

(1901) 3 BLR 102

In Re N.F. Bhandara

Sir Jenkins, Kt., CJ, Tyabji & Russell, JJ

Mr. N.F. Bhandara was called upon by the High Court to show cause why his name should not be removed from the roll of the Advocates of the Court on account of criminal proceedings against him with respect to forgery and criminal breach of trust framed on the complaint of his client. He was stated to have claimed a large fee of Rs. 10000 on the threat of appearing for the other side.

Held: It is highly reprehensible for an advocate of the High Court to stipulate for, or receive, a remuneration, proportioned to the result of litigation, or a claim, whether in the form of a share in the subject-matter, a percentage, or otherwise.

By acting in such a manner, an Advocate renders himself liable to disciplinary action of the High Court.

(1901) 3 BLR 164

Gopalrav Hanmant v/s. Kallappa Bin Dharmappa

Candy & Crowe, JJ

The Respondent had sued for the dissolution of a partnership claiming a certain share of money including capital and profits. The partnership related to opium and *ganja* contracts.

The Appellant pleaded that the partnership was illegal.

Held: The suit to recover even the money advanced as capital, for the purpose of a partnership which was even partly illegal, is not maintainable at law.

(Notice the prevalence of deals in contraband as much as strictness of the law since early days).

(1901) 3 BLR 188

King-Emperor v/s. Shivgowda

Candy & Crowe, JJ

The then *Swami* of the community to which the parties to the case belonged, had declared the second marriage of a woman as adulterous as it was a secret *pat* marriage. Some years later, another *Swami* declared the marriage as valid. As that *Swami* took no notice of the communications of the villagers citing their disapproval, they published a notice in the newspaper stating "Jingowda having left a concubine by name Uma, has had offspring by her." The villagers were convicted of defamation.

Held: The conviction was proper, as even if the allegations were made for the benefit of a portion of the public, the accused had no privilege to disseminate them to a circle of readers wider than those who could possibly be interested in the allegations.

(1901) 3 BLR 220

Abdul Allibhoy v/s. Mahomedally Hyderally  
Sir Jenkins, Kt, CJ, Russell & Whitworth, JJ

The Respondents were manufacturers of ink and claimed exclusive right to certain labels and trade marks. The labels with the mark "Waterloo" were made by first collecting the bottles of four European makers. The labels designed by the Plaintiff were a combination of all four labels. The name was suggested by another pen supplier. "I liked the name. So I call my ink "Waterloo".

Held: A person, who uses a label, which is a deliberate combination of other labels with a view to represent his wares as the wares of others, cannot be allowed to take an injunction restraining some other person from imitating his label.

(1901) 3 BLR 246

Bai Fatan v/s. Emad Asla  
Fulton & Sir Chandavarkar, JJ

Certain lands were conveyed and given possession of by the Respondents to the mother of the Appellants under a sale deed. The sale deed recited that the land so conveyed was obtained by the Respondents from the Government in exchange of some other land. The Appellant was ousted by two other Respondents under a Mamlatdar's decree.

Held: Possession is good defence against a wrong-doer. Possession peaceably held entitles a person to recover without further proof of title as against a mere wrong-doer.

(1901) 3 BLR 449

King-Emperor v/s. Abdul Khadir

Candy & Fulton, JJ

The accused stole a pony and sold it to a third person. He was convicted of the offence and sentenced to a term of imprisonment and fined a sum of Rs.20. It was further ordered that out of the fine, when Rs.9-12-0 was recovered and paid to the purchaser, the pony should be returned to the complainant.

Held: No condition could be imposed on the return of the pony to the complainant and that the order of the award of a portion of the fine to the purchaser should be reversed.

(1901) 3 BLR 717

Ramrao Narayan v/s. Rustumkhan

Fulton & Crowe, JJ

The land in dispute was a graveyard which was not used for 20-30 years. However, its character as such was retained.

Held: It was the custom of the country that the ground in which the human remains are interred is regarded as forever sacred. The ownership of the soil maybe vested in others, but the permission to bury in the land, carries with it the right to perform all customary rights.

## 1902

(1902) ILR 26 BOM 88

Fakiraya v/s. Gadigaya

Sir Jenkins, CJ & Candy, J

In 1888, the Defendants mortgaged three fields and a house to the Plaintiff's undivided uncle for Rs.2000. In 1892, the field and the house was sold subject to this mortgage in execution of a money decree obtained by the uncle and having obtained leave to bid at the sale, the uncle purchased the fields for Rs. 340 and the 1st Defendant purchased the house for Rs.300.

Subsequently the uncle died and the Plaintiff having succeeded to his estate sued to recover a proportionate share of the mortgage debt from the house of the 1st Defendant. He valued the field at Rs.3200 and the house at Rs.800 as the mortgage debts amounted to RS.4000. He claimed to recover Rs. 800 from the house. Defendant no.1 pleaded that at the time of the sale the mortgage debt was only Rs.3100 that the value of the field which the Plaintiff bought was more than sufficient to satisfy the mortgage debt, which was, therefore, wholly extinguished and that the house was no longer available for redemption.

Held: Where the Plaintiff, instead of enforcing his mortgage and bringing the property to sale free of encumbrance, brings to sale the equity of redemption in part of the mortgaged property and buys it himself, an equity arises which entitles the Defendant to require satisfaction first out of the property brought by the Plaintiff. Otherwise the action of the Plaintiff in causing the sale subject to the mortgage might almost necessarily secure to him an undue profit at the expence of the Defendant.

(1902) ILR 26 BOM 198  
Ramrao Bellary v/s. Rustumkhan  
Fulton & Crowe, JJ

A certain piece of land at Dharwar which had formally been used as a graveyard by the Mahomedan community there was sold by the owner to Defendant no.4, who thereupon began to prepare the foundation of the house which he intended to build upon it. The Plaintiffs, who were the members of the Mahomedan community at Dharwar, filed this suit alleging that the land was used for burying the dead and was accustomed to perform religious rites and ceremonies at the said land. They prayed for a declaration that the land was a public property and for an injunction restraining the Defendant from obstructing them.

Held: They were entitled to the declaration and injunction prayed for. The ownership of the soil may be vested in others but the permission to bury in the land granted, as it must be, subject to the custom of the community, carries with it the right to preform all customary rites.

(See also 1899 ILR 23 BOM 666)

(1902) ILR 26 BOM 533  
Emperor v/s. Tribhovandas Brijbhukandas  
Candy & Fulton, JJ

The accused were partners in a shop at Surat, in which ostensibly the business of cloth selling was carried on, but which was actually used for the purpose of carrying on a *satta* or wagering business. The wagers made were on the figures denoting the prices for which opium was sold at Calcutta. Information as to these sales were received by a telegraph from Calcutta. The firm kept books in which the wagers were recorded.

Held: The books kept by the firm and the telegrams received used for the purpose of recording the wagers were not 'instruments of gaming' and the wagering with which the accused was charged was not a 'game', therefore, the charge of arrest did not apply.

(1902) ILR 26 BOM 609

Cawasji Shroff v/s. The G.I.P.Railway Company  
Candy & Crowe JJ

The G.I.P. Railway company carried 27 heads of cattle from Talegaon to Bombay. The cattle were put in one truck by their owner under the supervision of the company's good clerk at Talegaon and were so allowed to be put by the servant in spite of a circular issued by the Traffic Manager to prevent the overcrowding of cattle. When the cattle were detained at the goods yard of the company at Wadi Bundar, they were found suffering from the effects of overcrowding. The Bombay society for the Prevention of Cruelty of Animals prosecuted the Railway Company.

Held: The accused person cannot be criminally punished unless *mens rea* is proved; nor can he be found guilty of a crime committed by his servant. A Railway Company, therefore, cannot be penally liable for the acts of its servants; in spite of the circular issued.

(1902) ILR 26 BOM 689

Harivallabhdas Haridas v/s. Bhai Jivanji  
Sir Jenkins, CJ & Batty, J

The Plaintiff was the managing clerk of a firm of Solicitors in Bombay, who were acting as Solicitors for one Cursondas in a suit which he had filled in this Court to recover a large amount of property. This suit was managed for Cursondas by a friend of his, and Cursondas agreed that if he succeeded he would give his friend a sum of Rs 50,000/-. The friend took the help of the Plaintiff in conducting the suit and agreed to give him half share i.e Rs 25,000/-. The Plaintiff alleged that Cursondas knew of this arrangement with the Defendant at the time the Rs 50,000/- were promised. Subsequently, that friend gave the Plaintiff a writing agreeing to pay him half share in case the litigation was successful. The suit was successful and the Plaintiff sued the Defendant for Rs 25,000 as per the agreement.

Held: If the transaction was not known to Cursondas, it was vitiated against him. So far as the Plaintiff is concerned, by the reason of secrecy of the profit sought, the transaction which forms the foundation of the Plaintiff's claim infringes so gravely those essential principles which equity insists. He cannot be permitted to profit indirectly by a transaction in which he could not have recovered from Cursondas directly.

## 1903

(1903) 5 BLR 667

Narsinha Shankar v/s. Imam Mahamad  
Sir Chandavarkar & Aston, JJ

The Plaintiff's application for renewal of his license for arms was rejected and his license was cancelled. The Defendant (police officer) was instructed to attach the Plaintiff's existing gun. The Defendant, on conveying this to the Plaintiff, he (Plaintiff) immediately submitted his gun to the Defendant.

Yet the Defendant continued the search of the Plaintiff's house. The Plaintiff sued for malicious search. The Plaintiff contended that a great inconvenience was caused to him and his guests. He contended that the Defendant had done this to cause annoyance to the Plaintiff.

The Defendant contended that he suspected that the Plaintiff had another gun. Hence he searched the house, though he did not find another gun.

Held: The onus of proving that the Defendant did not act honestly but with intent to injure lies on the Plaintiff. The Plaintiff must show that the Defendant acted intentionally without a just cause or excuse.

The Defendant is not proved to have acted with an intent to injure the Plaintiff. The Defendant was acting in obedience to the lawful order of his superiors and had no malice. Hence he could not be sued.

(1903) 5 BLR 676  
Rudrappa v/s. Irawa  
Sir Jenkins, KCIE, CJ & Jacob, J

The deceased was survived by a sister and brother's widow. The question that arose was whether a sister or a brother's widow is preferred as an heir.

It was argued that succession governed by *mitakshara* does not name the sister as the heir. The useage that a sister succeeds as an heir outside Gujarat and the Island of Bombay and was entitled to preference even over *Gotra Sapindas* was established.

Held: The sister is entitled to preference over the brother's widow.

(1903) 5 BLR 741  
Emperor v/s. Abdul Hussein  
Sir Chandavarkar & Aston, JJ

The accused had a shop for several years in Poona Cantonment. He had a wooden box kept in front of his shop for use as a step to facilitate access to his ota which rose three feet above the public road.

This box was placed on a stone slab covering the gutter (drain) at the side of the road adjoining his shop. He was sentenced and convicted for *wilful obstruction to free passage of the street* under Rule 141 of the Cantonement Code, 1899.

Held: The box lay there for several years and no notice for removal of the box was given to the accused. That the obstruction was willful was not proved. Hence the accused could not be held guilty of the offence.

(1903) 5 BLR 798  
Venkappa v/s. Siddapa  
Sir Jenkins, KCIE, CJ & Jacob, J

A pleader entered into a compromise in a case on behalf of his client. The appeal was resisted on the ground that a decree in accordance with the compromise was

final. It was contended that upon a pleader signing a compromise on behalf of his client was to be assumed that the client was agreeing to the compromise.

Held: A pleader has not a general power of compromising a case on behalf of his client; he must be specifically authorized to that end. Even though Counsel have a general power of compromise, it does not allow them to compromise matters outside the scope of the suit.

(1903) 5 BLR 877

Emperor v/s. Mahomedally Rajbhai  
Sir Chandavarkar & Jacob, JJ

The accused purchased weights from a begger boy. The accused did not make any enquiry about how and from where the boy had the weights in his possession. It was contended that the omission to make such necessary enquiries coupled with the fact that the weights were purchased from a begger are sufficient to convict the accused as guilty for theft.

Held: The Magistrate was right in dismissing the contention that such omission of enquiry and purchase from a begger would justify the inference that the accused either knew or had a reason to believe that it was a stolen property. No circumstances hint that a reasonable man would have drawn the inference that the property being dealt with was a stolen property.

The Accused was correctly discharged.

## 1904

(1904) ILR 29 BOM 13

Satyabhamabai v/s. Ganesh Krishna  
Sir Jenkins, KCIE, CJ & Aston, J.

The Plaintiff sued to recover his share in certain ancestral properties against 13 Defendants. The parties agreed that the widows would get those properties which would have gone to the share of their husbands by way of their maintenance.

After the evidence was recorded, the Plaintiff applied for withdrawal of the suit as she had settled with Defendants 1 and 2; the other Defendants objected.

Held: A Decree of Partition partly based upon an Agreement between the parties cannot be resiled by the Plaintiff later as certain rights were vested in the Defendants.

(1904) ILR 29 BOM 91

Basappa Fakirappa v/s. Rayava Basappa

Sir Jenkins, KCIE, CJ, Sir Chandavarkar, Batty, & Aston, JJ

The Appellant claimed the estate of the son of his deceased brother against the remarried widow of his brother as she would claim from two families, the family of her predeceased husband and the family of her second husband.

Held: On remarriage the widow becomes the guardian of the son. Therefore, under S. 2 of the Hindu Widow Remarriage Act, the widow is entitled to succeed to the estate of her son from her former husband.

(1904) ILR 29 BOM 85

Rashid Karmali v/s. Sher Banoo

Russell & Sir Chandavarkar, JJ

A Khoja, governed by Shia Law, married of his own volition. Later he sold his property being his share in his father's estate to his brother. Still later, he executed a Will appointing his two brothers as his Trustees. He affirmed the sale of the immovable property and bequeathed the value of his ornaments to his two brothers in equal share after payment of his funeral expenses.

His widow sued to set aside the Sale Deed and to claim the estate on intestacy.

The Sale Deed was said to be for a wholly inadequate consideration and the widow was held entitled to maintenance.

Held: A Khoja and his wife, though married according to Mohammedan rites are yet "Hindus" and are governed by the Hindu Law of Succession and Inheritance. Hence, if the brothers remained joined, their widows would be entitled to maintenance out of the estate of their father.

(Similarly, Kutchi Memons were held to be governed by Hindu Law of Succession in ILR 34 BOM 647)

(1904) ILR 29 BOM 213  
Rudrappa v/s. Narsing Rao  
Sir Jenkins, KCIE, CJ & Sir Batchelor, J

The tenancy of a tenant had expired. He held over. He was dispossessed by the landlord.

Held: A tenant holding over after expiry of the period of tenancy cannot be dispossessed by force. Such a tenant is still in juridical possession as he can recover possession against a third party for wrongful dispossession.

“Due process of Law” required to be followed does not mean only “legally”, but only by institution of legal proceedings. Hence, he was not entitled to recover possession by himself.

(1904) ILR 29 BOM 306  
Bai Motivahoo v/s. Purshottam Dayal  
Sir Jenkins, KCIE, CJ & Sir Batchelor, J

After purchasing a property in the name of his wife, the Plaintiff’s husband executed a document that it belonged to her. It was not registered. Later he executed a Will disposing it off.

The case of oral gift was not proved.

Held: The doctrine of Advancement does not apply to Hindus. The purchase of a property by the husband in the name of his wife does not raise any presumption of any gift to her.

In India, the ownership of the property is seen from the source of funds for purchase.

(1905) ILR 29 BOM 357  
Dinkar Dongre v/s. Narayan Lohar  
Sir Jenkins, KCIE, CJ & Aston, J

The Plaintiff, who lived near a stream, sued the Defendant who lived upstream and who had built a dam to use the water of the stream through a water course (pat) for injunction restraining the Defendant from erecting a dam higher than that of the Plaintiff’s and for recovery of Rs.50/- as damages for diminishing the Plaintiff’s water supply and causing injury to his crops and garden.

The Defendant contended that the dam was built 30 years ago by his ancestors.

Held: This was a contest between two riparian owners. Each owner had a right to the usufruct of the stream which passes through his land. That is not an absolute and exclusive right to the flow of the water, but its enjoyment subject to similar rights of other such owners.

{See also the right to fish in the sea. AIR 1929 BOM 226 and the right to waters of a stream (1897) ILR 23 BOM 47}

(1905) ILR 29 BOM 410  
Lakshmibai Anant v/s. Vishnu Bele  
Sir Jenkins, KCIE, CJ, & Batty, J

The deceased directed his daughter-in-law to adopt a son and thereby make him the legal heir. The Respondent sued for a declaration that he was the grandson of the deceased by virtue of his adoption and therefore the owner of certain share of the property.

Held: The deceased did not beneficially dispose of the property vested in him under such a will. The father in law's assent does not survive beyond his lifetime. Therefore, the will was held invalid. The Court saw a clear difference between consent given during the lifetime and the authority to be exercised after the death of the giver.

(1905) 7 BLR 73  
Framji Shapurji v/s. Framji Edulji  
Sir Chandavarkar, J

The Plaintiff had a building of ground plus two storeys with an outhouse. The building had 8 ancient honey-combed openings to its South side from which the Plaintiff received an uninterrupted supply of light and air. The outhouse was used by his family and later, by his servants. It was gutted in fire. The walls of the outhouse stood. The Plaintiff was to re-construct the outhouse. The Defendant was proceeding to construct a building close to the Plaintiff's house leaving 6-8 ft. space in between.

The Court considered the right to light and the right to air separately as also the right in a country and in a town on a different footing.

