ORIGINAL CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice.

ASHA'BA'I AND ANOTHER (PLAINTIFFS), *v.* HA'JI TYEB HA'JI RAHIMTULLA AND OTHERS (DEFENDANTS).* 1882 *February* 23.

Cutchi Memons, law of inheritance applicable to—Partition, proof of—Trust—Owner of property constituting himself trustee—Father opening an account in name of his son—Stridhan, descent of ornaments of wife given at marriage and after marriage.

In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons.

To effect a partition of ancestral property there must be, in the absence of division by metes and boundaries, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property.

In order that the owner of a fund may constitute himself a trustee of it, he must either expressly declare himself a trustee, or must use language which, taken in connexion with his acts, shows a clear intention on his part to divest himself of all beneficial interest in it, and to exercise dominion and control over it exclusively in the character of a trustee.

From the single circumstance that an account has been opened by a father in his books in the name of his son, in which money is credited to the son, no presumption can be raised in India, that the father intends to create a trust, in favour of his son, of the sums appearing in the account.

Where the wife of a Hindu dies, leaving one son and two daughters, such of her ornaments as were given to her at her marriage pass to her daughters and not to her son. Those given to her after marriage, or by her husband or kindred, pass, according to the Mayukha, to the son and daughters in equal shares.

THE plaintiffs Ashábái and Emnábái were the widow and infant daughter of one Háji Adam Háji Esmáil, a Cutchi Memon Mahomedan, who died intestate on the 17th May, 1878, leaving only the plaintiffs, him surviving. His father Háji Esmáil survived him, and died three months later, *viz.*, on the 19th August, 1878. The plaintiffs in this suit sought to recover out of the estate in the hands of Háji Esmáil at his death the share of Háji Adam, alleging that the said estate was ancestral property. The first three defendants were the executors of Háji Esmáil. The fourth defendant Tyeb Háji Joonas was the grandson of Háji Esmáil, being the son of his daughter Zulekábái. He claimed the greater portion of the property in question as legatee under Háji Esmáil's will.

* Suit No. 616 of 1879.

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There were four distinct subjects of claim in the plaint, *viz.*:—

(1). In respect of the estate of one Háji Joosub Bulládina, the great-grandfather of Háji Adam, which comprised moveable and immoveable property. This property was alleged to have come into Háji Esmáil's hands as ancestral estate. The said Háji Joosub Bulládina died in 1858.

(2). In respect of the estate of one Háji Hubib Háji Joosub, the grandfather of Háji Adam, which was of the value of ten lákhs or thereabouts. This was also alleged to have come to Háji Esmáil as ancestral property. Háji Hubib died in 1855.

(3). In respect of jewels and ornaments of the value of Rs. 75,000, portion of which, it was alleged, formed the *stridhan* of Jambubái, the deceased mother of the said Háji Adam, which, with the remainder thereof, it was alleged, had been presented to Háji Adam on his marriage with the first plaintiff. The plaint alleged that the said jewels and ornaments were in the possession of Háji Esmáil at the time of his death in August, 1878.

(4). In respect of a sum of Rs. 1,90,000 which the said Háji Esmáil settled as and for the benefit of the said Háji Adam Háji Esmáil shortly after his marriage. The plaint alleged that in 1866 the said sum was credited to Háji Adam in the books of Háji Esmáil in an account opened for that purpose in Háji Adam's name, and interest thereon at nine per cent. per annum was added thereto by yearly rests. The plaint further stated that the account of the said fund, with accumulation of interest, was, at the date of suit, Rs. 4,00,000 or thereabouts.

The plaint prayed (1) for a declaration that the share of the estate of Háji Joosub Bulládina (the great-grandfather), come to the hands of Háji Esmáil, and the estate of Háji Hubib Háji Joosub (the grandfather), which came to the hands of the said Háji Esmáil, were ancestral property, and unaffected by his will.

(2). That an account should be taken of the said estates, and the defendants ordered to pay their shares to the plaintiffs.

(3). That the defendants should be ordered to deliver up the said jewels and ornaments or to pay the value thereof to the plaintiffs.

(4). That an account should be taken of what was due by the estate of Háji Esmáil to the plaintiffs as heirs of Háji Adam in respect of the Rs. 1,90,000 in the plaint mentioned, and interest, and that the defendants should be ordered to pay such sum as might be found due.

The material issues raised at the hearing were the following :—

(a) Whether the plaintiffs, or either, and which of them, by the law and usage among Memons, became on the death of Háji Adam entitled to his estate.

