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to eject him to prove that he has a superior title. This the plaintiff has failed to establish, and his suit must, therefore, be dismissed.

Mr. Khare also contended that the gift was good so far as the shares of the adult co-parceners were concerned, and that the plaintiff should be allowed to add the minor as a party and convert the suit into one for partition of the whole family property. Whether at this stage such a change in the nature of the suit could be allowed, is a question which we need not discuss, for we think the authorities establish beyond doubt that the gift of an undivided share is not allowed by Hindu law, and cannot be given effect to.

We, therefore, reverse the decrees of the Courts below and reject the claim, with costs on the plaintiff throughout.

Decree reversed and claim rejected.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

NARNA AND PARAMESHVAR, SONS OF NARASINH BHATTA (ORIGINAL APPLICANTS), APPLICANTS, *v.* ANANT AND ANOTHER BY THEIR GUARDIAN *AD LITEM* (ORIGINAL OPPONENTS), OPPONENTS.*

1894. *September* 24.

Practice—Procedure—Decree—Death of party between hearing and judgment—Judgment, date of operation of—Civil Procedure Code (Act XIV of 1882), *Sec.* 234.

An appeal having been argued on the 11th November, 1892, the case was adjourned for judgment which was delivered on the 30th November, 1892, and was in favour of the plaintiffs. In the meanwhile the defendant had died. On application for execution it was contended that the decree was null and void, as the respondent was dead when it was passed.

Held, that the judgment should be regarded as operating as if it had been delivered on the day when the arguments were closed.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of E. H. Moscardi, Acting Judge of Kánara.

The applicants Narna and Parameshvar brought a suit (No. 76 of 1891) against one Paramabhatta in the Court of the Subordi-

* Application No. 94 of 1894 under extraordinary jurisdiction.

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nate Judge of Kumta. Their suit was dismissed, and they appealed to the District Court. The appeal was heard on the 11th November, 1892. The Judge then intimated that the decree of the lower Court should be reversed, but his judgment awarding the plaintiff's claim was not formally delivered until the 30th November. In the meanwhile (19th November) the defendant Paramabhatta died.

The applicants subsequently applied for execution. The opponents (Anant and Rámbhat), sons and heirs of the deceased defendant Paramabhatta, resisted the application and contended that the decree in appeal was null and void, as the defendant was dead when it was passed.

The applicants then applied for a review of judgment, and asked that the names of the opponents should be substituted on the record for that of the deceased, and that the appeal should be reheard. The opponents contended that this application was too late, as it was made more than six months after the date of the defendant's death. The Judge rejected the application.

The following is an extract from his judgment :—

"The applicants were present in Court at the hearing, and they, therefore, knew that judgment had not been delivered on the 11th November. They also must have known that Paramabhatta's death occurred a few days after the hearing, for they are caste-fellows of Paramabhatta and lived in the same village—indeed one of the affidavits filed by the opponents goes so far as to say that one of the applicants assisted in carrying Paramabhatta's corpse to the burning ground. Thus the applicants knew that the judgment in appeal and the death of Paramabhatta must have occurred within a few days of one another, and it was, therefore, their duty to enquire which of the two occurred first."

The applicants then applied under the extraordinary jurisdiction of the High Court, contending that the judgment of the appellate Court ought to have been dated the 11th November, on which day the defendant was alive. A rule *nisi* having been granted, calling on the opponents to show cause why the Judge's order rejecting the application should not be set aside,

Shámráo Vithal appeared for the applicants in support of the rule:—The Judge expressed his opinion on the case on the 11th November, 1892, and all the proceedings and arguments were closed on that day. The written judgment, though subsequently

delivered, ought to have been dated the 11th November—*Rámkrishna* v. *Ramábái*[1].

Ghanashám N. Nádkarni appeared for the opponents to show cause:—The present application is not one to be entertained under the extraordinary jurisdiction of the High Court. The Judge has not exercised his jurisdiction wrongly or with material irregularity—*Amir Hasan Khan* v. *Sheo Baksh Singh*[2].

BAYLEY, C. J. (Acting):—Having regard to the long established practice of the Courts in England—see *Miles* v. *Bough*[3]—and to the decision in *Rámkrishna* v. *Ramábái*[1], we think that the Judge's judgment of 30th November, 1892, should be treated as operating as if it had been delivered on the 11th November, 1892, when the arguments were closed and the Judge took time to consider his judgment. Under these circumstances nothing further remains to be done than for the original plaintiffs to apply for execution under section 234 of the Civil Procedure Code. There is no necessity to place the names of the opponents on the record for the purpose of re-hearing the appeal, and we, therefore, discharge the rule. The parties to bear their own costs of the rule.

Rule discharged.

(1) I. L. R., 17 Bom., 29. (2) I. L. R., 11 Cal., 6.
(3) 3 Dowl. and Lowndes, 105.

APPELLATE CIVIL.

Before Mr. Justice Farran and Mr. Justice Candy.

MORO NA'RA'YAN JOSHI (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'LA'JI RAGHUNA'TH AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1894. *September* 25.

Limitation Act (XV of 1877), Sch. II, Arts. 140, 141 *and* 144—*Alienation by a Hindu widow—Subsequent adoption by widow—Suit by the adopted son to recover possession—Adverse possession—Adoption—Rights of adopted son.*

The childless widow of a separated Hindu being in possession of his property as his heir, alienated it in the year 1868. Twenty years afterwards (13th May, 1888) she adopted a son, who in 1890 brought the present suit to recover the alienated property.

* Second Appeal, No. 730 OF 1892.