Held: The men who enjoyed the right to air, more or less, pure and free ought to be reasonably protected against any interference.

The diminution of light from 90° to 20° is serious though the Plaintiff could not expect to have horizontal or direct light as before. The English rule of 45° is a safe one to adopt in a populous city, like Bombay, but it must be seen with other circumstances to cause an actionable nuisance. The right to light was to be enjoyed taking into consideration the daily growing demand for increased building accommodation.

The question of air stands upon a different footing. There is a greater likelihood of foul air rushing into the Plaintiff's inner room when the door of the privies constructed by the Defendants close to the Plaintiff's rooms is opened. The Court ought to consider the sanitary requirements where ventilation is even more important than light. This was held taking into account the plague that visited the city of Bombay.

The servants are also human beings and the light affecting their outhouse is also an actionable wrong even if they be a class of persons accustomed to live in dark rooms regardless of ventilation.

[See also (1993) ILR 7 BOM 95 and (1891-93) 7 BHC Rep. Unreported Judgments 177]

(1905) 7 BLR 252

Gangadhar v/s. Parasharam

Sir Jenkins, KCIE, CJ & Batty, J

A Hindu died leaving 4 sons. His estate consisted of a thikan and buildings. The title devolved upon his sons and later, his sons' sons. The predecessor of the Plaintiff left the family house in 1857 and never participated in the profits of the property. No account was rendered or demand made for 40 years.

Held: To constitute adverse possession between tenants in common, there must be an exclusion or ouster. The exclusive right of profits by one tenant in common continuously for a long period would be sufficient evidence to presume an actual ouster of the other tenant in common.

(1905) 7 BLR 324

Dady Nasserwanji Dady v/s. Acting Advocate General,

Tayabji, J

A Parsee left everything to charity under his will except for making provisions for *Baj*, *Rojgar* and *Muktad* ceremonies from the income of his properties after making his funeral expenses. Out of an income of Rs.20,000/-, Rs.7,000/- was used for his funeral expenses. The latter bequest failed.

Held: Such a bequest is void. There is no gift to charity where the fund is divided into two parts and one is devoted to an invalid purpose. Hence, everything went to charity as that was the dominating intent of the settlor.

(1905) 7 BLR 308

Balaram Budharam v/s. Ramkrishna Chilaji  
Sir Jenkins, KCIE, CJ, Russell & Aston, JJ

The Plaintiff sued for possession of movable and non-movable properties. The Defendant was held entitled to a 1/3<sup>rd</sup> share in the house and the decree directed partition.

Held: A decree in terms of the report of the Commissioner for taking accounts is a final order effecting partition and must be stamped as an instrument of transfer.

Though the law requires the shares to be determined and allotted to the respective parties, the practice in many Courts is not to make a final order under S. 396 of the CPC, 1882 but to leave the determination and allotment of the shares in execution proceedings.

The suit would be considered still pending until a decree is passed. The law does not require two decrees to be made in such a case when it is possible for the Court upon the materials before it to make a final order of partition determining the respective shares of the parties, the Court is bound to make that order. When it is not so possible, the Court may appoint Commissioner under S. 396 of the CPC.

(This position must govern suits until this day for partition or administration when the share of the Plaintiff is determined and/or admitted).

## 1906

(1906) ILR 30 BOM 37

The Town Municipality of Jambusar v/s. Girjashanker Narsiram  
Sir Jenkins, KCIE, CJ, & Batty, J

The Plaintiff was a member of a joint Hindu family which owned a house in Jambusar. The tax in respect of his house fell into arrears. Summary proceedings were instituted by the Municipality under the District Municipal Act. The amount was paid after the institution of the proceedings. The prosecution ended without a decision on merits. The Plaintiff sued for damages for malicious prosecution against the Municipality of

Jambusar and its officers.

Held: The object of the Municipality is “to teach a minatory lesson to other defaulters on the disadvantages of non-payment of the tax”. That could not be regarded as an indirect motive or as malice for the purposes of such a suit, it being a legitimate end of punishment to deter other evil-doers from offending in the same way.

(1906) ILR 30 BOM 122

Bai Hansa v/s. Abdulla Mustaffa  
Sir Jenkins, KCIE, CJ, & Aston, J

The husband sued for restitution of conjugal rights. The wife pleaded non-payment of dower. The husband pleaded consummation of marriage.

Held: After consummation of marriage, non-payment of dower, even though proved, cannot be pleaded in defence of an action for restitution of conjugal rights.

(1906) ILR 30 BOM 126

Emperor v/s. Budhoobai  
Russell & Aston, JJ

The accused, a fisherwoman, was charged under S. 410 (1) of the Bombay City Municipal Act (Bom. Act III of 1888), with selling or exposing for sale without a municipal license fish on the Chowpatty foreshore, in the City of Bombay. The sale was from a basket, which the accused had placed on the sand, at some distance from the water, between the high and low water mark. The fish sold was fresh fish and was brought from one of the boats then in Back Bay. The accused contended that it was a market sale. Back Bay was outside the municipal limits under the Municipal Act.

Held: The accused was not protected by S. 410 (2) of the Bombay City Municipal Act (III of 1888), since it was impossible in the present case to say that the fish had been sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, it having been brought from the vessel which was in the water.

The onus of proving that the place in question was a “private market” lay upon the accused.

The Bombay City Municipal Act (III of 1888) applied to Back Bay because it came within the expression “City of Bombay” as defined by the Bombay General Clauses Act (I of 1904).

(1906) ILR 30 BOM 229  
Bhau Gurav v/s. Raghunath Gurav  
Sir Jenkins, KCIE, CJ & Aston, J

A wife bequeathed her Stridhan without her husband's consent.

Held: The bequest failed as, except the Stridhan known as Saudayik, a woman's power of disposal over her Stridhan during coverture is subject to her husband's consent and without such consent she cannot bequeath it by will when she is survived by her husband, who is not shown ever to have consented to the will.

Saudayik Stridhan is that which is obtained by a married woman or by a virgin in the house of her husband or of her father, from her brother or parents.

(1906) ILR 30 BOM 593  
Krishnabai Thakur v/s. Manohar Sundurrao  
Sir Jenkins, KCIE, CJ, & Sir Beaman, J

The applicant applied for the leave to file a suit in forma pauperis alleging that after her husband's death, her husband's brother possessed himself of her property including the ornaments that she ordinarily was accustomed to wear. She sued to recover these ornaments.

Held: The only point to consider was whether the applicant was possessed of sufficient means to enable her to pay the fees prescribed by law for the plaint and not whether she would have had the ornaments.

The words "other than his necessary wearing apparel" does not require that the person should not be possessed of sufficient means to enable him to pay the fee prescribed by law, but only the condition that the applicant is not entitled to property worth Rs.100.

## 1907

(1907) ILR 31 BOM 495  
Tara, Father of Hari Shinde v/s. Krishna Bandu

Sir Chandavarkar & Sir Beaman, JJ

A Vaghya (male dedicated to the God Khandoba) had three daughters, one of whom was a Murali (female dedicated to the God Khandoba) and two were married. After the Vaghya's death, his Murali daughter, who lived by prostitution and had children by promiscuous intercourse, claimed her father's property as heir to the exclusion of her sisters under the rule of Hindu Law that an unmarried daughter inherits her father's property before his married daughters.

Held : A woman, who in her maiden condition becomes a prostitute, being neither a kanya (unmarried) nor a kulastri (married), but, notwithstanding her prostitution a qualified heir, would be entitled to succeed to her father's property only in default of either married or unmarried daughters.

(1907) ILR 31 BOM 366  
Bai Jina v/s. Kharwa Jina Kalia  
Sir Chandavarkar & Pratt, JJ

The Plaintiff, an ex-communicated member of the Mussalman Kharwa community of Broach, sued his wife for restitution of conjugal rights. At the time of their marriage, the parties were members of the caste; but subsequently the Plaintiff was ex-communicated from his caste. The Defendant contended that she should not be compelled by the Court to go and live with him as his wife before the Plaintiff was re-admitted into the caste.

Held: Upholding that contention that at the time of his marriage the Plaintiff was not only a Mahomedan by faith, but a member of the Kharwa community. Upon that status his wife married the Plaintiff. It was, therefore, of the essence of the marriage contract that they married because they were members of particular community and they must be regarded as having entered into the marital relation on the basis of the status.

(1907) ILR 31 BOM 430  
Dahibai v/s. Doonderji Damji  
Russell, J

The Solicitor for the Defendant in a suit brought to obtain probate of the will of the one Damji Lakhmichand set up the defence that the will was a forgery. Being unable to procure the services of an expert, he, after special study for the purpose, himself carefully studied every letter of the alleged will and, despite Counsel's opinion that he had no chance of succeeding, eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs he claimed extra

payment for the additional and unusual work incurred by him.

Held: (in review of taxation) The solicitor was entitled to be separately remunerated for the special work done by him. There was, in fact, a charge for work done which would not ordinarily fall upon a Solicitor in the preparation of the brief.

(1907) ILR 31 BOM 68  
Kalidas Lalabhai v/s. Tribhuvandas Bhagvandas  
Russel, Acting CJ, Sir Beaman & Sir Heaton, JJ

An award began by saying: "We decide as below. The parties should act accordingly". It went on: "The Defendant should take into his possession as below after passing a legal release." It added other directions with regard to the action of the Defendant and provided: " In connection with whatever is settled to be given to the 'Defendant' and to be taken by him, we direct that 'Defendant' should take into his possession, the properties and receive and pay money stated above after passing a release of sufficient stamp and getting it registered.

Held: The award came within the meaning of the words "an award by an arbitrator directing a partition" within the meaning of S. 2 Clause 15 of the Indian Stamp Act (II of 1899).

(1907) ILR 31 BOM 218  
Emper v/s. Isap Mahomed  
Batty & Sir Heaton, JJ

The accused was tried on charges under Ss. 363 (kidnapping from lawful Guardianship) and 366 (kidnapping a woman) of the IPC. At the conclusion of evidence for the defence, the Court added a charge under S. 498 (enticing a married woman) of the IPC notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges.

Held: The procedure adopted was not regular as the additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused.

The conviction under S.498 of the IPC was set aside and further investigation was ordered into the remaining charges.

## 1908

(1908) 10 BLR 93

Emperor v/s. Chinto Bhairava  
Sir Chandavarkar & Knight, JJ

A Municipal Secretary was convicted for corruption punishable under S.162 of the IPC. He was sentenced to pay a fine of Rs.200/- "having regard to his position as a Secretary of the Municipality and also to his age (45)". The Court had to consider enhancement of sentence. The accused wanted to show that he was wrongly convicted.

Held: It is the practice of this Court that in cases of enhancement of sentence, conviction is accepted as conclusive and the question of enhancement is considered on that basis.

(1908) 10 BLR 811

Daji Khare v/s. Govind Bapat  
Sir Macleod, J

The Commissioner for taking accounts was appointed for taking accounts of the dealings and transactions of a partnership firm. He submitted a report to Court. The Defendants filed exceptions.

Held: Where the account books are admitted in evidence under S.32 of the Evidence Act, 1872 as having been kept in the ordinary course of business by the persons deceased, the Court may, in its discretion, take them as sufficient evidence without further proof.

The entries in the books are prima facie evidence against each partner but not conclusive evidence if a person shows any error. That person would have to prove the error.

Managing Partners are principals as well as agents and cannot be compelled to prove the payments in the same way as an agent.

A sleeping or dormant partner is the one not known as a partner to third parties. Even a Managing partner may be treated as a sleeping partner if he is known only as a manager to third parties. An active partner does not have a more favourable position on the accounts of the firm.

(1908) 10 BLR 848  
Emperor v/s. Bal Gangadhar Tilak  
Davar, J

The accused was charged with sedition for having printed and published 2 articles in his newspaper to bring hatred or contempt for the Government or to excite or attempt to excite dissatisfaction towards the Government under S. 124A of the IPC and for having done acts promoting disharmony, or feelings of enmity, hatred or ill-will between different groups under S. 153A of the IPC upon the second article.

The 3 charges were upon 2 articles written by the accused.

The summing up to the Jury showed the object of the section being to preserve order and amity between various subjects of the Crown and the requirement of the freedom of the press available to the accused.

The Court called upon the Jury to see the intention of the accused but not his motive, the surrounding circumstances, accept the translations of certain words put by the accused for the Marathi expressions in the articles and his construction of the articles.

The Court stated that the accused was entitled to have the benefit of the most favourable construction and called upon the Jury to see whether there was transgression of the law.

The Court read out some of the contents of the articles making a reference to a bomb. An analogy was drawn to the political agitation in Ireland which led to the grant of Home Rule. The Court referred the Jury to a postcard which was produced in evidence containing the names of 2 books on explosives. They were explained that it was to study the Explosives Act, 1884.

The Jury returned the verdict of guilty on the 3 charges by a majority of 7 to 2. The Court ascertained about the previous conviction which were affirmed.

The Court sentenced the accused to transportation for 3 years each for the first 2 charges. For the 3<sup>rd</sup> charge for which the punishment was only sentence of imprisonment and fine, the Court sentenced him to a fine of Rs.1000/-. The prosecution withdrew the 4<sup>th</sup> charge for which the accused was acquitted.

When called upon, he last stated:

*“All I wish to say is that in spite of the verdict of the Jury I still maintain that I am innocent. There are higher powers that rule the destinies of men and nations and I think it may be the will of Providence that the cause I represent may be benefitted more by my suffering than by my pen and tongue”.*

(40 years thereafter India became free of foreign Rule. The words remain engraved outside the Courtroom. The last 3 words are substituted by the words “remaining free”).

(1908) 10 BLR 107  
In Re. Shah Steam Navigation Company  
Davar, J

A shareholder applied for winding up the Company as 'just and equitable' under S.128 of the Indian Companies Act, 1882. Various shareholders joined the Petitioner and various others, opposed him. The Company had disputes with one Essaji Tajbhoy in the business of plying steamers. The Company was alleged to have made a loss of Rs.4.5 lakhs. It was alleged that it had no prospects of ever making a profit.

Held: The Petitioner has not made the application bona fide in the interest of the Company or its shareholders. The Company cannot be wound up as 'just and equitable' merely on the ground that it had made losses and is likely to make further losses.

(1908) 10 BLR 149  
Gangu v/s. Chandrabhagabai  
Sir Chandarvarkar & Knight, JJ

A property belonged to a Hindu. His widow was murdered by the son of her husband's half brother. The accused was tried, convicted and hanged in the same year. His widow sued to recover the property of her uncle-in-law's estate through her husband and, in the alternative, as a reversioner.

Held: Though her husband would be dis-inherited upon his conviction for murder, she would not suffer from the similar defect as her husband's disability to inherit, upon considering various texts in smriti of yajnavalkya. It was held that such disability must be construed strictly and must apply only to the person and not his heirs even if they claim through him.

(1908) 10 BLR 498  
Rajendralal Maneklal v/s. Surat City Municipality  
Sir Chandavarkar & Naik, JJ

The Municipality constructed a dam in a creek. A ditch was allowed to be connected with the creek. The ditch drained away rain water which was filled with the rubbish of the town. It got soaked up with weeds, silt and other things. The rain water which collected in the creek flooded the Plaintiff's property.

Held: The Municipality was liable for misfeasance since their negligence turned into a nuisance.

## 1909

(1909) 11 BLR 85

Sir Dinshaw Petit v/s. Sir Jamshedji Jijibhoy  
Davar & Sir Beaman, JJ

The Plaintiff challenged the appointment of the Defendant as trustee of the suit trust as not having been validly appointed and applied for a scheme of the trust to be framed in a class action.

Held: The Zoroastrian religion does admit and enjoin conversion. The Indian Zoroastrians, whilst theoretically adhering to their ancient religion, erected caste barriers around themselves and gradually fell under the influence of caste idea till the expression "Parsi" distinctly meant a caste.

Even if an alien, a Juddin, is duly admitted into Zoroastrian religion, he would not be entitled to the use and benefits of the funds and institutions which were founded and endowed only for Parsis. Parsis are the persons descended from the original Persian emigrants, born of Zoroastrian parents, profess Zoroastrian religion and children of Parsi fathers by alien mothers who have been duly and properly admitted into the religion.

The decision of a suit under S. 539 of the CPC is binding on all persons affected by it.

(1909) 11 BLR 255

Raghunathji Tarachand v/s. The Bank of Bombay  
Sir Chandavarkar & Sir Batchelor, JJ

The Defendant was a joint Hindu family firm consisting 2 coparceners trading in the name and style of Raghunathji Tarachand as a partnership. A minor in the family was admitted to the firm. The firm executed a Hundi and was sued thereon. The minor contended that his share was not liable.

Held: The rule of Hindu Law, that debts contracted by a managing member of the HUF are binding on the other members only when they are for a family purpose, is subject to one important exception.

Where the family carries on a profession or business, the member who manages the business has an implied authority to contract debts for the business which binds all in the family. The creditor is not bound to inquire into his authority.

In a trading family, trade is its Kulacharas, all the family members trade in union, and hence, all the incidents of trade apply to it.

The firm, including the minor's share was liable on the Hundi.

(There is no personal liability of the coparceners. See AIR 1946 BOM 396).

(1909) 11 BLR 332

Emperor v/s. Kesari Kanji

Sir Chandavarkar & Sir Heaton, JJ

One Kesari was charged with the murder of her step-daughter Mithi aged 6 years by smothering her in the mud of a Creek. The evidence against her consisted mainly of her step-son Chittio and her own confession. The accused later contended that she made a confession under pressure from the police. There is no evidence to that effect. The Jury in the District Court of Surat returned the verdict of not guilty.