(b) Whether the plaintiffs, or either, and which of them were entitled to maintain this suit in respect of any portion of the estate of Háji Joosub Bulládina.

(c) Whether the plaintiffs, or either of them, were entitled to maintain this suit in respect of any portion of the estate of Háji Hubib.

(d) Whether Háji Esmáil settled any and what money for the benefit of Háji Adam as in the plaint alleged.

(e) Whether the plaintiffs or either of them were entitled to any and what part of the moneys in the account mentioned in the plaint.

(f) Whether the claims in the plaint mentioned, or any of them, were barred by the Statute of Limitations.

The principal questions discussed at the hearing were :—

(1) Whether the Hindu law of inheritance applied to Cutchi Memons.

(2) Whether, even if the Hindu law did apply, there had not been a partition between Háji Adam and his father Háji Esmáil.

It appeared from the evidence that in the year 1876 a suit (No. 291 of 1876) had been brought by Háji Adam against his father Háji Esmáil, in which he claimed a share in the estate of his grandfather (Háji Hubib) and his great-grandfather (Háji Joosub), alleging that the same was ancestral. That suit was compromised, and a consent decree was passed on the 11th July, 1876, by which it was ordered that the defendant (Háji Esmáil) should pay a sum of Rs. 20,000 to persons named as trustees, who

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were to apply the requisite portion thereof in payment of the plaintiff's debts and liabilities and pay over the surplus to the plaintiff, (Háji Adam), and, further, that the defendant should pay during the life of the plaintiff a monthly sum of Rs. 250 for the maintenance of the plaintiff and Rs. 50 for the maintenance of the plaintiff's wife (Ashábái) during her life, and it was lastly ordered "that the plaintiff be permitted to withdraw this suit without liberty to the plaintiff until after the defendant's death to bring a fresh suit for the same causes of action or any other claim arising from any account now or heretofore existing (if any) between the plaintiff and the defendant." It was contended that although there had been no actual partition of the estate, yet that this decree operated as a partition.

(3) Whether Háji Esmáil had made himself trustee for his son Háji Adam in respect of the sum of Rs. 1,90,000 claimed in the plaint. The plaintiffs alleged that this sum had been settled on Háji Adam by his father in 1866 on the occasion of Háji Adam's marriage. They relied on the account contained in Háji Esmáil's books which were opened in that year in Háji Adam's name, and in which that sum was credited, interest at nine per cent. per annum being added by yearly rests, and also on certain statements made by Háji Esmáil in his life-time to the effect that the moneys credited in the account belonged to his son Háji Adam.

Latham and *Inverarity* for plaintiffs.—The Hindu law applies to Cutchi Memons—*Hirbái* v. *Sonábái*(1); *Hirbái* v. *Gorbái*(2). As to Háji Adam's interest in the estate, *Uddárám Sitárám* v. *Ránu Pánduji*(3); Mayne's Hindu Law (1st ed.), para. 287, *Ibid.* 375; *Moro Vishwanáth* v. *Ganesh Vithal*(4); *Rám Joshi* v. *Lakshmibái*(5); *Lakshman Dádá Náik* v. *Rámchandra*(6).

Háji Esmáil created a trust in respect of the Rs. 1,90,000 in favour of Háji Adam. He always dealt with the account as a trustee for Háji Adam—*Sir Jamsetji Jijibhái* v. *Sonábái*(7); *Childers*

(1) Perry's Or. Ca., p. 110.
(2) 12 Bom. H. C. Rep., 294, at p. 320.
(3) 11 Bom. H. C. Rep., 76.
(4) 10 Bom. H. C. Rep., 453.
(5) 1 Bom. H. C. Rep., 189.
(6) I. L. R., 5 Bom., 48.
(7) Bom. H. C. Rep., 133.

v. *Childers*[1]; *Jones* v. *Lock*[2]; *Vandenburgh* v. *Palmer*[3]; *Stapleton* v. *Stapleton*[4].

Starling and *Jardine* for the executors (the first three defendants).—The executors are merely stakeholders. As to the alleged partition, counsel cited *Appovier* v. *Rámá Subba Ayan*[5]; *Chidambaram* v. *Gouri Nachiar*[6]. With regard to the alleged trust, *Gopeekrist* v. *Gungápersad*[7]; *Gaskell* v. *Gaskell*[8]; *Hughes* v. *Stubbs*[9]; *Richards* v. *Delbridge*[10].

