BOMBAY HIGH COURT

1862 - 2012

A Journey of 150 Years through some Memorable Judgments

Part 1

PREFACE

A tiny kernel of an idea planted by Justice Mridula Bhatkar took root, and has resulted in a humble effort to present before you a compendium of the crux of some of the judgments of the Judges who have served the Bombay High Court since its inception in 1862.[1] The initial idea was to document one judgment of the First Court from each year which was modified to include a judgment of the Bombay High Court of each year. I soon realized that it was too expansive an idea to merit a single judgment a year. I could collect and collate, as many as ten judgments which would qualify to show the development of the law we desired to portray. Having found too vast a number of such judgments, I had to settle at a more reasonable figure of about five judgments each year to showcase the progress this Court has made from its illustrious beginnings. Our Chief Justice Mohit Shah and our Justice Chandrachud wholeheartedly supported the idea to complement the Book published on this the sesquicentennial of our Court.

As the number of Judges grew, fewer judgments of each Judge would be selected as illustrations. These judgments are not the only path-finding ground-breaking ones; they are also ones with simplicity and legal elegance. The number of judgments we settled upon just would not permit all deserving judgments to be compiled; only a few have been picked from each year as the first in a series of such compilation. The selection is largely subjective, most of which are selected by young minds reflecting the choice of today and have been largely accepted, with some additions and editing. The selection evinces the fountain of talent that awaits the future.

This enumeration is a joint effort, involving much labour and thought, from Judges and Lawyers, young and old, law students, interns, fresh Lawyers and newly appointed judicial officers. The entire exercise is an effort in making the judgments more readable and citizen-friendly.

A true test of a judgment is described by John Wirenius in his book on the freedom of expression in the United States *"First Amendments, First Principles"* :

[1] A list of Chief Justices is annexed as Schedule I-A and Puisne Judges and their tenure is annexex as Schedule I-B

Law is not a Surgeon's scalpel. It is a blunt instrument, capable of inflicting crushing damage, but not of exploring fine nuances. Although it is easy for the Advocates and the Judge to explore fine legal distinctions, using scholastic logic, every law-suit ends up in a judgment and every judgment must be simple enough to be enforced without triggering a new law suit.

The evolution of the Court has shown that law has been indeed used as a surgeon's scalpel.

A reading of the law reports from the very first year of the incorporation of this Court until the last has been a revealing experience.

The very first judgment of this Court which came to be reported was dated 30th June, 1863 in Special Appeal No.302 of 1862 and has been reported in the first volume of the Bombay High Court Reports (BHC Rep.) which reported judgments from 1862 to 1865. An intriguing aspect which became apparent upon reading the volumes of BHC Rep. was that the names of the Judges were not conspicuously mentioned at the top of the judgments as has been the practice since 1875 when the Indian Law Reports series came to be published followed by the Bombay Law Report series from 1899. It took some effort to ascertain from the reading of the judgments who the authoring Judges were, as the names and references were inconspicuously mentioned within the Judgments. The Counsel who appeared before them, were named, but once, in a single paragraph that dealt with their submissions. The law reports published for 2 or 3 years in a single volume showed many judgments of the few Judges who presided over the Court then. The most vivid and conspicuous aspect of the judgments was their length which was the one reason why the judgments of 2 or 3 years could be compacted in a single volume.

It was of interest to note how editors of Law Reports and illustrious Counsel who practiced in the Court later became Judges who presided over it, exemplified by Justice Nanabhai Haridas, Sir Chimanlal Setalvad and Sir Jamshedji Kanga. There have been illustrations of Advocates General of the Court who came to be Judges. Academicians and jurists also adorned the Bench, the best known being the Rt. Hon'ble Sir Dinshaw Mulla.

The decisions of the earlier Supreme Court of Bombay on its Plea Side and Equity Side of the years 1855 to 1861 were reported in an Appendix of the first volume of the BHC. The judgments of the Original Side, the Appellate Side and the Crown Cases were separately recorded. We have selected judgments from each of these sides, the Appellate side having far more judgments than the others by virtue of its sheer extent of the territorial jurisdiction. Those Law Reports published a list of Jurists, text books and works of authority in addition to the subject index and lists of cases reported and cited.

The extent of the territorial jurisdiction of the Court revealed by the content of the judgments was quite notable. It extended in the North up to a part of what is present day Pakistan; Karachi was within its jurisdiction, but not Peshawar. The orders of the 'Acting Judges' from Surat, Bharuch, Ahmedabad and Belgaum came up before the Court. One judgment revealed that the District of North Canara (except the Taluka of Kandapur) was detached from Madras Presidency and annexed to Bombay Presidency.

It is interesting to note how the laws which still govern us were in effect from the earliest days.

- ⇨ The Civil law relating to “readiness and willingness” in a specific performance suit from 1862; the Criminal law relating to recovery of property has been recorded since 1890. The very first publication of law reports showed the case of this principle in suits for specific performance of contracts since 1962, a legacy of the common law. The judgment considered how the Plaintiff could not be ready and willing to perform only a part of the contract and called upon the Defendant to specifically perform a part when he did not show his readiness and willingness to perform the other part.
- ⇨ The distinction between juridical possession and mere occupation of premises in custody of an agent came to be recognized from the early 20th Century.
- ⇨ The law of maintenance of Hindu wives and widows came to be settled with its various dimensions which holds good today.
- ⇨ The *benami* nature of transactions was considered in judgments since 1880s which culminated in the law more than a century thereafter in 1988.
- ⇨ The right to receive light was settled in Common Law resulting in injunctions against closure of windows or doors by the neighbour's construction, but not when one of the five windows had to be closed by such construction. The right to air was held to be even more sacred and

put on a higher pedestal than the right to light considering the climatic conditions and the entitlement to good health of the inhabitants of the 'Island'. Later judgments did clamp the private right of a single individual which gave way for the greater good of the many. The 'vast construction' in the island set in the earlier 20th Century has been observed to be the cause for containing that right. The degree of entitlement to light came to be settled at that time to the “45 degree Rule” as was then prevalent in England. The easementary right was granted essentially as a Common Law right which statutorily came to be recognized from 1882. This is perhaps the only law which narrowed its ambit as time marched on.

The content of the law considered in the early judgments was vastly different from what might be expected. An overwhelming number of judgments considered personal laws, more specifically the prevalent uncodified Hindu Law, most of which related to adoption, maintenance, partition and alienation of property. The reliance upon custom as the source of Hindu law was also imported into judgments relating to Mohammedans. The exceptions to Mohammedan Law were by way of custom with regard to matters of inheritance and succession amongst Khojas and Kutchis who sought to govern themselves by Hindu Law. No particular custom prevailed amongst Parsis. In the absence of customary law amongst Parsis, the English Common Law was applied to them.

The common law of justice, equity and good conscience became the main legacy left by the system of the Rule of Law. The touch of equity in the matter of law by which the parties were governed would leave an indelible mark.

- The Court dealt with the rights of riparian owners and neighbours with regard to the use of water from a stream. The striking case was of a man who was deprived of water from a stream and who sued for injunction restraining his neighbour from diverting all the water of the stream through a canal into his fields. While the Defendant claimed the use of the canal constructed by his father decades ago, the judgment held that the water of the stream is a “usufruct” and could not be used such as to deprive his neighbor completely.
- The parameters of 'apprehension' as a criminal offence as also a tort came to be considered in a rather hilarious appreciation of evidence. It was held that mere complaint of apprehension was not enough, but the evidence must expose such apprehension as would be expected by a reasonable man upon seeing what transpired. The admitted evidence of a burly man waving his hand within six inches of the face of the victim, with clenched or

unclenched fist, resulted in a verdict of the presence of apprehension entitling him to damage of Re.1.

- The alluvion, the land formed by a river, was held to belong to the owner of the contiguous land as against the Government.
- The building structures of the Convocation Hall, the Library in the Clock Tower as well as the Cawasji Jehangir Hall, were held to be included in the premises of the University as they were used for the purpose of education as against the Crown.
- The Court upheld the claim relating to the nuisance caused by falling branches and fruits of the trees of the neighbour.

The acceptance of the texts of the Hindu Law and the customs, pickled and sprinkled with a touch of Common law manifested itself in the interpretations in various judgments to advance justice by observation of minute details to decipher exceptions in the law. The Court bolstered the entitlement of unprivileged family members to inherit properties.

- A blind or deaf Hindu woman was not entitled to the estate of her father as she could not perform *shraadh*; it was held that this applied only when she was completely deaf from birth. However, she was entitled to maintenance out of the estate of her father.
- Leprosy was a disqualification for inheritance; it was held that this applied to only a virulent and aggravated type. Yet, he was entitled to maintenance.
- In execution of a decree the Judgment Creditor sought to attach the movables of a Hindu woman including her Mangalsutra; it was held that the Mangalsutra, which was required to be worn by a woman at all times, was her wearing apparel and that Life Insurance was for the heirs hence were exempt from attachment.
- Costs for withdrawal of a suit by a minor on attaining majority were granted to the Defendant as also his next friend.

As Jose Gracie Oliver said:

"Justice is so subtle a thing that to interpret it one has only the need of a heart"

Judgments came to be passed under the Court's supervisory jurisdiction *suo motu*.

- The Whipping Act of 1864 which set out the punishment of lashes/strikes for theft upon children to be awarded for a second time offence of theft, if 'locus penitence' is not offered, as the convict showed that he is not deterred by the sentence of imprisonment only, came under the Court's purview. Upon review of the register of criminal appeals disposed off by the Sessions Judge, an order annulling the sentence of the lower Court of one dozen lashes/strikes upon a child who committed the offence of theft was directed to be carried into effect.
- An order was passed upon review of taxation of Solicitors of the Court for the Solicitor's fees.

The Judgments also exhibit the confidence the Judges of this Court had in their judicial officers, even Magistrates, and the respect and trust the Judicial Officers commanded. It reflects how the parties accepted such position and how the Judges were above board.

- A case was refused to be transferred because a Magistrate took up the matter of a person under his service.
- A challenge to an order of a Magistrate who knew one of the parties was dismissed. The Judges observed that the relationship did not matter for the ultimate decision.

The judgments also betray the acceptance of streaks of gender discrimination then prevailing in English Law as also in the uncodified Hindu Law both of which came to be upheld.

- A marriage operated as a gift of all the properties of a Parsi governed by English law to the husband who could deal with it, lease and dispose it off without her consent.
- A Hindu widow could alienate her husband's estate only for legal necessity; the alienation could only be to incur expenses for pilgrimage for his last rites.

The distinction in the legal practice that prevailed in England and the Islands of Bombay came to be commented upon, leading to legislative reform in very early days. The total lack of registration of transfers of immovable properties was frowned upon. References were made to Regulative Acts. The first of such was the Bengal Regulation XXXVI of 1793 which preceded the Bombay Regulation I of 1800, followed by the Madras Regulation XVII of 1802 relating to registration of documents. These regulations were accepted and used to set the tone for the

requirement of registration with regard to immovable properties until the Indian Registration Act, 1843 came to be enacted. The legislations of those early days, with or without amendments, continue to apply today.[2]

The Court has had its triumphs and trials; its ups and downs; its crosses and crowns. The dark pre-independence days, exhibited adherence to the Law considered from an angle wholly different from the view of an independent mind. The cases of Lokmanya Tilak, Veer Sawarkar and others reflect two stark views. The post emergency era of detention and clamp-down on Fundamental Rights demonstrate victory over oppression by remarkable interpretation.

The law of tort in common law gave way to decisions under specified legislations and has evolved into verdicts upholding the Fundamental Rights of Citizens, and more specifically the Right to Life in ways too numerous to enumerate. This evolution reflects the social milieu through a century and a half that the Court has journeyed. A reading of the judgments show that Court has stood tall in an increasingly globalised economic society, conscious of the quality of life of people, as much as the extent of rights of their properties.

The Judgments serving the Fundamental Rights of citizens and Judgments upon Judicial Review are a class apart. Beneficient, reasonable, practical and purposive interpretation was made to enhance justice and prevent its frustration. They held that –

- Hearing does not always include personal hearing; Written Statement is enough
- Supervisory jurisdiction also extends to Tribunals, local bodies and authorities
- Court would inspect and have re-valued answer sheets of college students
- There can be implied waiver of statutory notice to the BMC
- Probate Petitions would not be barred by limitation; only the delay would have to be explained
- Milk would include milk powder which does not cease to be milk on dehydration

[2] A list of the Statutes referred to and considered in these judgments is annexed as Schedule II

- Devolution of interest of a female in a dwelling house cannot be kept in abeyance as the only single male member would not constitute joint family
- Rules of Bar Council classifying students in two categories – those in regular employement and those undergoing professional course – were discriminatory
- Right to Life extended to the right to die by suicide
- Right to Adopt is included in the right to Life
- Victims of crime had rights of protection, representation and participation
- Death in a factory compound was death in a public place as the public had access there
- A father could evict his son from his own property; the son lived as member of the family – nothing more and nothing less
- Mandatory injunction to restore status quo ante could be granted though in rare cases
- Right to maintenance during *iddat* period included permanent settlement for *post-iddat* period also
- Writs could be issued even in contractual disputes if the State acted arbitrarily
- *Talaq* could be effective only when rules were strictly complied by the husband claiming it
- Presumption of a letter being posted could be drawn when the receipt was not rebutted
- Exemption of Court Fees payable by female litigants for maintenance was not applicable to Probate Petitions, but applicable to Petitions for Succession Certificate when the estate was for only employment benefits but not when the estate was shares and securities
- Striking off defence for disobedience of an order of the Court would include excluding the right of cross-examination also.
- A foetus is not a person to be able to claim compensation
- The right of information extends to ‘what’ but not ‘why’
- Sonography machines could be seized; the installation of “silent observer” in sonography machines was legal
- Infertility, unlike impotency, could not annul a marriage which could be consummated
- Merit and need-based scholarships granted to students of minority communities were valid as they did not impinge upon the rights of students of majority communities

Aside from the challenge to stray provisions of Statutes, such as, S. 309 of the IPC relating to suicides, the vires of legislations such as the Profession Tax Act,

Public Premises Act, Customs Act, Pre-conception and pre-natal Diagonostic Tecniques Act came to be considered.

The public interest litigation era, which has come of age, has produced directional orders rather than judgments. The cases of rescue and rehabilitation of trafficked children, Mumbai flood victims, Mithi River clearance and traffic pollution control are worthy examples.

While some of the judgments may have been overruled by the Supreme Court, they are unique in their contributions, the other view notwithstanding. The verdict relating to the right to commit suicide, the ambit of the grant of mandatory injunctions, the fact that imported goods attract custom duty when they enter the Indian territorial waters and the more recent rulings relating to open green spaces in the city and the jurisdiction to tax non-residents are but a few notable illustrations.

Like the small acts of small men that make a nation, rather than just the great acts of only great men, these are the judgments of innumerable Judges that have made and moulded our Court.

This is not a digest of judgments, it is not a ready-reckoner or a legal referencer for a Lawyer. It is the first electronic documentation of a proposed series of the core of the judgments of the Bombay High Court, serving the purpose of going down the memory lane. We have turned the complex into the simple. It reads much like a book, though it is only a compilation, which I hope will be read by all persons without distinction of education or age to know what this Court has stood for.

The tiny acorn which took root and held its ground has become a mighty oak. I wish you many happy hours of reading under the shade of its canopy. I hope you enjoy reading the compilation as much as we all have, presenting it to you.

Justice Roshan Dalvi

18th August, 2012

1862-65

(1862-65) 1 BHC Rep. 1

Jina Ranchod v/s. Jodha Ghella

Forbes & Newton, JJ

The Appellant sued for removal of a building constructed by the Respondent on waste land of the town on Gogo. The land was contended to be belonging in common to all the houses in the street. The Respondent contended that he had not encroached on any land not his own, but only built his house on old foundations.
The acting Judge of Ahmedabad held that the disputed house was on the Queen's Highway which was a thoroughfare and hence, in charge of the Magistrate.

Held: The Plaintiff was competent to sue in Civil Court for removal of a building erected on any portion of a waste land belonging in common to all the houses in a street or road if it causes him injury.

(1862-65) 1 BHC Rep. 4

Reg. v/s. Chanviova Kon Shidram Shetti

Sir Sausse, CJ, Forbes & Newton, JJ

A woman attempted to commit suicide by throwing herself into a river. She confessed her guilt and stated that that was when she had suffered from extreme bodily affliction.

The Magistrate sentenced her to pay a fine of Rs.25/- and in default to undergo simple imprisonment for two months.

Held: S. 309 IPC requires both imprisonment and fine to be levied. Hence, the sentence was not according to law; some imprisonment was essential, however, short.

(1862-65) 1 BHC Rep. 4
Dhondu Jagannath v/s. Narayan Ramchandra
Sir Sausse, CJ, Forbes & Newton, JJ

The Plaintiff sued for the balance amount payable on a bond of Rs.1,500/- with interest @ 1-3/4% p.a. The Bond was executed in 1846. Interest had been paid from time to time till 1855. The Defendant signed the account as adjusted then and admitted a balance of Rs.1,788/- for principal and interest and promised to pay the consolidated

sum.

The Trial Judge found that double the principal amount on the Bond short of only Rs.226/- was repaid by way of interest. He decreed the suit for Rs.226/- on the Hindu Law that no amount in excess of double the amount by way of interest can be claimed.

The Court considered the Law laid down by Manu, Chapter on Judicature and on Law, Civil and Criminal, Shlok 151 which ran thus -

> *"Interest on money received at once, not month by month or day by day as it ought, must never be more than the amount of the Principal paid up at the same time."*

The Court also considered the commentary of Mithila School by Vachapati Misra, in (1) Colebroke's Digest page 63 which ran thus -

> *"This is paid without diminishing the Principal; even though received for a thousand years, it does not reduce the Principal."*

Held: The Rule of Hindu Law is simply that no greater arrears of interest can be recovered at any one time than what will amount to the Principal sum; but if the Principal remained outstanding and the interest was paid in smaller sums then the amount of the Principal money there is no limit to the amount of interest which may be recovered from time to time.

(1862-65) 1 BHC Rep. 56
Bechar Bhagwan v/s. Bai Lakshmi
Forbes, Erskine & Sir Westropp, JJ

A Hindu widow executed a Deed of Gift of movable and immovable properties inherited by her from her husband consisting of bonds and lands in favour of the Plaintiff without the consent of her husband's heirs. The sister of the deceased husband challenged the transfer as exceeding authority and claimed it to be void.
The Court referred to the opinion of the Shastri of Surat, Strange on Hindu Law, Vol.1 pg. 246, Vyavahar Mayukha commenting on the text of Katyayana, the answers of the Supreme Court Pundits (Bengal) and Hindu Law by Sir Francis Macnaghten pg.4.

Held: A Hindu widow has full right to alienate the movable properties of her husband inherited by her without consent of the heirs; not the immovable properties except under special circumstances, for necessary subsistence or purposes beneficial to the deceased, e.g. religious purposes. She is little more than a tenant for life in his immovable properties.

(1862-65) 1 BHC Rep. 205
A.C. Cama v/s. H.F. Morgan
Sir Arnould, Acting CJ, Newton & Tucker, JJ

The Plaintiff's case is that the Defendant came running out of his house with a stick and flourishing it within 6 inches of his face gesticulated to the Plaintiff in abusive language that if he were impertinent he would strike him and the Plaintiff so believed. The Defendant admitted that he ran out of the house, with a stick in his right hand, but seeing the miserable, little, puny man that the Plaintiff was, shifted the stick to the left hand so he would not be tempted to use it against the Plaintiff and gesticulated with his right hand unclenched within 6 inches of the Plaintiff's face for the sake of emphasis.

He denied that he threatened to strike the Plaintiff, if he was impertinent, but deposed that he stated to the Plaintiff that “if he were not such a miserable little snob or a brute (he forgets which) he would knock his head off his shoulders”. The Court held that whether the Defendant had the stick in his hand or his unclenched hand did not matter for either would have the “same legal quality (though not the quality) of violence or criminal force. The test was whether The Plaintiff had reasonable apprehension from the gestures and abusive language that the Defendant would strike.

The Court observed that the word “if” can have no effect on the apprehension.

Held: While interpreting the law the Court would go on grounds of plain sense than on any subtleties or refinements – a look, a gesture, a word, even silence may be construed as threat. Hence held that the Defendants' act was an assault hence in appeal granted damages of Re.1/-.