Held: Whether the confession was voluntarily made has to be decided by the Judge himself for purpose of admitting it in, or excluding it from the evidence in this case. If the confession was voluntarily made and was not caused by threat or inducement, he must admit it in evidence. Once it is admitted, it is for the Jury to say whether it is true or not. If a confession made before the Magistrate is retracted, it cannot be left to the Jury to decide whether it was voluntarily made. If that is done, there is a serious misdirection to the Jury in summing up the evidence resulting in miscarriage of Justice.

(1909) 11 BLR 606

Chabildas Lallubhai v/s. Ramdas Chabildas

Sir Beaman, J

One Lallubhai died intestate in Bombay living a widow and 5 sons. Chabildas, one of the sons used to carry on business as freight broker and contributed from his earnings to the joint family funds. After the death of their mother the joint property was divided among all co-parceners. Chabildas had two sons, Ramdas, the Defendant and Karsandas and one daughter. Chabildas claimed that he had purchased various properties and amassed great wealth and therefore he has absolute right to dispose of the same. The Defendant claimed that the property also belongs to his grandfather and, therefore, it is a joint family property, in which all are entitled equal share. The rent and profits which the Plaintiff received from the ancestral immovable property were mixed together with the income of the business.

Held: If a Hindu having ancestral moneys and working independently, makes large extrinsic gains which he keeps wholly distinct, he may treat the latter as his self-acquisitions. But if he mixes his gains with his ancestral money he cannot afterwards be allowed to separate them by a mere account. Where there is an indiscriminate blending of ancestral with self acquired properties, what is purchased out of the aggregate results is ancestral. However, a bona fide reasonably fair family arrangement will be upheld by the Courts.

(1909) 11 BLR 1109  
Mahipat Shamlā v/s. Nathu Vithoba  
Sir Basil Scott, CJ

The Plaintiff sued to redeem and recover possession of certain immovable property alleging that the sale deed which was executed was really a mortgage. The Defendant disputed this allegation and contended that evidence was not admissible for the purpose of proving that it was really a mortgage. The Plaintiff y applied to the Court for permission to withdraw the suit with liberty to bring a fresh suit.

Held: The Court should not allow a suit to be withdrawn under S. 373 of the CPC, 1882 after the parties are ready for trial, if such withdrawal may operate to the prejudice of the Defendant.

(1909) 11 BLR 926  
Nandalal Thakersay v/s. The Bank of Bombay  
Sir Beaman, J

The Plaintiff carried on business as a merchant and commission agent. He entrusted certain bales of cotton to his muccadam for warehousing, but the latter pledged them to a bank, which inspite of the Plaintiff's demand did not restore the goods to him or compensate him.

The Court considered the torts of detention and conversion and distinguished them from a lawful pledge protected under S. 189 of the Indian Contract Act, 1872.

Held: Conversion arises by wrongful taking and wrongful detention. Where a person charged with the goods does acts inconsistent with ownership of the rightful owner, conversion takes place from that moment. It depends upon the intention of such person followed by the act of passing off or changing or destroying the property. His conduct would fix the responsibility. Demand by the owner and refusal by the person in having the goods is evidence of conversion.

The pledge of the goods is a separate transaction and the Bank is not liable to the

owner of the goods bona fide pledged.

(1909) ILR 33 BOM 636

Ismailji Yusufali v/s. Raghunath Lachiram Marwadi

Sir Chandavarkar CJ & Sir Heaton, J

The father of the Plaintiff obtained from the Government four salt pans on a lease for a period of five years on the condition that the lessee was not competent to sub-let the pans without the written permission of the Collector of Salt Revenue. However, the father sub-let them to the defendant without any such permission. On the expiry of the lease and the death of the father, the Plaintiff obtained a fresh lease deed on the same covenant and he also sub-let the two pans to the Plaintiff on the original terms. At the expiry of the sub-lease, the Plaintiff sued to recover the deposit money from the Defendant.

Held: The object was to enable the Plaintiff to manufacture salt without a license, and that the real object of the agreement was forbidden by law and by the terms of the license within the meaning of S. 25 of the Indian Contract Act, 1872. Thus the claim for the money to be recovered was rejected by the Court.

## 1910

(1910) 12 BLR 675

Emperor v/s. Shankar Dev

Sir Chandavarkar, Kt., & Sir Heaton, JJ

The accused made a declaration under S. 4 of Act XXV of 1867 that he was the owner of a press called The Atmaram Press. He took no part in the management of the press which was carried on by another person. A book styled Ek Shloki Gita was printed at the press. The book contained matters of metaphysics, philosophy and religion to a large extent. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was charged with the offence under S. 124 A of the IPC, 1860.

Held: The evidence is evenly balanced and equivocal. The accused should be given benefit of the doubt. It is impossible to convict a man under S.124A of the IPC unless his intention to read the seditious subject book is clear.

(1910) 12 BLR 984

Sakrappa Hebsur v/s. Shivappa Basappa  
Sir Chandavarkar, Kt., & Sir Heaton, JJ

The arbitrator granted a smaller share under the award to a minor.

Held: The award was valid and binding upon the minor. The validity of the award must be determined according to the circumstances as they existed at its date; and not by what had transpired some years after it had been passed by the arbitrators.

(1910) ILR 34 BOM 278

Parami Ramayya v/s. Mahadevi Shankrappa  
Sir Chandavarkar & Knight, JJ

A Hindu widow was entitled to maintenance at the rate of Rs.24 p.a. under her husband's will. After the husband's death the widow led for some time an unchaste life and gave birth to a child, but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will.

Held: According to the Shastras, the husband would have had to maintain his wife, unless she had misconducted herself with a man of a lower caste. There is no allegation against the widow of such misconduct. Hence she was entitled to the maintenance.

(1910) ILR 34 BOM 111

Mardansaheb Ratimani v/s. Rajaksaheb Kashimsaheb  
Sir Chandavarkar & Sir Heaton, JJ

One Mardansaheb sued to recover possession of property of his uncle, Maulasaheb. One Miyasaheb claimed as son of Maulasaheb and Jainabi under the will of Maulasaheb in his favour. Jainabi's husband had divorced her before the child was born, but it was not known whether that was before the conception of the child. Jainabi's marriage with Maulasaheb was subsequent to the birth of Miyasaheb.

Held: Even if she was divorced at the time of conception, the illegitimacy of the Miyasaheb and the consequent fornication and adultery is proved.

(1910) ILR 34 BOM 427

Dullabhji Sanghani v/s. The Great Indian Peninsula Railway Company  
Sir Beaman, J

The Plaintiff was travelling in a local train. A mail train passed by with the door of one of its compartments open and swinging. The door caught the arms of the Plaintiff which were projecting slightly outside the carriage windows and inflicted severe injuries.

Held: The Defendant was not negligent.

The injuries complained of could not have been suffered had the Plaintiffs remained inside the carriages in which they were travelling

## 1911

(1911) 13 BLR 345

Temulji Jamsetji Joshi v/s. The Bombay Electric Supply  
Davar, J

The Plaintiff sued the tramway company claiming damages for injuries sustained to his foot while attempting to board a stationary tram car when the car was suddenly started at a signal given by the conductor tilting the footboard by which he lost his balance.

Held: The footboard was not loose and the Plaintiff's fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board.

(1911) 13 BLR 296

Emper v/s. Vinayak Damodar Savarkar  
Sir Scott, Kt., Sir Chandavarkar, Kt. & Sir Heaton, JJ

The accused was charged with sedition, arrested in England and brought to India under the Fugitive Offenders Act, 1881. He made attempt to escape at Merseilles, France. He was re-arrested in Merseilles and was brought before the Court of the First Class Magistrate at Nashik. He claimed asylum of France and since he was brought to Bombay without extradition, he claimed that he was illegally re-arrested and hence the Court had no jurisdiction to try him. At the commencement of the trial the accused said that he would take no part in the trial but asked for an adjournment and for facilities to make to the British and to the French Governments representations regarding what he contended was his illegal re-arrest in Marseilles after he had escaped from the custody of police officers charged with the duty of bringing him from England to Bombay.

Held: Where a man is in a country and is charged before a Magistrate with an offence under the IPC it will not avail him to say that he was brought there illegally from a foreign country. For the offences committed in British India and in London, the jurisdiction of the Court to try him is not affected by any illegality in connection with his re-arrest that may have occurred at Merseilles.

(1911) 13 BLR 19  
Aryodaya Spinning & Weaving Co. Ltd. v/s. Siva Virchand  
Sir Batchelor, J

The Appellant was in the service of the Respondent. Under his contract of service, it was incumbent on him to give 15 days' notice to the company before he left the service, failing which he would not be entitled to wages due. The Appellant left the service without notice. He sued to recover wages. The rule was held to be a forfeiture clause which the Court could not enforce. Hence his claim was decreed.

Held: The employee was bound to give 15 days' notice. The company rule had nothing illegal or contrary to public policy. The employee made the contract with his eyes open and by which he was bound. The Court cannot re-write the contract. He was bound by his contract.

(1911) 13 BLR 13  
In Re Rassul Haji Cassum  
Sir Beaman, J

Upon the acts of insolvency committed by a firm, it was adjudicated insolvent. The property of the firm vested in the Official Assignee. The Official Assignee seized 39 buffaloes of a third party as the property of the insolvent. The party claimed release of buffaloes and damages.

Held: An Official Assignee or a Receiver does not have unlimited power to seize property and to hold it until the party from whom he had taken it could establish his rights in a civil suit. The proper remedy is the procedure under O. 21, Rs. 58, 59 and 60 of the CPC, 1908 to summarily answer that question. The Court can order return of property wrongly taken to the person justly entitled to it under such application. But the Official Assignee may file a regular suit to have the question determined.

(1911) 13 BLR 860  
Ganpat Teli v/s. Tulsiram Dhangar

Sir Chandavarkar, Kt. & Sir Hayward, JJ

A Hindu died surviving him his widow and daughter. The widow sold the property and contracted a re-marriage. The brothers of the deceased sued to recover possession of the property. The widow contended that the sale was for necessary purposes being satisfying old debts, performance of pilgrimage to Pandharpur to perform *Shraddha* of her husband and the betrothal expenses of her daughter. The expense of the pilgrimage and betrothal were challenged.

Held: A Hindu widow owes duties to the soul of her husband. Hence she can make a disposition for religious purpose which is conducive to the spiritual welfare of her husband, but not others. Expenses for the performance of her husband's *Shraddha*, fulfills the conditions of legal necessity if the pilgrimage was for the spiritual benefit of her husband and are reasonable, honest and proportionate to the status of the family. The expense of the betrothal of her daughter was well within her power.

## 1912

(1912) ILR 36 BOM 94

Ghelabhai Gavrishankar v/s. Hargowan Ramji  
Sir Chandavarkar Kt. & Sir Hayward, JJ

The Plaintiff sued to establish his right as the hereditary priest of the Kachhia Kunbis of the Kasba section of Surat, to officiate as the family priest of the Defendant as his family members were the hereditary priests since the time of the Defendant's ancestors.

Held: Under Hindu law, the office of hereditary family priest (*yajman vritti*) is a nibandha and is ranked among the hereditary rights of immovable property. Thus, priesthood vested in particular families is regarded as vritti or immovable property.

(1912) ILR 36 BOM 279

Rao Saheb Manaji Kalewar v/s. Khandoo Baloo  
Davar, J.

A widow, Maloobai filed a suit in *forma pauperis* challenging a gift deed. Pending the hearing, Maloobai died leaving a will and appointing the Plaintiff as her Executor who continued the suit in *Forma Pauperis*.

Held: Though the original Plaintiff was allowed to sue as pauper, the Plaintiff was not shown to be such and hence cannot sue as pauper.

(1912) ILR 36 BOM 446  
Himatlal Motilal v/s. Vasudev Mhasker  
Sir Basil Scott Kt. CJ & Russell, J.

The village of Godadra in the district of Panch Mahals was the inam of Defendants No.1 and 2, who agreed to sell it to the Plaintiff at a certain price and delivered a Banakhat (agreement to sell) to the Plaintiff in exchange for earnest-money paid by him. Subsequently, Defendants No.1 and 2 sold the village under a registered deed to Defendants No.3 and 4 at a considerably higher price and by way of a hurried transaction.

Held: The Plaintiff under his contract had a prior equity. The title of the party claiming under the prior contract prevails against the subsequent purchaser, although the latter's purchase may have been registered. Thus, the subsequent purchasers were bound to show three things: (i) that they were purchasers for value; (ii) bona fide; and (iii) without notice of the prior agreement.

(1912) ILR 36 BOM 524  
Emperor v/s. Chhotalal Babar  
Sir Chandavarkar Kt., & Sir Batchelor, JJ.

The accused was a subject of the State of Cambay. He lived there and traded with his business partner, Ambalal Jethalal. Conspiring with his business partner in Cambay, the accused sent him to a professional forger at Umreth in British India, to instigate the forger to forge a valuable security. Pursuant to the instigation by Ambalal Jethalal, the forgery was committed at Umreth. The accused was charged in a Court in British India, with abetment of forgery under the IPC. The Court referred to the Bombay High Court the question of whether the accused, not being a British subject was subject to the jurisdiction of his Court.

Held: The offence was continued and completed in British territory, although it had been initiated elsewhere. Under the IPC although a conspiracy takes place beyond the jurisdiction of the Court, if the crime is committed within its jurisdiction, the co-conspirator although resident abroad, is subject to the jurisdiction of the Court.

(1912) 14 BLR 115

Mahadev Sakharam Parkar v/s. Janu Namji Hatley

Sir Basil Scott, Kt., CJ, Russell, Sir Chandavarkar, Sir Batchelor & Sir Heaton, JJ

The Plaintiff purchased 1/10<sup>th</sup> share in the land at a Court sale common with his co-sharers. The Plaintiff filed a suit to recover by partition his share in the village. The Defendant resisted his claim on the ground that it was barred by limitation. The suit not brought within 12 years from the date of sale, but within 12 years from the date of his taking symbolical possession.

Held: Symbolical possession is not real possession nor is it equivalent to real possession under the CPC, 1908 except where the Code expressly or by implication provides that it shall have that effect.

(1912) 14 BLR 332

Malkajappa Bulla v/s. The Secretary of State

Russell & Sir Chandavarkar, JJ

The Plaintiff was the owner and in peaceable occupation of the suit land. He sued for an injunction to restrain the Defendant from interfering with the Plaintiff's enjoyment of the ground or extending his building thereover.

The Deputy Collector passed an order in respect of the land under S. 37 and 135 of the Land Revenue Code, 1879 though the Government had no title whatever to the plot.

Held: Where the collector deals with the land belonging to an individual in peaceable occupation, he is not dealing with it in his official capacity, but is acting *ultra vires*.

## 1913

(1913) ILR 38 BOM 116

The Dholka Town Society v/s. Patel Desaibhai Kalidas

Sir Basil Scott, Kt. CJ & Sir Batchelor, J

The drainage water passing along a certain drainage was cut due to some default so that instead of flowing along the assigned channel it was flowing across the road into the Plaintiffs' field and caused considerable damage.

Held: This damage was found to be due to the neglect of the drainage channel which the municipality was bound to repair.

(1913) ILR 38 BOM 156  
Emperor v/s. Gangappa Kardeppa  
Sir Heaton & Sir Lallubhai Shah, JJ on dissent  
Sir Macleod, J

Eleven accused persons were tried for the offence for dacoity. There was no direct evidence against any of them. However, seven of these confessed their crimes implicating themselves as well as the rest. A question arose whether the remaining four accused who had not confessed could be convicted solely on the confessions of their co-accused, as there was no independent evidence implicating the four of them.

Heaton J. was of the opinion that S.30 of the Evidence Act, 1872 made the confessions of the accused evidence against those persons implicated as well as the other accused. However Shah J. held that the S. 30 permitted the confessions of the co-accused to be taken into consideration only if there was other evidence in the case.

Due to difference of opinion, the case was referred to Macleod .J.

Held: There was nothing in the S. 30 of Indian Evidence Act, 1872 which prevented the Court from convicting the accused after taking the confessions of co-accused into consideration. However a conviction founded solely on the confession of a co-accused could not be sustained as there is no material before the Court to enable it to decide whether what is been said by the accused is true or false.Hence such accused had to be acquitted.

(1913) ILR 38 BOM 224  
Mallik Saheb v/s. Malakarjunappa Shivamurteya  
Sir Beaman & Sir Macleod, JJ

A Hindu widow who had inherited property from her husband alienated a portion of it. Her only daughter assented to the alienation a few days after by a writing which was not registered. After the death of the widow and her daughter, an heir of the daughter sued to set aside the alienation on the ground that it was not made for legal necessity.

Held: The property which the widow inherited from her husband was alienated by her own decision or assent. Hence, there is no question of legal necessity that can arise. The assent of tthe daughter was not compulsorily registrable under S. 17(d) of the Registration Act, 1908 because on that day the executor had no more than a spes successionis as an heir would.

(1913) ILR 38 BOM 377  
Tuljaram Gujar v/s. Sitaram Kusar  
Sir Heaton & Sir Lallubhai Shah, JJ

In 1910 a mortgage suit was filed. The Plaintiff having died, his son's name was substituted in the place of his name on 30<sup>th</sup> April, 1912. On the same day the Court issued summons for the first time to the Defendants for the disposal of the mortgage. On the day of hearing, the Court raised issues for which neither parties had witnesses ready. The Court found that the claim was not proved on the absence of evidence.

