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SARGENT, C. J.:—The High Court, in awarding the plaintiff's claim with costs throughout, must, we think, be understood as referring to the claim as stated in the plaint, and not to the claim as described, according to the usage of the office, by the officials of this Court at the head of the paper book of appeal. Sections 579 and 587 of the Code of Civil Procedure do not require the claim to be stated in the decree so as to make that statement a part of the decree itself. The claim, as made by the plaint, is for interest until satisfaction, in clear and unambiguous language, which distinguishes it from the claim in *Prabhalanadha Pillay* v. *Ponnusawmy Chetty*(1); nor is there any necessity for construing the decree otherwise than according to its language, in its plain grammatical sense, which distinguishes it from the case we have been referred to in *Thamman Singh* v. *Gangá Rám*(2).

We think, therefore, that the plaintiff was entitled, under the decree, to interest up to payment on the principal sum of Rs. 1,300; and as Rs. 1,485 and costs of suit, making in all Rs. 2,084-2-7, were paid into Court on 14th June, 1884, the date of the *darkhást*, we must vary the order of the Court below by directing that on payment by the defendant of further interest on Rs. 1,300 from date of suit up to the day of payment, together with the plaintiff's costs in the *darkhást* proceedings and on this appeal, the defendant shall be deemed to have satisfied the decree.

(1) 6 Mad. H. C. Rep. Rul., p. 1. (2) I. L. R., 2 All., 342.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

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JAMNA'BA'I, (ORIGINAL APPLICANT No. 2), APPELLANT, *v.* HASTUBA'I (ORIGINAL APPLICANT No. 1), RESPONDENT.*

Act XXVII of 1860—*Certificate of heirship under Act XXVII of* 1860, *grant of*—*Joint certificate to widows of two sons of owner of estate.*

R. and his sons, L. and S., were members of an undivided family. S. predeceased R., who subsequently died, leaving L. him surviving, and on the death of L. the widows of L. and S. applied for a joint certificate of heirship to the estate of R. Before their application was heard, L.'s widow repudiated the joint application, and prayed for the grant of a certificate to her alone. The District Judge, how-

* Appeal No. 54 of 1885.

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ever, ordered a joint certificate to be issued to the two widows. On appeal from this order by L.'s widow,

Held, that, under Act XXVII of 1860, a joint certificate could not be granted. S. having predeceased R., his interest in the family property and *sacra* reverted to R. and L., and after L.'s death the estates vested in L.'s widow, who had, therefore, a better claim to be entrusted with getting in the debts.

The order of the lower Court was varied by directing the certificate to go to L.'s widow alone on her giving security for half the amount of the outstandings.

THIS was an appeal from an order of M. H. Scott, District Judge of Ahmednagar.

One Rámchandra Tukárám had two sons, Lálchand and Sardármal, the husbands of Jamnábái and Hastubái, respectively. Sardármal predeceased his father. Subsequently to the death of Sardármal, Rámchandra on the 27th October, 1881, executed a document whereby he provided for Sardármal's widow, Hastubái, and consented to her adopting a son, if Lálchand approved. Rámchandra died on the 10th November, 1881, and some time afterwards Lálchand died. After the death of Lálchand, Jamnábái and Hastubái on the 13th October, 1883, presented a joint application to the District Judge of Ahmednagar for a certificate of heirship to the estate of Rámchandra. Before this application came on for disposal, Jamnábái on the 24th March, 1884, presented another application praying for a grant of certificate to her alone, alleging that her husband, Lálchand, having survived his father, the estate vested in him, and that she was his heir. The District Judge passed an order granting a joint certificate to Jamnábái and Hastubái. From this order Jamnábái appealed to the High Court.

Macpherson and *Telang* (*Shántárám Náráyan* and *Vishnu Khrishna Bhátvadekar* with them) for the appellant:—The District Judge was wrong in granting a joint certificate. Jamnábái is the sole heir of her husband, Lálchand, he having survived his father. Hastubái's, husband, Sardármal, predeceased his father, and his interest was taken by his surviving father and brother. Hastubái, therefore, has no *locus standi*. If she wishes to establish her title, she has her remedy by a separate suit. The Court will grant a certificate to the applicant, who is

the right heir—*Surfoji* v. *Kamakshiamba*[1]. The Court will not consider the effect of the alleged agreement between Lálchand and Hastubái for sharing the estate between them. The object of Act XXVII of 1860 in granting a certificate is to secure debtors who pay money due to the estate of the deceased—*Prán-kisto Biswás* v. *Nobodip Chunder Biswás*[2]. A certificate ought to have been granted to Jamnábái, who is preferable to Hastubái—*In the matter of the petition of Oodoychurn*[3]. The District Judge had no power to grant a joint certificate to two persons. He should determine which of them was better entitled to a certificate, and grant it to that person alone—*Madan Mohan* v. *Rámdial*[4]; *Hurro Kristo Doss* v. *Rámá Nundo Doss*[5]. The intention of the Legislature is that one certificate only should be granted.

Inverarity (*Shivshankar Govindrám* with him) for the respondent:—The finding of the District Court is right. In such a matter a Judge is not bound to come to a positive conclusion as to who is the preferable person. The application was to collect debts due to the estates of the three deceased persons. By the agreement, Hastubái's right to a moiety was recognized, and the right to collect one-third of the debts assigned to her. The right to a certificate is to be determined at the time it is granted, and the effect of it is to declare the right to collect debts. Hastubái has been in enjoyment of the estate, and the conduct of Jamnábái is an admission of Hastubái's right to such enjoyment. It was after the joint application had been made that Jamnábái wanted to withdraw, and she should not have been allowed to withdraw.