(1862-65) 1 BHC Rep. 262
Vishwanath Atmaram Vs. Bapu Narayan
Sir Sausse, CJ & Sir Arnould, J

Upon accounts of certain transactions and liabilities, the Plaintiff and the Defendant entered upon an agreement giving the Plaintiff certain properties from the estate of the Defendant with right of management in exchange of one house to be given to the Defendant’s wife. The Plaintiff conceded only a life interest to her and demanded the property and gave notice that the agreement about the interest of the wife was at an end.

Held : The Plaintiff must be ready and willing to perform the entire agreement in the absence of which he cannot claim specific performance of any part.

(This position in law still prevails)

1864-66

(1864-66) II BHC Rep. 36
Dada Honaji v/s. Babaji Jagushet
Sir Couch, Newton & Warden, JJ

The Appellant sold his house to the Respondent for Rs.675/-. The Respondent paid him Rs.275/- and agreed to pay Rs.400/- to the mortgagee. The Appellant admitted the contract, but alleged that the Respondent agreed to resell the property upon payment to him of the purchase money and that he would execute a writing to that effect before he took possession.

It was held by the lower Court that written evidence of the Deed of Sale could be impeached only by other written evidence.

Held : That the rules of justice, equity and good conscience require that the terms of a contract may be shown by way of addition or alteration to a written contract if such evidence is very powerful to induce the Court to believe that the terms expressed are not the real ones (in the written contract).

[S. 91 of the Evidence Act, 1872 changed this position in law.]

(1864-66) II BHC Rep. 75
Nesarwanji Pestonji v/s. Deputy Collector of Customs
Sir Couch & Tucker, JJ - upon dissent
Forbes & Newton, JJ

The Plaintiff had a hak called Mogalai Ki Choki purchased by his father from the successors-in-title of the Nawab of Surat to recover annual produce on articles imported and exported through the City gates. The Defendant, by a proclamation, forbade him to collect under pain of punishment which order the Plaintiff challenged.

Held: The intention of the Legislature in Act XIX of 1844 abolished collection of all huks, fees, customs, dasturi, duties, taxes, cesses under whatsoever name not forming a part of the revenue in a language too large to bear the construction that it abolished the Plaintiff's right to levy only the taxes and cesses levied by the Government.

(1864-66) II BHC Rep. 106
Reg. v/s. Vyankatsvami
Forbes, Sir Couch & Newton, JJ

The Respondent was convicted and sentenced by the Sessions Judge of North Canara to 10 years transportation on 18.9.62. He appealed.

On 28.2.62, The Secretary of State for India in Council ordered the District of North Canara, which formed the Presidency of Fort St. George (Madras), except the Taluka of Kandapur, to be detached from Madras Presidency and annexed to Bombay Presidency from 16.4.62.

The Legislative Council of Bombay passed Act III of 1863. Government of Bombay assented to the Act on 4.1.63. Nothing was to affect acts done in Canara prior to the Act.

As the sentence was passed after annexation but prior to the Act, it was contended that the Bombay High Court had no jurisdiction to hear the Appeal.

Held: S. 408 of the Cr.PC applied and under clause 26 of the Letters Patent this Court had jurisdiction to hear the appeal.

(1864-66) II BHC Rep. 133
Sir Jamshetji Jijibhai v/s. Sonabai Patak
Sir Couch, J

The Plaintiffs are Executors & Trustees of the Will of the Late Sir Jamshetji Jijibhai ("Sir JJ") and sued for distribution of the properties forming the Estate of the Late Sir JJ. The Plaintiffs admit that the Defendants are entitled to those properties. The Defendants claimed the properties.

The evidence showed that Sir JJ did not pay salary to the persons he employed, but gave them benefit of certain trading adventures. He opened an Account in his books in the name of Sorabji Pestonji, the predecessor of the Defendants.

He credited various amounts from time to time therein and debited his account. From Rs.750/- the credits rose to Rs.110,549/- in October 1829. Then the proceeds of a shipment made to China was received by Sorabji and carried into the account and the balance was reduced. After the death of Sorabji the account continued in favour of his son, Dinsha. In 1867, a house was purchased by Sir JJ in the name of Dinsha and the purchase money and expenses were debited to the account of Dinsha. Government Securities and company shares were purchased by Sir JJ. Share certificates, though in the name of Jehangir Sorabji, remained with Sir JJ and interest was paid into the account. Sorabji was his faithful servant and related by marriage to his niece. Sir JJ took a lively interest in his welfare. He would deal with the property as would be most beneficial to Sorabji. He did not deal with it for his own benefit. After his death, the

account was continued. His Will gave the account balance to those to whom the income or interest was credited.

Held: The credits and accretions in the account were not gifts; the intention was to create a Trust which could not be defeated by subsequent acts. The property which was not sold was ordered to be sold and proceeds ordered to be distributed as per the declaration in the Will.

[See Lopez v/s. Lopez 1868-69 (V) BHC Rep.172 - no primogeniture was recognised amongst Portuguese after the Treaty by which Bombay was ceded to the British as English Law is then applicable.

(1864-66) II BHC Rep. 345
Nasarwanji Pestanji v/s. Nasservanji Darasha
Sir Arnould, Acting CJ & Warden, J

The Appellant sued to recover possession of 2 bighas of land on the banks of R.Tapi. The Appellant alleged that it had formed part of his field No.63 and had been washed away and subsequently re-formed on the west of his field. The Respondent claimed that it formed part of his field no.64 which measured less than it was said to measure.

Held: The land was admitted to have been gained from the River by gradual accretion, was contiguous to the Appellant's field no.63 and hence he was entitled to it on the principle of alluvian, the imperceptible augmentation to the land from washing up of earth by the river which is added so gradually that it is impossible to distinguish how much is added at any one moment of time. Inundation is different from alluvian for it does not alter the nature of the land on the water receding. It is clear that the land remains the property of the former owner.

1866-67

(1866-67) IV BHC Rep. 1
Naoroji Beramji v/s. Henry Rogers
Sir Westropp, J

The Appellant and his wife were conveyed the suit property. The Appellant leased it to the Respondent. The Respondent demanded renewal as per its terms. The Appellant was to renew the lease at the same rent and under the same conditions. The wife

objected.

The Court considered Lex Loci as also the Law of Inheritance and Succession, specially of Parsis.

From Act IX of 1837 until The Indian Succession Act X of 1865, English Law was applicable to Parsis except to matrimonial suits "and perhaps, I should add, except as to bigamy". It applied to chattel real or chattel estate.

The Parsis petitioned to the Bombay Government in March 1836 to have their succession and Inheritance Law according to their established custom and usage "amongst the most wealthy and respectable families" corresponding with the mode of distribution amongst Hindus.

Mr. Rogers, then Acting Advocate General found the usages very inadequate and inconclusive and observed that it would be difficult to assert that there was any system peculiar to Parsis". He observed that Parsis made no distinction between movable and immovable properties for distribution, did not prefer the decisions of their Panchayat and had no rule of primogeniture. The better remedy for them would be an Act declaring the Law as having been hitherto applicable to them as would be applicable in future to them.

The opinion of Mr. Rogers was forwarded to the Government. The Act was passed in 1937 as put up for opinion of the Parsi community. It was accepted in toto as the "enactment entirely and most completely meets with the views and wishes of the Parsi community and they have no objections whatsoever to urge against it."

Lex Loci in Bombay previous to the cession of the Island to Charles II could only have been the Hindu Law, the Mohammedan Law and the Portuguese Law. The Hindu and Mohammedan Laws were not abrogated when the country was brought under the subjection of the King of Great Britain, but they did not bind all Christians and others.
Bombay was obtained expressly for the purpose of English commerce. The Island was inhabited almost exclusively by Hindus, Muslims and Portuguese. Lex Loci of Bombay was English Law applicable to all except Hindus and Mohammedans. Real property law of primogeniture was not introduced in Bombay, since the time of the cession from the Portuguese. Immovable properties were sold, mortgaged by parties or the Sheriff under Writs without any fine or recovery or without legalisation by any Act of the Legislature under seal as personal estate or chattels real and merely by a simple writing expressive of the intention of the parties unlike in England.

[The Registration Act was enacted later.]

The property was conveyed to the Appellant and his wife who were goverened by English Law.

Held: The marriage of the Appellant and his wife operated as a gift to the husband of all the wife's properties (chattels real). The Appellant could let it as he desired without the concurrence of the wife. He was bound to perform his obligations under it. The Respondent was entitled to specific performance.

(1866-67) IV BHC Rep. 73
Ramchandra Dixit v/s. Savitribai
Sir Couch, CJ and Newton, J

A Hindu widow, supported by her father-in-law till his death, sued his eldest son for maintenance out of the father-in-law's estate. The father-in-law left behind 3 sons. The Respondent contended that he was not solely liable. The Small Cause Court granted maintenance of Rs.150/-.

Held: The maintenance of a Hindu widow is a charge upon the whole estate and, therefore, every part thereof. The Respondent is liable, but may sue his brothers for contribution.

(1866-67) IV BHC Rep. 113
Madhavrao Raghavendra v/s. Balkrishna Raghavendra
Tucker & Gibbs, JJ

The parties are brothers. An ancestral house was in the possession partly of the Plaintiff and partly of the Defendant. The Plaintiff sued for the portion in the possession of the Defendant. He alleged a custom in his family that the eldest brother was entitled to the whole of it. The Defendant denied the custom.

Held: Though custom and usage of the country, if established, would bind the parties, the special family custom is opposed to, repugnant and antagonistic to Hindu Law and the ordinary custom amongst Hindus and hence cannot be enforced.

(1866-67) IV BHC Rep. 114
Dhondu Naik v/s. Ramji Kakda
Tucker & Gibbs, JJ

The Appellant (DH) got the property of Rama attached in execution of a decree. The property did not belong to the JD. The Respondent purchased the property. The Respondent sued for damages.

Held: In a Court sale there is no implied warranty by the execution creditor of the title of the JD; the rule of Ceveat Empteur applies. The proclamation of sale declares only the right, title, interest of JD to be sold. The purchaser is bound to satisfy himself of the title. Should it turn out that JD had no title, the purchaser has no remedy in the absence of fraud or willful misrepresentation. The persons whose property is wrongfully sold can sue to recover damages against the executing creditor for loss suffered by the sale.

(1866-67) IV BHC Rep. 185
Jehangir Modi v/s. Shamji Ladha
Sir Sargent, J

The Directors of a Joint Stock Company purchased shares on behalf of the company in other companies. That was purchased out of the subscribed capital of the company in the ordinary course of its business and not to re-sell them at a profit for the company. A shareholder sued to recover the price of the shares purchased by him, when the company went into losses.

The first object of the company was "purchase and sale of shares on commission" which would exclude purchases by the company on its own account for profit.

Held: The Memorandum of Association must authorise the Directors to purchase shares in other companies, otherwise the purchase is ultra vires the company. The shareholders can compel such Directors to restore the funds of the company employed for such purchase. Courts of Law and Equity have constantly held that no company can purchase its own shares and such a contract is ultra vires. That would be a transfer to an abstraction. Though it would be harsh on some individuals, for companies to flourish in this country, the application of funds of the company must be used for legitimate purposes. Hence, purchase by Directors from individual shareholders is ultra vires. Purchase of shares must be confined to dealings in other companies.

[This has been legislated since the Companies Act of 1913. Under S. 77A of the Companies Act, 1956, a company can purchase its own shares on specified conditions.]

(1866-67) IV BHC Rep. 206
Bhimacharya v/s. Fakirappa
Tucker & Gibbs, JJ

The Plaintiff sued the Defendant, his tenant, to eject him from the Plaintiff's land as the lease had expired. He served the Summons. The Defendant appointed a Vakil who

stated that he had no instructions and was unable to put in a Written Statement or make any defence. The suit was decreed. The Defendant appealed.

Held: The hearing was ex-parte and hence the Decree was not appealable. The Summons directed the Defendant to appear and answer the Plaintiff's claim, in person, or by a pleader duly instructed and able to answer all questions. Hence, the presence of the pleader is not all necessary to constitute compliance of the Summons. A pleader not supplied with the means of answering or who is instructed to remain mute or decline making any answers cannot be called a representation of the Defendant which will give the suit the character of defended action. The policy of law and the course of justice would both be defeated if such an appearance were to be treated as otherwise than nugatory. Decree upheld.

1868-69

(1868) V BHC Rep. 75
Bhima Krishnappa v/s. Ningappa
Warden & Gibbs, JJ

The Plaintiff sued for removal of 7 water pipes of the Defendant's house and for injunction restraining the Defendant from interfering with building his new house.

The Defendant set up prescriptive use of the water pipes for 30 years and asserted that the Plaintiff's new house would interfere with his water pipes.

The parties entered into an agreement in respect thereof. The Assistant Judge found want of consideration as it was merely to avoid litigation.

Held: Such an agreement is not without consideration and upheld it.

[O.23 R.3 CPC after 1976 amendment settles this position.]

(1868-69) V BHC Rep. 109
Manchersha Aspandiarji v/s. Karunissa Begum
Sir Couch CJ & Newton, J

A Hindu agent of a Mohammedan mortgaged her property to a Parsi. The mortgaged property caught fire. The mortgagee repaired it. The mortgagor sought to redeem it on that ground. It was contended that the Mohammedan Law applied.

Held: Since there was no law on the subject applicable to Parsis, whose act was challenged, the law of justice, equity and good conscience would apply as done by the Courts of equity in England with such modifications as are required in India.
In equity the mortgagor should not be allowed to recover the property only on payment of the principal advanced since it would be inequitable that the mortgagor who has rebuilt one part of the premises must have no allowance made to him.

(1868-69) V BHC Rep. 135
Hari Dhangar v/s. Biru Darsh
Warden & Gibbs, JJ

The Plaintiff sued to establish his right to perform divine service at a temple and to recover the property allotted to it. The Plaintiff relied upon a written document showing admission of the predecessor-in-title of the Defendants.
The Assistant Judge held the document proved because it was more than 30 years old and came from proper custody.

Held: That was not enough. The Plaintiff must also show that the document offered reasonable presumption that it was honestly and fairly obtained and procured for use and was free from suspicion of dishonesty.

(S. 90 of Indian Evidence Act, 1872 with extra requirements was legislated later)

(1868-69) V BHC Rep. 24
Reg. v/s. Mulya Nana
Sir Couch, CJ & Newton, J

2 persons were charged with theft. The Respondent was sentenced to suffer rigorous imprisonment for 2 years, to receive 2 dozen lashes under the Whipping Act VI of 1864 and a fine of Rs.10/- by distress sale of his movable property. The other was sentenced to 1 months' rigorous imprisonment and to receive 1 dozen lashes/strikes.

The Respondent appealed. The appeal was dismissed against him. But the order against the other Accused who did not appeal was reversed as he was a child and had no previous conviction and was hence discharged from prison after having undergone sentence of 15 days.

Held: (Upon review of the Register of Criminal Appeals disposed of by the Sessions Judge) The order of the Sessions Judge is annulled and the sentence must be carried into effect.

(1868-69) V BHC Rep. 145
Shivshankar Govindram v/s The Justices of the Peace for the City of Bombay
Sir Couch & Sir Sargent, JJ

The Plaintiff owned a house. He ran up arrears of house rate. The Municipal Corporation issued a distress warrant to sell the goods to satisfy the claim. The Plaintiff sued the Defendants.

Held: The Justices did nothing wrong at all. The rate made by them was to be levied by the Municipal Commissioner. The Justices were not liable in tort committed by the Commissioner. They have no control over him or the rate levied even if the money is to be paid out of the fund over which the Justices have control.

(1868-69) V BHC Rep. 50
Amritrau Deshmukh v/s. Anyaba Deshmukh
Newton, Acting CJ & Gibbs, J

The Plaintiff claimed a ½ share in 10 villages and main lands. He claimed to have been in his possession down to 1862 within 12 years preceding the suit. The Plaintiff sued showing the acknowledgment (admission) in writing of the draft to allow him a share in a watan. The Defendant was in management and paid the rents.

Held: Though an acknowledgment of liability is enough to bring a suit on a debt or a legacy within limitation, it is not enough to sue on a deshmukhi watan. The Plaintiff must show what he has paid for the alleged share to show his possession or management of the Watan.

(1868-69) V BHC Rep. 85
Reg. vs. Fattechand Vastachand
Warden & Sir Sargent, JJ

4 persons were tried and convicted of murder of 1 person in their house and sentenced to transportation for life. The victim's throat was cut in their house. The witness gave evidence consistent with the case of the accused that he was a thief and was caught and so committed suicide by slitting his own throat which the accused tried to prevent him from doing. The witness was not an accomplice and needed no corroboration.

The Sessions Judge in summing up before the jury did not revert to this evidence. He did not read out the entire evidence of all important witnesses as per convention (though not enjoined in the Code).
The accused applied for acquittal on these amongst other grounds.

Held: The Sessions Judge must give a full and detailed statement of the evidence of both sides to the jury and point out what weight the jury must assign to it. If the accused is prejudiced by its omission, it would be error in law justifying setting aside the verdict. The Court observed that the evidence of the witness was so absurd, it need not have been referred to and the accused suffered no prejudice. Non reading of the evidence of other important witnesses in extentio was compensated by the defence Counsel showing all the evidence in favour of the accused to the jury.

Held: There was defective summing up but no misdirection. The accused did not suffer prejudice thereby and hence no retrial was necessitated.

(1868-69) V BHC Rep 145
Janardhan Pandurang v/s Gopal and Vishnu Pandurang
Sir Couch, CJ

A brother was sought to be disinherited on the ground that he suffered from leprosy.

Held: Only a virulent and aggravated type of leprosy and not a mild curable form of leprosy would come under the expression “one incurably diseased” so as to be a disqualification entailing forfeiture of inheritance under the Mitakshara and Vyavahara Mayukha Hindu law.

1870

(1870) VII BHC Rep. 12
Yesoba Damodhar v/s. Secretary of State for India in Council
Spencer, J

A land was required for public purposes. The collector paid compensation to the owner under Act VI of 1857. He was sued by the person claiming to be the real owner for compensation.

Held: The collector who pays compensation under the Act after making proper inquiries to the person “deemed by him to be in possession as owner” is not liable to be sued by the real owner of such land for the amount of compensation.

(1870) VII BHC Rep. 45
Jivandas Keshavji v/s. Framji Nanabhai
Sir Bayley, J

A lien was created in 1865 when the first Registration Act XVI of 1864 came into force. A Gujarati unregistered document was subsequently executed by the person who gave the lien on 13th June 1865 acknowledging the receipt of the loan.

Held: The original oral contract of lien being in itself a perfected transaction, was not merged in or invalidated by the subsequent document, and that, therefore, the fact of the latter not being registered did not affect the validity of the prior transaction. A lien created by a verbal contract and deposit of title deeds of immoveable property was upheld.

(1870) VII BHC Rep. 70
Reg v/s. Kusa Valad Lakshman
Gibbs & Sir Melvill, JJ

The prisoner Kusa and a boy named Kashiram, aged 15 and 12 years, were tried for theft. Kusa was sentenced to receive twenty stripes with rattan and to be confined to six months in Puna Jail Reformatory.

Held: The object of the law under S. 3 of the Whipping Act VI of 1864 is to inflict whipping, in addition to the other punishment, upon those persons only who, after completing a previous sentence, and after having a *locus penitence* afforded to them, again commit the same offence, and thereby show that they are not to be deterred by a sentence of imprisonment only. The Court therefore, reversed only so much of the sentence as directed the prisoner to receive twenty stripes with rattan.

1871

(1871) VIII BHC Rep. 69
Narotam Bapu v/s. Ganpatrao Pandurang
Sir Westropp, CJ & Sir Bailey, J

The Plaintiff claimed a right of way in a galli (Agiary Lane) which belonged to the Defendant.

Held: Prior to the passing of the Indian Limitation Act, 1871, in order to give rise to an easement by prescription over immoveable property in the Island of Bombay it was

necessary for a Plaintiff claiming such an easement to prove twenty years' uninterrupted user of it.

A note was written at the end of the judgment :-
We are happy to find that the Indian Legislature has recently passed The Limitation Act (IX of 1871) legislating on the subject of easements and adopted the twenty years' period for the whole of British India.

(1871) VIII BHC Rep. 23
Khandu Keru v/s. Tatia Vithoba
Lloyd & Kemball, JJ

The Plaintiff sued to recover the price of the skin and flesh of an ox brought by a Mahar who ascertained a hereditary right to carry away dead animals of the village to which he belonged and take their skins,

Held: The suit is for damages and cognizable by the Court of Small Causes. Although a question of title may be incidentally gone into in such a suit, no special appeal lies under S. 27 of Act XXIII of 1861.