Held: There was a miscarriage of justice in the way the case was disposed of. The scheme of the CPC requires that the parties should have been given an opportunity to produce evidence relevant to the issues after ascertaining the matters which were at dispute. The lower Court should have also made summons for settlement and not for a final disposal.

(1913) 15 BLR 61  
Emperor v/s. Ranchhod Bawla  
Sir Batchelor & Rao, JJ

A complaint was filed for an offense of criminal breach of trust under S. 406 of the IPC. The offence is non-compoundable. The complainant later applied to the Magistrate to be allowed to withdraw the case.

Held: In respect of a non-compoundable offence, it is not competent for a Magistrate to order an acquittal on a private complainant offering to withdraw from the prosecution in a warrant case.

(1913) 15 BLR 130  
Nadirshaw Sukhia v/s. Pirojshaw Ratnagar  
Sir Basil Scott, Kt., CJ, & Sir Chandararkar, J

Defendant No. 1 wrote a letter to Defendant No. 2 and 3, editors and proprietors of *Jam-e-Jamshed*, who published the letter. The letter criticized the conduct of the Plaintiff who had offered himself as a candidate for the election of trustees of charitable funds of the Parsi community. The Plaintiff brought an action for libel against the Defendants.

Held: The statements made by the Defendants were not privileged as they were published in a newspaper read by the public at large and not confined to the Parsi community alone.

It is open to any member of the public to comment on true facts as regards matters of public interest. However, if any allegation of fact imputing an act of misconduct is made in the course of the comment, the defence of fair comment cannot be taken. The libel can then only be justified on the ground that the allegation is true.

(1913) 15 BLR 209

Balmukund Kesurdas v/s. Bhagvandas Kesurdas

Sir Batchelor & Rao, JJ

A suit was filed to recover possession of property held jointly with the brother of the Plaintiff against another brother. The Defendant claimed that he also held the suit property jointly with his brothers. The Plaintiff applied to the Court to add other properties also if the Court held that they were joint and for Partition of all of them as an alternative relief to the plaint. The other brother bequeathed his properties to the Defendant. The Defendant claimed also under the will. The Defendant expired. His heirs claimed that the suit property was separate and self acquired property of the other brother and descended under his will to them.

Held: If a party to a suit defends the suit on one defence and also on an alternative defence, his legal representatives may, on his death, rely upon either of the defences.

(1913) 15 BLR 252

Jhangir Muncherji Lali v/s. B.B. & C.I. Railway Company

Davar, J

The Plaintiff was travelling by train and had occupied the corner seat. His arm was resting on the window sill and projecting about 4 inches outside. While his arm was so projected outside, it came in contact with an open door of a stationary train at a station, as a result of which he suffered a fracture. He sued the railway company for negligence.

Held: As the Plaintiff himself was guilty of negligence which contributed to the injury, he was not entitled to recover damages. The negligence on the part of the Plaintiff constituted a material part of the effective cause of the injury.

(1913) 15 BLR 307

Emperor v/s. Vishnu Puranik

Sir Batchelor & Rao, JJ

The accused was a proprietor of a large pharmacy of Indian medicines on behalf of which he prepared, printed and published a book in Marathi. It was alleged that the book contained obscene passages.

The Court laid down the test of obscenity.

Held: The test to be applied is whether the language complained of is such as is calculated to defeat or corrupt those whose minds are open to immoral influences.

If the passages are held to be obscene, then the author's liability will not be saved merely by reference to other passages in the book which may contain moral precepts of an unexceptionable character.

(1913) 15 BLR 352

Sardar Nowroji Pudumji v/s. Putlibai Davar, J

A testator had bequeathed a portion of his property to his son and provided that if the son died "without marrying or if married without any lineal heir" his share would revert equally to his surviving sisters or their heirs.

Held: The restriction imposed by the testator was nugatory and the son took the whole of his inheritance absolutely.

(1913) 15 BLR 564

Emperor v/s. Chandkha Salabatkha Sir Batchelor & Sir Heaton, JJ

The accused persons dug a hole during the night in the wall of the complainant's dwelling house with the intent to complete the hole and enter the house and commit theft. However, the hole could not be completed as they were interrupted.

Held: The act amounts to an act of attempt to commit house-breaking by night and not a mere preparation to do so as a distinct overt act was begun and carried out to a certain extent, though not completed due to obstruction by other people.

(1913) 15 BLR 765

Hanmant Rukhmaji v/s. Annaji Hanmant  
Sir Basil Scott, Kt., CJ, Sir Beaman & Sir Lallubhai Shah, JJ

A lower Appellate Court had dismissed an appeal observing that "the appeal is summarily dismissed" under Order XLI r. 11 of the CPC.

Held: In dismissing an appeal under Order XLI, rule 11 of the CPC, the Appellate Court should write a judgment as required by Civil Circular 51 of 1890.

(1913) 15 BLR 833  
The Dakore Town Municipality v/s. Anupram Travadi  
Sir Basil Scott, Kt., CJ & Sir Heaton, J

There was an *otla* abutting on a public street in front of the Respondent's house. The *otla* had an embedded stone which was in that position for more than 12 years.

Contending that the stone was encroaching on a public road, the Municipality of Dakore removed the stone from the *otla*.

Held: If a statutory condition regulating the exercise of the Municipality's power is shown, it does not matter that the encroachment is in existence for 12 years or more. However, the Municipality was not justified in its action as it failed to show how the stone obstructed safe and convenient passage along the street.

## 1914

AIR 1914 BOM 8  
Kalyanchand Lalchand v/s. Sitabai Dhanasa.  
Sir Basil Scott, CJ, Sir Batchelor & Davar, JJ

In a Probate proceeding objection was raised about the validity of a will claiming that deceased executed it within 48 hours before his death when he could not have been in a sound state of mind. The Probate Court accepted the contention after taking evidence to that effect and refused to grant the probate. Another proceeding was filed to consider the same question.

Held: The Judgment in a probate proceeding does not confer upon or take away from any person any legal right or character. Yet, such proceeding, if contested, constitutes a suit within the meaning of S.11 of CPC. Therefore, its finding will operate as res judicata between the parties.

AIR 1914 BOM 128

Emperor v/s. Ganpat Sitaram

Sir Heaton & Sir Lallubhai Shah, JJ

The accused is a tooth powder manufacturer. He used general get-up of the labels resembling and identifying with labels of two other companies. He was, therefore, convicted under S. 468 of the IPC. The accused raised a contention about the difference between counterfeit trademark and false trademark. He contended that this case was not of counterfeit trademark and hence not a forgery.

Held: S. 468 IPC provides for counterfeit trademarks. When both boxes of tooth powder were compared they identically resembled each other. Therefore, the accused used a false trademark. False trademark and counterfeit trademark is the same thing under S. 468. The conviction was affirmed.

AIR 1914 BOM 28

Purushottam v/s. Rakhamabai.

Sir Heaton & Sir Lallubhai Shah, JJ

A Hindu widow, while adopting a boy, stipulated with the natural father of the boy to have all rights of management of her husband's estate in herself till her death. The son objected to the agreement on attaining the majority.

Held: Such agreement is not binding upon the adopted son as it was not fair and reasonable.

## 1915

AIR 1915 BOM 48

Jesang Motilal v/s. Emperor

Sir Beaman & Sir Macleod, JJ

A telegraph was used for wagering to see whether a person won or lost by the announcement of a telegram.

Held: Upon correct and logical analysis, the paper of the telegram was a wagering instrument as it could be used by brokers for the purpose of recording a transaction between themselves and their client. Therefore, a telegram announcing the happening of an event to show whether one has won or lost falls within the mischief of the Bombay Prevention of Gambling Act, 1887.

AIR 1915 BOM 107

Keshav Hurgovan v/s. Bal Gandi.

Sir Basil Scott, CJ & Sir Batchelor, J

Two suits were filed; one for restitution of conjugal rights by a Pakhali caste Hindu husband and the other for dissolution of marriage by the wife. A decree of divorce on the basis of custom of the caste to which party belonged, on payment of money to opposite side, was passed.

Held: A custom by which the marriage tie can be dissolved by either party against the wish of another on the payment of sum of money fixed by the caste is opposed to public policy as it is based on caprice and repugnant to Hindu law also under S. 23 of the Indian Contract Act, 1872.

AIR 1915 BOM 35

Vitthal Ramkrishna v/s. Prahlad Ramkrishna.

Sir Heaton & Sir Lallubhai Shah, JJ

A Hindu male died leaving behind a son and a widow, his step mother. The son died leaving behind 3 sons, one from his first wife and 2 sons from his second wife. In the partition suit amongst those 3 sons the grandmother was not made a party as it was contended that she was not entitled to share in the property upon partition amongst her grandsons.

Held: Under Mitakshara Hindu Law a step grandmother is entitled to a share in family estate on partition amongst her grandsons and hence she is a necessary party to the Partition suit.

AIR 1915 BOM 284

Bai Bhicaiji v/s. Perojshaw Jivanji  
Sir Beaman, J.

The Plaintiff husband and wife lived in a house. The adjoining land, which was used for the tethering of bullocks, was obtained by the Defendant. He built a stable on it for accommodation of 75 horses. The Plaintiff sued for damages due to nuisance.

Held: Where a nuisance is of a kind to injure the health or seriously imperil the life of those who complain of it, the relief of injunction can be granted. Where nuisance merely diminishes the comfort of human life, the relief of damages is required to be granted. The Defendant has no excuse to say that he has done all the things in his power and taken all reasonable care and precaution to prevent the nuisance. In deciding the amount of damage and estimating a nuisance due regard has to be given to the station in life of the Plaintiff, locality and nature of nuisance itself.

## 1916

AIR 1916 BOM 140

Abdul Latif v/s. Pauling & Co. Ltd.  
Kemp, J.

The Defendants were contractors working for the railway and constructed two lines without any gate or gate-man at crossing. Trucks and engines working on the lines were under the Defendants' control. The Defendants agreed to take precautions for safety of public by taking proper care. The Plaintiff's car approached towards level crossing at midnight. The driver saw some trucks moving along the line of crossing. To avoid collusion, he took a left turn because of which the car was damaged.

Held: The Defendants are not liable to the Plaintiff as there was no privity of contract between the Plaintiff and the Defendants. On the other hand, the Defendants were liable for the negligent act of their servants in the course of user of the railway line crossing on the road.

AIR 1916 BOM 104

Tavakalbhai Sultanbhai v/s. Imtiyazbegum Mirabanesaheb  
Sir Basil Scott, CJ & Sir Heaton, J

A Mohammedan lady made a gift of her property to three persons directing that the management will remain in the hands of one of them and he should make all the payments to the others out of income of said property.

Held: The donee can take all the properties entrusted to him. But it will be binding on him to make payments as directed by the doner. He should accept the gift along with all liabilities.

AIR 1916 BOM 104

Tavakalbhai Sultanbhai v/s. Imtiyazbegam Mirabanesaheb

Sir Basil Scott, CJ & Sir Heaton, J

A Mohammedan woman purported to make a gift in favour of three persons of certain Inam lands by a document dated 5th August 1889 subject to the condition that the vahivat or management of the land should be made by one of the three and that after paying Government dues, Rs.40/- should be paid out of the residue annually to her. One of the donees died and his interest in the property passed to his heir who contended that he was absolutely entitled to the property and no more liable to pay Rs.40/- annually to her. Hence she sued to enforce her rights under the Gift Deed. The question before the Court was whether the person claiming under the donee is bound by the condition in the Gift Deed.

Held: When a Mohammedan donee accepts gift of a property subject to condition that he would pay certain sums out of income thereof to certain persons, an obligation in the nature of the Trust attaches to the property in the hands of the donees and in the hands of those claiming under them with notice and such obligation will be enforced by the Court.

AIR 1916 BOM 166

Raoji Fakira v/s. Dagdu Hanmata

Sir Batchelor Ag. CJ & Sir Lallubhai Shah, J

A civil suit was filed for declaration that the Plaintiffs are vatandars of a Mharki Vatan. It was contended by the Defendants that the civil Court has no jurisdiction to entertain the suit as the power of deciding who are the vatandars of this inferior village vatans is vested in the Collector and hence Civil Court's jurisdiction is impliedly barred.

Held: The jurisdiction of the Civil Court, if it is to be withdrawn, must be withdrawn by clear and unambiguous words and not by doubtful inferences. S. 64(a) of the Hereditary Offices Act, 1874 merely empowers the Collector to register the names of the individual vatandars as holders of the Office and does not confer any power on him to determine who are vatandars. Hence there is no reason to think that this power is withdrawn from the jurisdiction of the civil Court. Therefore it was held that the civil Court had jurisdiction to entertain the suit.

AIR 1916 BOM 167

Carolina Dos v/s. Dominic Joseph

Sir Beaman, J

The Plaintiff sued the Defendants as heirs and representatives of the deceased person on the ground that at the date of the marriage he was a domiciled subject of Goa in Portuguese India and hence their marriage with all its incidents must be governed and determined by the Law of Portugal. The Defendants contended that the deceased was, at the time of his two marriages, one with Defendant No.3 and the other with the Plaintiff, the domiciled subject with British India and hence none of the rights of reliefs claimed by the Plaintiff under the Law of Portugal can be granted. His domicile at the time of his marriage had to be seen.

Held: The domicile of origin is that which a person acquires at his birth from his parents. It is not necessarily in itself local, i.e., to say merely the place of birth. However, the said domicile follows him until he chooses to divest himself of it by substituting a domicile of choice, which is acquired by combination of facts of residence with the intention that residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by the fact of abandoning the residence and the intention of abandonment. The moment the domicile of choice is abandoned, the domicile of origin revives. In this case it was held that the Plaintiff's husband had, despite his intention to return to Goa, acquired a domicile of choice in Bombay. There was no evidence showing that he had abandoned that domicile and, therefore, it was held that devolution of his estate would be governed by the Indian Succession Act, 1865.

AIR 1916 BOM 228

Dattatraya Ramchandra v/s. Aminuddin Fakruddin

Sir Basil Scott, CJ & Sir Heaton, J

A Preliminary decree was passed in a Mortgage Suit on 30.7.1913. Immediately thereafter on 25.8.1913 a final decree was passed, by which the Appellant was directed to pay Rs.8000/-. On 6th November 1913 he preferred an appeal against the

preliminary decree only although his objection was as regards Rs.2000/- of the amount which he was required to pay by the final decree. The question was whether he could challenge preliminary decree only after passing of final decree when it was possible for him to challenge both the decrees together.

Held: S. 97 of the CPC, 1908 does not in terms prevent a party from filing a combined appeal against a preliminary and final decree, if the dates permit him to do so. Where, therefore, the Appellant instead of appealing against the final decree, appeals against the preliminary decree, the course is unreasonable, and the Appellant will not be permitted to avoid the provisions of the Court Fees Act, 1870 by getting what may or may not be an effective reversal of the final decree by a circuitous method when the direct method is open to him.

## 1917

AIR 1917 BOM 162

Bapuji Ramchandra v/s. Guja Mahadu

Sir Heaton & Sir Lallubhai Shah, JJ

A redemption suit was decreed directing delivery of possession to mortgagor and to pay off the mortgage debt by installments to the mortgagee. The parties did not execute the decree. The possession remained with mortgagee. The mortgagor again mortgaged the property to the present Plaintiff who brought a suit against the mortgagor and prior mortgagee to enforce the mortgage.

Held: The first suit having been heard and decided on merits, the second suit for redemption was not maintainable as it was barred by S. 11 of CPC. Even if the second suit was to be treated as based on previous decree, it was barred under S. 47 of the CPC.

AIR 1917 BOM 130

Emperor v/s. Mallangowda Parwatgowda

Sir Batchelor & Sir Lallubhai Shah, JJ

An undertrial prisoner who was in custody, was sent for medical examination to a dispensary for the malady, which involved an examination of the patient by Doctor in private. When the accused was undergoing the examination, he made a confession to Doctor while two policemen who took him to dispensary were standing outside on the

veranda.

Held: The confession of accused is inadmissible under S. 26 Indian Evidence Act, 1872, as accused was in the custody of police even while he was undergoing medical examination.

AIR 1917 BOM 61

Abdul Razzak v/s. Mohammed Hussain

Kemp, J

This was a suit for damages for breach of the contract by the Defendant to give his daughter in marriage to the Plaintiff and for the return of certain ornaments and clothes presented by the Plaintiff to the Defendant's daughter in anticipation of the proposed marriage and for expenses incurred in connection with the marriage. The issue raised for consideration was whether a suit for breach of promise of marriage will lie under Mohammedan Law.

Held: In a suit for damages for breach of contract of marriage under S.73 of Contract Act, 1872 the promisee is entitled to receive compensation for any loss or damage caused to him by the breach. He is also entitled to the return of money, ornaments, etc., given by him as consideration for the promise under S. 65 of the Act. However, there is no authority in the Mohammedan Law, unlike that of English Law, to justify the allowance of damages in case of breach of the promise of marriage.

AIR 1917 BOM 220

Laxmya Shiddappa v/s. Emperor.

Sir Batchelor and Sir Lallubhai Shah, JJ.

The accused was convicted by the Trial Court on the charge of murder on his plea of guilt and sentenced to death without recording any evidence. The matter was before the High Court for confirmation of death sentence.

Held: Merely because S.271 of the Cr.PC makes provision for convicting the accused on his plea of guilt, it is entirely in the discretion of the Judge to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. The S. does not direct that in every case in which accused pleads guilty he is to be convicted. Moreover in case of the sentence of death it cannot be in accordance with the usual practice to accept the plea of guilt where the natural sequence would be a sentence of death. Hence the conviction was set aside and direction was given that the accused be tried in

accordance with law, notwithstanding his plea of guilt.