Pigot and *Lang* for the fourth defendant.—They cited in addition, as to the alleged trust, *Heartley* v. *Nicholson*[11]; *Milroy* v. *Lord*[12]; *Currant* v. *Jago*[13]; *Warriner* v. *Rogers*[14]; *Sidmouth* v. *Sidmouth*[15]; *Xenos* v. *Wickham*[16]; *Cecil* v. *Butcher*[17].

SARGENT, J.—The plaintiffs in this suit are the widow and infant daughter of one Háji Adam Háji Esmáil, and they seek to recover from the estate of his father Háji Esmáil—

(1). The ancestral property which came to the hands of Háji Esmáil from his grandfather Háji Joosub Bulládina and his father Háji Hubib.

(2). A sum of one lákh and 90,000 rupees which, it is alleged, was held by Háji Esmáil in trust for his son Háji Adam.

(3). Ornaments and jewels belonging to the estate of Háji Adam.

The first three defendants are the executors named in the will and are now in possession of the estate of Háji Esmáil, who died on 19th August, 1878, having survived his son Háji Adam, who died on 17th May, 1878, without male issue.

The fourth defendant Tyeb Háji Joonas is the grandson of Háji Esmáil and a legatee under his will, and was made a party at his own request by an order of 26th March, 1881.

(1) 3 K. & J., 310.
(2) L. R., 1 Ch. Ap., 25.
(3) 4 K. & J., 204.
(4) 14 Sim., 186.
(5) 11 Moo. Ind. Ap., 75.
(6) L. R., 6 Ind. Ap., 177.
(7) 6 Moo. Ind. Ap., 53.
(8) 2 Y. & J., 502.
(9) 1 Hare, 476.
(10) L. R., 18 Eq., 11.
(11) L. R., 19 Eq., 233.
(12) 4 De G. F. & J., 264.
(13) 1 Coll., 261.
(14) L. R., 16 Eq., 340.
(15) 2 Beav., 447.
(16) 2 Eng. & Ir. Ap., 296.
(17) 2 Jac. & W., 565.

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The first question of importance which presents itself for decision in this case is as to the law of inheritance applicable to Cutchi Memons, to which caste the parties interested belong. The ecclesiastical records of this Court show that Khojás and Cutchi Memons have ever since the decree in the case of the "Khojás and Memons" before Sir E. Perry in 1847 (*Hirbái* v. *Sonábái*[1]) been regarded in the Supreme Court and subsequently in this Court as Hindus who had been converted to Mahomedanism whilst retaining their Hindu law of inheritance; and, so far as Khojás are concerned, the decision of the Court of Appeal in the case of *Hirbái* v. *Gorbái*[2] must be taken as conclusively deciding that the *onus* of proving a custom of inheritance not in conformity with Hindu law lies upon those who set it up. The above records are even richer in instances of the application of Hindu law of inheritance to the estates of Memons than to those of Khojás, and establish a non-contentious practice extending over many years.

I think, therefore, that in the absence of any special ground of distinction, and none was suggested, no sufficient reason exists for placing Memons on any different footing from Khojás as regards the application of the Hindu law of inheritance in the absence of proof of any special custom, although undoubtedly it leaves the law, as pointed out by the Chief Justice in the above case of *Hirbái* v. *Gorbái*[2], in an incomplete state, which can only be satisfactorily dealt with by express legislation.

Applying, then, this rule to the circumstances of the present case, and assuming, as was admitted, that Háji Esmáil and Háji Adam were an undivided family, it follows—and this was not denied—that, in default of any partition between the father and son during their joint lives, the ancestral property would pass to Háji Esmáil as the surviving male.

It was argued, however, that, although there had been no actual partition in Háji Adam's life, what occurred on the occasion of a suit being filed by Háji Adam against his father to compel immediate partition of the ancestral estate ought to be regarded as having had that effect. It appears that this suit was disposed

(1) Perry's Or. Cas., 110.

(2) 12 Bom. H. C. Rep., 294.

of by a consent decree on 11th July, 1876, by which it was ordered that the defendant should pay a sum of Rs. 20,000 to trustees for paying the plaintiff's creditors and the costs of that suit, and paying the residue, if any, to plaintiff; further, that defendant should pay plaintiff, during his life, a monthly sum of Rs. 250 for his maintenance and to plaintiff's wife Rs. 50 for her life for maintenance; and, lastly, that the plaintiff be permitted to withdraw the suit without liberty to bring a fresh suit for same causes of action, or any other claim arising from any account now or heretofore existing between the plaintiff and the defendant, until after the defendant's death.