(1871) VIII BHC Rep.129
Tukaram Ramakrishna v/s Gunaji Bhaloji
Sir Westropp, CJ

The judgment-creditor applied to attach the ornaments of the wife of a Judgment-debtor in execution.

Held: Ornaments on a person of a Hindu wife, if forming part of her Stridhan, cannot be taken under an execution against her judgment-debtor husband. On certain occasions, however, the husband may take them, but the right is personal to him. The exceptions cited from Sir Thomas Strange on Hindu Law Vol. I pg 27 are preservation of a family during a famine, meaning general want, distress preventing performance of a religious duty, sickness, imprisonment, etc.

(1871) VIII BHC Rep. 114
Rupchand Hindumal v/s. Rakhmabai
Sir Melvill & Kemball, JJ

Two brothers died undivided in interest, leaving their widows but no issues. On the death of the first brother the whole estate vested in the other brother and on the death

of the second husband, in his widow. The first brother's widow adopted a son after the death of both the brothers. The adopted son incurred some debts. The property of the other widow was attached. She got the attachment raised. The ownership of he adopted son was challenged.

Held: A Hindu widow can adopt a son without the consent of her husband's kinsmen, but when such adoption has the effect of divesting an estate already vested in a third person, e.g. the widow of her husband's deceased brother, the consent of such third person would be necessary to give validity to such an adoption.

(1871) VIII BHC Rep. 24
Reg. v/s. Tai Nanchand
Sir Westropp, CJ, Gibbs, Sir Melvill & Kemball, JJ

The sanction given by the Assistant Sessions Judge for the prosecution under S. 193 of the Indian Penal Code was challenged for the want of specification.

Held: The sanction to prosecute is sufficient even if does not mention the section of the Penal Code under which accused is permitted to be prosecuted.

1872

(1872) IX BHC Rep. 12
Yenkoba Kasar v/s. Rambhaji Arjun
Gibbs & Sir Melvill, JJ

The Court had to see whether the Plaintiff's suit was a "suit for land".

Held: A suit for land is the suit in which the Plaintiff prays for delivery of possession of the suit land.

(This position in law has been stated to be well settled and applied to a suit for partition in AIR 1952 BOM 365 which is followed till date)

(1872) IX BHC Rep. 19
The Advocate General v/s. Fatima Sultani Begam
Sir Sargent, J

A person had executed a *Wakfnama* whereby he made an endowment in favour of a

mosque built by him, laying down details of the class of people, his relations, upon whom the guardianship would vest with after his death. He later, executed a will, the construction of which implied that the management of the *Wakf* would vest in two Parsi vakils.

Held: If the donor has specified the class from whom the manger is to be selected, he is bound by the *Wakfnama* and cannot disregard it by naming a person not answering the proper description.

(1872) IX BHC Rep. 147
Manmal Valad Suratmal v/s. Dashrath valad Narayan
Sir Westropp, CJ & Sir Melvill, J

The Appellant sued to obtain possession of a field under a certificate of sale granted to him by a civil Court in satisfaction of a money decree against the debtor.

The Respondent defended that the field had been sold to him by the debtor under a deed of sale earlier and he had been in possession since.

Held: An unregistered deed of sale accompanied by immediate possession ought to be preferred to a subsequent registered certificate of a Court sale or to a subsequent deed unaccompanied by possession.

(1872) IX BHC Rep. 171
Reg v/s. Jethya Valad Vestya
Sir Bayley & Kemball, JJ

A labourer agreed to serve in consideration of money due from him on account of his previous debts. He quit service after three months in violation of the agreement under which he was to serve for ninety-seven and a half months.
He was prosecuted and convicted of breach of contract of service.

Held: The labourer was not liable to be dealt with criminally because there was no fraudulent breach of contract.
However, he had already suffered the full term of imprisonment.

(1872) IX BHC Rep. 266
Srinivas Udpirav v/s. L. Reid, District Magistrate of Dharwar
Gibbs & Llyod, JJ

The Appellant opened a new window in his house at Dharwar which rendered the Respondent's house less private than before.

Held: The Appellant was not guilty of any tortious act, and should not be debarred from improving his own house, though the effect might be, to some extent, prejudicial to his neighbour.

The Respondent should adopt some arrangement by which the inconvenience arising therefrom may be avoided.

(1872) IX BHC Rep. 413
Narayan Bava v/s. Balkrishna Shideshvar
Llyod & Kemball, JJ

The Appellant claimed his exclusive right of breaking the *dahi handi* on a certain day in the precincts of a temple at Dehu.

The Respondents broke a *dahi handi* of their own on the same day in the same place. The Appellant was deprived of a donation of Rs. 5,000 which one devotee intended to make but did not make.

Held: The breaking of their own *dahi handi* by the Respondents on the same day in any part of the temple was injurious to the Appellant and occasioned immediate and necessary loss.

(1872) IX BHC Rep. 438
In Re The Albert Mills Company Limited
Green, J

On a motion made by the Applicants, a rule was granted calling upon the company and its directors to show cause why a Writ of Mandamus be not issued requiring them to permit each of the Applicants to exercise the office and the functions of a director of the said company.

Held: The High Court has jurisdiction to enforce by a Writ of Mandamus the right of persons duly elected as directors of a Joint-stock company to exercise the functions of a director of such company, if such rights are interfered by the company acting through its other directors even if they are not permanent directors and can be removed from office by a special resolution of shareholders.

1873

(1873) X BHC Rep. 51
Gulabhai Mondas v/s .Dayabhai Gowardhandas
Sir Westropp, CJ & Sir Melvill, J

The Plaintiff sold field no. 956 along with his share in the well to the Defendent. The Plaintiff used to pay Rs.8 as 'kus' (tax on well) when he owned the land. The Deed of sale stated that the defendent would be paying tax on the land but remained silent as to payment of tax on the well. The Collector collected 'kus' amounting to Rs.8, from the Plaintiff. The Plaintiff sued the Defendent to recover the amount paid by him by way of tax and also claimed damages worth Rs. 1-3-0.

Held: From the deed of sale, it is amply clear that the defendents need not reimburse to the Plaintiff a single penny. The sale deed speaks about payment of tax on the field itself but remains silent on payment of tax on the well upon the common law rule of construction of deeds '*expressio unius est exclusio alterius*'.

(1873) X BHC Rep. 95
Lallu Haribhai v/s Ranchod Jamnadas
Sir Sargent, Acting CJ & Kemball, J

The Plaintiff and the Defendent were owners of adjoining properties and shared a common veranda. Both of them had agreed via a written statement that they would not build upon the veranda or divide it with wall. The Defendent on the occasion of rebuilding his house, built a front wall of eighteen inches in advance of the Plaintiff so as to encroach upon a part of veranda.

Held: The fact that the defendent, in breach of agreement with the Plaintiff, built a wall of eighteen inches in advance of the Plaintiff's property in itself, is not sufficient for its removal. The Court should be satisfied that the wall materially interferes with the comfort and convenience of the Plaintiff and that the Plaintiff could not be compensated by damages. Also, the Court shall inquire whether the Plaintiff protested while the wall was being built or played the role of a watchdog and came to Court once the damage was inflicted.

(1873) X BHC Rep. 344
Mor Joshi v/s. Muhammad Ebrahim
Sir Melvill & Sir West, JJ

The Plaintiff's property was for sale under a decree. The Defendent, a bona fide purchaser, bought the land with his own funds. Since the Defendent had friendly relations with the Plaintiff, he agreed to return him the land on receipt of purchase money and made a promise to this effect in writing.
The Plaintiff, through its assignee, sued to compel the defendent to receive the purchase money and execute a conveyance in his name.

Held: The promise made by the defendent was without consideration. The document shows nothing more than a proposal and the defendent cannot be compelled to sell off his property merely on this. If the Plaintiff is able to prove that he had accepted the proposal and thereby reciprocated the promise of the defendent, it would have been a valid contract.

(1873) X BHC Rep. 356
Reg v/s Pirtai
Sir Melvill & Sir West, JJ

3 prisoners were charged with the offence of murder whereas 1 prisoner, who was the victim's wife, was charged with the offence of abetting the murder. All 4 offenders were residents of foreign territories. The murder was committed by them in Satara, a British territory. However, the 4th offender had instigated the offence from Kolhapur State. The Sessions Judge assumed jurisdiction over all four accused and tried the case himself on evidence and merit and sentenced all of them to death.

Held: The offence, for which the 4th offender was charged, had occurred in foreign territory. S. 66 of the Cr.PC assumes the offence therein indicated to have been committed within a district, i.e. within a local jurisdiction. Hence her conviction was annulled.

(1873) X BHC Rep. 381
Khemkor v/s Umiashankar Ranchhor
Sir Westropp, CJ & Nanabhai Haridas, J

The Plaintiff Khemkar, widow of late Ranchhor, was a Sompura Brahmin. 'Natras' or remarriages are allowed in Sompura Brahmina. The Plaintiff underwent a marriage with Ranchhor during the lifetime of her first husband without obtaining his consent. Now, after the death of Ranchhor, the Plaintiff claims maintenance from the son of

Ranchhor. The Defendent is the son of Ranchhor with another wife. The Defendent claims that the Plaintiff was not the legal wife of Ranchhor as she got married to him during the lifetime of her first husband and thus she is not entitled to maintenance.

Held: The Plaintiff Khemkar cannot be considered the lawful wife of Ranchhor plainly because she married him when her first husband was alive and also without his consent. The Judges corroborated with the view taken by the Judge of the small Cause Court, Ahmedabad, that even though she is not the legal wife of Ranchhor, she is entitled to maintenance as the mother of illegitimate children of Ranchhor i.e. as his concubine.

(1873) X BHC Rep. 483
Udaram Sitaram v/s. Sonkabai
Sir West & Nanabhai Haridas, JJ

The Plaintiff sued her father-in-law for separate maintenance after the death of her husband. The Defendent claimed that his son had not left any property that came to him and therefore he was not liable to maintain his daughter-in-law. The defendent used to ill treat the petitioner. Maintenance of Rs. 10 p.m. was ordered.

Held: Hindu law contemplates that a daughter-in-law, after the death of her husband, continues to be a part of the family of her in-laws and it imposes a duty on her of attending to the needs and commands of her in laws. It is the duty of the head of the family to look after the needs and maintenance of the dependents of the family. The father in law cannot shake off from his duties by ill treating the petitioner which may hasten her to death or force her to quit the family. Brihaspati, the Hindu mythological God, had said “one who leaves his family naked and unfed, shall taste honey at first, but shall afterwards find it to be poison”. If the daughter in law fails to perform her duties towards her in laws, she would not be entitled to any maintenance. The duty of paying maintenance is an inalienable right and if the corresponding duty is not performed voluntarily, it must be enforced.

1874

(1874) XI BHC Rep. 23
Hari Yemaji v/s. Parsharam Gundo
Sir West & Pinhey, JJ

The Plaintif sued to recover arrears of rent of certain land belonging to him.

He alleged that he had given a notice of enhancement to the Defendant. The Defendant denied the Plaintif's right to enhanced rent.

Held: The Plaintiff could not, by a notice given in December 1870, entitle himself to enhanced rent for the then current year 1870-1871. The Respondent was awarded the rent for last two years at the previously established rate.

(1874) XI BHC Rep. 44
Reg. v/s. Daya Anand & Ranchod Khalpo
Sir West & Nanabhai Haridas, JJ

The two accused persons were convicted of murder and sentenced to death. The conviction was principally based upon a confession by the second accused.

The confession that was in form of question and answer was duly attested by the signature of the Magistrate but instead of the signature or mark of the accused, it bore the following: "The signature of Ranchod Khalpo; the handwriting of Venkatesh Narotam, Talati of Binari."

Held: Taking the confession of the accused Ranchod but omitting to cause that prisoner to sign or mark the confession was serious carelessness & rendered the evidence inadmissible under S. 91 of the Evidence Act, 1872. The evidence apart from the confession is insufficient to sustain the charge.

(1874) XI BHC Rep. 137
Reg. v/s. Balvant Pendharkar
Nanabhai Haridas & Larpent, JJ

The accused was tried of a charge of forgery. The accused alleged that his confession in the Magistrate's Court was induced by illegal pressure.

Majority of the jury was of the opinion that the accused should be acquitted, but the Session Judge differed from them.

Held: If a statement in confession of crime is the result of any undue or illegal influences, it is utterly inadmissible; but in the absence of evidence that it was induced by illegal pressure, it cannot be presumed that it was so induced. Under S.24 of the Indian Evidence Act, 1872 a confession is inadmissible only if it is induced by illegal pressure. When the Sessions Judge did not consider it to have been so induced and found it full and clear and supported by reliable evidence, it was properly admitted in evidence notwithstanding his retraction and though he was found not guilty by the Jury.

(1874) XI BHC Rep. 172
Reg. v/s. Bapu Yadav
Sir West & Nanabhai Haridas, JJ

This appeal was from a conviction for counterfeiting coin. The accused made certain coins, bearing on one side the superscription "Jalaluddin Akabar Badshah Gazi San 988 and the celebrated formula of the Mahomedan faith on the other side.

Held: A coin is a metal used for the time being as money. Money is a general standard of value & medium of exchange. The test whether a particular piece of metal is money or not is the possibility of taking it into the market & obtaining goods of any kind in exchange for it.

It is clear, thus, that the tokens imitated in this case were not money & therefore not coins within the legal meaning. Thus it did not amount to an offence under Ss. 230 and 231 of the IPC.

1875

(1875) XII BHC Rep. 294
Hirbai v/s. Gorbai
Sir Sargent, J, and on appeal, Sir Westropp, CJ & Green, J

A Khoja having died intestate and without leaving issue, was survived by his mother (a widow), his wife, and a married sister.
Khojas, having been originally Hindus converted from Hindu religion to the Muhammadan of a Shia division and Ismaili subdivision, were partly regulated by Muhammadan Law, partly by Hindu law and partly by custom.
If a custom opposed to Hindu law be alleged to exist amongst Khojas, the burden of proof rests upon the person setting up that custom.

Held: According to the custom of the Khojas, the mother was entitled to the management of his estate, and, therefore, to letters of administration, in preference to his wife and sister.

(1875) XII BHC Rep.10
Suleman Vadu v/s. Trikamji Velji
Sir West & Nanabhai Haridas, JJ

In a conveyance between the parties the land which was to be sold was 19 acres. It was described in the conveyance as 30 acres instead. An award of damages was made in respect of the area of the land which was found to have fallen short. It was argued that though this is a material discrepancy, the specification of the area with boundaries was a mere matter of description and that an error in this respect offers no ground for compensation.

Held: The specification in a deed of sale of land of the area of the land sold prima facie implies that area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of the land, the real area of which is found to fall short of the area specified in the deed of sale.

(1875) XII BHC Rep. 9
P. Sokabai v/s. Lakshmibai
Sir Bayley, J

The Defendant contended that the High Courts in India "absolutely control the cause lists". Thus, according to them, the Bombay High Court had the power to lay down that a case shall not come to the Court unless the Plaintiff has paid the cost of the summons.

Held: The Court will not make the payment of the cost of a summons adjourned from chambers into Court, a condition precedent to the hearing of the suit.

(1875) XII BHC Rep. 147
Reg. v/s. Gulam Abas
Sir West & Pinhey, JJ

The accused, Gulam Abas, had committed the offence of theft in his master's house on two occasions. A separate sentence was granted by the Magistrate for both the occasions.

Held: The aggregate of the sentences awarded to one person in one trial for several instances of the same offence, is to be regarded as one sentence.

(1875) XII BHC Rep. 262
Hormasji Temulji v/s. Mankuvarbai
Sir Westropp, CJ & Green, J

The Solicitor of the Respondent mortgaged the property of his father to the Respondent, purporting to do so under a power of attorney granted by his father. They did not advertise the mortgage and delayed the registration of the mortgage deed. In the meanwhile, the Solicitor's father agreed to sell a house, which formed part of the mortgaged property, to the Appellant.

Held: The doctrine of constructive notice cannot be applied against the Appellant as the Solicitor act of mortgaging was a fraud. As the Respondent was equally guilty of keeping the transaction a secret, she cannot also claim the benefit of the doctrine.

(1875) XII BHC Rep. 94
Himatsing Becharsing v/s. Ganpatsing
Sir Westropp, CJ & Kemball, J

The Respondents had contended that a Hindu son could not sue his father for maintenance.

Held: A Hindu son can sue his father for maintenance out of ancestral property, if the property in the hands of the father cannot be partitioned.

(1875) XII BHC Rep. 229
Vrandavandas Ramdas v/s. Yamunabai
Sir Westropp, CJ & Larpent, J

Gokaldas, a member of an undivided family died leaving two nephews and one concubine, the Respondent. One of the nephews made a gift of the entire property to the Respondent as she was his uncle's concubine for a very long time.

The deed of gift was void as against the other nephew. The Respondent was only entitled to maintenance which would be secured out of the property.

1876-77

(1876-77) ILR 1 BOM 15
Reg. v/s. Maruti Dada
Sir West & Nanabhai Haridas, JJ

Two persons were jointly charged with stealing. One of them was charged with receiving stolen goods also. He confessed the crime. No evidence was led against the first person. He was made witness against the other.

Held: The offence of abetment is a substantive offence. The conviction of an abettor is not dependent on the conviction of the principal. The punishment is also the same for him. An abettor may be convicted before the principal is arrested. The principal may then be tried and acquitted. Even if there is no identity or guilt of the principal seen, the guilt of the abettor can be seen. Only because both are tried together cannot alter the real force of the case against the abettor. The acquittal of the principal does not necessarily require the acquittal of the abettor.

(1876-77) ILR 1 BOM 64
Reg. v/s. Devama
Sir West & Nanabhai Haridas, JJ

A Magistrate dismissed the complaint upon the complainant and the accused having settled their dispute and divided their property.

Held: Dismissal of the case means that the no offence had been proved and hence the accused was discharged. “Dismissal of a complaint" applies to a summons case only. The provisions of S. 215 of the Cr.PC are highly useful in many cases. They enable a Magistrate, to dispose of an accusation without proceeding to an actual conviction or acquittal where a strict application of the criminal law would be undesirable. But these provisions are open to abuse, and, to guard against their perversion, a discharge made not equivalent to an acquittal and does not bar the revival of a prosecution even if agreed by the parties. The Magistrate would exercise the power of recall only if it is just.

(1876-77) ILR 1 BOM 67
Shankar Ramchandra v/s. Vishnu Anant
Sir West & Nanabhai Haridas, JJ

The Appellant claimed that a Deed of Partition, on which he sued, was not compulsorily, but optionally registrable. He valued his interest in the suit property at more than Rs.100 and hence “declared” such interest.

Held: If the instrument requires registration under S. 17, the specific provision imposing a necessity for registration is not superseded by a general provision for optional registration. Even if the partition deed did not create an interest, it at least declared an interest in immoveable property. Since it was not registered, it could not be admitted in evidence.

(1876-77) ILR 1 BOM 97
Rahi, wife of Teja Kurad v/s. Govinda Teja
Sir Westropp, Kt. CJ & Larpent, J

Re-marriage prevails amongst Sudra tribe. Bhagu and Gau were married. Gau re-married by Pat marriage without having received a chor-chitti (release) from her husband and before their divorce. Under an adulterous intercourse, a son was born. He claimed a half share in the estate of his deceased father and a right to be maintained therefrom.

Held: He was not a Dasiputra. He could not inherit as an illegitimate child even to the extent of half a share. He was entitled to maintenance. A liberal but suitable maintenance, having regard to the extent of the estate of his father, was directed to be ascertained and allotted to him.

[Later, in the case of Khemkor v/s. Umashankar (10 BHC Rep 381) a Brahmin wife who remarried in the lifetime of her husband without his consent, though not a legal wife, but his concubine and the mother of his illegitimate children, was held entitled to maintenance after his death from out of his estate.]

(1876-77) ILR 1 BOM 177
Murarji Gokuldas v/s. Parvatibai
Sir Westropp, Kt. CJ & Sir Sargent, Kt. J

The Plaintiffs challenged the property in the hands of the Defendants who were the heirs of a blind widow who had inherited the property through her late husband. The widow's blindness developed with advance in age preceding the death of her husband. It was contended that she could not bequeath as under Hindu law, blindness disqualifies inheritance.

Held: Blindness, to cause exclusion from inheritance, must be congenital, as expressly provided by Manu and in other Hindu texts and authorities. Therefore, the widow's blindness did not prevent her from inheriting the property of her husband on his demise, and consequently, her heirs could rightfully claim under her will.

