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VII of 1878 allows this as if the debt "were an arrear of land revenue." In the opinion of the District Judge, the effect of section 81 designating the revenue officers as those who may collect debts due for timber, is to bring in the bar of jurisdiction contained in section 11 of Act X of 1876. We are of opinion, in the absence of authority and looking at the object of Act X of 1876 to hold the contrary, as the officer who uses the machinery by which Government revenue is collected is for the purposes of the Forest Act only like a *persona designata*: if the machinery designated had been regulated by the Code of Civil or Criminal Procedure, the Judge or Magistrate or Police officer would not have come under the bar of section 11; and there is no reason for placing a Collector or his subordinate the Mámlatdár in a different position. This view is supported by Birdwood J.'s remarks in *Náráyan* v. *Sakhárám*(1) and by West J.'s comparison of the Collector to a bailiff or agent in the case of the same name, *Náráyan* v. *Sakhárám* (2). The fact that the officer passing an order is a Mámlatdár does not necessarily bar the jurisdiction of a Civil Court—*Ganesh* v. *Mehta Vyankatrám* (3). The Court, therefore, reverses the decree of the District Judge and remands the suit to his Court for trial. Costs of this appeal on respondent.

Case remanded.

(1) I. L. R., 9 Bom., 462. (2) I. L. R., 11 Bom., 522.
(3) I. L. R., 8 Bom., 188.

ORIGINAL CIVIL.

Before Mr. Justice Candy.

RA'MPARTA'B SAMRATHRA'I AND ANOTHER PLAINTIFFS, *v.* FOOLIBA'I AND GOOLIBA'I, DEFENDANTS.*

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March 13, 14.

Practice—Jurisdiction—Cause of action arising out of jurisdiction—Addition of a defendant residing out of jurisdiction in a suit brought against other defendant under clause 12 *of Letters Patent,* 1865*—Fresh leave to sue such new defendant necessary—Hindu law—Minor—Liability of minor for debt—Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by the acts of the guardian.*

* Suit No. 76 of 1892.

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Where a defendant is added who does not reside within the jurisdiction of the High Court and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under clause 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed.

Under Hindu law where an ancestral trade descends upon a minor as the sole member of the family, and the ancestral trade is carried on under the superintendence of the minor's natural guardian, for the benefit of herself (she having a claim for maintenance) and the said minor, the minor will be bound by all acts of the guardian necessarily incidental to or flowing out of the carrying on of the trade.

SUIT to recover Rs. 53,883-4-9 alleged to be due to the plaintiff in Bombay by the defendants' firm of Bálárám Punamchand at Sihore in the territory of Bhopál.

The plaintiffs' firm in Bombay had acted as the commission agents of the firm of Bálárám Punamchand of Sihore. That firm was a family firm of long standing at Sihore and had formerly been carried on under the name of Chhotámal Bálárám. The last male owner was one Punamchand, who died in 1943 (1886-87), leaving an infant daughter named Goolibái (the second defendant). Subsequently to his death the firm was carried on by a munim under the directions (as the plaintiffs alleged) of his (Punamchand's) mother Foolibái (defendant No. 1). The plaintiffs now sued for money due in respect of transactions since Punamchand's death.

The suit in the first instance was brought against Foolibái alone, the plaint alleging that she was the owner of the firm. In her written statement she denied that she was the owner or was responsible for any of the firm's transactions. She stated that the firm had belonged to her son Punamchand, who was then dead, and who had left an infant daughter Goolibái, who was alive.

In consequence of these allegations the plaintiff added Goolibái as a party defendant to the suit (see I. L. R., 17 Bom., 466). Leave under clause 12 of the Letters Patent, 1865, had been duly obtained when the plaint was originally filed, but no fresh leave was got when Goolibái was added as a party.

The case now came on for hearing against both the defendants Foolibái and Goolibái.

The issues raised for the first defendant (Foolibái) were whether she carried on business at Sihore, and whether she was liable to the plaintiffs' claim.

For the second defendant (Goolibái), the following issues (*inter alia*) were raised:—

(3) Whether this Court has jurisdiction to try this suit as against the second defendant?

(4) Whether the plaintiffs' claim is not barred by limitation?

(5) Whether the second defendant was capable of being a debtor to plaintiffs in respect of the transactions in the plaint mentioned?