(This practice still prevails)

AIR 1917 BOM 221

Dadasaheb Dasrathrao v/s. Bai Nahani

Sir Beaman & Sir Heaton, JJ

The Plaintiff sued for possession of the house which the Plaintiff had bought under a registered sale deed from Defendant no.1 and 2. Defendant No.1 was the mother of Defendant No.2. Defendant No.2 pleaded minority. The appellate Court found that Defendant No.2 not being clearly a minor in appearance and so intentionally caused the Plaintiff to believe that he was major and on the faith of that belief to part with her money for the purchase of the house. The question for consideration was whether a minor can be a "person" within the meaning of S.115 of Evidence Act, 1872 to apply the rule of estoppel against him.

Held: The meaning of a 'person' in S.115 of the Evidence Act, 1872 cannot be contracted so as to exclude from its connotation all persons declared under the Contract Act, 1872 as incompetent to contract. Therefore, a minor definitely falls within the definition of the 'person' under S. 115 of Evidence Act, 1872 to attract the rule of estoppel against him. In this case it was held that as Defendant No.2 represented to the Plaintiff that he was a major and intentionally caused her to believe that he was major and on the faith of that belief caused her to part with money, he was estopped from subsequently pleading minority and proving it.

## 1918

(1918) ILR 43 BOM 66

Karbasappa v/s. Kallava

Sir Beaman & Sir Heaton, JJ

A Hindu widow who lived with her father applied for maintenance from her stepson @ Rs.400/- p.a. and also claimed arrears for maintenance for 6 years before the suit at the same rate.

The Trial Court awarded maintenance @ Rs.75/- p.a. for 6 years prior to the suit and @ Rs.120/- p.a. as future maintenance.

On appeal, it was observed that there was no authority and no definite principle on which cases of the kind could be decided. There was a very large discretion in Courts to grant or withhold arrears with reference to urgent needs and necessities for a widow within the period of limitation.

A demand is prima facie evidence of need, but it is not in the demand that the right of maintenance is routed. A demand is not necessary.

Held: Re: arrears @ page 68; if she lived for 6 years in her father's house, "while it would not be safe to conclude that she was not in want to continue to depend on her father's bounty, it may be ground for reasonable inference that she was not driven by absolute necessity to enforce her rights of maintenance against her husband's family".

Held: Re: quantum @ page 68 – "We generally agree with the extremely harsh and rigorous attitude of the Hindu mind towards women so unfortunately situated as Hindu widows often are".

Held: She was entitled to arrears of maintenance 3 years prior to the suit and no interference was made with regard to the quantum though observed to be "unduly liberal".

(1918) ILR 43 BOM 103

Girjashankar Vaidya v/s. The Bombay Baroda Central India Railway  
Sir Basil Scott, Kt. CJ & Sir Batchelor, J

The Plaintiff and his wife were 3<sup>rd</sup> Class passengers in a train. The compartment was overcrowded. The Plaintiff pulled the chain to stop the train twice, but without success, to remedy the situation by the Railway.

After the 2<sup>nd</sup> attempt, the driver and the guard cuffed, slapped, arrested and handed over the Plaintiff to the Station Master at the next station.

The Plaintiff's statement was recorded. He was released and allowed to travel.

He sued the Railway for damages for Rs.3000/- for willful, aggravated assault, for public humiliation and agony.

Held: That the Railway was not liable for the acts of the driver and the guard as they were not within the scope of their authority or in course of their employment.

They committed a wrong exceeding the authority vested in them.  
If such transgression was in the interest of the master, he would be liable.

(1918) ILR 43 BOM 164

Vishnu Joshi v/s. Vasudeo Oka

Sir Lallubhai Shah & Kemp, JJ

The Plaintiff and the Defendant owned neighbouring lands separated by a fence. There was a row of coconut trees on the Defendant's lands. The leaves of the trees overhung on the Plaintiff's land. They withered and fell there. The coconuts also fell on the Plaintiff's land.

The overhanging of the leaves was admitted. No damage was proved.

Held: The Decree of permanent Injunction against the Defendant that the overhanging portions of the trees be cut down and that the Defendant see that the leaves and fruits did not drop on the Plaintiff's land was confirmed.

{See the analogy applied in case of branches and roots of a tree standing on the suit land for many years in (1920) 22 BLR 790 and (1894) ILR 19 BOM 420}.

(1918) ILR 43 BOM 531

Emperor v/s. Haji Ghulam Mohammed Azam

Sir Heaton & Sir Hayward, JJ

The tenant of the Defendant was holding over after his tenancy had expired. The landlord prevented him from entering the demised premises. The landlord was convicted of the offence of wrongful restraint.

Held: The accused was rightly convicted as a tenant in India holding over had a right to retain possession of the premises he occupied against the landlord until he was dispossessed in due course of law.

(1918) ILR 43 BOM 739

Emperor v/s. Sabit Khan

Sir Basil Scott, Kt. CJ, Sir Heaton & Sir Lallubhai Shah, JJ

Two brothers lived in the same village. One had no children but considerable properties. The other had a wife and child but no income. He served as a coolie.

The brother refused him all aid. The brother went out of the village and never returned. His remains were found in a pit shown by the two co-accused.

The main accused, the brother, appropriated certain crops from the land and rents from the tenants. He got certain bins of rice. The co-accused shared the proceeds. The Forest Range Officer was suspicious. He reported the absence of the brother. All 3 were arrested. The co-accused made detailed confessions of murder. They

narrated how the victim was given an assault blow first by his brother in the forest and how they all finished him.

Held: Based upon the confessions along with the corroborating evidence against the accused brother, he was convicted. The conviction was upheld by majority – Shah J. dissenting - upon accepting the confessions with the corroborating evidence.

## 1919

AIR 1919 BOM 84

Pandu Vithoji v/s. Goma Ramji

Sir Heaton & Sir Hayward, JJ

There was joint family of a Hindu and his son. The father agreed to sell to the Plaintiffs a portion of the Joint Family property possessed by him and his son as coparceners. The Plaintiffs claimed that they were put in possession of the property. It was challenged. Hence the Plaintiffs sued for possession.

Held: Under the Hindu Law as recognized in the Bombay Presidency a coparcener can sell his own interest in Joint Family Property provided there is valuable consideration for the same. In such a case, however, joint possession cannot be given to the Purchaser. He can only obtain a declaration that he has acquired the interest of the Vendor in the particular property and for partition.

AIR 1919 BOM 85

Mallappa Parappa v/s. Gangava Gangappa

Sir Basil Scott, CJ & Sir Lallubhai Shah, J

The Plaintiff sued to recover possession of certain land as the next reversioner of the deceased. The defence was that the widow of the deceased had adopted a son who had alienated the property to other Defendants. The adoption was proved, but was invalid according to Hindu Law on the ground that she had adopted her husband's father's cousin which is against the sentiments of Hindus.

Held: Under Hindu Law the adoption by a widow of her husband's father's cousin is not invalid. Such an adoption is opposed to Hindu sentiment, but is not prohibited by Hindu Law.

AIR 1919 BOM 34

Dinu Yesu v/s. Shripad Baji

Sir Heaton & Sir Lallubhai Shah, JJ

The Plaintiffs had filed a fresh suit for redemption of a mortgage though earlier also a decree was passed for redemption which was not executed. The Defendant, hence, challenged the maintainability of the suit.

Held: Where a redemption decree is passed in earlier suit, a fresh suit brought after the period for executing the said decree had expired was not maintainable.

AIR 1919 BOM 162

Hira Gobar v/s. Emperor

Sir Heaton & Sir Lallubhai Shah, JJ

The accused were charged for the offence of housebreaking and theft. They were convicted for the offence relying on the evidence that the accused had pointed out various places of the offences to the Police. However, nothing was discovered in consequence of the information given by the accused.

Held: Statements made to Police Officers or to a complainant in the presence of Police Officers are inadmissible in evidence under S. 25 and 26 of the Indian Evidence Act, 1872. Only the relevant portion of the said statement can be admissible under S.27 of the Act, if some fact was discovered as a result of such statement. In this case it was held as no such fact was discovered, the statement would not be admissible. The conviction and sentence of the accused were, therefore, set aside.

## 1920

(1920) ILR 44 BOM 400

Emperor v/s. Mohidinn

Sir Lallubhai Shah & Sir Hayward, JJ

A Bench of three Special Magistrates heard the prosecution evidence on a charge of grievous hurt. However, even though one of the Magistrates was absent during the evidence of the defense, the remaining two Magistrates went ahead with the trial.

These two Magistrates heard the defense evidence and convicted the accused.

Held: The trial must be completed before the same Magistrates who commenced it or must be held afresh before a different set of Magistrates. It cannot be said that the accused was not prejudiced or there was substantial compliance with Rules of procedure. The trial was void in view of R. 4 of the Rules for Guidance of Special Magistrates Bench framed under S. 16 of the Cr.PC, 1882. The conviction was set aside.

(1920) ILR 44 BOM 496  
Maneklal Motilal v/s Mohanlal Narotumdas  
Sir Macleod, CJ & Sir Heaton, JJ

The Plaintiff, a resident of Ahmedabad, sued for an injunction to restrain the Defendant from invading the privacy of his bedroom, by opening a window of the additional storey constructed by the Defendant to his home.

Held: The Plaintiff had a right to privacy and the invasion of this right was an actionable wrong.

(1920) 22 BLR 790  
Someshvar Jethalal v/s. Chinulal Nageshvar  
Sir Macleod, CJ & Sir Heaton, JJ

The Plaintiff sued for removal of overhanging branches and penetrating roots of the tree that stood partly on his land and partly on the Defendant's land. The tree had stood on the suit land for more than 50 years and Defendant was the accepted owner of the tree who enjoyed its benefits.

Held: A person has no right to cut off branches and roots of neighbour's tree, which has grown partly on his own land for many years.

{See the analogy with regard to overhanging leaves and fruits of tress that fell on the neighbour's land in ( 1918) ILR 43 BOM 164and (1894) ILR 19 BOM 420}

AIR 1920 BOM 29  
Ramchandra Kolaji v/s. Hanmanta Laxman  
Sir Macleod & Sir Heaton, JJ

The Plaintiff sued for redemption to redeem and recover his mortgaged property. He had earlier also filed a suit to redeem the mortgage, but not wishing to proceed with that suit had withdrawn it with permission to bring a fresh suit. The permission was granted provided that such suit was brought within 2 years and that the costs of the Defendants in that suit were first paid. The suit was brought 8 years after the withdrawal.

Held: The dismissal of the second suit was improper as it was not open to the Court in the first suit to impose a limitation of time within which the second suit must be brought, and that so long as the second suit was brought within the ordinary period of limitation applicable thereto, it was not barred.

AIR 1920 BOM 203

Bai Parbati v/s. Mansukh Jetha

Sir Macleod & Sir Heaton, JJ

A wife was convicted of attempting to murder her husband and had undergone sentence of 3 years rigorous imprisonment. The husband thereafter sued for restitution of conjugal rights. Upon passing the decree the Court directed the wife to go and live with her husband and to go to jail if she willfully disobeyed that order.

Held: Ordinarily, a Court passing a decree for restitution of conjugal rights against a wife ought to exercise the discretion conferred upon it by Rule 33 Order 21 of the CPC and direct that the decree shall not be executed by the detention of the wife in prison. The decree for restitution of conjugal rights accompanied by a direction that the decree shall not be executed by imprisonment, is not a nullity. It is a declaration that the marital obligation of living with her husband rests on the wife and it protects the husband against any proceeding for maintenance which the wife may institute under S. 488 of Cr.PC. Such a decree therefore does serve a really useful purpose. It is no ground for refusing to exercise the discretion given under O.21 Rule 33 that the wife has already been in jail under the sentence of criminal Court and it would be no violence to her feelings. It would be ludicrous to send her to jail for refusing to live with her husband whom she had at one time apparently attempted to murder.

AIR 1920 BOM 205

Dharma Lakshman v/s. Sakharam Ramjirao

Sir Lallubhai Shah & Sir Hayward, JJ

The Plaintiff was the illegitimate son of a sudra. He claimed to inherit the separate property of his father's legitimate son, as a brother.

Held: The illegitimate sons are not entitled to collateral succession even amongst sudras. Hence he cannot inherit the separate property of his father's illegitimate son.

AIR 1920 BOM 354

Murgeppa Basappa v/s. Kalva Golappa

Sir Macleod CJ & Sir Heaton, J

A Hindu widow of 12 years who had not reached puberty adopted a son. The adoption was challenged.

Held: If an adoption was a matter of religion and nothing more, a child would be capable of performing the adoption validly as soon as she was big and strong enough to take the adopted child in her lap. But when matter is affecting the property then a person making an adoption must be capable of volition on his or her own. Otherwise the elder members of the family would be able to induce widows of tender age to make adoptions in the interest of those persons. No ordinary child of twelve years of age is capable of volition of the kind required for adoption, unless he or she is a very exceptional person. An adoption which was invalid abinitio could not be validated later.

## 1921

(1921) ILR 45 BOM 557

Dundappa Yedal v/s. Bhimawa Patil

Sir Macleod, CJ & Sir Fawcett, J

The Respondent, a shudra, daughter of one Somawa, had mortgaged the property belonging to her mother. She claimed an account of her mother's mortgaged property. It was not proved if Somawa was married.

Held: Under Hindu Law an illegitimate child is not the father's, but a mother's child. Hence, it has a right of inheritance to the mother's property.

The illegitimate daughter of a shudra succeeds to her mother in absence of any nearer heir.

The Respondent was Somawa's nearest heir and, so as a successor of her property, was entitled to sue the Plaintiff for an account of the mortgage.

(1921) ILR 45 BOM 987  
Jethabhai Patel v/s. Parshotam Kumbhar  
Sir Macleod, CJ & Sir Fawcett, J

Two persons - Lallu and his wife Shiv, made a joint will few days before their death. Shiv died three days before Lallu. The Petitioners applied for the probate of the will.

Held: A will made by two persons as a 'perfectly valid will'.

(1921) ILR 45 BOM 1086  
Emperor v/s. Dinanath Ravte  
Sir Macleod, CJ & Sir Lallubhai Shah, JJ

The accused made a confession of his guilt of murder before a Magistrate. In the confession he admitted that he had been told the truth by Sahib i.e. the Superintendent of Police who assured him that he would be released if he told the truth.

The Sessions Judge passed this evidence to the jury and consequently jury found him guilty.

Held: The confession so made was bad under S. 24 of the Indian Evidence Act, 1872, 1872. It was under inducement. Hence it was even wrong to proceed with the evidence as it cannot be considered. The conviction was set aside and retrial was ordered based on evidences other than the confession.

AIR 1921 BOM 220  
Dattaraya Purshottam v/s. Radhabai Balkrishna  
Sir Macleod, CJ & Sir Fawcett, J

The question of law raised before the Court was whether the Order of return of plaint for presentation in proper Court, amounts to a preliminary decree within S. 2 and S. 97 of CPC, 1906.

Held: Issues of law on which a case may be disposed of most often raise questions of jurisdiction or of limitation. But a finding that the Court has jurisdiction or that the Plaintiff has brought his suit within the time prescribed by the law of limitation, does not determine the rights of the parties with regard to all or any of the matters in controversy in the suit; it merely enables the Court to proceed to inquire into those rights. Hence it is not a preliminary decree.

AIR 1921 BOM 205  
Kulsumbi v/s. Abdur Kadir  
Sir Macleod, CJ & Sir Heaton, J

The parties, who were are Sunni Mohammedans, were married. The husband agreed to pay prompt dower. Five months after the marriage the wife gave birth to a fully developed child. Though the marriage was consummated as the parties lived together for some time after the marriage, the child was begotten by an unknown father. The husband turned the Plaintiff out of his house shortly after the child was born, but had not divorced her. The wife sued to recover her dower.

Held: The concealment of pregnancy is not by itself a ground for cancelling the marriage. The law provides ample remedies to the husband who was deceived. He may divorce his wife. The marriage in this case was not invalid and hence wife was held entitled to prompt dower.

## 1922

AIR 1922 BOM 276  
Senaji Kapurchand v/s. Pannaji Devichand  
Sir Macleod CJ & Sir Lallubhai Shah, J

An application for interim relief was made in a suit earlier stayed under S. 10 of the CPC, 1906.

Held: An order under S. 10 of CPC regarding the stay of suit cannot prevent a Court from making the interlocutory orders like an order of receiver or injunction or even attachment before judgment if the Court is satisfied that the Defendant intends to transfer his property with a view to obstruct or delay the execution of decree which may be passed against him.

AIR 1922 BOM 397  
Chimabai Malgauda Patil v/s. Mallapa Payappa  
Sir Macleod CJ & Coyajee, J

The Plaintiff, a widow, who died of plague on 29<sup>th</sup> November, 1915, sued for recovery of possession of her husband's property against the Defendant who was the adopted son of her husband. She contended that as the Defendant was the son of her husband's

sister the adoption could not have taken place at all.

Held: Under the Hindu Law in Bombay Presidency a widow is bound by the adoption as made by her husband and she cannot raise the dispute regarding the same whether it was valid or invalid.

AIR 1922 BOM 222

Nowroji Hormasji v/s. Srinivas Prabhu  
Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff sued for eviction on the ground that he wished to use the tenanted premises for his own purpose as he had to vacate certain rented premises and hence he wanted to occupy his own premises to store his goods and to sell them. The contention advanced by the tenant was that Plaintiff was asking the Court to eject the Defendants from a greater space than the space he occupied in the rented premises. Therefore, his requirement is not reasonable and bonafide.