(1876-77) ILR 1 BOM 513
Secretary of State for India v/s. Sir Albert Sassoon
Sir Sargent, Kt. & Green, JJ

Two lands were leased for 999 years. The annual rent of one land was Rs.500/- per acre and for the other Re.1/- per acre as it was "at times covered by the sea". The Lessee had the right to reclaim it from the sea in which case the rent would be Rs.500/- per acre. The lessee also had the power to dig, excavate or remove the soil from that land,

The lessee excavated the land and turned it into a dock, at the entrance of which he constructed gates so as to control the flow of the sea water into the dock.

The Court was to give meaning to the word "reclaim". It could be to convert the land from being overflowed by the sea into dry land by rendering it secure from the ingress of the sea or the creation of the land applied to a useful mercantile purpose, controlled and regulated.

The Court saw the intention of the parties in the Lease Deed and held that the meaning of the word "reclaim" was to be used in its ordinary sense.

Held: The construction of the dock was not such a reclamation as was contemplated in the lease. Therefore, enhanced rent could not be charged.

1878

(1878) ILR 2 BOM 19
Baban Mayacha v/s. Nagu Shravucha
Sir Westropp, Kt. CJ & Nanabhai Haridas, J

Some fishermen erected fishing stakes at a distance of between 2 to 3 miles of the coast of Salsette. Other fishermen sued them for ejectment from their fishing ground upon trespass. It was held that Civil Court had no jurisdiction. Later, they again sued them for damages for maliciously erecting fishing stakes at a distance of only 120 feet from those of the Plaintiffs and disturbing the Plaintiffs' enjoyment of their right to fish and unjustifiably preventing fish from getting into the nets of the Plaintiffs.

The Rights of the Crown and of the public in the waters and the subjacent soil of the sea and the right of the public to fish in the sea, whether it and its subjacent soil is vested in the crown or not, is common and is not subject of property. The right may, in certain portions of the sea, be regulated by local custom.

Held: Public exercising the right to fish in the sea are to do so in a fair and reasonable manner, and not so as to stop others from the same. Conduct to prevent another from a fair exercise of his equal right, if injury results to him, is actionable.

(1878) ILR 2 BOM 377
Rangubai v/s. Bhagirthibai
Sir West & Pinhey, JJ

The parties are sisters. Their father was adopted. He inherited a property from his adoptive mother. The mother had taken him in adoption against the wishes of his natural father. His natural father had given consent to the adoption on the conditions that she must obtain consent of the British Government, her own family and the bankers of the town. He wrote letters to her in that behalf. "Without the prior order of the British Government", he wrote, "do nothing at all, as I have not 5 or 10 sons; only this one". He directed the adoption to be upon "an order issued in the boy's favour as to all the possessions" of the family. His letters conveyed an absolute prohibition to the proposed adoption without Government consent. His letters were read out at the adoption.

Held: According to the Hindu Law prevailing in the Bombay presidency a wife is not competent to give her son in adoption against the will, express or implied, of her husband, the father of that son, or under circumstances from which the husband's dissent can be inferred.

Since the condition was not fulfilled, the adoption became invalid notwithstanding that the condition was unnecessary and imposed because of a mistake as to the necessity for the assent of Government to the adoption.

(1878) ILR 2 BOM 346
Ramachandra Sakharam Vagh v/s. Sakharam Gopalvagh
Sir Melvill & Pinhey, JJ

In 1801 the Peshwa granted a village a saranjam to a person. He enjoyed it till his death in 1818. The British Government resumed it and granted instead a political pension of Rs.1200/- p.a. to his son during his lifetime and a moiety to the second generation.
The adult legitimate son of such person claimed maintenance alleging that he was turned out of the house by his stepmother.

Held: A saranjam and pension in lieu thereof are both impartible. The Pensions Act, 1871 prevents a Civil Court from declaring such a pension to be partible, unless the

collector authorizes it. The fact that the collector authorizes a suit for maintenance out of such pension, affords no ground for presuming that he authorizes a suit for the partition of the pension.

Therefore, if a Hindu father possesses practically no partible property, his legitimate son, though adult and suffering from disability to inherit, is entitled to maintenance from him.

(1878) ILR 2 BOM 110
The Collector of Thana v/s. Bal Patel
Sir Westropp, CJ & Nanabhai Haridas, J

The Plaintiff, a cattle-breeder, erected a hut on public ground in Thana and lived there for a few months in monsoon while his cattle grazed on the public grazing ground in that area in Thana. He was not an owner or a lessee of any land in the village. On being prevented by the Collector in Thana from grazing his cattle, the Plaintiff brought a suit against the same for declaration of his right to graze his cattle within limits not only of that village area but any other district of Thana.

Held: He had no right to so graze his cattle under S. 32 of the Bombay Act, I of 1865 under which free pasturage is provided for village cattle only. The section specified that such right could not be "otherwise appropriated or assigned without the sanction of the Revenue Commissioner."

(See also ILR 14 BOM 213 and AIR 1990 BOM 343)

(1878) ILR 2 BOM 75
Dhanjibhai Bomanji Gugrat v/s. Navazbhai
Green, J

The Plaintiff sued his mother and brothers for administration of the estate of his deceased father. He applied for reliefs in respect of certain amounts given by him to the Defendants, by the deceased to his wife and for his wife's ornaments.

Held: Under S. 8 of the Parsi Succession Act, XXI of 1865, S. 42 of the Indian Succession Act of 1865, which dealt with the rule of advancement, was excluded for Parsis. Yet the scheme of distribution in the Parsi Succession Act did not favour the rule of children's advancement being accounted for in distribution.

(1878) ILR 2 BOM 67
Bhala Nahana v/s. Parbhu Hari
Sir Westropp, Kt. CJ & Sir West, J

A Hindu desired to adopt a son. He induced the boy's parents to give him their son in adoption, but died without having executed such settlement. The son was treated as adopted during his lifetime. His widow executed a gift in favour of the son after 30 years.

Held: The widow was bound by the contract of her husband to adopt in equity and must specifically perform the adoption. The alienation made by her was valid as against the next heir by blood of the adoptive father.

A member of the Talabda caste may adopt by an express promise to settle his property upon the boy.

1879

(1879) ILR 4 BOM 29
Ravji Sarangpani v/s. Gangadharbhat
Sir West & Pinhey, JJ

The Plaintiff sued his brother and the brother's purchaser challenging the sale of Inam land. Both brothers had shares in the Inam village and jungle of 8 Pies in a Rupee. The Plaintiff was a manager of the jungle having purchased the right to cut the jungle for 3 years. His brother executed the sale deed without adequate consideration and without the Plaintiff's consent. The purchaser obstructed the Plaintiff in his right as owner and manager. The Plaintiff's brother claimed that he was the sole manager and not under any legal obligation to obtain the consent of the Plaintiff and so long as the Plaintiff received consideration, he had no right to challenge the same.

Held: The Plaintiff was a member of the family who owned the Inam village. He had a perfect right to question any transactions entered into by the elder member as manager, whereby he would be defrauded.

(1879) ILR 4 BOM 103
Nilkanth v/s. Dattatraya
Sir Melvill & Pinhey, JJ

The Plaintiff claimed Rs.27-14-0 due to him on a money bond dated 2nd of Kartik Vadya Shake 1797 (15th November, 1875). The suit was filed on 12th March, 1879. Reckoning the period by the British calendar, the suit is in time, but reckoning it by the native one, it is out of time.

Held: When the bond bears a native date only and is made payable after a certain time, that time, whether denoted by the month or the year is to be computed according to the Gregorian (British) calendar under S.25 of the Limitation Act, 1877.

(1879) ILR 4 BOM 37
Sadu v/s. Baiza
Sir Westropp, Kt., CJ, Kemball & Pinhey, JJ

A Hindu Sudra died surviving him two widows, B & S, son of B Mahadu and the daughter of S, Darya and an illegitimate son Sadu, the Plaintiff. Sadu and Mahadu continued to live together for some time. Later they lived separately but continued joint and undivided in estate till Mahadu's death. They entered into an agreement in writing under which Sadu was allowed a portion of the family property by Mahadu. Sadu sued on the agreement. The suit was decreed. Later he brought a second suit as heir of his father and brother and claimed the whole ancestral property.

Held: The second suit was not barred as the first suit was on the agreement and the second suit was on his rights as heir. Sadu and Mahadu were co-parceners from the death of their father until the death of Mahadu. Sadu, as the surviving co-parcener could take the whole property.

(1879) ILR 4 BOM 219
Vithaldas Manickdas v/s. Jeshubai
Sir Westropp, CJ & Kemball, J

A Hindu widow inherited an estate of her seperated husband who dies leaving her a widowed daughter-in-law and a paternal uncle's son. The daughter-in-law filled a suit against to recover possession of certain immovable property left by the deceased widow.

Held: The daughter-in-law was entitled to succeed to the property in priority to the paternal first cousin of her deceased husband.

1880-82

(1880) ILR 3 BOM 251
Brito v/s. The Secretary of State for India in Council
Sir Sargent, Kt., J

Prior to the 28th December, 1877, the excise duty on salt manufactured in Bombay was paid under the Bombay Salt Act VII of 1873 which regulated the importation and transport of salt in the Presidency of Bombay. The Plaintiffs, who were salt merchants, were desirous of exporting salt from their saltworks at Uran and Panvel, and accordingly under the provisions of Act VII of 1873 made four separate applications in writing to the Assistant Collector of Salt Revenue for the necessary permits, all dated prior to the 28th of December, 1877. Each application stated the amount of salt which it proposed to export and the duty payable in respect of the amount of salt therein mentioned was paid.

On 28th December, 1877, Act XVIII of 1877 came into force by which Act the excise duty on salt manufactured in Bombay was raised and on that date the Plaintiffs were disallowed to remove the salt unless an additional duty was paid as per the new Act. The Plaintiffs paid the additional duty demanded under protest demanded and exported the salt. The Plaintiffs instituted a suit to recover the excess duty paid.
Held: On the 28th December, 1877, the Plaintiffs had acquired the right to remove salt, whenever they might think proper, by simply complying with the usual forms required by the Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so as to destroy that right and to impose on the Plaintiffs a heavier burden as a condition of their removing the salt.

However, as the salt was allowed to pass free into British Malabar on the strength of they having already paid the duty, the sum paid under protest must be deemed to have been appropriated by the Plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar by applying to the Collector of Customs at Bombay for certificates that the duty had been paid, by presenting them at the Malabar ports, and claiming, in virtue of such certificates, that the salt should be admitted free of Customs duty.

(1880-81) ILR 3 BOM 725
Murari v/s. Suba
Sir Sargent, CJ & Kemball, J

The Plaintiff, a Murari, instituted this suit to establish his right as *guru* to certain annual fees from the Defendants as his *sishayas* (disciples), and to recover one year's arrears of such fees from them.

The Plaintiff belonged to Mahar caste, and used to recover from the Defendants certain fees which, he alleged were appurtenant to the office of the *guru* amongst the members of the Mahar caste living in a certain village. The Defendants denied that the Plaintiff was their *guru.*

Held: A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honors at the hands of the members of the caste by virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office.

(1882) ILR 3 BOM 592
Sadu v/s. Shambu
Sir Sargent, CJ. & Sir Melvill, J

The standing crop of sugarcane was attached to be sold in execution of a money decree.

Held: Standing crops are immovable property within the meaning of S. 22 of the Dekkhan Agriculturalists' Relief Act (XVII of 1879) as well as within the Code of Civil Procedure, and not liable to attachment and sale in execution of money decrees, unless specifically pledged.

(1880-82) ILR 3 BOM 725
Murari v/s. Suba
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff Murari instituted this suit to establish his right as *guru* to certain annual fees from the Defendants as his *sishayas* (disciples), and to recover one year's arrears of such fees from them.
The Plaintiff belonged to Mahar caste, and used to recover from the Defendants certain fees which, he alleged were appurtenant to the office of the *guru* to the members of the Mahar caste living in a certain village. The Defendants denied that the Plaintiff was their *guru.*

Held: A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honors at the hands of the members of the caste in virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office.

(1882) ILR 3 BOM 592
Sadu v/s. Shambu
Sir Sargent, Kt. CJ & Sir Melvill, J

This was in reference under S. 617 of the CPC, 1877- "whether standing crops must be regarded as immovable property within the meaning of S.22 of the Dekkhan Agriculturalists' Relief Act, 1879 and, as such, whether they are attachable and saleable in execution of money decrees."

Held: Standing crops are immovable property within the meaning of S. 22 of the Dekkhan Agriculturalists' Relief Act, as well as within the CPC and not liable to attachment and sale in execution of money decrees, unless specifically pledged.

(1882) ILR 3 BOM 717
Naginbhai v/s. Abdulla
Sir Melvill & Pinhey, JJ

In execution of a decree obtained by the Plaintiff he attached three pieces of land and a house in Surat as the property of the Judgment-debtor. The property was purchased by his father in his name. The father of the Judgment-debtor sued for a declaration of his own right to the property and to prevent the Decreeholder from attaching and selling the property. The Decreeholder contended that the property had been purchased with the money of the Judgment-debtor and belonged to him and was liable to attachment and sale in execution of their decree.

Held: When a purchase is made by a Hindu or Mahomedan in the name of his son, the presumption is in the favour of its being a *benami* purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. When the rights of creditors are in issue in such a transaction very strict proof of the nature of the transaction should be required from the objector to such rights, and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son. The decree of the lower Court was reversed.

[This position was legislated more than a century thereafter under the Benami Transactions (Prohibition) Act, 1988]

1881

(1881) ILR 5 BOM 99
Narbadabai v/s. Mahadeo Narayan
Sir West, J

A Hindu widow, who was the third wife of the deceased, sued her step sons for maintenance.

Held: A Hindu husband cannot alienate, by a deed of gift to his undivided sons by his first and second wives, the whole of his immovable property, though self acquired, without making suitable provisions to take effect after his death for his third wife, who is destitute and has not forfeited her right to maintenance. After her husband's death, she is entitled to "follow such property in the hands of her step sons" to recover her maintenance, her right to which is not affected by any agreement made by her with her husband in his lifetime. Also, maintaining the wife is a duty which the husband cannot owe to another. Her right as against him is one that she cannot transfer to another. Even a widow's right to maintenance against the heirs taking her husband's property, cannot be assigned.

(1881) ILR 5 BOM 425
The Guzerat Spinning and Weaving Company v/s. Girdharlal Dalpatram
Sir Westropp, Kt. CJ & Sir Melvill, J

The Defendant subscribed for 101 shares of a company as a subscriber to the memorandum and articles of association of the Plaintiff Company, then in the process of formation. Subsequently, and before registration, the Defendant gave notice to the persons most active in the promotion of the said company that he would withdraw his signature and have no connection thenceforth with the proposed company. His withdrawal, however, was not accepted.

Subsequent to the receipt of the said notice, the memorandum and articles of association signed by the Defendant were presented for registration, but registration was refused on the ground that the documents were not printed. A printed copy of each was then procured and registered.

The registered copies differed, in respect of the signatures subscribed thereto, from the copies signed by the Defendant. The Defendant's name was put upon the register of the company as the holder of 101 shares, but without the Defendant's assent or knowledge, and two calls were made upon him in respect of the said shares. The Defendant denied that he was a member of the company or liable for calls.

Held: The Defendant was not a member of the Plaintiff Company. S. 22 of the Indian Companies Act, 1866 required the subscriber to subscribe to a registered

memorandum. The The Defendant was, therefore, not a subscriber to the memorandum of that company. Besides, the agreement referred to in S. 22 was an agreement with the company. Since the company was not in existence when the Defendant signed the memorandum, he could not have entered into any contract with the company.

(1881) ILR 5 BOM 371
The Great Indian Peninsula Railway Company v. Radhakisan Khushaldas
Sir Westropp, Kt. CJ, & Sir Melvill, J

The Respondent sued the Appellant railway company for damages for breach of contract of carriage for goods delivered to the railway company from B, a station belonging to another railway company, for transport to S, a station belonging to the Appellants and obtained from that company a receipt which recited that it was granted "subject to the rules and regulations and charges in force on that or any other railway over which the goods might pass". The goods were lost while on the line and in the charge of the Appellants.

Between the two railway companies, there existed an agreement arranging for the interchange of traffic which provided, inter alia, that goods should be booked through to and from all stations on both lines at certain stated rates, that in such cases, one company should receive payment and account to the other; that any claim for loss or damage should be paid by the company in whose custody the goods were while damaged or lost, or if that could not be ascertained, then by both companies rateably; and that no alteration affecting the through traffic should be made by either company without previous notice to the other. The Appellants pleaded that the suit was wrongly brought against them, as there was no contract between themselves and the Respondent.

Held: "The real ground of liability is that the trade has been carried on behalf of the Appellants. Hence the suit, whether or not it might also have been brought against the other Railway Company, was rightly brought against the Appellants in as much as the agreement between the two companies, if it did not actually constitute a partnership between them, showed at least that the other railway company became the agent of the Appellants to make the contract for carriage with the Respondent.

(1881) ILR 5 BOM 132
Jechand Khusal v/s. Aba and Baika
Sir Melvill & F.D. Melvill, JJ

A spinner entered into an agreement with a spinning and weaving Company to receive

payment on the number of pounds of cotton spun by him, calculated at a certain rate for every hundred pounds. He attached the money due under the said agreement. The opponent contended that this money was not wages, and hence, refused to give.

Held: A person who agrees to spin cotton and to receive a certain amount of money for a certain quantity of cotton spun by him is a labourer and, therefore, the remuneration is wages liable to be paid.

(1881) ILR 5 BOM 580
Luckumsey Rowji v/s. Harbun Nursey
Sir West, J

At the funeral of the Plaintiff's father in the presence of a large number of persons from their caste, the Defendant spoke that the deceased was a '*Patit',* a man who had acted contrary to moral and religious principles, and that he was an outcaste sinful man. The Plaintiff sued for defamation as such words were used to hurt the feelings of the family members.

Held: A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other person, does not entitle them to sue.

1882

(1882) ILR 6 BOM 122
Dhadphale v/s. Gurav
Sir Melvill & Kemball, JJ

The Plaintiff belonged to a family of Guravs (temple servants) attached to Temple of Bahiroba and the Defendant was a holder of inam allowance granted in consideration of his daily offering to the idol of some rice and cake and burning a lamp. The Plaintiff filed a suit alleging the failure of the Defendant to make such offering for a period of one year. The Defendant alleged that during the said year he offered food in his own house to the idol and that he had eaten it himself and it was not obligatory upon him to offer food to the idol in the temple.

Held: As a temple servant, the Plaintiff may have the right to take the food offered to the idol. However, the Plaintiff cannot obtain relief upon the omission of the Defendant to offer food and the consequent loss suffered by the Plaintiff of his own account and

not as a representative of the idol. The Defendant was not obliged to supply food to the temple servants though that may involve a loss to the Plaintiff.

(1882) ILR 6 BOM 541
Khodabhai Mahiji v/s. Bahdhar Dala
Sir Westropp, Kt., CJ, & Nanabhai Haridas, J

The Plaintiff sued to recover an amount due on a bond executed by the principal debtor and the surety. The debtor was survived by his father, mother and two brothers. After the death of the debtor the Plaintiff sued his father, mother and brothers along with the surety. While the surety denied execution of the bond, the other Defendants denied knowledge of the transaction.

The debtor was separate in interest from his father and his mother and brothers could not be considered as his legal heirs. The Court had to determine the heirs of the debtor.

Held: The father is the heir of the deceased as that had to be determined in Hindu law upon who offers the funeral cake.

(The rules of succession have changed since the codification of succession law)

(1882) ILR 6 BOM 700
Lukmidas Khimji v/s. Purshotam Haridas
Latham, J

The Plaintiff sued a partnership firm and some of its partners for recovery of a certain amount. The first Defendant denied being a partner of the firm. The third Defendant also denied that the first Defendant had ever been a partner in the firm. It was contended by the Defendants that the firm consisted of 3 partners, one of whom had not been joined as a party to the suit.

Held: A promisee is at liberty to sue any one or more of the joint promisors against whom he wishes to proceed allowing his right against those he does not proceed against to be barred.

(1882) ILR 6 BOM 116
Rama v/s. Shivram
Sir Melvill & Pinhey, JJ

The Plaintiffs and the Defendants belonged to a village in which, by custom, they had a right to carry their bullocks in a procession on the *Pola* on the last day of *Shravan*. The Plaintiffs and the Defendants had entered into an agreement at the instance of the Defendants for each of them to exercise this right every alternate year. In the year 1878 it was the Plaintiffs turn to carry the procession of parading their bullocks but the Defendants prevented them from doing so. The Plaintiffs sued for declaration of their rights and damages to recover Rs.25/-.