Scott (with *Lang*, Advocate General) for Foolibái (defendant No. 1):—Foolibái is clearly not liable to the plaintiffs' claim. She is not and never was the owner of the firm. As the widow of a former owner she is, by Hindu law, only entitled to maintenance out of his property. So far no doubt she is interested in the firm, but that does not make her liable. He cited Lindley on Partnership (5th Ed.), pp. 110-112; *Lukmidás* v. *Purshotam*[1].

Dávar (with *Inverarity*) for Goolibái (defendant No. 2):—As against this defendant, this Court has no jurisdiction to try this suit. The whole cause of action did not arise in Bombay, and leave to sue under clause 12 of the Letters Patent, 1865, was, therefore, necessary. That leave was, no doubt, obtained for the suit when first filed. But it was then a suit against the first defendant Foolibái only. The Judge's order making the second defendant party was not obtained until the 13th August, 1892. It was a new suit against her. (See section 22 of Limitation Act, XV of 1877.) Fresh leave should have been obtained—*Rámpurtáb Samruthrái* v. *Premsukh Chandamal*[2].

Next we say as against us the suit is barred by limitation. The last item of the account was in 1889, and the suit as against us was not instituted until the 13th August, 1892.

Further, the second defendant Goolibái is a minor and cannot be liable. The firm is her property. The munim was not her agent, for a minor cannot appoint an agent—section 183 of the Contract Act (IX of 1872). The plaintiffs dealt with the firm

(1) I. L. R., 6 Bom., 700. (2) I. L. R., 15 Bom., 93.

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at their own risk. This is not a case of partnership; therefore, section 247 of the Contract Act does not apply. A minor cannot be liable—Lindley on Partnership (5th Ed.), p. 74; Addison on Contract (9th Ed.), p. 379; *Dilk* v. *Keighley*(1); *Thornton* v. *Illingworth*(2); *Lovell* v. *Beauchamp*(3).

Kirkpatrick (with *Macpherson*) for plaintiff:—The English cases cited do not apply. The firm was a family firm. Nothing similar to a family firm under Hindu law exists in England. As to a minor's liability in such a case, Tágore Law Lectures, 1884, pp. 239-40; *Joykisto* v. *Nittyanund*(4); *Sámalbhái* v. *Someshvar*(5); *Bemola* v. *Mohun*(6); *Rámlál* v. *Lakhmichand*(7). No fresh leave under clause 12 of the Letters Patent was necessary when the second defendant Goolibái was made a party. The suit was the same. It was a suit against the firm. Even for purposes of limitation, it would not, in such a case, be regarded as a new suit, notwithstanding section 22 of the Limitation Act—*Kasturchand* v. *Ságarmal*(8). There is no similar provision with regard to jurisdiction. As to limitation, the suit is not barred. This is a mutual account and one item is within time. But in any case section 13 of the Limitation Act applies—*Atul Kristo* v. *Lyon & Co.*(9). We contend that the first defendant Foolibái is also liable. She has been acting as manager and trustee.

CANDY, J.:—The facts of this case require to be stated with some precision. Suit No. 136 of 1889 in this Court(10) was filed on 15th March, 1889, by Rámpartáb Sámrathrái and Harbilas Rámpartáb, carrying on business in Bombay under the name of Rámpartáb Harbilas, by their munim Benirám Motirám (I will call these parties in future "the plaintiffs"), against 1, Premsukh Chandanmal of Indore, a minor, by his mother Mathubái; 2, Rámlál of Sihore; 3, Foolibái of Sihore, widow of Bálarám Bhágmal; 4, the above-named Mathubái of Indore, widow of Chandanmal. (All these defendants were stated to have carried on business until lately in partnership with Chhotámal at Indore

(1) 2 Esp., 480.
(2) 2 B. and Cr., 824, at p. 823.
(3) (1894) Ap. Ca., 607, at p. 611.
(4) I. L. R., 3 Cal., 738.
(5) I. L. R., 5 Bom., 38.
(6) I. L. R., 5 Cal., 792.
(7) 1 Bom. H. C. Rep., Appx., 51.
(8) I. L. R., 17 Bom., 413.
(9) I. L. R., 14 Cal., 457.
(10) See report of this case, I. L. R., 15 Bom., 93.

under the name of Chandanmal Chhotámal, and at Sihore under the name of Chhotámal Bálárám.) 5, Goolibái, infant daughter of Bálárám Bhágmal, by her mother (should be grandmother) Foolibái; she was added as a defendant in July, 1889.