Held: It is for the landlord to decide whether he should occupy as much or less space for his business in his own premises. It is not for the Court to decide how much space he requires. To prevent the landlord from occupying a space in his own premises for his own business and directing him to go to another place would be going entirely beyond the jurisdiction of the Court in cases falling under the Bombay Rent (War Restrictions) Act, 1918.

AIR 1922 BOM 381

Dinshaji Edalji v/s. Jehangir Cowasji  
Sir Macleod, CJ & Sir Kanga, J

The applicant herein was convicted by the Presidency Magistrate under S.500 of the IPC, 1860 for making a defamatory statement while in the witness box implicating immoral relations between his wife and the opponent Jehangir. He raised the defence that a witness cannot be prosecuted for defamation in respect of statement made by him in witness box in a judicial proceeding.

Held: The protection given by the 9th exception to S.499 IPC is only to the extent when the defamatory statement has been made in good faith for the protection of the interest of the person making it or of any other person or for public good. This protection is further available to the witness in respect of the statements made by him while giving evidence in a judicial proceeding. However, the protection which may be given upon Principles of public policy to a witness cannot be given to a complainant who, when asked by the Magistrate to state his grievance, deliberately makes a defamatory

statement without the slightest justification.

AIR 1922 BOM 3

Ratan Lal Bhola Ram v/s. Gulam Husen Abdul Ali

Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff sued to restrain the Defendants from blocking certain windows of his house. The Defendants denied that the Plaintiff had acquired a complete prescriptive right to the light and air of the windows. It was contended that the Plaintiff did not have peaceable enjoyment of the light and air as an easement for 20 years as the building was burnt down in 1905 and rebuilt so during the period of rebuilding there were no windows with regard to which the light and air could be enjoyed.

Held: If the owner of the building who in the course of acquiring the right of easement by prescription is so unfortunate as to have his house burnt down begins immediately to rebuilt his house and places the windows exactly in the same position as the old ones, it may be said that he has been enjoying the access and use of light and air continuously. However, if there is any delay in rebuilding, then that might be the evidence of an intention not to resume the user.

## 1923

AIR 1923 BOM 130

Bai Monghibai v/s. Bai Nagubai

Sir Lallubhai Shah Acting, CJ, & Crump, J

The deceased had wife and two sons. Due to the conflict his wife and two sons lived in house at Mandvi and deceased lived in another house at Masjid Bundar. Since 1915 he had relationship with the Plaintiff. The Plaintiff lived at several different places in the City and deceased used to maintain her and also visited her. However, there was no evidence to show that the deceased and the Plaintiff openly lived together. The Plaintiff had her own place of residence and also used to pay its rent. It appeared that before the death of the deceased due to illness, he resided in the house of the Plaintiff. Though the said fact was not a secret, but on perusal of the evidence on record it could not be said that the Plaintiff lived with him openly as a member of his family.

Held: Under the Hindu Law, in order to get the maintenance for herself from the heirs of the Hindu, it is essential for the concubine to show that she was an avarudha stree i.e. she must show that she lived as the permanent concubine of a Hindu openly and as a

member of his family. In the absence of such evidence she was held not entitled for maintenance.

AIR 1923 BOM 148

Haji Oosaman Haji Ismail v/s. Harron Saleh Mohamed

Sir Lallubhai Shah, Acting CJ, & Pratt, J

The conveyance of the vendors of the Plaintiff who were Cutchi Memons showed that they had inherited the property from their father as his only heirs.

Held: The rules of Hindu law of custom do not apply to the Cutchi Memons in respect of the joint family property as applicable to Hindus. The rules of Hindu law of custom are applicable to Cutchi Memons in a limited sense for inheritance and succession. A son of a Cutchi Memon has no vested interest by birth in the ancestral property of his father like the Hindu son.

(See ILR 34 BOM 647)

AIR 1923 BOM 409

Kashinath Bondale v/s. Vishwanath Bondale

Sir Macleod, CJ & Crump, J

The Plaintiff sued for declaration that a certain temple was a public temple and they had the worship right there. Plaintiff applied for injunction restraining the Defendants from obstructing in the enjoyment of the right to worship. The Plaintiff also prayed for removal of certain lock put up by the Defendants on the door of the inner room of the temple. The Court granted the permanent enjoyment and then added as follows:

“As the lock has been clearly removed by the order of the Court, I order that the Defendants shall not lock the door again”.

Held: Mandatory and prohibitory injunctions must be given in general terms. There was no necessity to pass mandatory order regarding the lock. It was unnecessary and may lead to undue interference with the powers of management of the temple. The perpetual injunction is sufficient. The Plaintiff can execute the decree. The Defendants cannot be forbidden to do particular acts otherwise there would be no limit to the number of acts which might have to be mentioned.

AIR 1923 BOM 1  
Emperor v/s. Narayan Gogte  
Lallubhai Shah, Ag. CJ, Crump & Sir Marten, JJ

A third class railway compartment of 25 persons was reserved for European and Anglo-Indian passengers. It was vacant. Accused had purchased a third class ticket. He entered the compartment. He was arrested and convicted and sentenced to pay fine of Rs.5/- under S. 109 of the Indian Railways Act, 1890.

Held per Minority: The reservation was made under R. 47 of the Act knowing whether any passengers would travel under "working instructions" issued by the Company. The Company relied upon its inherent powers through.

A penal provision must be strictly construed. The prosecution must make out that the compartment could be legally reserved as was done. The company has the power to regulate traffic within the limits allowed by law and it is for the prosecution to establish that the limits are not transgressed.

The reservation involves an undue and unreasonable preference or advantage in favour of a particular person or an unreasonable prejudice or disadvantage for another. Hence when the Railway Administration exercised its power there would be a kind of preferences. R. 47 could require reservation within limits. In the absence of the rule it is a question of fact. Under S. 67(1) of the Act fares are accepted and ticket issued subject to the condition of there being room available in the train. If a person cannot get accommodation the fare is to be refunded. Hence it shows that the person who purchased the ticket is desirous of travelling by a particular train and he is anxious to secure accommodation. If he finds the compartment vacant and cannot travel by it, he would be put to undue disadvantage, if the vacant room is kept apart for a person who has not shown a similar desire to travel.

Overcrowd is not the rare occurrence. The vacant compartment could accommodate 25 passengers. Hence, this indirectly has element of preferential treatment.

Held per Majority: Under S. 42(2) of the Act the preference shown by railway cannot be undue. It has to be seen whether the preference to keep one compartment is undue. The accused objected it on rational discretion. The Railway knows best its own business. It will not reserve for any class accommodation yet what is reasonable. That would not pay the Railway. Undue preference would be there if there is prejudice. What is important to note is the total average number of passengers, the average number of passengers of this special class, what is the accommodation reserved for this special class and what is the accommodation available for other passengers? All that we know is that the compartment could hold 25 passengers. That is not sufficient to show undue preference without showing prejudice. The accused stated that reservation was an insult to him. That has nothing to do with undue preference.

The general power of the Railway may be exercised for actual passengers of a prospective passengers. The company is entitled to reserve individual seats or whole compartment, they may reserve for females, smokers or non-smokers, members of a Cricket or Football team for any large particular traffic, for pilgrims, for political gatherings or a race meeting or for any particular caste or sect. The general discretion rests with the Railway. The Managers may issue requisite orders for reservation of passenger accommodation. It is for each passenger to obey the orders. If each passenger is put a law unto himself, the lease can only be the result. No interference with the rule is called for.

AIR 1923 BOM 163

Gopal Avte Vs/s. Manaji Padwal  
Lallubhai Shah, Ag. CJ & Crump, J

A suit was filed upon sale of a property. The owner of the property was stated to have disappeared and not heard of since.

Held: Under S. 108 of the Indian Evidence Act 1872 the presumption relates to the fact of the death and not to the date of the death. That fact of the death must be proved by any other fact by the party interested in establishing that he died on or before any particular date.

## 1924

AIR 1924 BOM 368

Ramchandra Adaram v/s. Lodha Gouri  
Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff's suit for possession came to be decreed for possession and rent from the date of the suit. Thereafter, the Plaintiff filed suit for recovery of rent which accrued due prior to the date of suit.

Held: The suit for possession and claim of rent prior to the suit are separate causes of action under the provisions of Order 2 of the CPC. Therefore, second suit for mesne profits is not barred.

AIR 1924 BOM 154

Babaji Ramaling v/s. Appa Vithavja

Pratt & Sir Fawcett, JJ

This was a suit for exercising the easementary right to water flowing from springs in the Defendant's land which the Plaintiffs claimed to have acquired. The Defendant obstructed this easement by constructing a dam and tapping at a distance of 14 feet from the source of water. The Court had to consider whether that would amount to an obstruction to the easementary right of taking water from the springs.

Held: The close proximity between the flow tapped by the Defendants and the Springs lead to the presumption under S. 114 of Evidence Act, 1872 and to such cases S. 7 of the Easement Act, 1882 does not apply.

AIR 1924 BOM 322

Meghji Vallabhdas v/s. Dayalji Lal & Co.

Sir Fawcett, J

The Defendants were in possession of a godown on the basis of a lease. As per the lease the Defendants were bound to vacate the leased property on 20th October 1923. They asked for permission to remain in possession. However, the Plaintiff insisted for vacating the premises. Thereafter also the Defendants continued in possession for two months. Hence the Plaintiff filed the suit claiming compensation for use and occupation of the premises with interest thereon.

Held: The possession of the Defendants in the premises amounted to holding over of tenancy in terms of S.116 of Transfer of Property Act, 1882 as the Plaintiff exercised his right of treating the Defendants as his tenants. Hence, it was held that the Plaintiff was entitled to recover from the Defendants the rent of the two months which he has claimed in the form of compensation.

AIR 1924 BOM 457

Shiddubai Rudragauda v/s. Nilapgauda Bharmagauda.

Sir Macleod, CJ & Sir Lallubhai Shah, J

The issue before the Court was about the validity of the Adoption Deed. As per the evidence of the Doctor the child who was taken in adoption was very ill on the date of the adoption. Yet the child was aware of what she was doing when she signed the adoption deed and took part in adoption ceremony. The question before the Court was the evidentiary value of the Doctor's testimony that she was very ill on that day.

Held: The opinion of the doctor who visited the patient on one day that she would not be capable of a particular action is not alone determinative, but must be seen with the other evidence.

## 1925

(1925) ILR 50 BOM 94  
Vishwanath Naik v/s Ramkrishna Kesbekar  
Sir Fawcett & Coyajee, JJ

The land in suit was leased to the Plaintiff by the Defendant under a Mulgeni lease. The Plaintiff had agreed to give 17 Khandis of paddy as rent per annum. The Plaintiff alleged that the Defendant's father removed earth from the Plaintiff's land and consequently the land was exposed to inundation from the sea and therefore spoilt. The produce from the land was of inferior quality. He sued that he was not liable to pay the whole rent.

Held: Unless there is any stipulation in the agreement of tenancy, a tenant is not entailed to claim abatement of rent by reason of inundation at high water. It is only when a part of the premises leased is entirely damaged, that an abatement of rent on that account can be claimed.

(1925) ILR 50 BOM 215  
Bhimli Dalal v/s B.B and C.I Railways Co.  
Sir Macleod, CJ & Coyajee, J

The Defendant was the holder of the season ticket entitling him to travel first class between Malad and Churchgate stations situated on the line of BB and CI Rlys. His ticket was stolen. He, therefore, asked for a duplicate pass which the company refused. The Defendant continued to travel without payment.

Held: The passenger is entitled to travel in a train with proper pass or a proper ticket with him and deliver up his pass or ticket immediately on requisition being made. The Defendant had to pay excess charge and Rs.342/- for the fare.

(1925) ILR 50 BOM 246  
Emperor v/s. Tarakdas gupta  
Sir Fawcett & Sir Madgavkar, JJ

The accused, who was a graduate of the Calcutta University and a trade representative in Bombay, wrote a letter containing indecent overtures to the complainant, a European nurse, with whom he was not acquainted. It was enclosed in an envelope and sent by post to her address. She filed a police complaint.

Held: The accused intended to insult the modesty of the complainant, who is an unmarried woman which amounts to an offence. Therefore, he was sentenced to suffer simple imprisonment for 3 months.

(1925) ILR 50 BOM 268  
Navnithlal Hurgovandas vs Purshotam Hurjiwan  
Sir Macleod, CJ & Coyajee, J

The Petitioner was married to a minor in May 1922. Thereafter, a dispute arose between the minor's father and the husband's father, with the result that in march 1923 the minor went to her father's house. The father refused to allow her to go back to the Petitioner.

Held, the fact that a girl has not matured would be a ground of refusal to give the custody to the husband and generally speaking it is in accordance with Hindu custom that a girl after marriage should reside with her parents until she attains puberty.

(1925) ILR 50 BOM 318  
Suzuki and Company Ltd v/s. Uttamchand Maneklal.  
Sir Macleod, CJ & Coyajee, J

By a contract, dated October 21, 1924, the Defendant agreed to buy from the Plaintiff 50 tons of Mauritius Crystal sugar, fair average quality shipment free Bombay Harbour. In performance of the contract the Plaintiff sent to the Defendant an invoice of goods but the said goods were not imported by the Plaintiff but by another firm.

The Defendant refused to accept them as according to the contract the Plaintiff had to directly import the goods.

Held: A tender of goods of the contract quality imported not by the Plaintiff but by another firm was a good tender under the terms of the contract.

## 1926

(1926) ILR 50 BOM 133  
Kasamkhan Mujawar v/s Kazi Amin  
Sir Fawcett & Sir Madgavkar, JJ

The dispute was whether a person had an exclusive right to officiate as kazi, based merely on heredity under Mohammedan law.

Held: A Hindu marriage is a sacrament where a priest is necessary; a Mohammedan marriage is a contract where neither priest nor kazi is needed. Hence, a claim to such a right, although supported by a custom established as existing in a particular community was not one that should be recognised by the Civil Court.

(1926) ILR 50 BOM 49  
Raghunath Rithkaran v/s The Imperial Bank of India  
Sir Macleod, CJ & Coyajee, J

On 22nd December, 1921 the Defendant Bank presented to the Plaintiff a hundi for payment. The Plaintiff paid the amount without reading the hundi. The Plaintiff discovered his mistake but did not give any intimation thereof to the Defendant Bank until August 9, 1924.

Held: The Plaintiff had paid money under a mistake of fact. It is the duty of the person paying money under a mistake of fact to inform other party within reasonable time. The right to recover it back was lost due to delay or gross negligence.

(1926) ILR 50 BOM 616  
Mohammadalli Allabux v/s. Ismailji Abdulali  
Sir Macleod, CJ & Coyajee, J

The petitioner was the father of three children under the age of 18. The petitioner

handed over the custody of two daughters to the 1st Respondent who arranged that they should remain in custody of 2nd Respondent. The girls were taken charge and send by him to the state in Kathiawar. The petitioner attempted to get back the custody of daughters, but failed. Hence he sued for custody of his daughters. The two daughters were outside the limits of Appellate Jurisdiction of the High Court.

Held: The High Court can, under its common law powers, issue a writ of Habeous Corpus for the production of person who is outside India provided it is satisfied that he is in the custody or under the control of a person within its jurisdiction.

(1926) ILR 50 BOM 635

Manchersha Sorabji v/s. Virji Jekisondas  
Sir Macleod, CJ & Crump, J

The Plaintiff owned Asarwa village on the south of the Defendant's land. Near the Defendant's land was the Plaintiff's gate from which the Plaintiff used to cross the Defendant's land to go to the main road. The Defendant built a wall near the gate obstructing the Plaintiff's right to way. The Plaintiff, thereupon, sued for an injunction in respect of the alleged right of way. The Defendant said that the Plaintiff had an alternate way.

Held: The Plaintiff was allowed to use the land of the breadth of six feet for non-agricultural purposes; he had a right to do so provided that additional burden is not thereby imposed on the Defendants land.

(1926) ILR 50 BOM 692

Ramchandra Babar v/s. Shirpati Bhangire  
Sir Fawcett & Sir Madgavkar, JJ

The suit plot of land belonged to the father of the Plaintiff. The Plaintiff alleged that the plot was in their 'Vahiwat'. They further alleged that 3 trees were cut down by the Defendant for which he was liable in damages. The Defendant contented that he was in possession as a mortgagee from the Plaintiff's father, that the trees were planted by him after he entered into the possession and therefore belonged to him.

Held: The mortgagee, who has planted trees on mortgaged land after entering into possession is not liable in tort for cutting down and removing them in the absence of evidence that his act was 'destructive or permanently injurious to the property'.

AIR 1926 BOM 435 (Full Bench)

Ishvar Patil v/s. Gajabai Patil

Sir Macleod CJ, Sir Lallubhai Shah, Crump, Sir Madgavkar & Coyajee, JJ

The Plaintiff claimed a declaration contending that he was the adopted son and, therefore, the owner of the joint family property. He claimed joint possession of those lands which were joint between himself and the Defendants or in alternative for separate possession of his half share by partition. The Defendant contended that the widow had no power under Hindu Law applicable to their family to make the adoption.

Held: That widow of a coparcener has no inherent power to adopt without the consent of her husband's coparcener.

AIR 1926 BOM 328

Official Trustee of Bombay v/s. Salebhai Sarutally Bhagat

Taraporewala, J

The Plaintiff sued to restrain the Defendant's servant and workman from encroaching on suit property which was a trust property for the purpose of plastering a wall. The question involved was whether the Defendants are entitled to raise the scaffolding in the open chowk of the Plaintiff for the purpose of plastering and white washing by entering through the Plaintiff's property.