Held: The Plaintiffs have no cause of action as the agreement entered into between the parties is a personal one and none of the parties to the agreement were parties to the suit.

(1882) ILR 6 BOM 83
Rungo Bujaji v/s. Babaji
Sir Westropp, Kt. CJ & Birdwood, J

The Plaintiff sued on a note bearing a native date Ashad Vadya 13th, Shake 1799 (7th August 1877) and contained a stipulation of payment of money to be made in Kartik, Shake 1799.

Held: The true construction of the note is that the maker was to pay within four lunar months which would expire in the month of kartik. The said period of four months for ascertaining whether the suit was barred was to be calculated according to the Gregorian Calendar and therefore, the claim is not barred.

1883

(1883) ILR 7 BOM 1
Hassonbhoy v/s. Cowasji Jassawalla
Sir West, J

The Defendant, obtained a *rule nisi* calling on the second Plaintiff to show cause why he should not be committed for contempt in disobeying an order made by Marriott, J., directing him to give to the Defendant inspection of all documents in his possession or under his control.

Held: As regards the jurisdiction of High Courts in India, power to commit for contempt is provided in S. 136 of the CPC of 1877.

“The process of attachments for contempt”, it is said, “must necessarily be as ancient as the laws themselves”.

Under the authority conferred by the charters of the Supreme Court and continued by their own Letters Patent, the High Courts in India posses the power of enforcing obedience to their orders by committal for contempt.

As regards the High Courts in India, the remedies provided by section 136 of the CPC (Act X of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience.

An application may properly be made in Court to commit for contempt of an order made in Chambers.

(1883) ILR 7 BOM 127

Kalu v/s. Kashibai

Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the Defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property.

Held: They had no legal right to be supported by the Defendant, notwithstanding that they were in indigent circumstances. The Court decided the matter after referring to the texts of Manu and previous judgments. It was remarked by the Court that a man's aged parents, his wife, and his infant children appeal to his protection in a special manner in which no other relations do, and the strength of the expression used in the injunction as to their protection points to children only being intended. To extend the legal obligation to descendants would impose in many cases a heavy burden. The Chief Justice observed: "On the whole we think that, whatever the extent of moral obligation may be amongst Hindus, the legal obligation should not be carried beyond what the language the text creates according to its plain and obvious sense."

(1883) ILR 7 BOM 221

Kashibai Bhagvantv/s. Tatiya Lakshman

Sir Sargent, Kt., CJ & Kemball, J

The Plaintiff sued for the possession of certain land on the ground that he was the adopted son of his deceased father. The Defendant contended that the adoption was invalid because the Plaintiff was the eldest son of his natural father. The question

before the Court was that of the validity of the adoption of an eldest son.

Held: The prohibition to the adoption of the eldest son, unlike that of the adoption of an only son, is merely admonitory in the texts of the original Smritis, the opinions of the commentators and the decisions of the High Court and does not create any legal restriction.

(1883) ILR 7 BOM 131
Vasudev Bhat v/s. Narayan Damle
Sir Sargent, Kt., CJ, &. Kemball, J

The Plaintiff sued for possession of certain lands, alleging that they had been given to him under a registered deed of gift. It was found that no possession was given to him under the deed. It was contended by him that his title was complete without possession as the deed had been registered.

Held: The Plaintiff was only entitled to the land of which he had been put into possession.

According to Hindu law, in order to give complete validity to a gift of land as between donor and donee, the donee must be put into possession.

Registration gives the done neither actual, nor constructive nor symbolic possession and therefore cannot be regarded as equivalent to delivery and acceptance.

1884

(1884) ILR 8 BOM 95
Nandkishor Balgovan v/s. Bhagubhai Pranvallabhdas
Sir Bayley, Acting CJ & Sir West, J

In May 1876, the Defendants raised the outer wall of his shop and thereby enclosed the Plaintiff's window. The Plaintiff sued for injunction against the Defendants directing them to remove a portion of their shop which obstructed the access of light and air to the window of the Plaintiff's shop.

Held: Access of air in this country is hardly of less importance than that of light. It must be taken as matter of common knowledge that a material interference with it is injurious not only to the comfort but to the health of the inmates of house thus affected.

To take control of air and light in this way out of the hands of a person entitled is a material injury giving a claim to relief by the Civil Court.

[See also (1905) 7 BLR 73 and (1891–93) 7 BHC Rep. unreported Judgments 177]

(1884) Indian Decisions ILR 8 BOM 395
Narsingrav Ramchandra v/s. Venkaji Krishna
Kemball & Birdwood, JJ

Three brothers belonging to a joint Hindu Family instituted a suit in their own name and on behalf of their minor brother to set aside an alienation of the family property made by their deceased father. A certificate of administration in the name of one of the Plaintiffs was demanded before the suit could proceed.

Held: No certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor with permission.

(1884) Indian Decisions ILR 8 BOM 421
Ranchhod Varajbhai v/s. the Municipality of Dakor
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

The applicant claims refund from the municipality and serves notice to be refunded the amount within one month, but sues on the notice prior to the expiration of the month.

Held: The Defendant, a surveyor of highways, was entitled to the notice period of one month until its expiration.

(1884) Indian Decision ILR 8 BOM 490
Bhikaji Oke v/s. Yashwantrav Khopkar
Sir Sargent, Kt. CJ & Kemball, J

A house and an anganna (homestead) was the ancestral undivided property of the Plaintiff and his father, having been acquired by his grandfather. The property was sold in execution of a money decree passed against the father. The purchaser came into possession. The Plaintiff sued to recover his 1/6th share in the house, his father having another 1/6th share.

Held: By the sale of ancestral property in execution of a mere money decree against the father for his separate debt, only the right, title and interest of the father would pass

to the purchaser. A purchaser at a Court sale cannot set up the title of a bona fide purchaser for value without notice.

(1884) Indian Decision ILR 8 BOM 532
Purshottam Vithal v/s. Purshottam Ishwar
Sir Sargent, Kt., CJ & Kemball, J

The Plaintiff sought to stay the sale of an immovable property in execution of a decree of the Court. The purchaser obtained possession of the property. The trial Court inquired into an application that the decree was obtained by fraud.

It is not competent for the Court to refuse to sell the property as ordered by the decree on the ground that a stranger impeaches it as having been fraudulently obtained. If the stranger wishes to stay the execution of the decree, he should file a suit and obtain an injunction for that purpose.

(The law has been altered since the amendments to the CPC in 1976)

1885

(1885) 9 ILR BOM 58
Giriowa v/s. Bhimji Raghunath
Sir West & Nanabhai Haridas, JJ

Raghunath and Balaji were brothers and vatandar 'Kulkarnis' of village Kalagadi. Balaji died leaving a piece of land for his widow. Raghunath endeavoured to appropriate the whole vatan estate. The parties entered into an agreement under which Raghunath gave the widow a certain property as her share for her lifetime. The widow adopted her brother's son and gifted him her entire share under the agreement. After Raghunath's death his son sued for declaration that the adoption as well as the gift of her share of the property was invalid. He claimed rights on the entire vatan as an undivided estate.

Held: The expression 'to enjoy for the rest of her life' ordinarily described the estate of a Hindu widow and did not impose any restriction on the exercise of her power. She had separated in interest from Raghunath and was at a liberty to adopt a son without the previous sanction of Raghunath or his son. The fact that the adoptee was a son of her brother did not in any way restrain her from adopting him. Further, that a long period of 25 years had passed between the death of her husband and adoption and circumstances did not in any way extinguish the right of the Defendent to adopt a child amidst the circumstances calling for adoption.

(1885) ILR 9 BOM 82
Dagdusa Tilakchand v/s. Bhukhan Shet
Sir West & Nanabhai Haridas, JJ

The Plaintiff claimed a right to a wall which he alleged to be his property. He obtained an Award of his rights with costs. The award of costs was challenged.

Held: The Arbitrator had no implied power to deal with the question of costs. Hence the award relating only to costs was set aside. The remaining award was upheld. The Court observed that in case of excess of jurisdiction or a perversion of the purpose of legislature, it would interfere under its extra-ordinary jurisdiction, where no remedy is available.

(1885) ILR 9 BOM 94
Keshav Ramkrishna v/s. Govind Ganesh
Sir West & Nanabhai Haridas JJ

A father and son both died leaving their widows. Both widows adopted a son each. The adopted son of the father sued to declare the adoption by the widow of the son invalid since his adoption was prior and upon an allegation that the other widow was unchaste.

Held: The adoption of the son by the widow of the father was invalid. After the death of the son, his estate vested in his widow. The existence of the widow and her ownership over the property of her deceased husband rendered the elder widow incapable of adoption. The estate having thus vested in the son’s widow would not be divested by her subsequent unchastity and, therefore, enquiry into her chastity is irrelevant.

(1885) ILR 9 BOM 172
In the petition of Bapasa
Sir West & Nanabhai Haridas, JJ

The Petitioner was charged, convicted, fined and sentenced for having committed an offence of hurt. The complainant in the petition was a servant of the Magistrate. It was contended that the Magistrate ought not to have tried the case himself and should have transferred it to other Magistrate.

Held: The Magistrate was not deprived of his jurisdiction by the circumstances that the complainant was his servant complaining on his own account though it would generally be expedient for him to refer the complaint to another Magistrate.

(See AIR 1931 BOM 206 showing confidence of the High Court in Magistrates)

[Consider the position today and the applicable law]

(1885) ILR 9 BOM 106
Appanna v/s. Tangamma
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff obtained a decree and sought to execute it. The execution directed recoevery from 'Streedhan'. The decree holder requested the Court to attach two trinkets on the Judgment debtor stating that she had concealed her ornaments. The two ornaments were 'mokti' and 'mangalsutra,' the latter being a thread on which glass beads are strung, with large perforated gold balls hanging in the middle.

Both the ornaments are of very insignificant value, but a Mangalsutra means a thread of auspiciousness (mangal means good luck and sutra means thread). According to the time honoured and universal usage obtaining amongst the Hindus community, the sutra is a sacred tie or trinket co-existent with the mark of vermilion found on every woman whose husband is alive. It is only on the death of the husband that the sutra is removed.

Held: Though under S. 266 of the CPC, 1882 ornaments were not protected from sale and attachment, the removal from the neck of a 'Sadhava' is calculated to give offence to the whole community to which the Defendant also belongs and it is necessary to uphold the customary law. Therefore, having regard to the universal practice amongst Hindus for a married woman to wear a mangalsutra during the lifetime of her husband without ever removing it, it must be regarded as a part of her necessary wearing and the apparel not to be taken vide the execution order.

(1885) ILR 9 BOM 272

In the petition of Raja Paba Khoji
Nanabhai Haridas & Wedderburn, JJ

The Municipality of Thana had promulgated a rule that no place except for municipal market would be used for selling vegetables. The Petitioner exposed vegetables on the '*ota'* of his house. Different people started selling their own marketable items in the area nearby to the petitioners. The Petitioner was fined.

Held: The petitioner used his '*ota'* as a shop and not as a market. The Defendants failed to prove that the crowd that accumulated was because of the petitioner. The grant of market in itself did not imply a right in grantee to prevent persons from selling marketable articles in their homes. The fines were ordered to be repaid.

(1885) ILR 9 BOM 279
Bai Daya v/s. Natha Govindlal
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff sued her stepson to recover arrears of maintenance as he had inherited, from her husband, several moveable and immoveable property which valued to 10000/-. The Defendant contested that the total value of the property summed to Rs.2000 and his father had left a liability worth Rs.2000. The Defendant himself had incurred a liability of Rs.1800. He further contested that, under Hindu Law, a step son is not expected to maintain his step mother.

The Court considered the texts of Manu, Chapter VI S. 2, Art. 1, p.490: “A mother and a father in their old age, a virtuous wife and an infant son must be maintained, even doing a hundred times that which ought to be done” and also the text in Mitakshara on the subtraction of gift Ch. X, fol. 69, p.1, referred in the manual of Hindu Law by Sir Thomas Strange: “Where there may be no property, but what is self-acquired, the only person whose maintenance out of such property is imperative are aged parents, wife and minor children.”

Held: The terms ‘mata’ and ‘ mata pitrau’, which meant mother and parents, should be read in their natural sense which would not include a step mother. The obligation of supporting a step mother out of the family property, should be left to the conscience of each individual, influenced more or less by the opinion of particular community to which he belongs.

(1885) ILR 9 BOM 311
Jagabhai Lallubhai v/s. Rustomji Nasarwanji
Sir Sargent, Kt. CJ & Nanabhai Haridas, J

The Plaintiff advanced monies to a firm of 2 partners engaged in construction of a barrel-house. The Plaintiff was to receive all sums which would become due on the contract under a power of attorney and to pay the balance to the firm after repaying himself all amounts due with interest. Later 1 partner alone entered into another agreement with the Plaintiff for a further sum to be advanced.

Held: The second contract was also necessary for carrying out the partnership business and hence bound the firm. The two agreements and the power of attorney constituted an assignment of all the monies to become due on the contact as security for the payment of the Plaintiff's advances with interest.

1886

(1886) ILR 10 BOM 152
Bai Vijli v/s. Nansa Nagar
Sir Sargent, Kt., CJ & Birdwood, J

The Respondent had advanced money to the Appellant who was a married woman in order to enable her to obtain a divorce from her husband. He promised to marry her as soon as she was divorced. He then sued to recover the advances he had made.

Held: The object of the agreement with the wife to divorce her husband and marry the Respondent was immoral and, therefore, the agreement was void. Hence the Respondent could not recover the money he had advanced.

(1886) ILR 10 BOM 167
Waghji Thakersay v/s. Khatao Rowji
Sir Scott, J

A guardian ad litem appointed for the Defendant who was of unsound mind pending the suit. He was made party to the suit for the purpose of discovery. However, in response to interrogatories he refused to make certain admissions which would be harmful to the Defendant.

Held: The guardian of a person of unsound mind cannot be called upon to make admissions against the interests of the party on whose behalf he has been appointed.

(1886) ILR 10 BOM 340
Queen-Empress v/s. Bai Rukshmoni
Birdwood & Sir Jardine, JJ

The Respondent was the wife of a lunatic who had been an inmate of a lunatic's asylum for several years. The brother of the lunatic had filed a complaint of bigamy against her.

Held: Since the brother was not a person 'aggrieved' in the matter, he could not procute the complaint.

1887

(1887) 11 ILR BOM 59
Queen-Empress v/s. Rakma'Kom Sadhu
Sir West & Nanabhai Haridas, JJ

The accused was a prostitute. She was charged with having communicated syphilis to the complainant and convicted under S. 269 of IPC, 1860 as a negligent act and one likely to spread any disease dangerous to life. The prosecutor had sexual connections with the accused alone during that particular phase and thus claimed that it was the accused that passed on the disease to him. She was suffering from primary syphilis on the day she had sexual connection with the prosecutor and had suppressed this fact from him. The fact that she had syphilis on the day of the intercourse was undisputed. The prosecutor contracted this disease from her.

Held: Even if it is assumed that there was dangerous disease and culpable negligence, still the act of having sexual intercourse could not have spread the infection, without the intervention of the complaining party, himself a responsible person and himself generally an accomplice. The only charge that can be made out here is that of cheating punishable under S. 417 or 420 of the IPC, 1860. To establish this, there should be evidence believed by the Magistrate that the intercourse was induced by misrepresentation on the part of the diseased.

(1887) 11 ILR BOM 69
Lakshmibai v/s. Hirabai
Sir Scott, J

A Hindu died leaving behind his widow and his adopted son. He directed by his will that they would be the heirs of all his properties. The son childless behind the Plaintiff, his widow, surviving him. His mother took possession of all of her husband's properties claiming to be joint tenant with her son under the will to be entitled by survivorship on his death. She claimed that the Plaintiff is entitled to nothing more than maintenance out of her father-in-law's property.

Held: Under the will the widow and son had been tenants-in-common and not joint tenants and that the Plaintiff as her son's widow, was entitled to his share.

In expounding Hindu wills, the Court should presume that the holder did not intend to depart from the general law beyond what he explicitly declares. When the deceased constituted his widow as one of his heirs, contrary to the general principles of Hindu law, which only gives her a right to maintenance, his act was silent as to how far her right would extend. That right was to be construed in a manner most consistent with the general principles of Hindu law and to hold that a joint tenancy had been created would be a distinct derogation of the joint family system, which is a key stone to Hindu Law. It would be, in effect, exclude the son's family, for the benefit of the widow, in total disregard to the relations and obligations of a Hindu family. The fact that Nathu died childless was not an accident which could not have been presumed to have been in testator's contemplation.

(This is the presumption in India unlike in England)

(1887) ILR 11 BOM 247
Khusalchand Lalchand v/s. Bai Mani
Sir Sargent, CJ & Birdwood, J

The Plaintiff instituted a suit against his wife, the Defendant for possession of his minor daughter and restraining his wife from giving her in marriage as arranged by her. The Court granted an injunction but the marriage was nevertheless solemnized by the mother. The Defendant, post the marriage of his daughter, amended the plaint so as to include a prayer to declare the marriage of his daughter null and void because it was conducted without his permission. The Defendant claimed that the Plaintiff had turned her out of his house eight years prior to the institution of this suit. After some years when their daughter came to be of marriageable age, she requested her husband to get their daughter betrothed, which he failed to do. She also informed him about the marriage of their daughter, once it was fixed, but he remained unresponsive.

Held: Getting a girl married is not merely a right but a duty to be discharged for the spiritual benefit of the girl. The Court supported the marriage on the principle of factum valet, there being no express authority required making the consent of both the parents as condition precedent for the validity of marriage. The plaintiff's action lacked bona fides as it was merely to assert his right over his daughter without any regard to her interest and with the sole object of annoying her mother from whom he had been long separated.

(1887) 11 ILR BOM 329
Thomas Evans v/s. Trustees of Port of Bombay
Sir Jardine, J

The 1st Defendant was the owner of the property Wellington Reclamation Land, Bombay. It had been its practice to let out the said property, in lots, for tents, which were taken down during monsoon. A public road ran along one side of the land and on the other side, furthermost from the road, was a bungalow which at the time of the accident was under the occupation of the Plaintiff. There was a road to this bungalow but since a long time people used a short cut that went diagonally through the tenting ground. This was a beaten track and it was obstructed by ropes and pegs during the tenting season. No express permission was taken by the occupants of the bungalow and other licensees to use this short cut.

The 1st Defendant leased this property to the 2nd defendant for building purpose. A hole of 8 feet square and 4 feet deep was dug on the leased land to make certain borings. This area was not lit, fenced or demarcated in any way nor was the Plaintiff informed about the dug portion of the ground. The Plaintiff passed by the short cut road to his bungalow. He returned late at night through the same road. He failed to see the hole and fell into it thereby sustaining severe injuries. He sued both the Defendants for the damages sustained by him.

Held: There was a negligence in digging the hole across a path that several licensees were using and in not placing any person or light to warn the passengers of the danger arising out of the hole and excavated earth which was heaped up. However, the 1st Defendant had given permission to the lessee to make borings only on their land. Hence the 1st defendant was not liable.

The 2nd Defendant was liable to the Plaintiff because the person who dug the hole was his servant pro hac vice, and the digging of the hole was within the course of his employment or within the scope of his authority. The Plaintiff was awarded Rs.17,000 as compensation.

(1887) 11 ILR BOM 462
Abdullah v/s. Kashi
Sir West & Birdwood, JJ

The Plaintiff and his deceased brother borrowed Rs.150 from the Defendant and, in consideration of the amount, executed a bond in the Defendant's favour whereby the the Defendant was allowed the enjoyment of a certain land for twenty years. At the end of this period it was to be restored to the Plaintiff free from all claims on account of the principal or interest on the sum borrowed. It was also agreed that at the end of twenty years if the Defendant planted vines or grew trees on the land and found it impracticable to remove them, he could retain them being the tenant of the Petitioners and paying Rs.50 as annual rent. Thus the Plaintiffs filed this suit to redeem their land.

Held: The document that embodied the contract between the parties is headed Karz Rokha or debt note. It is not the name given to a contract or to a memorial of it that determines the nature of the contract, but its contents. The jural relation constituted by it determines whether it is a lease, a conveyance, a mortgage or a contract of some other nature. The Defendants were given the right to retain occupation of the vineyard, subject to payment of a rent of Rs.50 per annum.