The plaint recited that between the 22nd November, 1888, and 26th January, 1889, the defendants from Sihore drew certain *hundis* upon plaintiffs in Bombay, which plaintiffs paid. Plaintiffs, therefore, sued to recover the amount of the said *hundis*.

The first of these defendants replied by his mother that the firm of Chandanmal Chhotámal at Indore had stopped business on 14th March, 1889, and that he was in no way interested in the firm of Chhotámal Bálárám at Sihore.

The second defendant Rámlál replied that he had been merely a munim of the Sihore firm of Chhotámal Bálárám.

The third defendant Foolibái replied that the Indore and Sihore firms were entirely distinct, the latter belonging to Bálárám Bhágmal, who died in Samvat 1926, leaving this defendant his widow, who adopted Punamchand, who died in 1943, leaving Goolibái, a minor daughter, who was a necessary party to the suit; that on Punamchand's death, Chhotámal of the Indore firm supervised the Sihore firm for the benefit of the representatives of Punamchand; that a general account must be taken, in two separate suits, of the dealings between the plaintiffs and the said two firms; and that she was willing that the accounts of the transactions between the plaintiffs and the Sihore firm should be taken in a properly framed suit in a Court of competent jurisdiction; but in any event she (Foolibái) could not be liable for the transactions in respect of which the suit was brought.

The fourth defendant Mathubái made a similar defence.

The fifth defendant Goolibái replied by her grandmother Foolibái, that she was not liable in respect of any of the transactions in the plaint mentioned, and that her father Punamchand had no interest in the Indore firm.

Issues were raised, and the case came on for hearing before Telang, J., whose decision is reported (see I. L. R., 15 Bom., p. 96). He found that the plaintiffs were not entitled to sue in respect of

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the *hundis* by themselves; that the *hundis* were a few items out of a long and a general account between the plaintiffs and the Indore and Sihore firms respectively; that an amendment of the plaint could not be permitted, allowing plaintiffs to sue for a general account, because the jurisdiction conferred by leave of the Court having been granted under clause 12 of the Letters Patent, 1865, was confined to the cause of action disclosed in the plaint as originally framed, and thus the Court could not allow an amendment which would substantially alter that cause of action. Mr. Justice Telang, therefore, dismissed the suit with costs. The plaintiff filed an appeal, which was not prosecuted to a hearing.

On 15th February, 1892, plaintiffs filed the present suit (No. 76 of 1892) against Foolibái, widow of Bálárám, "carrying on business at Sihore, formerly under the name of Chhotamal Bálárám, and now in that of Bálárám Punamchand." The plaint states that "defendant has a firm at Sihore where she carries on business;" that the present suit was brought in respect of the plaintiffs' dealings with the said Sihore firm, and plaintiffs prayed that, if necessary, an account should be taken of the said transactions. Leave was given under clause 12 of the Letters Patent, 1865.

Defendant Foolibái traversed these allegations of the plaint, and stated that the firm had belonged to Punamchand, who died in Samvat 1943, leaving Goolibái, a minor daughter, him surviving, and that she, Foolibái, had always denied her liability in respect of the transactions in the former suit. Plaintiffs then at once applied to the Court to allow them to amend the plaint by adding the name of Goolibái as defendant.

The Judge (Farran, J.) granted a summons, which he subsequently made absolute, as to making Goolibái a defendant, with liberty to the plaintiffs to make the necessary consequential amendments. Foolibái appealed, and the decision of Sargent, C.J., and Bayley, J., is reported (see p. 466 of I. L. R., 17 Bom.). The Appeal Court held that whatever weight there might be in the objection to Goolibái being made a party, such objection could only be taken by Goolibái and not by Foolibái. The appeal was, therefore, dismissed.

The plaint in the present suit was then amended on 19th April,

1893, and Goolibái's name was added as defendant. Various pleas have been raised on her behalf, which may be summarised as follows, *viz.*, (*a*) The Court has no jurisdiction to try the suit against her, no leave having been given under clause 12 of the Letters Patent as regards herself; (*b*) limitation; (*c*) she, a minor, cannot be liable for transactions entered into by the munim of the firm.