Now it is plain that the very object of this consent decree was to prevent a partition of the ancestral property during Háji Esmáil's life, and, therefore, it is difficult to understand how by any process of reasoning it can be held to have been equivalent in any sense to an actual partition. It was said that it assumes the right to a partition; but, even assuming that it did, before a partition can be effected there must be, in the absence of division by metes and boundaries, at any rate an agreement that each party interested shall henceforth enjoy the produce of a certain definite share of the joint property, which was not the case here. There cannot, therefore, be any doubt, that no partition was effected during Háji Adam's life, and, therefore, that the ancestral property became absolutely vested in Háji Esmáil on his son's death.

Passing to the next claim, *viz.*, the sum of Rs. 1,90,000 alleged to have been held in trust by Háji Esmáil for his son, we find that this claim is based upon an account opened by Háji Esmáil in his books in his son's name in the year 1912 (A.D. 1855-56) when his son was a year and a half old, and which was written off by carrying the balance to the credit of the profit and loss account on the 28th November, 1873. The items on the credit side consist of cash payments by Háji Esmáil and of two credit transfers, the proceeds of the sale of gold and shares and money representing the value of the ornaments of Jambubái, Háji Adam's mother, used on the occasion of his marriage with the plaintiff Ashábái. The debit items consist of two debit transfers, sums expended on the purchase of gold and shares and ornaments for Ashábái, sums

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expended on the funeral ceremonies of Jambubái, and two sums, each of Rs. 41,000, in 1920 and 1928 in respect of expenditure on a rest-house and the purchase of lands for certain charitable and religious purposes. It was said that Háji Esmáil in opening this account must be deemed to have created himself a trustee of all sums placed to the credit of the account, with large powers as to their application and investment; and the case of *Sir Jamsetji Jijibhái* v. *Sonábái*(1) was much relied on in support of that contention. Now the principle to be drawn from the authorities—at any rate the more recent authorities—is, that, in order that the owner of a fund may constitute himself a trustee of it, he must either expressly declare himself to be a trustee, or must use language which, taken in connection with his acts, shows a clear intention on his part to divest himself of all beneficial interest in it, and to exercise dominion and control over it exclusively in the character of a trustee. It will suffice to refer to *Richards* v. *Delbridge*(2) and *Heartley* v. *Nicholson*(3) for the enunciation of the above rule and for its application, under circumstances analogous to those of the present case, to *Sir Jamsetji Jijibhái* v. *Sonábái*(4) and *Vandenburgh* v. *Palmer*(5).

Now, if the case for the plaintiffs rested exclusively upon the account as it appears in the books, no intention to create a trust by Háji Esmáil could, I think, be safely inferred from it. No presumption could be raised, that it was intended for the benefit of Háji Adam from the one circumstance of its being in his name. The remarks of the Privy Council in *Gopeekrist Gosain* v. *Gungápersád Gosain*(6) are equally applicable to an account opened in a man's books in the name of his son as to a purchase by him in his son's name. The frequency of *benami* transactions in this country forbids any presumption being raised in either case contrary to that which arises in favour of the person who provides the funds.

However the plaintiffs do not rely exclusively upon the account itself, but, in addition, upon a statement made by Háji Esmáil

(1) 2 Bom. H. C. Rep., 133.
(2) L. R., 18 Eq., 11.
(3) L. R., 19 Eq., 233.
(4) 2 Bom. H. C. Rep., 133.
(5) 4 K. & J., 204.
(6) 6 Moo. Ind. Ap., 53.

in December, 1871, before the Commissioner in Insolvency, in which he explains the nature of the account. The question there arose as to whether Háji Esmáil had duly accounted for all the shares which had been purchased in his partnership with one Soomar Ahmed and handed over to the former. Two receipts, signed by Háji Esmáil, were produced, acknowledging the receipt of 4,920 shares, and his defence was that they belonged to Sala Mahomed and 136 to his son Háji Adam. These 136 shares were admitted by the defendants to form part of the Oriental Financial shares debited to Háji Adam in 1921, and in respect of which a dividend is credited to the account in 1924. In examination-in-chief he said that these shares were the private property of Háji Adam. In cross-examination he says: "My son purchased these shares. I received the dividend, because I advanced the money for the purchase of the shares. My son is now twenty. He was fourteen when the shares were purchased. The shares were my son's, not mine; he carried on business at that age; he had a deposit in my books. His money was deposited by me on his account while he was young, and I carried on business in his name." In re-examination he says: "With reference to shares in my son's name, it is usual for wealthy gentlemen in my position to open credits in their sons' names and carry on business for them till they are of age. My son is now of age, and carries on business for himself. I advanced him money when he came of age; his account is still in his name in my books; he can draw money whenever he likes. The proceeds of his financial shares have been handed over to him in his account; he draws on such account, and everything to the credit of such account is his property."