1888

(1888) ILR 12 BOM 26
Yashwantrav v/s. Kashibai
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A concubine obtained an order of maintenance after the death of the person she lived with. It was resisted on the ground that she had committed adultery and thus forfeited her right to maintenance.

Held: According to Hindu law, during the co-parcener's life-time his concubine is regarded as his wife. Hence punishment for adultery committed by the concubine with another man is the same as the punishment for the wife. Thus, continued continence was held to be a condition precedent to the deceased co-parcener's concubine claiming maintenance.

(1888) ILR 12 BOM 85
Pallonji Merwanji v/s. Kallabhai Lallubhai

West & Birdwood, JJ

Two Defendants in the original suit were both represented by one attorney. During the pendency of the proceedings, the Attorney applied to withdraw on behalf of both clients since their interests were conflicting on account of a disagreement between them. A few days after being permitted to withdraw, the Attorney appeared in a fresh suit on behalf of one of them. The other applied to restrain him from doing so.

Held: There was no unfair advantage to the applicant on account of any particular instructions or information given to him by the other Defendant in the previous suit. Therefore the Attorney was not restrained from appearing.

(1888) ILR 12 BOM 105
Hanmant Ramchandra v/s. Bhimcharya
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A Hindu died leaving behind a widow who was pregnant at the time and a son adopted by him a few days before his death. By his will, he directed that in case his wife gave birth to a son after his death, his property was to be divided equally between the natural born son and his adopted son. The guardian of the natural-born son sued to recover possession of the property from the adopted son. It was contended that the adoption was invalid since it was during his wife's pregnancy.

Held: The father cannot interfere by will, with his natural-born son's right of survivorship under Hindu law which provides that the adopted son's share in the property must be reduced to one-fourth on the birth of a natural-born son.

(1888) ILR 12 BOM 237
The Bombay and Persia Steam Navigation Co. v/s. Shepherd and Haji Ismailji
Sir Farran, J

There was a collision between the Plaintiff's steam ship 'King Arthur' and the Defendant's steam ship 'Zuari' as a result of which, the Zuari was sunk. Subsequent to the filing of the suit, the Zuari was floated and the Plaintiff applied for permission to add the ship as a joint Defendant in the suit.

Held: All persons may be joined as Defendants against whom the right to any relief is claimed. The word 'Defendant' includes a ship, which is invested with a persona for the purposes of the case. Therefore, the ship was permitted to be added as a joint Defendant.

1889

(1889) ILR 13 BOM 25
Ananta Balacharya v/s. Damodhar Makund
Birdwood & Parsons, JJ

The Plaintiff alleged that their father Ananta and the Defendants father Makund were brothers; that the two brothers made a memorandum of partition of family property. Whereby they agreed to divide the property in equal shares; and provided that if in future their sons did not agree and there was any partition, they should exersice ownership according to this document and not take more than mentioned in the document.

Held: This agreement constituted a partition between the brothers ,and was binding on there descendants.

(1889) ILR 13 BOM 126
Dulari v/s. Vallabdas Pragji
Sir Jardine, J

The Plaintiff claimed to recover from the Defendant a sum of Rs.2500. She alleged that a young girl was given to her when her mother died and had been maintained by her for a number of years. She arraged to get the said girl married and was to recieve Rs.2500 on the marriage as agreed by the Defendant. Before the marriage ceremony could be performed the Defendant had induced the girl to quit the Plaintiff house for immoral purposes.

Held: The alleged agreement on which the suit was bought was immoral and against public policy and hence the action was not maintainable.

(Contrast this case with the next in the context of immorality)

(1889) ILR 13 BOM 150
Khubchand v/s. Beram
Sir Sargent, Kt. CJ, & Nanabhai Haridas, J

A *Naikin* (dancing girl) died at Nasik possessed of some immoveable property. She left behind two illegitimate children who inherited the property and divided in

union. The son mortgaged the dwelling house to the Plaintiff. The bond stated that the object of the loan was to enable the mortgagor to teach his daughter singing and for household expences. It was contended that the bonds were void on the ground that the loan was for an immoral purpose as of teaching the girls to sing was to make them more attractive as prostitutes.

Held: The bond was not void, inasmuch as, amongst the community of *Naikins* the singing skill was not necessarily acquired by the women with a view of practising prostitution. It was a distinct mode of obtaining a livelihood, although it might be true that most of those who sing lead a loose life.

(1889) ILR 13 BOM 358
Gangavishnu Shrikisondas v/s. Moreshvar Hegishte
Sir Sargent, Kt. CJ & Sir Bayley, J

The Plaintiff desired to publish a new and improved edition of an old religious sanskrit text entitiled 'Vrtraj' on religious observences. He secured the assistance of 2 well-known pandits who prepared the new edition, recasting and rearranging the old materials and adding valuable footnotes. The Plaintiff registered the copyright of this work. The Defendant printed and published an edition of the same work.

Held: The Plaintiff's work was such a new arrangment of old matter as to be an original work and entitled to protection as copyright. As the Defendant had not taken their material from independent sources, he had pirated the Plaintiff's work and hence must be restrained by injunction.

(See 1890 ILR 14 BOM 586 for copyright in common law relating to translations).

(1889) ILR 13 BOM 389
Queen-Empress v/s. Murarji Gokuldas
Sir Scott & Parsons, JJ

The accused was charged with assaulting his mother with a wooden shoe. In the course of the trial the complainant's pleader offered to be bound by the oath of one specific person provided he swore on the G*ita* and gave a plain categorical denial to the alleged assault. The accused pleader also consented. That person was sworn on the G*ita*, and stated in his examination that the accused had not committed any assault, but merely held his mother by her hand.

Held: The Court was not bound to decide the case on the evidence of witness who swore the special oath.

(1889) ILR 13 BOM 681
Queen-Empress v/s. Narottamdas Motiram
Sir Scott & Sir Jardine, JJ

The accused was charged with keeping a certain shed for the purpose of a 'common gaming-house'. The accused kept the shed where a large number of people gathered for the purpose of betting on the quantity of rain which might fall in a given time. The instrument used for measuring the quantity of rainfall was a rain gauge in a gutter attached to the roof of the shed. The accused were entitled to a commision on each bet.

Held: The shed in question was undoubtedly a common betting place,and the instruments used were instruments used for betting. There is no law in India which makes betting illegal. There is a distinction between betting and gaming. There must be a game before there is gaming. To constitute a game, there must be a contest and an active partcipation is necessary. In the present case, there was no active part taken by the betters who merely watch the falling of rain. Rain-betting is, therefore, not a game and the place where it was carried on was not a 'common gaming house'.

1890

(1890) ILR 14 BOM 260
Queen-Empress v/s. Nana
Sir Sargent, Kt., CJ, Sir Bayley, Sir Scott, Sir Jardine and Parsons, JJ

The accused was charged under S. 411 of the IPC with dishonestly receiving stolen property. In the course of the police investigation, the accused was asked by the police where the property was. He said he had buried the property in the fields and took the police to the spot where the property was concealed, and with his own hands, disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in the custody of the police.

Held: The statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused as a confession of guilt, they were an admission of a criminating circumstance and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly, and, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the police. The statement of the accused that he had buried the property in the fields was admissible in evidence under S. 27 of the Evidence Act, 1872, as it set the police in motion and led to the discovery of the property. A statement is equally admissible in evidence under S. 27, whether the statement is made in such detail as to enable the police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed.

However, neither of above statements was admissible in evidence under Explanation 1 of S. 8 of the Evidence Act, as evidence of the conduct of the accused.

(1890) ILR 14 BOM 196
The Bombay National Manufacturing Company Limited v/s. Ahmed Bin Essa Khaliffa
Parsons, J

The Plaintiff sued for recovery of Rs.15,000 alleged to be due in respect of four calls upon fifteen shares standing in the Defendant's name. The Defendant had not subscribed to the memorandum of association of the company, but had signed the duplicate memorandum. The Defendant denied that he ever was a member of the Plaintiff's company.

Held: When a person signs a duplicate of the memorandum of association after the registration of the original memorandum, he does not thereby become a subscriber within the meaning of S. 45 of the Indian Companies Act of 1882. Such signature, however, is equivalent to a proposal to the company to take shares and if such a proposal is accepted, the person signing is a person who has agreed with the company to become a member within the terms of S. 45, and is liable to calls if entered on the register.

As the Defendant was aware of the company's acceptance of his proposal and, despite this, had never made an attempt to revoke it even after the calls were made, he was clearly a person who had agreed with the company to become a member within the meaning of the said section.

(1890) ILR 14 BOM 353

His Highness Shrimant Maharaj Yashwantrao Holkar of Indore v/s. Dadabhai Ashburner
Sir Sargent, Kt. CJ & Sir Scott, J

The Plaintif sued for specific performance of an agreement to mortgage an immovable property. The agreement was executed in Bombay.

Held: A suit for land was a suit which asked for delivery of the land. Hence a suit for specific performance is not a suit for land.

(1890) ILR 14 BOM 249
Waman Bova v/s. Krishnaji Bova
Sir Sargent, Kt. CJ, Sir Bayley, Sir Scott & Sir Jardine, JJ

The adoption of an only son was challenged.

Held: The adoption of the only son of his natural parents is invalid in Hindu law.

The judgment of the Late CJ Sir Michael Westropp and Nanabhai Haridas J. in Lakshmappa Ramava 12 BHC Rep. 376 has settled this issue. Maintaining the uniformity of decisions was of paramount importance and the Court should stick to such a practice “in the absence of very a cogent reason to the contrary.

(1890) ILR 14 BOM 25
In Re Atmaram Narayan Parab
Sir Jardine & Candy, JJ

A Magistrate First Class made an order under S. 147 of the Cr.PC prohibiting certain persons from taking part in the worship and other religious ceremonies connected with a certain temple.

Held: The matters in dispute not being adjudicable by a Civil Court, the Magistrate did not have jurisdiction to forbid the persons named in the order from taking part in the ceremonies in question.The order was also bad in form as it contained no restriction of the time during which it was to operate.

(1890) ILR 14 BOM 97
Nathji Muleshwar v/s. Lalbhai Ravidas
Sir Sargent, Kt., CJ & Candy, J

The Respondent claimed that the Appellants had published defamatory matter in an application they had filed in a suit brought by a third party. The application described the Respondent as a person "whose occupation it was to obtain his living by getting up such fraudulent actions" and stated that he induced the Appellants to make a false claim.

Held: The Appellants were privileged against a civil action for damages for what they might have said of the Respondent in the application as no action for slander lies for any statement made in the pleadings or during the conduct of a suit.

(1890) ILR 14 BOM 213
The Secretary of State for India v/s. Mathurabhai
Sir Sargent, Kt., CJ & Candy, J

The Respondents had sued to establish their right to graze cattle on the banks and dry part of a village tank and for a perpetual injunction restraining the Appellants from interfering with such right.

The Appellants contended that the tank was a waste land and that the Respondents could not acquire, as against the Government, a right of grazing by prescription.

Held: The suit should be dismissed, as it was essential that the user should have been as '*of right*' to graze cattle on the tank in question. The right of free pasturage does not necessarily confer the right of pasturage on any particular piece of land.

The rule of construction according to which the Crown is not affected by a Statute, unless specially named in it, applies to India.

(See also 1878 ILR 2 BOM 110 and AIR 1990 BOM 343)

(1890) ILR 14 BOM 282
Sheshgiri v/s. Girewa
Sir Sargent, Kt., CJ & Hart, J

The Respondent was one of 3 daughters of a Lingayat, who died in 1870, leaving immovable property. The Appellants were his illegitimate sons.

The Respondent sued to recover the property alleging that one of her sisters was disentitled from inheriting by disease, the other was rich and the Appellants' illegitimacy excluded them.

Held: The Appellants were not entitled to more than half of the property to which they succeeded immediately on the death of their father. The other half went to either the widow or the daughters.

If the other half went to the widow, she took it as one of a class of persons, who exclude the illegitimate sons' right to more than half.

If it went to the daughters, there was no evidence to show that the Appellant had adverse possession of the property of it as against the Appellants before the widow's death.

(1890) ILR 14 BOM 299
Maharana Jasvatsingji Fatesingji, Chief of Limdi v/s. The Secretary of State for India
Sir Jardine & Candy, JJ

The Thakor of Limdi possessed several *talukdari* villages, one of which was Akru. He paid a lump *jama* to the Government for his *talukdaris.* As a result of disputes between the Thakor and the *grassias* of Akru, a consent decree was passed whereby a moiety of Akru was assigned to the *grassias* with the liability to pay the *jama* remaining with the Thakor. The Thakor paid the seperate *jama* demanded by the Collector in respect to the moiety, which was in addition to the lump *jama* paid by him.

The Thakor filed a suit to recover back the payments made.

Held: Under the consent decree, the Thakor stood in relation of an insurer to the *grassias* from all exactions of Government dues. The payments of *jama* made by the Thakor on account of the *grassias* were therefore not voluntary, but made under protest and, as such, were recoverable by suit.

(1890) ILR 14 BOM 532
Kaikhusru Kabraji v/s. Jehangir Murzaban
Sir Farran, J

A newspaper called *Rajya Bhakta* published a false and defamatory statement of the Plaintiff. More than a month afterwards the Defendants published an article in their newspaper *Jam-e-Jamshed* calling attention to the statement made in *Rajya Bhakta* and repeating it, however declaring that the said statement was 'evidently false'. The Plaintiff sued for defamation.

Held: After reading the article as a whole and in its natural sense, and taking it in connection with the previous article appearing in the Defendant's paper with reference to the Plaintiff, the article was in itself defamatory of the Plaintiff.

(1890) ILR 14 BOM 586
Munshi Abdurruhman v/s. Mirza Shiraji
Parsons, J

The Plaintiff published a book called '*Moontakhebate Bahiri*' in Urdu. The Defendant later published in Persian called '*Moontakhebate Mahomedi*'. The book was almost an exact translation of a large portion of the Plaintiff's book.

The Plaintiff prayed for an injunction restraining the Defendant from selling any copies of the book.

Held: The Defendant has not infringed the Plaintiff's copyright by translating his book.

(See 1889 ILR 13 BOM 358, the earliest concept of copyright in common law for compilation of texts)

1891

(1891) ILR 15 BOM 160
His Highness Syed Ali, Sultan of Zanzibar v/s. A. Adib
Sir Farran, J

The Plaintiff sued for damages for breach of contract of purchase of a steamship ordered by the Defendant which was to sail from Zanzibar to Bombay. On the apprehension that the Defendan was to leave Bombay, the Plaintiff filed an Affidavit and obtained an order for Arrest before Judgement. The Defendant was arrested and brought to Court and, at once, discharged. Thereafter, the Plaintiff sold the ship at an auction. The Plaintiff applied for the withdrawal of the suit with liberty to file a fresh suit. The Defendant appeared without Service of Summons and resisted the withdrawal application and applied for compensation for his arrest on insufficient grounds.

Held: The Defendant could appear without Service of the Summons. The Defendant was arrested when he was going to leave Bombay. He did not file an Affidavit showing injury caused to him, but injury had to be imputed upon being publicly arrested and detained for some time. Hence, he was awarded compensation of Rs.10/-. The Plaintiff was allowed to withdraw the suit with liberty to file a fresh suit but upon payment of costs.

(1891) ILR 15 BOM 234
Manjappa Hegade v/s. Devappa Hegade
Sir Sargent, Kt. CJ & Telang, J

A brother died leaving a widow. His brother sold his undivided moiety of the family property to a stranger. He sued to recover possession of the property from the widow of the deceased brother. The widow claimed that the Deed of Sale was without consideration and her brother-in-law had no authority to sell.

Held: A widow of an undivided brother does not get a life interest. She is only entitled to maintenance. However, she may succeed her brother-in-law as gotraja sapinda.

(This position was altered under S. 3 of the Hindu Women's Right to Property Act, 1937)

(1891) ILR 15 BOM 236
Girianna Naik v/s. Honama Naik
Sir Sargent, Kt. CJ & Telang, J

A Hindu died leaving a will in which he provided that his widow shall be maintained in the family house. The widow left the family house. No cause was shown.

Held: A widow for whom maintenance is provided is not entitled to it if she resides elsewhere, without cause.

(1891) ILR 15 BOM 702
Queen-Empress v/s. Shivram
Birdwood & Parsons, JJ

The accused took 100 cartloads of earth from the complainant's land upon ploughing it.

Held: Earth is soil. When severed from the earth and land to which it is attached, is moveable property. If dishonestly severed by digging and ploughing and taken away, it would amount to theft. It ceases to be "land" or "attached to the earth or permanently fastened to anything which is attached to the earth" and becomes moveable property under S. 22 of the IPC and hence, becomes subject of theft under Explanation 1 to S. 378 of the IPC.

[See also (1891) ILR 15 BOM 344 in which a ferry of the complainant was taken away for plying customs]

(1891) ILR 15 BOM 585
Amiruddin v/s. Mohammed Jamal
Sir Sargent, Kt. CJ & Candy, J

The Plaintiff alleged that he was in possession of the suit room till a specified day when he was dispossessed by the Defendant. The Defendant claimed the room to have been in his possession when the Plaintiff removed the padlock. The Defendant removed that padlock and resumed possession. The Defendant claimed that the Plaintiff was a tresspassor and could not sue under S. 9 of the Specific Relief Act, 1877.

Held: A tresspassor had not acquired juridical possession. He cannot sue to recover possession.

(See S. 6 of the Specific Relief Act, 1963)

(1891) ILR 15 BOM 400
Bapuji Raghunath v/s. Kuverji Umrigar
Birdwood & Parsons, JJ

The Plaintiff sued for recovery of fazendari rent from the holder of fazendari land in the Court of Small Causes at Bombay. The Defendant pleaded that rent had not been paid since 1846 and he claimed adverse possession for over 12 years. He claimed that the suit was barred and the Plaintiff had no title. SCC declined to exercise jurisdiction upon the observation that the Defendant had raised a bona fide plea of title.

Held: It is the nature of the suit as brought by the Plaintiff that determines the jurisdiction and not the nature of the defence. The question of title may be incidentally raised. SCC cannot decline jurisdiction upon the Defendant's plea of lack of title.

1892

(1892) ILR 16 BOM 217
The University of Bombay v/s. The Municipal Commissioner for the City of Bombay
Sir Sargent, Kt. CJ & Sir Farran, J

On reference from the Court of Small Causes – The rateable value of the buildings occupied by the University of Bombay, viz., The Sir Cowasji Jehanghir Hall, the Library and the Rajabai Tower was to be considered.

Held: The buildings occupied by the Bombay University, viz., The Sir Cowasji Jehanghir Hall, the Library and the Rajabai Tower, in respect of which the Municipality sought to levy the general tax were not Government property for which Government paid a lump sum under S. 144 of the Bombay Municipal Act III of 1888 as they were received as benefactions intended as gifts to the University, the acceptance of which was formally voted upon with respect to each building by a Resolution of the Senate. The several buildings thus became the property of the University to be used for the purposes of the University as provided by S. 2 of the Act of Incorporation,1857. Under these circumstances it followed that they were not held by the Crown or for the Crown. It was true that the Governor of Bombay in Council had certain powers under the Act of nominating the Vice-Chancellor and Fellows, and controlling the creation of bye laws and imposition of fees. But such powers were of a visitorial character, and as was held in the case of University of Edinburgh, do not affect the question whether the property is Crown property.

These buildings were exempt from the general tax imposed on all buildings and lands in the city by virtue of the exemption in clause (a) of S. 143 of the Bombay Municipal Act III of 1888, as being “buildings exclusively occupied for charitable purposes.”

The words “charitable purposes” have acquired a technical meaning in the Presidency of Bombay, and in that sense they include all purposes within the meaning of Elizabeth's 1601 Statute of Charitable Uses.

The Preamble of the Act of Incorporation showed that the object and purpose of the Legislature in incorporating the University was to afford “encouragement to subjects of all classes in the Presidency of Bombay and other parts of India in pursuit of a regular and liberal course of education,” and therefore, although the University may not be exactly engaged in education in that it only conferred degrees on those who wished for a certificate that they had attained a certain standard of education, the special object for which it grants degrees is the advancement of education throughout India, and the University is, therefore, within the “spirit and intendment” of the statute of Elizabeth.

The Library, though not necessary for the special purpose for which the University was established, could not be regarded as sued for a charitable purpose; “a well selected library is clearly, if not necessary, at least a most useful, purpose to which such a University can appropriate a part of its buildings, affording, as it does, important assistance to those who conduct the examinations as well as to the students who are preparing for them; and thus, as was held in the analogous case of the University of Oxford furthering the great object for which the University was established, viz., the better encouragement of Her Majesty’s subjects in the pursuit of a regular and liberal course of education.”