Before discussing these points, it is necessary to dispose of the case as regards Foolibái. It is manifest she is not the owner of, or partner in, the Sihore firm: Mr. Kirkpatrick asked for a decree against her as "manager and trustee." But that is not the capacity in which she is sued; and apart from that, admitting that she is the only adult member of the family in Sihore who was consulted by the munim who managed the affairs of the firm, that fact would not make her liable in respect of transactions entered into with the firm, and with regard to which the supposed owner of the firm is sued. Attention has been called to her power of attorney filed in Suit No. 601 of 1889, in which it is recited that the "firm of Chhotámal Bálárám has been carried on under my superintendence for the benefit of myself and the said minor Goolibái." But a reference to the plaint in that very suit (No. 601 of 1889) shows that it was brought by Goolibái, "a minor carrying on business at Sihore under the name and style of Chhotámal Bálárám by her next friend Foolibái, &c." If Foolibái had claimed to be the owner, or part owner, of the firm of Chhotámal Bálárám, the plaint would not have been framed in the above terms. The power of attorney recites that the holder of it may use Foolibái's name *as the next friend of Goolibái*. No doubt Foolibái was interested in the firm: she has a charge on it for her maintenance, but in a suit for an account of the dealings with the firm she cannot be sued as the firm.

Some evidence has been produced to show that, in Márwár, till a minor comes of age, the "mother-in-law" is owner of the estate. It is unnecessary to discuss this evidence. It is quite insufficient to disprove the ordinary succession according to Hindu law, by which Goolibái must be sole owner of the firm of Chhotámal Bálárám.

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It remains, then, to consider the questions affecting Goolibái's liability in the present suit. Why her name was not entered in the plaint as a defendant when the plaint was filed on 15th February, 1892, it is impossible to say. As shown before, her existence was perfectly well known long before. In Suit No. 136 of 1889, she had been joined as a defendant on 13th July, 1889. Why leave was not asked under clause 12 of the Letters Patent when the summons was obtained in the present suit to make her a defendant, it is difficult to say. However that may be, the fact remains that when the suit is dismissed against Foolibái, we have a suit against Goolibái alone, who both admittedly and according to the plaint when the suit was filed, and when the plaint was amended, resided and carried on business at Sihore beyond the local limits of the ordinary original jurisdiction of this Court. To quote Mr. Justice Telang, "the only jurisdiction, therefore, which this Court can exercise over Goolibái is that given by clause 12 of the Letters Patent." But no leave has ever been asked for or granted under that clause for the Court to exercise jurisdiction over Goolibái. Mr. Kirkpatrick, for plaintiffs, contended that Mr. Justice Farran's order making Goolibái a party must be taken as including leave under clause 12 of the Letters Patent, 1865. But, as has been pointed out by Mr. Justice Telang, the order under that clause is not a mere formal order, or one merely regulating procedure. It is intended to be a judicial order, and cannot be presumed to have been made when there is no record thereof. According to the view which has been always accepted in this Court, the leave required by clause 12 of the Letters Patent must be granted, if at all, at the time of the acceptance of the plaint, and cannot be granted afterwards. By section 22 of the Limitation Act (XV of 1877) the suit as regards Goolibái must be deemed to have been instituted when she was made a party. Then was the time, if at all, to apply for leave under the clause. To use the language of the clause, the "suit" was then "received" against Goolibái. It cannot be inferred that leave was then allowed or granted. In *Jairám Náráyan* v. *Atmárám*[1], Mr. Justice West was asked to draw a similar inference, because leave had

(1) I. L. R., 4 Bom., 482.

been granted to the plaintiff to sue as a pauper: "but such leave" (he said) "does not by any means necessarily imply that this particular question was judicially considered."

Mr. Kirkpatrick, for plaintiffs, quoted the case of *Kasturchand* v. *Ságarmal*(1); but that was the case of misdescription, not non-joinder. Here plaintiffs sued Foolibái as "carrying on business at Sihore in the name of Bálárám Punamchand." The plaint stated that "the defendant has a firm at Sihore." She was sued as the owner of the firm. She is not the owner of the firm, but Goolibái is. If that be so, as Sir Charles Sargent said, it is clear that Goolibái is the person liable, and Foolibái is not liable. Foolibái is in the same position as Rámlál, who was sued in Suit No. 136 of 1889 as having carried on business with other persons at Sihore in the name of a certain firm. But Rámlál pleaded that he was merely the munim of a firm, and no further attempt has been made to render him liable for all or any of the transactions between the plaintiffs' firm and the Indore Sihore firms or either of them.