Now this statement, taken as a whole and in its plain and obvious sense, doubtless amounts to an admission, that the account was originally opened for the benefit of his infant son, and that during his minority Háji Esmáil carried on business on his account; that when his son came of age (which happened before the shares were purchased, which was in 1912) he carried on the business for himself; and, lastly, that whatever was then standing to the credit of the account was his son's property;—in other words, that the balance of the account carried over when his son's

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minority ceased and the account thenceforth carried on from year to year, belonged beneficially to his son and that whatever stood to the credit of the account was held by him as a trustee for his son. The relationship between them on this account would become one of trust and confidence, and does not admit of being described in any other terms. From 1922 (A.D. 1865-66), when Háji Adam married, down to the time when he went on pilgrimage at the end of 1873, the balance is carried on with interest from year to year. In 1922 a considerable amount of ornaments, alleged to have belonged to Háji Adam's deceased mother, were credited to the account. In 1923 two sums of 60,000 and 10,000 are placed to its credit, said to have been paid in by Háji Esmáil, and some small sums in respects of ornaments taken from the box of Háji Adam's mother; and so on from time to time sums are credited to the account as dividends on the Oriental shares before alluded to, or as paid in by Háji Esmáil himself. During the same period we find Rs. 41,735 debited in December, 1871, to the account on account of the Bandar Trust created to celebrate the memory of deceased members of the family. A trust deed was executed on the occasion to which Háji Adam was made a party as trustee, and he executed it; and two further sums of Rs. 4,314 and Rs. 2,823 were also debited to it in January and July, 1872, for the same purpose, and on 24th November, 1872, a sum of Rs. 4,487 was debited to it for outlays on the Musafarkana at Aden, which was admittedly erected expressly in memory of Háji Adam's deceased mother. All these sums, however, were expended on purposes which, from a Mahomedan point of view, might well be considered as spent for the benefit of Háji Adam, and his having executed the trust deed makes it in the highest degree probable, as father and son were then on good terms, that the sums were debited to the account with his consent, although he afterwards claimed the entire balance in his suit without giving credit for these sums when he was quarrelling with his father in 1876.

Háji Adam left for Mecca on 24th November, 1873, and, so far as appears on the books, the account was closed on 28th November, 1873, by carrying Rs. 1,50,000 to profit and loss account and the balance of Rs. 3,523 being paid in cash to Háji Esmáil. In the books

is also found what is called the pilgrimage account of Háji Adam commencing from 24th November, 1873, the day on which he left. Háji Adam returned in the middle of 1875, and soon afterwards towards the close of that year the father and son quarrelled, and the latter left his father's house with his wife. In the beginning of the following year the son filed a suit against his father, claiming his share of the ancestral estate and the balance of the account in question; and this suit was compromised by Háji Esmáil paying 20,000, to be expended in defraying his son's costs of the suit and his debts, and undertaking to pay him an annual allowance; the suit to be dismissed without liberty to renew it until Háji Esmáil's death. Rustomji Dosábhoy Setna, one of the executors of Háji Esmáil's will, in his answer to interrogatories filed by the plaintiff, states that he was managing clerk for the solicitors who acted for Háji Esmáil in the above suit, and that the latter then told him that the money appearing due in the account was his own private money as distinguished from his trade money. But this description of evidence is of the most unsatisfactory nature, whether we consider the time at which the statement was alleged to have been made, or the character which Mr. Rustomji had previously filled. Again, if such was the object of opening the account, why was it closed when Háji Adam went on pilgrimage? Whereas on the contrary, if it was considered as a fund belonging to Háji Adam, of which Háji Esmáil was a trustee and considered himself the guardian, there would be nothing strange in his father closing the account in the way he did when his son was going to be absent for a year and half. The question practically affects only volunteers; and upon the whole of the evidence I think it satisfactorily establishes that Háji Esmáil did constitute himself a trustee of the sums standing to the credit of the account in question for the benefit of his son, and that it had always been so understood between himself and his son until they quarrelled after the son's return from Mecca, when he repudiated that character, and refused to recognize his son's right to it, and that Háji Adam's representatives are now entitled to claim what was due on the account when it was closed, *viz.*, Rs. 1,53,523, 2 qr., 49 res.