The tower must be regarded as how it was intended to be, as an architectural building annexed to the Library, and therefore, could not be treated as distinct from it.

Hence the University buildings fell within the exemption in clause (a) of S. 143 of the Bombay Municipal Act, 1888 as being “buildings exclusively occupied for charitable

purposes", and were therefore exempt from the general tax imposed on all buildings and lands in the city.

(1892) ILR 16 BOM 353
Bapu v/s. Dhondi
Sir Jardine & Parsons, JJ

The Plaintiff sued to recover possession of mango trees on his land. The Defendant was taking fruits thereof for 12 years prior to the suit.

Held: The claim was for possession of an interest in immovable property and was governed by the limitation of twelve years prescribed by Article 144 of the Limitation Act, 1877.

(1892) ILR 16 BOM 561
Haji Abdul Rahman Allarakhia v/s. The Bombay & Persia Steam Navigation Company
Sir Farran, J

The Plaintiff required a steamer to sail from Jedda "fifteen days after the Haj" in order to convey pilgrims returning to Bombay. He chartered a steamer from the Defendants in June 1891 for that purpose. The Defendants chartered their steamers by English dates. The date inserted in the charter party was "the 10th August, 1892 (fifteen days after the Haj") "The 10th August, 1892 was given or accepted by the Plaintiff in the belief that it corresponded with the fifteenth day after the Haj. The Defendants had no belief on the subject and contracted only with respect to the English date. 19th July, 1892 and not 10th August, 1892 corresponded with the fifteenth day after the Haj.

On finding out the mistake in March 1892, the Plaintiff brought this suit for rectification of the charter party by the insertion of the correct date, 19th July, 1892, instead of the erroneous date, 10th August, 1892. Meanwhile the Defendants had let all their steamers and could not give the Plaintiff one for the 19th July, 1892.

Held: The agreement was one for the 10th August 1892, and as that date was a matter materially inducing the agreement, there could be no rectification, but only a cancellation, even if both parties were under a mistake.

The mistake was not mutual, but on the Plaintiff's part only; and therefore, there could be no rectification. A Plaintiff seeking rectification must show that there was an actual concluded contract antecedent to the instrument sought to be rectified, and that such contract is inaccurately represented in the instrument.

(1892) ILR 16 BOM 568
Ragoonathdas Gopaldas v/s. Morarji Jutha
Sir Farran, J

A partner of a firm leased a land in his own name though on behalf of the firm. Rents fell in arrears. The lessor sued all the partners.

Held: When one partner takes a lease of premises in his own name, though on behalf of the partnership and with the assent of his partners, his partners are not liable to be sued by the lessor for the rent reserved by the lease.

A lease is not as mere contract; it is a conveyance, and creates a transfer of property. The lessee can only be the person named in the lease. If that person becomes a lessee on behalf of someone else – which he may do – the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another person, but as far as the lessor is concerned, it must be deemed to be only on behalf of the person to whom the demise is made.

The other partners could not be sued also for use and occupation of the premises occupied by them as the lessor had no power to suffer or permit any one to occupy the premises during the continuance of the lease and therefore the foundation of a claim for occupation was necessarily wanting.

(1892) ILR 16 BOM 398
In the Matter of the Bombay Fire Insurance Company Limited
Sir Farran, J

The Plaintiff bought shares in the Defendant Company and applied to the directors for registration as a shareholder. The Articles of Association of the Company provided, inter alia, that any shareholder might, with the sanction of the Board of Directors, sell or dispose of and transfer all or any of his shares to any other person approved by the Board who shall not be bound to assign any reason for the withholding of such sanction. The directors refused the application giving no reason for doing so. The Plaintiff sued under S.45 of the Specific Relief Act, 1877 and S. 58 of the Indian Companies Act, 1882 for an order compelling the directors to register him as a shareholder.

Held: The application was refused as S.45 of the Specific Relief did not apply (there being another specific and adequate legal remedy, and under the Companies Act, the proper procedure had not been adopted. The title of the Plaintiff was not complete inasmuch as the requisite sanction to the transfer had not been obtained, and therefore, there was no privity between him and the directors of the Company.

(1892) ILR 16 BOM 634
In Re Jairam Luxmon
Sir Farran, J

A father sought to be appointed guardian of the property of his infant son to raise money upon mortgage.

Held: The Court had the power, irrespective of the provisions of the Guardians and Wards Act (VIII of 1890), of appointing a guardian of an infant's estate. The Court appointed the father, who was the applicant, the guardian of his infant sons for the purpose of raising money by the mortgage of his ancestral immoveable property on its appearing to the Court that by so appointing him guardian better terms were likely to be procured from the mortgagee and the infant and the whole family to that extent consequently benefited.

1893

(1893) ILR 17 BOM 584
Badische Aniline & Soda Fabrik v/s. Maneckji Katrak
Sir Sargent, Kt. CJ & Starling, J

The Plaintiff sued for infringement of their label used on the tins of dye that they imported into India. The label showed the picture of an elephant in the centre of a curved band. The rest of the label had coins, medals and tracing in combination of green, red and gold. The Defendant imported into Bombay tins of dye bearing a label, the chief feature of which was an elephant. The Defendant thereafter adopted a new label bearing the picture of an elephant, different in some respects from the Plaintiff's label and with new surroundings. The Plaintiff complained that its general effect was so similar to their Trademark that it amounted to a colourable imitation to be likely to deceive the purchasers.

Held: The Court does not have to see the effect on the brokers or the dealers, but how the label would be likely to strike incautious and unwary purchasers, such as are to be found more particularly in the mofussil. The Court observed that the attention of such purchasers would be arrested by the general effect of the label and would regard the labels as sympolic of the Plaintiff's goods. Even if a label has no part which is a copy of another label, it may be so like it in general appearance as to be likely to deceive purchasers. The Defendant had to be restrained by an injunction from selling the dyes.

(This position in law still prevails)

(1893) ILR 17 BOM 41
Vithal Hari Athavle v/s. Govind Thosar
Sir Sargent, Kt. CJ & Birdwood, J

The Plaintiff sued to recover amount due on a mortgage and claimed interest on the mortgage amount from the date of the institution of the suit till payment.
The amount due on the mortgage, less the amount paid by the mortgagor which was proved, was granted. The claim of interest was refused until Court Fee was paid thereon.

Held: Additional stamp fee is not required for the interest amount claimed as in mesne profits.

(See also AIR 1938 BOM 231)

(1893) ILR 17 BOM 100
Giriapa v/s. Ningapa
Sir Sargent, Kt. CJ & Telang, J

An adopted son sued to recover a share in his father's estate. A legitimate son was born to the father after the adoption.

Held: Under authority of Vyavahar Mayukha and Mitakshara that an he is entitled to a $1/5^{th}$ share.

(1893) ILR 17 BOM 114
Gojabai v/s. Shahajirao Bhonsale
Sir Jardine & Telang, JJ

A Hindu widow dies childless. She had two other co-widows. The Plaintiff was a grandson of one of her co-widows. The widow dies leaving behind a co-widow, a randson of another co-widow and a nephew of her husband. The Plaintiff as the grandson of the husband of the widow claimed the Streedhan of the widow given to her at the time of her marriage consisting of ornaments and a house.

Held: The Plaintiff was the nearest Sapinda as the grandson of the husband of the deceased and excluded the co-widow and the nephew.

(1893) ILR 17 BOM 164
Krishnarav Hasabnis v/s. Shankarrav Hasabnis
Sir Sargent, Kt. CJ & Birdwood, J

A Hindu dies leaving a widow and a son. His son died leaving a widow. The widow (mother of the son) adopted a son. He sued to recover her property.

Held: His adoption was invalid as discussed in West and Buhler 3rd Edition page 984 and accepted by the Privy Council. This was because an adoption by a mother higher in line than the son cannot be made as the son would be placed in a worse position as regards his Shraddhas than if there had been no adoption.

(1893) ILR 17 BOM 398
Manilal v/s. Bai Tara
Sir Jardine & Telang, JJ

A Hindu mortgaged his house. A suit on mortgage was decreed in his lifetime. The house was put up for auction. The mortgagee died. His widow resided in the house. The house was sold. The purchaser had knowledge of the widow's residence. The widow sued to establish her right to reside in the house.

Held: In the absence of fraud or any evidence that the mortgage was not for the benefit of the family, the purchaser took it free of the widow's right of occupation despite notice of her claim.

(The right of a wife in the matrimonial home now statutorily recognized is also not higher than a lawful contract entered into by her husband)

[See (1891) ILR 15BOM 673 – charge created by a mortgage is not extinguished on the death of a mortgagor]

(1893) ILR 17 BOM 369
Queen-Empress v/s. Khoda Uma
Sir Jardine & Telang, JJ

The accused were the subject of His Highness the Gaikwad of Baroda. They were extradited to British India for being tried for committing dacoity. The Magistrate committed to the Sessions Court under S. 398 of the IPC, 1860. The Sessions Judge amended the charge to S. 395 of the IPC. They were tried for committing dacoity and found to have committed only theft and not dacoity. The Sessions Court acquitted them of the charge of committing dacoity.

Held: The Sessions Court should have altered the charge under S. 227 of the Cr.PC and convicted the accused under S. 238 of the minor offence which the evidence established.

The extradition was proper even if it was demanded for trying the accused for the offence of dacoity, it did not mean that the conclusion of the trial must be under that charge alone. The trial could be on any charge. The Cr.PC was applicable as *Lex fori*.

(This position would prevail today)

(1893) ILR 17 BOM 485
Queen-Empress v/s. Bhima
Sir Jardine & Telang, JJ

The accused was charged under Ss. 457 and 354 of the IPC with house-breaking with intent to commit rape and assaulting the complainant to outrage her modesty. The accused made a statement to the Police Patel in front of the Panchayat.

Held: Police Patel is a police officer. Any statement made before him is inadmissible under S.25/26 of the Evidence Act, 1872 even if it is made in the presence of a Panch.

(The law remains unchanged to this day)

(1893) ILR 17 BOM 771
Govind Kulkarni v/s. Sadashiv Shet
Sir Sargent, Kt. CJ & Candy, J

The Plaintiff sued to recover his land adjacent to a temple belonging to the Defendants. The Defendants put up verandahs on that land. The land was seen to belong to the Plaintiff. The Defendant was made to pay compensation to the Plaintiff.

Held: The land being found to be of the Plaintiff, the Plaintiff cannot be given only compensation against his will, however reasonable it might appear. The Defendans had to remove the verandahs.

1894

(1894) ILR 19 BOM 72

In Re Mukund Babu Vethe
Sir Jardine & Ranade, JJ

The complainant was a native Indian subject to her Majesty residing at Belgaum. A criminal prosecution was filled against him in the Sangli state for criminal Breach of Trust committed within that state. Thereupon he obtained an order from the District Magistrate of Belgaum, which exempted him from arrest for the offence without a warrant issued by himself. Later a Police Officer from Sangli state arrested him on a charge of Criminal Breach of trust inspite of being informed of the order of District Magistrate; he was detained in custody till the matter came before the 1st Class Magistrate who ordered his discharge.

Held: The chief constable had no power to arrest the complainant without a warrant, and that he was guilty of the offence of wrongful confinement.

(1894) ILR 19 BOM 83
Hafizabai v/s. Kazi Karim
Starling, J

The husband of the Plaintiff left a considerable amount of property. He was a partner with his brother in business. He took charge of the properties. The Plaintiff applied for her husband's share. However, the Plaintiff's husband had left a will in which there were 3 executors, amongst them his brother. The Plaintiff prayed for the appointment of the receiver to collect and hold possession of the estate of her husband. The brother objected. Though the deceased had appointed 3 persons as executors, the Plaintiff sued only the brother.

Held: There is a danger that the estate of the deceased will be wasted in the hands of the brother. Hence this was a proper case to appoint a Court receiver. It was not necessary to add the other 2 executors as Defendants.

(1894) ILR 19 BOM 420
Hari Joshi v/s. Shankar Vithal
Sir Jardine & Ranade, JJ

The Plaintiff sued for an injunction restraining the Defendant from allowing the branches of his cashew tree to overhang the Plaintiff's ground and for an order directing him to cut off such branches. The Defendant pleaded that the branches of the tree had projected over the Plaintiff's land for 40 years and he contended that he had, therefore, acquired a prescriptive right of the nature of an easement over the Pliantiff's land.

Held: The Plaintiff was entitled to cut away the branches which overhang his land, though they had remained so for more than 40 years.

{See also (1918) ILR 43 BOM 164 and (1920) 22 BLR 790 }

(1894) ILR 19 BOM 639
Vithuldas Gober v/s. The Bombay and Persia Steam Navigation Company
Candy, J

The Plaintiff's goods were loaded in the Defendants steamer then lying in dock to be carried from Bombay to certain parts in east Africa. At the time of loading the ship was apparantly in the sound and seaworthy condition. Two days after the goods had been put on board and when the ship was still in dock, it sprung a leak and water came into the hold and damaged the Plaintiff's goods. The ship was taken to the dry dock and the leak repaired. The Plaintiff sued the Defendants for damages. The Defendants pleaded that the ship was in a seaworthy condition when the goods were put on board and they were protected by the bill of lading which contained certain exception.

Held: The Defendant was liable. While the ship was in dock it was not seaworthy, and the exception in the bill of lading did not limit the implied warranty of seaworthiness.

(1894) ILR 19 BOM 668
The Secretary of State v/s. Vakhatsangji Meghrajji
Sir Jardine & Ranade, JJ

The Plaintiff was a Talukdar of the village in Ahmedabad District. A bag containing Rs.1,525 which was stolen property was found buried under ground in that village. After this bag has been unearthed, another bag containing Rs.248 and a gold ring was also found in the ground close by. The Plaintiff claimed to be entitled to the property. His claim was rejected and the order was passed plaicing the property at the disposal of Government. The Talukdar then sued the Secretary of state for India in Council to recover the property in dispute.

Held: In the absence of any evidence to prove the Talukdar's right to treasure trove either by a grant or prescription, the property belonged to the Government. The Indian Treasure Trove Act, 1878 was inapplicable as no notice was given by the finder, nor were any proceedings taken under it.

1895

(1895) ILR 19 BOM 135
Kirparam Modia v/s. Modia Jhumerkaram
Sir Sargent, Kt. CJ, & Sir Candy, J

The original Plaint, as framed, contained the name of Mr. Kriparam as Plaintiff 1 and his wife and guardian as Plaintiff 2. When the Plaint was actually filed, Kriparam's name was struck out by the pleader. Subsequently, on his application his name was restored. But the period of limitation had elapsed by then.

Held: The pleader and Plaintiff 2 acted beyond their authority in striking out name of Plaintiff 1 and, therefore, the restoration of his name must date back to the filing of the suit, which was not barred.

(1895) ILR 19 BOM 207
Sakharam Mhadik v/s. Vishram
Sir Sargent, Kt. CJ, & Sir Candy, J

The Defendant sold the Plaintiff a jackfruit tree for Rs. 5/- in cash on 21st October 1885. In the document of sale, it was clearly stated that the said tree was a standing tree in the ' Kumbhar Vada' of Jhadgar village. In 1890 the Plaintiff sued for posesion of the jackfruit tree.

Held: The suit for possession was wrongly held to be for movable property. The document of sale clearly indicates the intention of the parties to sell standing jackfruit tree. Such a standing tree is immovable property irrespective of the Plaintiff's intention of cutting the tree & converting it to movable property.

Immovable property is governed by 12 years limitation and hence, the suit was held not time barred.

(1895) ILR 19 BOM 247
Queen-Empress v/s. Vasta Chela
Sir Jardine & Ranade, JJ

The acussed was charged with causing grievous hurt. The Joint Sessions Judge relying apparantly on evidence that the injured person remained in a hospital for twenty days, inferred, from the circumstance alone, that he was unable to follow his ordinary pursuits and convicted the accused under S. 326 of the IPC.

Held: In the absence of evidence that the injured person was unable to follow his ordinary pursuits during the twenty days, such inference could not be drawn.

(1895) ILR 19 BOM 352
Dorabji Randiva v/s. Muncherji Panthaki
Candy, J

In November 1869, the Plaintiff, being one year old then, his mother, the Defandant's daughter, paid the Defendant, his grandfather, a sum of Rs. 650 and at her request the amount was credited in the books of the Defendant's firm in the name of the Plaintiff. In December 1871, a further sum was credited in the account. The Plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday or other auspicious ocasions. The Plaintiff contended that the money was held by the Defendant in trust for him. The Defendant alleged that the money in question had been lent to him by the Plaintiff's mother and that the claim was barred by limitation.

Held: The Plaintiff's claim was not barred as the Defendant stood in a fiduciary position to the Plaintiff. The 'deposit' was within the meaning of article 60 of the Limitation Act, 1877 and limitation did not commence to run until demand.

(1895) ILR 19 BOM 614
Ramabai v/s. Rangrav
Sir Farran & Candy, JJ

A separated Hindu died possessed of certain property, a portion of which was watan land, and left him surviving a widow, a daughter and the Plaintiffs who were his brother's sons. Subsequently the widow adopted a son. The daughter did not take any steps to dispute the adoption. The Plaintiffs sued for a declaration that the adoption was invalid and that they were entitled to succeed to the property of the deceased on the death of his wife.

Held: The Plaintiffs were entitled under S. 2 of the Bombay Act to succeed to the watan property in preference to the daughter after the death of the widow.

(1895) ILR 19 BOM 571
Cursandas Natha v/s. Ladkavahu
Sir Farran, J

A Hindu directed his daughter-in-law to adopt his newphew under his will and devised the residue of his estate to him. The executors of the will brought a suit to have the will

construed and the rights of the nephew in the testator's estate ascertained and declared. A decree was made which declared that the adoption of the nephew was a condition precedent to his inheritance. The nephew filed a review stating that at the time of the decree he was a minor and he should have an opportunity of showing cause against the decree so far as it affected his interest after he attained majority.

Held: The review couldn't be granted. The Court, after deciding an issue in which an infant, a party to a suit, is interested, has no power to reserve to the infant the right to question such decision. A decree passed againt an infant properly represented is binding upon him like a decree passed against any adult, but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him.

(1895) 19 ILR 741
Queen-Empress v/s. Rego Montopoulo
Sir Jardine & Ranade, JJ

A Greek under British protection at Zanzibar was convicted by the British Consular Court of Culpable Homicide not amounting to murder and sentenced to 10 years rigorous imprisonment under S. 304 of the IPC, 1860. He challenged the jurisdiction.

Held: The British Consular Court exercised jurisdiction in one foreign state over subjects of another foreign state enjoying British protection by treaty, capitulation, grant, usage, sufferance or other lawful means.

(1895) 19 ILR 764
Callianji Harjivan v/s. Narsi Tricum
Sir Farran, CJ & Starling, J

The Defendant was an employee of the Plaintiff. He was indebted to the Plaintiff. He was arrested in criminal proceedings filed by the Plaintiff. He was released on bail and then employed by another person in the trade. The parties entered into an agreement that the Defendant would pay him Rs.1950/- in full settlement, serve the Plaintiff for 10 years honestly and could be dismissed for any fault. The criminal case was dismissed. The Defendant refused to be employed by the Plaintiff. The Plaintiff sued for specific performance.

Held: Specific performance or injunction could not be granted as pecuniary compensation was the proper remedy.

1896

(1896) ILR 20 BOM 50
Girdharlal Hargovandas v/s. Lallu Jagjivan
Sir Bayley, Acting CJ, & Fulton, J

The Plaintiff had presented his case to the Second Class Subordinate Judge who returned it for presentation to proper Court as he thought the subject-matter exceeded Rs.5000.
The Plaintiff then approached the First Class Subordinate Judge, who, finding that the subject-matter is less than Rs.5000 also returned it for presentation to proper Court.

Held: The Order of the Second Class Subordinate Judge was passed without reference to Act VII of 1887 and was erroneous.

(1896) ILR 20 BOM 124
The Municipal Corporation of Bombay v/s. Cuverji Hirji
Sir Farran, CJ & Tyabji, J

A broker sued the Municipality of Bombay for brokerage in respect of land purchased by them.

Held: If during the time that the broker was negotiating with the vendor, the latter was induced to consent to the sale, the broker is entitled to his brokerage.
To make the vendor pay brokerage, it must be shown that broker has been employed by such vendor to act for him or that in contract the vendor has agreed to pay brokerage.