Mr. Justice Telang in deciding Suit No. 136 of 1889 deemed it unnecessary to consider whether the cause of action intended to be introduced into the suit by amendment would itself be one over which that Court could exercise jurisdiction without leave granted under clause 12. But it is evident that according to the reasoning followed by Mr. Justice Telang, with which I concur, this question must be answered in the negative. Mr. Justice Telang remarked that, according to the evidence of the plaintiff Harbilas, the contract between him and Chhotámal, *in respect of the Sihore business*, took place at Indore, and the transaction in respect of which that suit (No. 136 of 1889) was brought, were entered into in pursuance of the contract. The *hundis*, which formed the subject-matter of the Suit No. 136 of 1889, are part of the dealings which make up the account, the subject of the present suit. Mr. Justice Telang's judgment shows that there is abundant authority for holding that in this Court the "cause of action" in clause 12 of the Letters Patent includes not only the breach on which the suit is brought, but the contract and other circumstances, which together with the breach go to constitute the plaintiffs' right to

(1) I. L. R., 17 Bom., 413.

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sue. Several matters may combine to make up a cause of action: the County Courts Act in England and the Letters Patent agree in this that they both expressly treat a cause of action as consisting of parts which may have different localities.

In the present suit the account consists mainly of consignments of opium made from Sihore to plaintiffs at Bombay, who either sold the opium in Bombay and credited the Sihore firm with the amount realized, or consigned the opium to China on account of the Sihore firm and *hundis* drawn by the Sihore firm on the plaintiffs in Bombay, who paid the same and debited the Sihore firm with the amounts. It was a mutual account, sometimes being in favour of the Sihore firm, sometimes in favour of the plaintiffs' firm. On these facts I cannot hold that the cause of action arose *wholly* in Bombay, and, therefore, I must hold that before the owner of the Sihore firm can be sued in this Court, the leave of the Court must first be obtained. It has not been so obtained, and thus the suit must be dismissed.

As counsel argued the other points, I will briefly refer to them.

As to limitation, it was contended that the date of the last item in the account corresponds with the 16th February, 1889, and as the suit was filed on the 15th February, 1892, the suit was within time. But the suit as against Goolibái was not instituted till she was actually brought on the record in April, 1893. Why she was not brought on the record in August, 1892, it is impossible to say. But it is clear that, according to section 22 of the Limitation Act, the suit was instituted against Goolibái when she was made a party, not when the Judge ordered her to be made a party. It is unnecessary, therefore, to consider Mr. Kirkpatrick's argument that, according to section 25 and article 85 of the Limitation Act, limitation did not begin to run till the close of the year 1889. But it may be remarked that by article 85 the year is to be computed as in the account. That, of course, must be the Samvat year, which ended on a date corresponding with some day in October, 1889. Section 25 refers to "instruments," not to suits on mutual open and current accounts.

But a further argument was raised, *viz.*, that by section 13 of the Limitation Act, no bar of limitation could arise, for Goolibái has never resided in British India. Mr. Dávar, for Goolibái, asked the Court to note that it was not admitted that Goolibái resides or has resided out of British India. But no evidence has been called by defendants in this suit. Up to the last moment it was apparently taken for granted that Goolibái has always lived with her grandmother at Sihore. That would be her natural place of residence; and, in the absence of any evidence on the point, I think I should be bound, if it were necessary to decide that point, to rule, on the strength of the decision in *Atul Kristo* v. *Lyon and Co.*[1], that the suit is not barred by limitation.

Lastly, with regard to Goolibái's liability. No doubt, according to English law, "there is nothing to prevent an infant trading or becoming partner with a trader, and until his contract of partnership be disaffirmed, he is a member of the trading firm. But it is equally clear that he cannot contract debts by such trading; although goods may be ordered for the firm he does not become a debtor in respect of them" (per Lord Herschell, V. C., in *Lovell* v. *Beauchamp*[2]).

But section 247 of the Contract Act in stating the position which an infant partner occupies, does not seem to accord with the English cases. According to the section, the infant partner, while entitled to share the profits of the business is not liable for the losses, except to the extent of his own share in the partnership property. His liability is a limited one like that of a shareholder in a limited company. According to the English cases, a minor is no more bound by a contract of partnership than by any other contract. Under this section it would seem that the minor's share in the firm property is liable for its obligations, whether he has derived benefit from the business or not (see Cunningham and Shephard's Notes on the Contract Act, 5th Ed., p. 474).