Held: The right of a person to go upon the land of his neighbor and erect a scaffolding thereon for the purpose of plastering and white washing his own wall, is in the nature of an easement, though it is not an easement of necessity, and hence he is entitled to do so.

AIR 1926 BOM 90

Parvatibai Trimbakrao v/s. Vishvanath Khanderao

Sir Macleod, CJ & Coyajee, J

The Defendant was adopted in 1896. A "Tharavpatra" was executed between his natural and adoptive fathers. It was mentioned in the "Tharavpatra" that the adoptive father had made a will that the adopted boy should act as per the terms of the will and that in case the adoptive father made another will, the adopted son should behave according to the terms of that other will.

Held: The agreement between the adoptive and natural fathers of an adopted son is against the general principals of Hindu Law and so is not binding on the adoptee.

AIR 1926 BOM 258

Timmanna Parmeshwar v/s. Govind Ganpati  
Sir Macleod, CJ & Coyajee, J

A partition decree was passed and the Plaintiff along with the Defendants were declared entitled to 1/6<sup>th</sup> share in whole property. The lands were to be got partitioned through the Collector. The Collector found some difficulty in partitioning the property.

Held: Once the Collector affects a partition, the Court cannot send the case back to him for repartition. However, if the Collector disregards the terms of the decree and divides the property in contravention of its terms, the Court is entitled to interfere.

AIR 1926 BOM 399

Bhau Laxman v/s. Budha Manku  
Sir Fawcett & Coyajee, JJ

The Plaintiff filed suit for eviction of the Defendant who had long been in possession of the joint family property. Another coparcener had sold his undivided share to a stranger who had peaceably obtained possession of such share.

Held: A stranger purchaser of the undivided share of a coparcener in a Joint Hindu Family, if in possession, need not be ejected in a suit for recovery of possession by coparcener.

AIR 1926 BOM 545

Rajubhai Mohanbhai v/s. Lalbhai Mulchand  
Sir Macleod, CJ & Coyajee, JJ

The Plaintiff sued to obtain an injunction restraining the Defendants from raising any construction over the open space of the suit property as it belonged to them jointly.

Held: There can be no question of easement as regards light and air in the case of joint property. Both parties were entitled to full ownership of property. Hence no relief of injunction can be granted.

AIR 1926 BOM 493

Goverdhandas Keshavlal v/s. Dhirajlal Dalsukhram  
Sir Fawcett & Sir Madgavkar, JJ

The question of ownership upon construction of certain documents was considered by two Courts. Whether the High Court in the second Appellate Court can interfere with the finding of the lower Courts.

Held: If the construction of a document is necessary for deciding a material question, it is a point of law on which a second appeal can lie.

AIR 1926 BOM 13

Kishenprasad and Company Ltd. v/s. Rajaram Ramharakh  
Sir Marten, J

The Plaintiff handed over to Defendant no.1, his employee two cheques of Rs. 30,000/- and 10,000/-, for being encashed. Defendant no.1 encashed the cheques but did not hand over the amounts to the Plaintiff. The other members of his family utilized the money in payment of their debts.

Held: All the Defendants were held liable for breach of trust committed by them in disposing of the money.

AIR 1926 BOM 62

Emperor v/s. Subrao Seshrao  
Sir Fawcett & Sir Madgavkar, JJ

The accused was convicted under S. 380 of IPC for two offences of theft. He was sentenced to suffer rigorous imprisonment for one day and pay fine of Rs. 50/- or in default to suffer rigorous imprisonment for 3 months for each offence. The Magistrate directed that both sentences should run concurrently.

Held: The sentences of imprisonment in default of payment of the fine cannot run concurrently.

(This position in law still prevails)

AIR 1926 BOM 481

Rajaram Tukaram v/s. Central Bank of India Ltd.

Sir Fawcett, J

A suit was brought against the bank. The question of jurisdiction was directly and substantially in issue in the trial Court. The suit was decreed. Later another suit was filed contending that the decree passed therein is null and void.

Held: Where Court has decided the question of jurisdiction upon objection raised to its jurisdiction, the question becomes res judicata between the same parties in a subsequent suit.

## 1927

AIR 1927 BOM 663

Abdur Rehman v/s. Bharna Budhya

Sir Lallubhai Shah & Percival, JJ

Question raised for consideration was whether parties can by consent confer jurisdiction on a Court which it does not possess.

Held: Where the Court has no jurisdiction to entertain a suit of particular nature, the consent of the parties or failure of parties to raise the point cannot give jurisdiction to that Court.

(This legal position still prevails.)

AIR 1927 BOM 652

Yeshvadabai Vaman v/s. Ramchandra Shankar

Sir Patkar & Sir Baker, JJ

A father-in-law under a will gave authority to his widowed daughter-in-law to adopt a son. He died leaving his widow and a daughter. The daughter-in-law adopted a son after obtaining consent from the widow and daughter of the deceased father-in-law. The daughter-in-law was not the widow of the last male holder. The adoption was challenged.

Held: The adoption was valid by virtue of the consent given by the mother-in-law on whom the estate had devolved in the absence of any other male member or any other adoption in the family.

AIR 1927 BOM 655

Lakshman Punji v/s. Krishnaji Maharu  
Sir Marten, CJ & Crump, J

Out of two attesting witnesses of mortgage deed one witness was dead and other witness denied his attestation. The Plaintiff called writer of mortgage deed to prove that document. The validity of the mortgage deed was challenged.

Held: When the only attesting witness denies his attestation, the document may be proved by calling its writer to depose as to the execution of the deed and as to its attestation by the two witnesses.

AIR 1927 BOM 513

Purushottam Govind Padhye v/s. Isub Mohammad Dingankar  
Sir Marten, CJ & Sir Baker, J

A mortgagor sued for redemption of a single mortgage debt. The interest of the mortgagees has been divided by a gift or an assignment between co-sharers.

Held: A mortgagor cannot bring a separate redemption suit for redemption of a single mortgage debt if the interest of the mortgagees has been divided.

AIR 1927 BOM 260

Akkava Ramchandrapa v/s. Sayyed Khan Muthekhan  
Sir Martin, CJ, Crump & Sir Patkar, JJ

The Plaintiff's daughter-in-law sold the property that had belonged to the Plaintiff's son. The daughter-in-law, being the widow of the Plaintiff's son was the immediate owner of

the property and the Plaintiff was the reversioner. The Plaintiff filed a suit to recover the property from the heirs of the purchaser after the death of her daughter-in-law. It was contended that a Hindu widow, cannot sell her husband's property without legal necessity even with the consent of the next reversioner.

Held: If a Hindu widow sells a part of her husband's property with the consent of next reversioner even if without legal necessity and subsequently dies, the said reversioner is estopped from challenging the validity of the transaction.

## 1928

AIR 1928 BOM 250

Hiralal Chimanlal v/s. Gavrishankar Ambashankar

Sir Madgavkar & Sir Patkar, JJ

A family served a donor who was the brother of the Plaintiff during his illness. The Donor transferred possession of his house property and land to his brother. Thereafter, he also executed a gift deed of the said property in favour of his brother, but it remained to be registered. He had also executed a Will bequeathing the said property to his brother. On the basis of this Will, the Plaintiff claimed possession of the said property. The question before Court was whether transfer of title and ownership was complete by handing over possession of property but without gift deed being registered.

Held: The actual transfer of possession would not make the gift complete in law. The services rendered by the donee during illness also cannot be consideration for the said document to fall it under S. 9 of Transfer of Property Act, 1882. An agreement to make a gift not being capable of specific performance, the doctrine of part performance under S. 53 of the said Act has also no application. Therefore, it was held that as the Gift deed was not a registered document it cannot be recognized in law and hence the Plaintiff was entitled to get possession of the property.

AIR 1928 BOM 526

Bhauddin Bala v/s. Ibrahim Allisaheb

Sir Fawcett, Acting CJ, & Sir Murphy, J

The Plaintiff sued the Defendant under S. 9 of Specific Relief Act, 1877 for possession.

After one year the father of the Defendant was added as a Defendant on his own application for the purpose of safeguarding his own interest. After the decree was passed against both Defendant Nos.1 and 2, it was contended by Defendant No. 2 that suit against him was barred by limitation. Hence decree cannot be sustained against him.

Held: Where a person has joined himself in the suit on his own application to protect his interest, he cannot subsequently avoid the decree eventually passed against him. As Defendant No. 2 has got the advantage of being added as party to suit, he must suffer disadvantage entailed.

AIR 1928 BOM 225

Shankar Tukaram v/s. Lakshmibai Shankarrao

Sir Patkar & Sir Baker, JJ

The Plaintiff employed one an agent to look after the management of her immovable property, collect rent, lease out land and file suits in connection only with the immovable property under a Power of Attorney. The agent was in possession of some ornaments of the Plaintiff. He pawned them with the father of Defendant No. 2 to 4. The Plaintiff sued for possession of said ornaments. The question before the Court was whether the agent was not in juridical possession of the ornaments within the meaning of S. 178 of the Indian Contract Act, 1872.

Held: The Power of Attorney must be construed strictly. Unless there is an express authority in the Power of Attorney, one cannot deal with the property. The agent was not empowered by the Power of Attorney to deal with movable property. He was in custody of ornaments but not in possession. There is distinction between custody and possession. Possession connotes juridical possession as distinguished from bare custody. The agent's possession was not juridical possession. Therefore, he could not pledge it.

(Consider a plethora of case law on the subject till the present day)

AIR 1928 BOM 158

Emperor v/s. Babulal Behari

Sir Madgavkar, J

A boy was murdered. During the investigation, one brass pot was recovered from the spot. It was bearing an impression of a palm. The impression was photographed and

enlarged by an expert. His opinion was produced in the case. It was contended by the accused that this opinion evidence cannot be admissible against him.

Held: The palm impressions are akin to finger impression. The knowledge of both is a study for the same class of expert. They are in fact a portion of the same science and therefore, expert opinion as to the identity of a palm impression is admissible under S. 45 of Evidence Act, 1872.

AIR 1928 BOM 175

Tilakram Choudhuri v/s. Kodumal Jethanand

Sir Marten, CJ & Sir Blackwell, J

The Plaintiffs were commission agents in Bombay. The Defendants were from Ludhiana. They entered into a contract that in case of any dispute arising between them, it should be filed in High Court of Judicature at Bombay or the Court of Small Causes at Bombay. The Defendant filed a suit on 13th May 1925 at Ludhiana. The Plaintiffs also filed suit against the Defendants on 19th May 1925 at Bombay. The Defendants filed an application in the Court at Bombay for stay of suit.

Held: As there was a binding contract between the parties to bring suit at a particular place, the suit filed at Ludhiana was not at all maintainable. By filing such a suit, the Defendants had committed breach of the express terms of contract. They were not entitled for relief of stay of the suit in Bombay.

## 1929

AIR 1929 BOM 72

Nurmohomed Rajmahomed V/s. Emperor

Mirza Khan & Sir Baker, JJ

A private Criminal Case was filed against three accused for the offence punishable under S. 411 and 414 of the IPC, 1860. The Court took cognizance against accused No.1 and 2 and directed investigation under S. 202 of the Cr.PC, 1898. The Magistrate proceeded with the case against accused No.3 and the trial resulted into his conviction, but the case against accused No. 1 and 2 was transferred to another Court on their application. In the transferred Court an objection was raised by accused No. 1 and 2 that the Chargesheet filed was illegal as Police were asked only to submit a Report

under S.202 Cr.PC and hence they had no authority to file the chargesheet. The Magistrate upheld the objection and discharged the accused.

Held: When complaint is sent for investigation under S. 202, the police does not have any power to arrest the accused or to file chargesheet. The police can only submit report after investigation.

AIR 1929 BOM 144

Ramchandra Trimbak v/s. Hari Martand

Mirza Khan & Sir Baker, JJ

The Plaintiff sued for a declaration of a right of way for his cattle and men to pass through the Defendant's land. The Plaintiff enjoyed this right of way for more than 20 years and thereby claimed the right of easement by prescription.

Held: In order to get the right of easement under S. 15 of the Easements Act, 1882 the Plaintiff must prove that he openly used the Defendant's land and such use was as of right. The owner of land should have knowledge of such use.

AIR 1929 BOM 206

Hamedmiya Bademiya v/s. Joseph Benjamin

Sir Patkar & Sir Murphy, JJ

The Plaintiff sued for pre-emption for getting back property sold by his brother to the Defendant who was not a Mohammedan. The question was whether law of pre-emption can be enforced against a non-Mohammedan.

Held: The right of pre-emption is not an incident of property and not applicable on the grounds of justice, equity and good conscience. It is only a contractual or a customary right. In the absence of custom, a non-Mohammedan is not bound by law of pre-emption.

AIR 1929 BOM 226

Raoji Vasudeo v/s. Tukaram Vishnu

Sir Madgavkar, J

The Plaintiff sued the Defendants for an injunction restraining the Defendants from

causing obstruction to the Plaintiff fishing at a certain spot on the shore at Vengurla. The Defendants claimed the right by prescription and usage over 28 years.

Held: The right of the Public to fish in the sea is common and not the subject of property. Members of the Public exercising the common right to fish in the sea are bound to exercise it in a fair and reasonable manner and not so as to impede others from doing the same. Continuously using certain portion of seashore, for more that 20 years for fishing would not create any legal right of prescription to exclude others. (See the right to use the water of a stream by a riparian owner 1905 ILR 29 BOM 357).

AIR 1929 BOM 323

Malhari Vaman v/s. Vinayak Ravji

Sir Baker, J

A Partition was effected between the Plaintiffs and the Defendants as a result of the suit but some of the properties were not included in that suit. Thereafter the Plaintiff again sued claiming a share in the said undivided property. It was the contention of the Defendants that the Plaintiff's suit was barred by principles of res-judicata. It was further contended that the Plaintiffs were never in possession of said property hence the Defendants had become owner by way of adverse possession also.

Held: Where there is partition between brothers and some property is left undivided the position of parties after partition is that of tenants in common in respect of the property which is left undivided. Such sharers in common cannot be compelled to get all the properties partitioned in one suit. Some of them may remain joint as tenants in common in respect of some properties and they may bring suit for partition in respect of those properties. Hence the principles of res-judicata are not applicable to such suit. To prove adverse possession ouster of the co-owner to his knowledge must be shown.

## 1930

AIR 1930 BOM 22

Ambashankar Uttamram v/s. Heptulla Sarafalli

Kemp, Acting CJ & Sir Murphy, J

The Petitioner Pleader entered into an Agreement with the Respondent to conduct certain litigation contemplated by a letter for a fee of Rs.125/-. After reading the papers in the case, the Petitioner called for further instructions from the Respondent in order to

properly draft the Pleint. The Respondent instead of supplying the particulars compromised his claim and then filed a suit against the Petitioner to recover the fees of Rs.125/- . On principles of “quantum meruit” the suit was decreed only for Rs.70/-.

Held: Where the Agreement between the Pleader and his client is that in return for a settled amount of fee the Pleader should conduct a litigation for the client, it does not lie in the client's power to alter the agreement by compromising the matter. It was held that Pleader is entitled to retain the whole fee which was paid to him. The Principle of quantum meruit has no application to such case.

AIR 1930 BOM 49

Emperor v/s. Ismail Hirji

Sir Patkar & Wild, JJ

The question raised by the Respondent accused was whether the passage surrounding a building and used for betting business amounts to a place as contemplated within the meaning of Ss. 3, 4 and 6 of the Bombay Prevention of Gambling Act, 1887. The issue was raised in the context of the horse racing.

Held: Where the passages are surrounded by building and are closed at night by doors and accused have appropriated them for the business of betting, the business of betting is localized and this localization converts the passages into a 'place' within the meaning of Ss. 3, 4 and 6 of the Bombay Prevention of Gambling Act.

AIR 1930 BOM 58

Shriram Pandurang v/s. Ramkrishna Shivrqm

Sir Madgavkar, J

A Hindu made a will during his last illness announcing his intention of adopting the Appellant and directing him to redeem the lands of the Respondent. Eight days thereafter the Appellant was taken in adoption and after few days the testator died. The Respondent thereafter filed a suit against the Appellant to carry out directions of the deceased contained in the will and redeem the mortgaged land. The Appellant raised three grounds to resist the suit; the will was in respect of ancestral property and hence the deceased had no power to make it, the directions were not mandatory but at the most recommendatory and these directions were void for uncertainty.

Held: On the ordinary principles of Hindu Law and the nature of the joint coparcenery, the Appellant's interest in the property began from the date of his adoption. The will, though made previously, could only take effect from the death of the testator. Hence he disposed of the property in which the Appellant had coparcenery interest and which he

could not do even with the consent of the adopted son. Hence will was not valid.

AIR 1930 BOM 68  
Hari Kalkundri v/s. City Municipality of Belgaum  
Kemp, Acting CJ & Sir Murphy, J

The Plaintiff claimed to recover the excess water cess levied on his house.

Held: Each tenement had separate connections with drain and separate entrances. Though 17 tenements occupy a house, each tenement is liable to pay tax as every tenement was "house".

(1930) 32 BLR 785  
Emperor v/s. Gafur Pathan  
Sir Broomfield & Mirza Khan, JJ

The accused herein portrayed himself to be Director of mesmerism. Purporting to convey first lessons of mesmerism, he sent three value payable parcels to Poona, Sialkot (Punjab) and Hissar (Punjab) each of which was valued at 2-8-0. The addressees in the first two cases paid the amount which was paid to the accused. The lessons that he sent were fake. It was held that it constituted cheating. The Magistrate in Panvel filed a reference before this Court.