1896 ILR 20 BOM 155
Dinkar v/s. Appaji
Sir Jardine and Ranade, JJ

Two managers of a Hindu family passed on a bond mortgaging certain family property for satisfaction of two money bonds which were barred by limitation.

Held: The manager of a Hindu family has no power to revive by acknowledgement a debt barred by limitation, except against himself.

(1896) ILR 20 BOM 165
Empress v/s. Lester
Sir Jardine, Acting CJ

A person under arrest on charge of murder was taken in a *tonga* from the place of the alleged offence to Godhra. He was accompanied by a friend and a police man. During the course of the journey, the policeman left the *tonga* to fetch a horse. In his absence, the accused made a communication to her friend about the alleged offence.

Held: The accused was in custody even during the temporary absence of the policeman.

(1896) ILR 20 BOM 199
Baba v/s. Shivappa
Sir Sargent, Kt., CJ & Fulton, J

A suit for possession was filed against the Appellant and her minor son. The land was mortgaged by the Appellant's husband. After his death, the Appellant sold it to the Respondent to pay off the mortgage and other debts.

Held: According to Mahomedan law, a mother not being the legal guardian of her minor child cannot do any act relating to the property of the minor so as to bind him.

(1896) ILR 20 BOM 232
Fazulbhoy Chinoy v/s. The Bombay & Persia Steam Navigation Company Limited
Sir Farran, CJ, Starling & Tyabji, JJ

The Plaintiff applied under S. 523 of the CPC, 1882 for an order that the matter in dispute between the parties should be referred to arbitration.

Held: A general agreement to refer future differences to arbitration comes within the purview of S. 523. However, an agreement which provides for the future appointment or election of arbitrators does not fall within the said section.

(1896) ILR 20 BOM 394

Queen-Empress v/s. Latifkhan

Sir Jardine & Ranade, JJ

Two constables arrested a person named Mahadu for committing theft. One of the constables beat the person, and the other constable present at the scene did not prevent such violence. Mahadu died soon after.

Held: A policeman who stands by acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment.

Under the Bombay District Police Act, 1890 every officer is bound to shelter a person in custody and arrest persons committing assault likely to cause grievous bodily injury. If he omits to perform his duty, he is guilty of abetment.

(1896) ILR 20 BOM 540

Queen-Empress v/s. Warubai

Sir Jardine and Ranade, JJ

The accused moved the High Court for a reversal of his conviction and contended that the Judge should have stated his reasons for upholding the conviction and should have given his opinion on all questions of fact in the case.

Held: In rejecting an appeal, under S. 421 of the Cr.PC the Appellate Court is not bound to write a judgment.

(1896) ILR 20 BOM 502

In Re Rodrigues

Candy & Ranade, JJ

The accused was employed by Treacher & Co Ltd. He was convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. The Magistrate was a shareholder in the company which prosecuted the accused.

Held: The Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest in the result of the accusation, however small it may be.

(1896) ILR 20 BOM 788
Balabin Keshav Bava v/s. Maharu Valad Nagu Patil
Sir Farran, CJ & Parsons, J

The Plaintiff prayed for an order of injunction directing the Defendant to remove a building recently erected to the south of his house. The Plaintiff alleged that the building obstructed his light and air and the passage of water from his roof and from a drain situate in the south corner of the terrace of his house.

Held: A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made.

An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window.

1897-99

(1897) ILR 23 BOM 47
Babaji Ramji v/s. Babaji Devji
Parsons & Ranade, JJ

The Plaintiffs and Defendants were riparian proprietors of lands situated on the banks of a rivulet, the Defendant's lands being situated higher up the stream than that of the plaintiffs. There were several dams erected in the bed of the stream for the purpose of regulating the flow of water to the lands of the different riparian proprietors and that the defendant's dam has always been a sluice or passage left through which the water flowed down to the Plaintiff's damn and thus irrigated their rice lands in the hot season. However, in October 1896, the Defendants erected a solid dam without any sluice or passage in it and thereby stopped the supply of the water to the Plaintiff's lands. The Plaintiff's prayed for an injunction directing the defendants to open a sluice in their dam and thus allowing in future the passage of the water on to the Plaintiff's dam.

Held: The Court had no jurisdiction to hear such a suit and grant such an injunction, as a person can only sue when he has been dispossessed or deprived of the use or when he has been disturbed or obstructed, or when an attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before the suit.

{See also (1905) ILR 29 BOM 357}

(1897) ILR 23 BOM 63
Ningava v/s. Bharmappa
Candy & Fulton, JJ

The Plaintiff brought this suit to recover possession of certain land. The Defendant denied the Plaintiff's title inspite of the Plaintiff having evidence of his ownership which he established by tendering a registered mortgage deed relating to adjacent land, executed prior to the date of the suit, by the owner who had since expired,in which the land in question was mentioned as one of the boundaries of the land comprised in the mortgage and was described as the property of the Plaintiff. There was no suit between the Plaintiff and the Defendant then and there was no motive on the part of the adjacent owner to make any statement in the deed on the Plaintiff's behalf.

Held: The statement in the deed was admissible under Clause 3 of S. 32 of the Indian Evidence Act, 1872.

(1897) ILR 23 BOM 22
Keshav v/s. Vinayak
Parsons & Ranade, JJ

The Plaintiff sued in the Court at Nasik to establish his share/right to a *Varshasan* (annual allowance) charged on villages in the Nizam's territory in Aurangabad and paid there.

The Plaintiff claimed that theVarshasan was granted to the common ancestor of the Plaintiff and the Defendant and enjoyed as joint ancestral properties. The Defendant contended that it was granted to his grandfather as his exclusive property and descended to his heirs only.

Held: The suit was governed by the law in force in the Nizam's dominions. The Court in British India had no jurisdiction to try it merely because the Defendant resided there.

(1897) ILR 23 BOM 54
In Re Jamnadas Harinaran
Parsons & Ranade, JJ

A paid B Rs.22. C made a memorandum; “B has received Rs.22”. The memorandum was not stamped. He was charged and convicted under S. 61 of the Indian Stamp Act, 1879 for not affixing the receipt stamp on the memorandum.

Held: The memorandum is not a receipt. Under S. 3(17) of the Stamp Act, there must be an acknowledgement of the receipt, either express or implied and not merely a statement of money received.

(1897) ILT 23 BOM 32
In Re Krishnaji Pandurang Joglekar
Parsons & Ranade, JJ

The accused was arrested. He was produced before the Magistrate. The Magistrate remanded him to police custody for 14 days under S. 167 of the Cr.PC, 1882 without recording reasons. Later, the Police asked for further remand for 14 days in police custody. The Magistrate granted it without recording reasons.

Within that period, proceedings under S. 107 of the Cr.PC were initiated. The accused was called upon to furnish security to keep peace in a bond of Rs.8,000/- and two sureties of Rs.4,000/- each. The accused failed to furnish security. He was committed to prison for 1 year.

Held: The Magistrate can continue the detention of the accused in police custody only for 15 days on the whole. Remands given from time to time cannot be in police custody. S. 344 of the Cr.PC contemplates such remands to jail.

(The position in law remains unaltered)

(1898) ILR 22 BOM 590
Laxmibai v/s. Ramchandra
Parsons & Ranade, JJ

A young widow was untonsured (absence of a shaven crown of hair) at the time of adoption. Hence, she was considered impure to participate in the ceremony of adoption. Her adoption was challenged.

It was observed that it was well known that among the Deshasta Brahmins in the Deccan widows are allowed to retain their hair.

Held: That the alleged impurity in case of the young widow that was not a disqualification so as to nullify the adoption.

(1898) ILR 22 BOM 754
Bhojabhai Allarakhia v/s. Hayem Samuel
Fulton, J

The Plaintiff sued the Defendants to recover possession of a certain house in Bombay and for arrears of rent. The Defendant pleaded that the house in question was occupied by Beni-Israel school of which he was the honorary secretary and not liable to be sued personally.

Held: The Defendant was liable for rent as there was nothing to show that the contract for the house was made on a personal credit of anyone except the Defendant.

(1898) ILR 22 BOM 693 (FB)
Heera Nema v/s. Pestonji Dossabhoy
Sir Farran, Kt. CJ, Candy & Tyabji, JJ

In 1889 the Plaintiff obtained a decree against the Defendants for Rs.941. The decree, capable of execution, was settled by the Defendants by payment of Rs.600 in cash and passing a promissory note for Rs.341 payable on demand with interest @ 3% p.m. This was not sanctioned by the Court. In 1892 and in 1895 the Defendants made up their accounts and again obtained a new promissory note. The Plaintiff sued on the note passed in 1889 which was for Rs.815 and carried interest of 3% p.m.

Held: The note was void under S. 257A of the CPC as it provided for payment of more than what was due under the decree. The consideration for the note given in 1889 was the agreement of the Plaintiffs to accept it in satisfaction of the decretal balance due to them. Since the agreement was void, the note given for void consideration was void.

The Defendant was duty bound to pay per month for the use and occupation of the house.

(1898) ILR 22 BOM 451
Stevens v/s. Bedford
Fulton, J

The Bombay Unconvenanted Service Family Pension Fund was a voluntary society established in 1850. Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were subject to such additions and alterations from time to time as sanctioned by the general body of subscribers. The Plaintiff became a member in 1875 during which time the pension

payable to widows in Europe was at the rate of 2 pense per rupee. In 1895 this rule changed. The Plaintiff contended that the society was not competent to alter the rules passed in 1871 which had induced him to join the society.

Held: The society had the power to alter rules and hence the Plaintiff's claim was rejected.

(1898) ILR 22 BOM 509
Bai Diwali v/s. Moti Karson
Parsons & Ranade, JJ

The Petitioner was directed by the District Judge of Ahmedabad to hand over her daughter aged about 8–9 years to her paternal uncle for the purpose of her marriage. The petitioner got her daughter married to another in defiance of the order of the District Judge. The paternal uncle claimed that he had already betrothed the girl to a suitable husband and prayed that the girl be handed over to him for the purpose of completing the marriage.

Held: Neither the disobedience of the order of the Court and nor the disregard of the preferable claims of the male relations would invalidate the marriage.

(The Child Marriage Restraint Act was enacted in 1929)

(1898) ILR 22 BOM 831
Kashinath Shimpi v/s.Narayan Shimpi
Sir Farran, Kt., CJ & Candy, J

The Plaintiff sued for a declaration entitling him to have the smoke from his house discharged through certain smoke holes in the east wall of his house over the Defendant's land and to restrain the Defendant from building on his land so as to interfere with the Plaintiff's right.

Held: The definition of easement is wide enough to embrace such an easement as a right capable of being acquired by prescription though it may pollute the air. If such right did not exist then a person after 20 years user could block up the apertures in his neighbours wall by which his kitchen is kept free of smoke.

(1898) ILR 22 BOM 715
In Re Hukumpuribava Gosavi
Parsons & Ranade, JJ

On the occasion of the *Sinhast* festival a district Superintendent of Police at Nasik issued a notification to the following effect: "*No member of any sect can be permitted to proceed naked to the tirth to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If anyone does this, he will be dealt with according to law."*
The *Gosavis* of *Trimbak* challenged it.

Held: The notification is neither illegal nor *ultra vires* as it was not in the form of any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law and would be dealt with as such.

(1899) ILR 23 BOM 518

The Secretary of State for India in Council v/s. Sitaram Shivram
Parsons & Ranade, JJ

The *khots* of the village of Ojharkhol in the Ratnagiri District cut down a large number of teak trees growing on this land.

The Plaintiff sued to recover the value of the trees cut, alleging they were the property of the Government.

The Defendants claimed ownership of the teak trees upon a proclamation issued by the Government in 1824, known as Mr. Dunlop's proclamation, though it was rescinded in 1851:
"Upon the teak and other trees that maybe on any person's land, Government has no design. He, whose trees may now exist, or he whose trees may hereafter grow, may make such use of them as he pleases. Government will not offer that slightest obstruction.

Held: The proclamation was not a mere promise, but an actual grant or gift of the teak trees to the persons on whose lands they were then actually growing, or might thereafter grow, and the gift could not be revoked.

(1899) ILR 23 BOM 666

Mohidin Sultan v/s Shivlingappa Bandeappa

Candy & Fulton, JJ

The Plaintiff sued for an injunction restraining the Defendants from burying their dead in his land. The Defendants contended that they had acquired an easement of burying their dead in that land around a *Dargha* by a continued practice of over a 100 years.

Held: No easement was acquired as the suit land was not dependant on any dominant heritage.

The right of burial in a particular locality is one that is most dearly prized, and therefore even if the Plaintiffs land may be rendered useless due to increasing number of tombs in the land it was not sufficient to put an end to this right.

The Defendants are entitled to claim for a limited class the right of burial in one corner of a field near the *Dargha*. The mere possibility that after many years the number of tombs would increase and the Plaintiff might plausibly be deprived of the use of a part or the whole of his land was too remote a consequence for the Court to consider the custom unreasonable.

(See also 1902 ILR 26 BOM 198)

(1899) 1 BLR 191
Narayan Vengorlekar v/s. Daji Bodewa
Parsons, Acting CJ & Ranade, J

The Respondent leased a thickan (land) to the Appellant's father on rent of Rs.5/-. The tenant could plant coconut and undhi trees in consideration of which he was given 9 coconut trees and put up a house on the land. The parties renewed the lease. The tenant was allowed to plant further trees and enjoy the fruits for 3 years and in the 4th year the tenant was to take 1/3rd trees and give the landlord 2/3rd.The tenant was to pay lease rent of Rs.14 ½ % p.a.

The Notice to quit was challenged on the ground that the tenant had a permanent tenancy and a right of perpetual management of the trees. He also claimed the right to keep his house standing on the land.

Held: Under the terms of the tenancy the tenant was to remain in management of his trees which would be the property of the landlord. The tenant who was allowed to erect the house could not retain it longer than the period of tenancy lasts. At its end, the tenant is bound to restore the land as he had received it and he cannot remain upon it when he is no longer a tenant. The house was built for the convenience of the father and can be occupied by him only so long he held the land as tenant. He can live in it while his interest in the land endured. Even the allowance to plant trees cannot create a permanent tenancy in the trees or the land.

(1899) 1 BLR 95
Yamunabai Kavade v/s. Manubai Kavade
Parsons and Ranade, JJ.

A Hindu died intestate leaving behind only self-acquired properties, which devolved on his widow.

The widow of his predeceased son, who had lived with the deceased till his own death, applied for maintenance from her mother-in-law.

Held: The self-acquired properties devolved upon the heirs of the deceased. Though it could not become ancestral property in the hands of the widow, since the deceased died intestate, all his sons would share it equally as ancestral property

Had the deceased left a Will, it would have devolved as self acquired property only to that legatee. Because of intestacy it would devolve as ancestral property to his sons as co-parceners of the HUF and his widow would be entitled to be maintained from **it.** Hence the moral obligation of the father-in-law is converted into a legal obligation when his self acquired property devolves upon his heirs.

The word ancestral in Sanskrit is Pitrajit as opposed to Swarjit or self-acquired.

2 incidents of self-acquired property are that it cannot be partitioned and the owner had unrestricted power to gift or bequeath it.

These incidents cease to attach to it when the owner has neither gifted it nor willed it. When the owner dies intestate, it becomes the joint common property of the family and all the sons share equally in it like any other ancestral property. (The sons living would share with the heirs of the pre-deceased son). Hence the daughter-in-law whose husband had lived with the deceased till his death is jointly entitled to be maintained out of such property.

(1899) 1 BLR 346
Suleman Varsi v/s. Sakinabai
Parsons & Ranade, JJ

The husband and wife were Khoja Mohmedans of the Subhania community were married according to the rules of the community known as the Bhagat community. About a year after the marriage between the parties, the whole Subhania community seceded from the *Bhagat* Community.

The wife was granted Maintenance of Rs.30 under S. 488 of the Cr.P.C.

Thereafter the husband divorced his wife by Talak Razi as per procedure. The husband offered to pay maintenance from the date of the order upto the date of the divorce and declined to pay any maintenance thereafter.

Held: The divorce was valid and put an end to the order of maintenance.

1900

(1900) 2 BLR 304
Queen-Empress v/s. Vinayak Bhatye
Sir Jenkins, Kt., CJ

The accused was a printer, publisher and editor of the Newspaper known as “Gurakhi”. He published an article entitled “A White man's Gun and the Death of a Native”. The accused was charged for sedition under S.124-A of the IPC.

Held: A publisher is *prima facie* liable for that which appears in his paper, and if he seeks to get rid of that liability the onus lies on him. He must establish that the paper was published without his knowledge, authority or consent, and without any acquiescence or connivance on his part. Mere absence or a want of particular authority, is insufficient to constitute an answer to the charge. The general character of the paper and the way in which it has been carried on must be looked at.

(1900) 2 BLR 130
W.A.Chambers v/s K.N.Kabraji
Russell, J.

A person sent a letter to a newspaper about a pending suit on libel making references to the parties. It was published in the newspaper. Notice was issued upon the writer to show cause why a warrant should not e issued upon him.

Held: Comments made on proceedings, civil or criminal, pending in a Court is an offence against the administration of justice and contempt of the authority of that Court. It can make no difference in principle whether those comments are made in writing or in speeches at public assemblies. Neither can it make any difference in principle whether they are made in reference to a trial actually commenced and going on or with reference to a trial which is about to take place.

In India, the powers of a Court in respect of contempt of Court are the same as those enjoyed by the inferior Courts in England.

(1900) 2 BLR 191
Gopikabai v/s. Dattatraya

Parsons & Ranade, JJ

The Respondent filed a suit to obtain a reduction in the amount of maintenance decreed to a Hindu widow on change of circumstances upon deterioration in the value of the family property.

It is competent for Civil Courts to entertain suits for reduction of maintenance allowed to a Hindu widow for sufficient reasons such as the permanent reduction of the value of the property. The fact that the property is reduced in value by having fallen into disrepair is no sufficient ground for asking for a reduction in the maintenance.

The right of maintenance of a Hindu window is not dependent on near relationship, but on the existence in the hands of her husband's heirs of the ancestral property in which he might have claimed a share. The amount of maintenance to which a window is entitled does not bear any fixed ratio to the means of the family, but these latter circumstances must govern the amount to a large degree, along with the consideration of the *status* and position of the widow in the family.

(1900) 2 BLR 533
Vasanji Bhimbhai v/s. Haribhai Monbhai
Sir Jenkins, Kt, CJ, & Candy, J

The Defendant claimed through the purchaser at an auction. The sale certificate had to be proved. The auction purchaser was not summoned.

Held: A sale certificate granted under S. 259 of the CPC, 1859 is a valid transfer of the right, title and interest and, therefore, is a document of title. Such a sale certificate, in the hands of the purchaser at an auction sale, is his title deed and he can, if he so minded, refuse to produce it in Court; but in that case secondary evidence of the same will be admissible under S. 65(c) of the Evidence Act, 1872.

A certificate of sale granted under the CPC is not a public document under the Evidence Act, 1872 so as to allow secondary evidence of it to be given under S. 65(e) of the Act.

(1900) 2 BLR 817
Queen-Empress v/s. Tukaram Chima
Ranade & Crowe, JJ

The accused, aged 40 years, dishonestly and without owner's consent stole a bag containing 55 lbs. of gram. He was charged with theft in a dwelling under S. 380 of the Indian Penal Code. He claimed leniency.

Held: Under S. 562, Cr.PC, the first offender, with a past good character and antecedents, need not necessarily be a youth: such an offender may be advanced in age. Youth, character and antecedents are the extenuating considerations which entitle a first offender to indulgence.

(1900) 2 BLR 1078
Queen-Empress v/s. Bhagi
Candy & Whitworth, JJ

The accused, who was a Vanjari by caste, admitted to have "corrupted water in a public cistern and causing the water less fit for drinking purposes under S. 61(m) of the District Police Act, IV of 1890." The accused was by caste a Vanjari.

Held: Corrupting the water requires some act which physically defiles or fouls the water. Hence, where a woman of the lower caste takes water from public cisterns of water, she cannot be convicted of defiling or fouling the water either under the Bombay District Police Act, 1890 or under the IPC, 1860.

1901

(1901) 3 BLR 1
Charles Heiniger v/s. Constant Droz
Batty, J

The Plaintiff sought an injunction restraining the Defendants from importing or selling watches of the kind imported by the Plaintiff or having any design or mark which would make the purchaser believe that the watches were the ones imported and sold by the Plaintiff.

Held: The Plaintiff is not entitled to such an injunction as he can only protect a trade mark representing his own reputation, but not the trade mark of another manufacturer or producer.