But it is said that here there is no case of partnership. Goolibái is the sole owner of the firm and section 247 of the Contract Act is not applicable. That is so strictly speaking; but, following the analogy of the rule declared by this section, the

(1) I. L. R., 14 Cal., 457. (2) (1894) Ap. Ca., 607 at p. 611.

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Calcutta High Court held in *Joykisto* v. *Nittyanund*[1] that "on principle there ought not to be any difference between the nature of the liability of an infant admitted by contract into partnership and that of one on whose behalf an ancestral trade is carried on by a manager."

In the case just quoted, one Anundo died leaving two infant sons and two widows. The sons and widows continued to live as members of a joint Hindu family. The ancestral trade was carried on under the management of the widows, who being *pardánashin* women employed one Haradhone for that purpose. The elder son after he came of age took part in the management with Haradhone. During the sole management of Haradhone, and also during the joint management of the elder son and Haradhone, dealings with the plaintiffs' firm continued, and in the course of these transactions the defendants (the two sons) became indebted to the plaintiffs in the sum of Rs. 4,605-11-3. This debt entirely arose out of transactions connected with the ancestral business carried on by the defendants' family after Anundo's death. The High Court decreed that the debt should be paid out of the partnership property of the two defendants. There is no trace of a suggestion that the liability of the share of the appellant defendant—the son who was still a minor when the suit was brought—in any way depended upon the fact that his elder brother when he came of age had joined in the management. The result would have been the same had the minor been the only son of Anundo. The High Court ruled, on the authority of the decided cases (one of which was *Rámlál* v. *Lakhmichand*)[2], that the guardian of a Hindu minor is competent to carry on ancestral trade on behalf of minor; consequently the contention raised that the infant appellant was not liable to any extent for the debt in question was not well founded.

So in the Bombay case just quoted, Sir M. Sausse, C.J., held that "an ancestral trade, like other Hindu property, will descend upon the members of a Hindu undivided family; and we think that such a family can *by its manager* (or its adult members acting as managers) enter into co-partnership with a stranger. In carrying on such a trade, infant members of the undivided

(2) I. L. R., 3 Calc., 738. (2) 1 Bom. H. C. Rep. (App.), 51.

family will be bound by all acts of the manager (or the adult members acting as managers) which are necessarily incidental to or flowing out of the carrying on of that trade, whether it be singly or with a co-partner." The same principle will hold good when the sole member of the Hindu family is an infant as here, and the ancestral trade is carried on under the superintendence of the natural guardian of the minor for the benefit of herself (she having a claim to maintenance) and the said minor. For these reasons I would hold, if there were no bar to the suit, that plaintiffs are entitled to have an account taken of their dealings with the Sihore firm, of which Goolibái is the owner, it being open to Goolibái, on the account being taken, to show that any items are not fairly debitable to her firm. Findings on issues Nos. 1, 2 and 3 in the negative.

Suit dismissed with costs.

Attorneys for plaintiffs :—Messrs. *Payne, Gilbert and Sayáni.*

Attorneys for defendants :—Messrs. *Dikshit and Dhanjisha.*

ORIGINAL CIVIL.

Before Sir C. Farran, Knight, Chief Justice, and Mr. Justice Strachey.

ISHWARDA'S TRIBHOVANDA'S, PLAINTIFF, *v.* KA'LIDA'S BHA'IDA'S AND OTHERS, DEFENDANTS.*

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Small Cause Courts Act (XV of 1882), Sec. 69—Duty of the Judge in stating a case for opinion of the High Court—Existence of a question of law, &c., a condition precedent.

Under section 69 of the Presidency Small Cause Courts Act (XV of 1882) the existence of such a question of law or usage or construction as therein mentioned is a condition precedent to a reference to the High Court, and if no such question arises, the Small Cause Court has no authority to refer and the High Court no jurisdiction to deal with the reference.

The duty of drawing up the case, where a reference is made, is imposed on the Court, and it is responsible for the form of the case.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act (XV of 1882) by C. W. Chitty, Chief Judge :—

* Small Cause Court Suit, No. $\frac{859}{25733}$ of 1895.