SARGENT, C. J.:—The question in this case arises on the rival claims of two widows, Jamnábái and Hastubái, for a certificate of heirship, under Act XXVII of 1860, to enable them to collect the debts due to the estates of their deceased father-in-law, Rámchandra Tukárám, and his sons, Lálchand and Sardármal, their deceased husbands. The District Judge granted a joint certificate to the widows, and against this order Jamnábái appeals.

(1) I. L. R., 7 Mad., 452. I. L. R., 8 Calc., 868.
(2) I. L. R., 4 Calc., note, at p. 413.
(3) I. L. R., 5 All., 195.
(4) 22 Calc. W. R. Civ. Rul., 274.

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Sardármal predeceased his father, who died on the 10th November, 1881. On the 27th October, 1881, Rámchandra executed a document, exhibit 67 in the case, by which he made a provision for Hastubái and consented to her adopting a son to her husband if Lálchand, his surviving son, approved. This document also purports to have been signed by Lálchand, but some doubt has been thrown on the genuineness of his signature at the hearing of this appeal. According to Hastubái, Lálchand, after the death of his father, passed a document to her (exhibit 60 in the case) on the 12th August, 1882, by which he agreed to give her a son to adopt if he should get one, and, if not, that she might adopt a kinsman. The document concludes as follows:—"Besides this, as to the dealings, cash, ornaments, goods, &c., making up the whole estate appertaining to the firm at Peth Ghodnadi and the firm at *mauze* Mhosne, I and you are the joint owners of the same, and the ownership of both us therein is in equal shares. On the day when you and I shall disagree I will give you a moiety of the whole estate, and myself take a moiety thereof." The genuineness of Lálchand's signature to this document is disputed by Jamnábái. The attesting witnesses, Gopál Sadáshiv and Kasturchand, were called, and spoke to Lálchand having signed it in their presence. The handwriting was also spoken to by two witnesses—Mulchand, who had been a servant of both the ladies, and Alamchand, a son-in-law of Rámchandra—as that of Lálchand. Mr. Báláji, Chief Interpreter of this Court, also expressed an opinion, after comparing the signature with admitted signatures of Lálchand produced by Jamnábái, that the signature in question was very similar to the latter, and had the appearance of having been written by the same hand, although with a slight difference in the vowel marks; at the same time he added that the latter was written more freely as compared with the former, in which the letters were more distinct and separate. As to Lálchand's signature of exhibit 67, he entertained doubts as to its being by the same hand as wrote the other signature, although he would not say positively it might not have been.

Such is the direct evidence as to the genuineness of the signatures on exhibits 60 and 67. On the other hand, there are

circumstances in the conduct of the parties since Lálchand's death which it is difficult to reconcile with the existence of exhibit 60 on the death of Lálchand. Without laying too much stress on the fact that it was not produced when the relatives Hukamchand and Nemichand and the *vakils* visited the ladies at Nagar shortly after Lálchand's death and discussed what was to be done, although on that occasion the *vakils* told Jamnábái (as Mulchand, a witness for Hastubái, himself admits) that she was the sole heiress and ultimately applied for a joint certificate solely on Jamnábái's statement that she knew it was her husband's wish, or on the circumstance that the *vakils*, as shown by the terms of the joint application, regarded Jamnábái as waiving her rights in favour of Hastubái, and had no idea that there was a document in existence recognizing Hastubái as the owner of a half of the family property—still when Jamnábái had repudiated the joint certificate, and had applied for a separate certificate, and the two ladies were disputing over the estate as shown by what occurred when Hastubái adopted on the 28th March, 1884, and when Hastubái was insisting on her right to a half of the estate, it does appear incomprehensible that the latter should not have produced exhibit 60 as establishing her title to what she was then claiming, and that nothing should have been heard of the document until 18th August, 1884, five months after the dispute on the occasion of Hastubái's alleged adoption, when it was put in by Hastubái with her written statement. The evidence, moreover, of the attesting witnesses is far from being of a very reliable character. Gopál, who maintains himself by begging, gave an account of the contents of the instrument which, he said, he had attested, which corresponded rather with exhibit 67 than exhibit 60, and that, too, although he says the document he attested was read out. The other attesting witness, Kasturchand, cannot read, and only remembers that there was an agreement for adoption. Lastly, the circumstance that ample provision had been made by Rámchandra for Hastubái, and that no other member of the family, except Hastubái, was present when exhibit 60 was executed, adds to the doubt at to its genuineness. Upon the whole of the evidence we think that the improbability of exhibit 60 having

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been in existence at the time of Lálchand's death, as shown by its non-production for a year and three months after his death notwithstanding the rights of the widows were constantly under consideration and for many months matter of serious dispute, outweighs the direct evidence as to Lálchand's signature being in his handwriting.

That being so, it remains to consider the rights of the widows independently of that instrument. Sardármal having died before his father Rámchandra, his interest in the family property and *sacra* reverted to Rámchandra and Lálchand, and his widow could not have adopted without their sanction, as she never had an independent right (see West and Bühler, p. 987). However, exhibit 67 shows that Rámchandra was willing that she should adopt if Lálchand assented; and although there is grave doubt as to Lálchand's signature to exhibit 67 being genuine, still we cannot doubt, from Jamnábái's conduct after her husband's death, that he had, as a fact, given his assent to the two widows adopting sons on the assumption that the property would be divided equally between them. It is not necessary to decide how the rights of the widows are to be worked out under this conditional consent, as in any case we are of opinion that it would be frustrating the object of the Act were we to grant the certificate to both the widows, and we think that, under the circumstances the widow, in whom the estate vested on Lálchand's death, has the better claim to be entrusted with getting in the debts.

The order of the Court below must, therefore, be varied by directing the certificate to go to Jamnábái alone on her giving security for half the amount of the outstandings to the satisfaction of the Court below. Parties to pay their own costs throughout.