court.

*Order reversed.*

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## APPELLATE CIVIL

*Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Pinhey.*

*September* 11.

BA'I KANKU (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'I JADAV (ORIGINAL PLAINTIFF), RESPONDENT.*

*Hindu Law—Widow—maintenance—Liability of son's widow for maintenance of her mother-in-law.*

Where a Hindu widow sued the widow of her pre-deceased son for maintenance, and it was found that the only property in the possession of the defendant were the proceeds of her own *stridhan* and a family-house, which yielded no rent and was jointly occupied by the plaintiff and defendant,

*Held* that the defendant was not liable for the maintenance claimed.

*Sávitribái* v. *Lakshmibái* (1) followed.

THE plaintiff, Bái Jadav, was a Hindu widow and sued her daughter-in-law (the widow of her pre-deceased son) for Rs. 498,

* Second Appeal No. 422 of 1882.

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being the amount of her maintenance for six years. She alleged that she was entitled to it from the estate of her son and his widow, the defendant. Bái Kanku answered *inter alia* that the plaintiff's husband had died twenty years previous to the institution of the suit; that the suit was barred by limitation; that she had no family property in her hands, and, therefore, was not liable for the maintenance claimed.

The Subordinate Judge (First class) of Súrat dismissed the claim. In appeal, the District Judge held that the suit was not barred and that the plaintiff was entitled to maintenance. He, however, found on the evidence that the defendant had been living on the proceeds of her own jewels, and that there was a family-house, which had been jointly occupied by the plaintiff and the defendant.

The defendant appealed to the High Court.

*Shántárám Náráyan Bondse* and *S. V. Bhándárkar* for the appellant.—The District Judge was wrong in holding that the suit was not barred. It is barred under Article 128, Schedule II, Act XV of 1877. There is no evidence in the case that the defendant has any ancestral property in her hands except a house. But it is found that the plaintiff and defendant are in the joint occupation of it, and that it realises no profit. It is also found that the defendant has been maintaining herself by the proceeds of her own jewels. She is, therefore, under no obligation to maintain her mother-in-law, as held by the Full Bench decision of this Court in *Sávitribái* v. *Lakshmibái*[1].

*Pándurang Balibhadra* for the respondent.

The following is the judgment of the Court delivered by

PINHEY, J. :—Two points have been argued in this second appeal: one of limitation, and the other of the liability of the defendant to maintain her mother-in-law, the plaintiff.

As plaintiff sues the defendant for maintenance on the ground that defendant is her son's widow, and the District Court has found that the defendant's husband died fifteen years before the present suit was instituted, it would appear at first sight that the suit was barred by Article 128 of Schedule II of Act XV of 1877. It is unnecessary, however, to dispose of the case on this

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ground, as, we think, the District Court has decided the case wrongly on the second ground, *i.e.*, on the merits; and it will be better to dispose of the case on the merits in order to prevent further litigation.

According to the ruling of the Full Bench in *Sávitribái* v. *Lakshmibái*(1), the defendant will be liable to the plaintiff for maintenance only if the defendant is in possession of ancestral property or property which belonged to her husband, out of which such maintenance could be recovered. It appears from the judgment of the District Court that the only property of which defendant is now possessed (whatever she may have had when her husband died twenty years ago, or whatever she may have done with it) is the proceeds of the sale of some jewels, her *stridhan*, and a family-house which is jointly occupied by plaintiff and defendant and yields no rent. Defendant is not, therefore, liable to the plaintiff in this suit.

We reverse the decree of the District Court and restore that of the Subordinate Court rejecting plaintiff's claim. Plaintiff to bear costs in the District Court and in this Court.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nánábhái Haridás.*

JAGJIVAN JAVHERDA'S (ORIGINAL DEFENDANT), APPELLANT, *v.* GULAM JILANI CHAUDHRI (ORIGINAL PLAINTIFF), RESPONDENT.*

*September* 19.

*Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money—Limitation Act XV of* 1877, *Schedule II, Arts.* 29 *and* 120.

A suit to recover money wrongly taken under a decree is a suit for compensation to which the limitation of one year under art. 29 of the Limitation Act XV of 1877, Sch. II, applies. The same limitation under the same provision applies if to the above demand a claim be added to recover damages for the loss of gain or interest upon the money.

THIS was a second appeal against the decision of Khán Bahádur M. N. Nánávati, Subordinate Judge (First Class) of Thána, re-

* Second Appeal No. 559 of 1882.

(1) I. L. R., 2 Bom., 573.