As to the claim of the executors to set off what was expended by Háji Esmáil on his son's pilgrimage, I think it must be

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allowed. The account in Háji Esmáil's books shows that he considered the money as advanced to his son. The plaintiffs say the account was concocted after Háji Esmáil and Háji Adam had quarrelled; there is, however, no evidence to support this statement. It is true, also, that the account was written off a few days after Háji Adam's death; but, in so doing, Háji Esmáil must fairly be taken to have done so on the supposition that he would not have to pay anything on the other account. However, the set-off must, I think, be confined to payments which can properly be regulated as made on his account. If a reference is insisted on, the account should be taken on the basis of the entries in the pilgrimage account in Háji Esmáil's books with liberty to the plaintiff to object to the items as not coming within the above description.

With respect to the claim to ornaments belonging to the estate of Háji Adam, it must be assumed, upon the evidence afforded by Háji Esmáil's own books, that his wife Jambubái had a considerable amount of ornaments in her possession at the time of her death, and it was assumed on both sides that, in the absence of proof of special custom, they must be treated as her *stridhan* according to Hindu law. The fourteenth issue raised the question of custom, but no evidence was called, and the issue was withdrawn. That being so, it was admitted by Mr. Latham that as Jambubái left two daughters, Zalekhabái (the mother of the fourth defendant) and Hafibái, such part of the above ornaments as were given to Jambubái at her marriage would on her death pass to her daughters, and, therefore, form no part of Háji Adam's estate. As to such of the ornaments that were given to her after marriage or by her husband or kindred, he (Háji Adam) would at least according to the Mayukha—a very high authority in Bombay—be entitled to share equally with his two sisters. It is, however, to be remembered, that Háji Adam was credited with Rs. 7,135 in his account in his father's books as the value of the ornaments belonging to Jambubái which were appropriated to his marriage with Ashábái, and he will have the benefit of it in the account already under discussion; and as he must be, I think, taken to have been a party to this transaction in 1866, when he married, he cannot now claim anything against Háji Esmáil's estate in respect of his one-third share of ornaments constituting Jambu-

bái's Asantaka, unless that share exceeded Rs. 7,135 in value; this, however, is quite independent of any right Ashábái may have to recover from Háji Esmáil's estate the ornaments so appropriated to the marriage as her *stridhan*, or their value in default of their not being forthcoming.

Assuming the one-third share to have exceeded Rs. 7,135 in value, the question as to the Statute of Limitations would arise. Now, it is to be remarked, that after Jambubái's death in 1862, when Háji Adam was only eight years old, Háji Esmáil must be deemed to have taken possession of them in the character in which by law he would have been entitled to do so, *viz.*, as being one, at least, of the natural guardians of his son and daughters according to Mahomedan law. Moreover, his crediting his son with the value of his mother's ornaments, which were appropriated to his son's marriage, shows that he treated them at that time as belonging, in whole or in part, to his son. Háji Esmáil's possession of the ornaments must, therefore, be considered from its commencement as that of a trustee for the specific purpose of protecting his children's property, and if he retained some portion of his son's share of those ornaments, the case falls under section 10 of the Limitation Act; and his son's claim, and, therefore, that of his widow as his representative, is not barred.

With respect to the ornaments given by outsiders on the occasion of Háji Adam's marriage included in Exhibit H, I think the evidence satisfactorily shows that they must be regarded as having been given to Háji Esmáil, except such as are specially mentioned in the account as having been given to Háji Adam, of which there is only one instance, *viz.*, a diamond ring of Rs. 800, which the account states that Háji Adam lost; and there is no evidence, except Ashábái's, upon which, I think, it would be very unsafe to act, that it is one of the rings in Háji Esmáil's possession at his death.

I think, therefore, the plaintiffs are entitled to a reference, if they wish for it, to ascertain the value of Jambubái's ornaments given to her subsequently to marriage.

Attorneys for plaintiff.—Messrs. *Bháishankar and Dinsha.*

Attorneys for first three defendants.—Messrs. *Macfarlane and Edgelow.*

Attorneys for fourth defendant.—Messrs. *Payne and Gilbert.*