Held: The act of inducing delivery of properties is a composite act which begins with dropping off parcels at the Post Office for delivery. Even if the parcels were not paid for or not reached the addresses, the mere fact that the parcels were posted with dishonest intention of getting payment on them would amount to cheating. All the offences were routed from Panvel by posting the parcels at the Post Office. Thus, all the papers shall be returned to the First Class Magistrate at Panvel and he shall dispose of all the cases according to law.

## 1931

AIR 1931 BOM 195  
Emperor v/s. Janardan Kashinath  
Sir Beaumont, J

On the accused pleading guilty, the Magistrate recorded it by writing the words “Accused Pleaded Guilty” and proceeded to hear the evidence without mentioning for what purpose he is recording the evidence i. e. whether for giving corroboration to the plea or for deciding the case on merits. The evidence did not justify the conviction but the Magistrate convicted the accused.

Held: Where it was not made clear that the evidence was being recorded for corroborating the plea or for deciding the case on merits, the Court cannot convict the accused on the basis of his plea of guilt.

AIR 1931 BOM 206

In Re Damodar Bapuji Padvi

Sir Beaumont, CJ & Sir Murphy, J

This is an application for transferring the case from Presidency Magistrate 5th Court Dadar to any other Court. One of the reasons given was that the Magistrate is the personal friend of the Complainant.

Held: It often happens that the one party is familiar with the Judge. But Judges quite appreciate the duty of impartiality and, therefore, it is not a ground for transfer of a case. [A similar confidence was shown by this Court in a Magistrate in (1885) ILR 9 BOM 172. Consider the position today and the applicable law].

AIR 1931 BOM 309

Emperor v/s. Abla Isak

Mirza Khan, J

Two accused were originally charged for the offence of murder and abetment of murder respectively. They were found not guilty. Then they were again charged for the same act for the offence of culpable homicide not amounting to murder and abatement of culpable homicide not amounting to murder.

Held: The accused could not be retried for the subsequent charges. Even if the subsequent charges were not framed against the accused in previous trial, it would have been competent for the Court to have found the accused guilty of the subsequent charges and not of the major offences.

(This rule of Double Jeopardy is affirmed by our Constitution in Part III relating to Fundamental Rights and is recognized in S. 300 of the Cr.PC.)

AIR 1931 BOM 466

Ramchandra Balwant Tilak v/s. Narsinha Chintaman Kelkar  
Sir Patkar & Sir Broomfield, JJ

The Plaintiff sued two Defendants for injunction in respect of an immovable property. During the pendency of suit one of the Defendants committed suicide & his minor son was brought on record as his legal representative for whom Defendant no.1 was appointed as guardian. After some period, the Defendant made an application giving up his defence and expressed his desire to have the suit proceeded ex parte against him & the minor heir of the other Defendant. The suit was heard ex parte granting certain injunctions against both Defendants.

Held: Minority per se is no ground for refusing injunction, if the acts were done by minor personally or by someone on his behalf or at his instance.

(1931) 33 BLR 663

Emperor v/s. Vadilal Devchand  
Sir Madgavkar & Sir Murphy, JJ

The accused was a dealer of brass and copper utensils and occupied a shop on a public roadway. During the first five days of the Hindu New Year, he brought his wares on the public road right in front of his house. A large crowd gathered on the vendors' side of the road to purchase goods. The other side of the road was relatively vacant. When accused was charged for obstructing the traffic, he defended himself by arguing that it was customary for him and other shopkeepers to sell goods on the road on the occasion of Hindu New Year as it is considered sacred.

Held: The accused was guilty of obstructing traffic under S. 61(f) of The Bombay District Police Act, 1890. Thus, the accused was made to pay a nominal fine amounting to Re.1 as this case was a test case.

## 1932

AIR 1932 BOM 473

Tipanna Mushappa Karigar v/s. Emperor  
Sir Baker & Sir Broomfield, JJ

The Appellants together with three others were tried by the second class Magistrate, Dharwar for offences under S. 448 and 323 IPC and abetment thereof. They appealed. The convictions were confirmed. The Judgment was challenged on the ground that it did not comply with the provisions of S.367 of the Cr.PC which requires that judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision.

Held: Unless and until there is some reason to believe that there has been a failure of justice, the High Court is not bound to invariably interfere in revision because there is an irregularity in the form of judgment.

AIR 1932 BOM 111

Ishwarappa Malleshappa v/s. Dhanji Bhanji  
Sir Patkar & Tyabji, JJ

The Plaintiff sued for dissolution of partnership firm and for accounts. The parties entered into a compromise under which one partner was to receive Rs.6,000/- and Rs.5,000/- from the other partners. The would exceed the pecuniary jurisdiction of the Court.

Held: Valuation for the purpose of Court fees and for the purpose of jurisdiction shall be that which has been fixed by the Plaintiff. The jurisdiction of a Court in a suit for accounts is no, therefore, ousted by the fact that on taking accounts a sum more than pecuniary jurisdiction of the Court is found due. S. 6 does not interfere with the power of the Court to pass any decree in a suit for accounts although it may exceed its pecuniary jurisdiction.

AIR 1932 BOM 122 (F.B.)

Nagindas Narandas v/s. Somnath Premchand  
Sir Beaumont, CJ, Sir Rangnekar & Nanavati, JJ

The Plaintiffs were members of the Lohagada section of the Lohar caste and they sued for a declaration that they have a right individually to inspect the accounts and documents of the caste.

Held: A suit to enforce such a right is not a caste question, and can be entertained by a civil Court.

AIR 1932 BOM 484

Bai Sada Parshottam v/s. Gangaram Becher  
Sir Baker, J

A sued to recover possession of his property from his annual tenant. The Court refused to pass a decree for possession as the owner did not prove service of the notice to quit, but granted a decree for use and occupation. The owner subsequently brought another suit to recover possession of the land.

Held: Where in a former suit between the parties there are several issues which are found against a party, the decision on all those issues is res judicata in a subsequent suit.

AIR 1932 BOM 397

Moreshwar Pandharinath v/s. Umraosing Mahalalsing  
Sir Baker & Nanavati, JJ

The only question in this appeal was whether the Respondents can be considered to be agriculturists.

The Respondents admittedly were hay merchants who dispatch large quantities of grass to Bombay from Wangao. They have themselves leased land on which they were growing grass and they had employed men to watch and cut grass.

Held: Grass is certainly an agricultural produce and a person who sells grass, provided it is produced by his own land and makes his living thereby, is an agriculturist. The criterion in such cases is whether the person claiming the benefit of the Act is a person who is in direct connection with the soil or whether he is a middleman. Where a person has leased the land on which grass is grown, which he sells, must be considered to be growing grass on his own land. In case of failure of the rains he loses the crop and therefore is dependent directly on the produce.

AIR 1932 Bom 398

Sundrabai Hanmantrao v/s. Hanmant Gurunath  
Sir Beaumont, Kt., CJ, & Sir Baker, J

The validity of the adoption of a daughter's son was claimed upon a custom amongst Deshastha Smarth Brahmins in the Dharwar district.

Held: When a party relies on a custom as establishing an exception to the general law the burden is upon him to establish the custom and the custom proved must be both ancient and invariable and the evidence by which it is established must be clear and unambiguous.

## 1933

AIR 1933 BOM 478

Emperor v/s. Chhaganlal Ishwardas Shah  
Sir Beaumont, Kt., CJ, & Sir Wadia, J

The petitioner was summoned to serve as an assessor in a sessions case. He appeared in a dress consisting of 'Peharan', a cap and a scarf. The Sessions Judge thought that he was not properly dressed and fined him Rs.3 as he was considered not properly dressed because he was not wearing a coat. There were no rules as to the dress to be worn by assessors. The assessor stated that the dress he wore was his best dress and the one in which he had appeared seven or eight times before the Court as an assessor and that it was the dress which he wore on ceremonial occasions. There was no evidence in answer to that and no reason to think the same untrue.

Held: The dress does not offend against any rule of public decency nor is intended to be insulting to the Court. The assessor, therefore, could not be charged as being improperly dressed. In order to bring the case within S.228 of the IPC it must be shown that an accused intentionally acted to insult the Court.

AIR 1933 Bom 479

Emperor v/s. Akbarali Karimbhai  
Sir Beaumont, Kt., CJ, & Sir Wadia, J

The Deceased met with a violent death. His three nephews and one servant were charged with the offence of murder. The trial Judge discarded the evidence of the eye witnesses but by relying upon dying declaration convicted accused no.1 and 4.

Held: The Court has always to bear in mind that a declaration admissible under S. 32 Evidence Act, 1872 is not made on oath and is not subject of cross examination and therefore it is weaker type of evidence than the evidence given by a witness in the witness box. If a Judge thinks that part of a dying declaration was false, it is no doubt very improbable that in practice he would act upon the declaration, at any rate, without very definite corroboration. But at the same time it cannot be said that as something in a dying declaration is false, therefore the whole declaration must necessarily be disregarded.

(The law on this point is yet the same.)

AIR 1933 BOM 209

Sabava Yellappa v/s. Yamanappa Sabu  
Sir Patkar & Sir Barlee, JJ

The Plaintiff sued to recover certain lands conveyed to Defendant No.1 by his adoptive father under Sale Deed executed prior to his adoption. The Plaintiff claimed that the sale transaction was illegal and void because Defendant no.1 was the mistress of his father and though the ostensible consideration was cash, the real consideration was illegal, being for past and future cohabitation. Though Defendant no.1 denied that she was the mistress, the evidence on record proved it. The question arose whether transfer was valid or void.

Held: If the consideration or object of passing the sale deed is immoral being for past or future cohabitation, the transfer would be void and not merely voidable. A consideration which is immoral at the time of the transfer as incapable of supporting an immediate promise to pay cannot become innocent by passage of time. In this case as the sale deed was executed in consideration of an illicit connection between the vendor and vendee and for immoral object, neither the vendor nor his legal representative can recover the property.

AIR 1933 BOM 266

Mazarali Inayat Ali v/s. Emperor  
Sir Murphy & Sir Broomfield, JJ

Two Police Officers were convicted under S. 376 of the IPC for committing rape on a defenceless woman in a Police Station, one after another. They challenged their conviction on the ground, inter alia, that the joint trial was irregular, the rape by each of the accused being isolated acts not forming a single transaction.

Held: The precise definition of the expression 'the same transaction' and 'each case' must depend on its own facts. It is for the Court to decide in each case if there is sufficient continuity of purpose between the acts of the jointly tried accused, to justify it in finding that the transaction was in reality a single one though composed of separate acts by the different accused. In this case it was held that the separate acts of rape by the accused formed a part of a single transaction as they could not have committed severally unless they had either been tacitly agreed or reciprocally connived. Hence the joint trial was not illegal.

AIR 1933 BOM 364

Panaji Girdharlal v/s. Ratanchand Hajarimal

Sir Beaumont, CJ & Sir Murphy, J

A decree for the sum of Rs.1359/- alongwith costs of the suit and interest at the rate of 6% per annum from the date of the suit was passed in favour of the Plaintiff. Initially he had filed a Darkhast only for the Principal sum and costs. The Darkhast was satisfied. Thereafter the Plaintiff filed another Darkhast asking for the interest awarded to him by the original decree. The question was whether such separate Darkhast was tenable.

Held: It is not permissible to levy execution of a money decree in different stages or piecemeal. The rule is that a party having a right to execute a decree for money presently payable must enforce the whole decree at the same time and if a person having a right to recover a certain sum under a decree asks the Court to enforce that decree for a less sum he must be taken to have waived his right to levy execution for the balance.

AIR 1933 BOM 479 (2)

Emperor v/s. Akbarali Karimbhai

Sir Beaumont, CJ & Sir Wadia, J

The victim met with a violent death for which his three nephews were charged with the offence of murder. The Prosecution evidence consisted of eye witness' account, dying declaration made by Badruddin and certain other articles. The Accused were convicted relying mainly on the dying declarations.

Held: Corroboration of dying declaration is not necessary as a rule of law but its evidentiary value varies very much in accordance with the circumstances in which it is made. The Court has always to bear in mind that dying declaration is not made on oath and is not the subject of cross examination and, therefore, it is a weaker type of evidence. However, merely because some part of the dying declaration is found to be false, the whole dying declaration need not necessarily be discarded.  
(The same position in law still prevails).

## 1934

AIR 1934 BOM 66

Dayavati Ramchandra v/s. Kesarbai Kasidai

Sir Beaumont, CJ, & Sir Blackwell, J

The Respondent filed a suit for maintenance against the wife of the deceased Hindu alleging that she had been in the exclusive keeping of the deceased for 12 years as a permanent concubine and that the arrangement had continued down to his death.

Held: Holding the Respondent entitled to the maintenance, the Court observed that what is necessary to be established by a concubine seeking maintenance after death of her paramour is that their relations lasted until the death of the paramour and sexual fidelity to the deceased had been preserved by her. As in this case, the Plaintiff has established that she had lived for a very large number of years with the deceased, and that he regarded her as a wife and that he intended that that relationship should be continued as it had existed in past, she was entitled to maintenance.

AIR 1934 BOM 21

Ebrahim Alibhai v/s. Bai Asi

Tyabji, J

A Mohammedan died leaving a widow and two daughters. Prior to his death, he had purported to make a gift of several lands to his daughters and executed two deeds. He called the tenants at that time and directed them to pay the rents to the two daughters, which they did. The gift was contested on the ground that it was invalid from the inception on the ground that a gift to two or more donees jointly without specifying their shares is invalid and it was also not a complete gift.

Held: Upholding the gift, the Court held that the test to decide the validity of a gift is whether the donor or the donee reaped the benefit under it. Since the tenants were paying the rent to the daughters they were reaping the benefits of the gift and hence gift was complete. Whether the shares given to the donees are equal or unequal, once the donor had parted with complete possession in favour of the donees, the donees became transferees of the property and the gift is complete. They may, if they so choose, continue to hold the property un-partitioned or may partition it.

AIR 1934 BOM 113

Bapu Appa v/s. Kashinath Balu

Sir Baker & Sir Rangnekar, JJ

A Hindu woman married twice. She had a son each for her marriages. The dispute was regarding the succession of her stridhan property. The question was whether her both the sons by the two different marriages can inherit it or whether the son from the second marriage was the sole heir to the said property.

Held: The law of succession to stridhan is based mainly upon the grounds of natural love and affection and upon the principle of equitable distribution. These grounds were in favour of both the sons being her children by two husbands. Hence both the sons are equally entitled to inherit her stridhan.

AIR 1934 BOM 193

A.B. Samant v/s. Emperor

Sir Beaumont, CJ & Sir Barlee, J

The Accused was arrested and a sum of Rs.512/- found on his person was kept by police in safe custody. Subsequently, the accused was convicted. There was no evidence before Court that the sum of Rs.512/- was stolen property. In passing sentence the trial Court imposed a fine of Rs.500/- on the accused and directed that the fine be recovered from the money seized from the accused by the Police.

Held: The Court had the power to make an order for the disposal of this money by confiscation and to recover the fine out of said amount under S.517 of the Cr.PC,1898.

## 1935

AIR 1935 BOM 186

Keshav Vasudev v/s. Emperor

Sir Beaumont, CJ & Sir Wadia, J

A complaint was made to the police station by the Deputy Nazir of the Sessions Court that his predecessor and various subordinate officials had misappropriated monies

forming part of estate of a minor.

The police, found evidence against all. Yet they did not send two of them for trial apparently because they came to the conclusion that it would be convenient if they are used as witnesses.

Held: The Cr.PC gives certain powers under which evidence of an accomplice can be made available. The police have no right to take decision themselves not to charge a person against whom they have evidence on the ground that they require him as witness.

Though the conduct of police was irregular, the evidence of those witnesses is not inadmissible under any provision.

AIR 1935 BOM 343

Kamalkant Gopalji v/s. Mahavji Vaghji

Sir Wadia, J

The Plaintiff sued to recover sums under two promissory notes which were passed by the Defendant in favour of the Plaintiff's father who died intestate.

The Plaintiff, his only son, claimed the sums as the sole surviving coparcener of a joint and undivided family of which he and his father were members and in the alternative as a sole heir and legal representative of his father.

At the trial, the Plaintiff did not press his claim as the heir and legal representative of his father.

Held: A coparcener does not represent the estate of the deceased member of the joint family. He gets the property by survivorship in his own right and not as a representative of the deceased. Therefore he cannot sue on the Negotiable Instrument payable to the deceased.

## 1936

AIR 1936 BOM 3

Dahyabhai Vanmalidas v/s. Hiralal Umedram

Sir Barlee, J

On the upper portion of a joint wall the Plaintiff had erected a pankh (projection) for protection, many years ago. The question was whether the Plaintiff acquired ownership over it due to adverse possession or easement only.

Held: If the removal of projection causes injury to the building or is intended for preservation or safety of building only, then that person can obtain easement only, even though he may obtain a right by prescription to the column below the projection.

AIR 1936 BOM 151

Fakir Mahomed Ramzan v/s. Emperor  
Sir Beaumont, CJ & Sir Macklin, J

The accused was convicted for the offence of theft. However there was absolutely no evidence to connect the accused with offence except the evidence of fingerprints and the deposition of the expert.

Held: The Court must satisfy itself as to the value of evidence of the expert and cannot hold anyone guilty only on the opinion of expert.

AIR 1936 BOM 289

Basawanewa Balappa v/s. Balappa Shivappa  
Sir Macklin, J

In a suit for restitution of conjugal rights, the husband alleged that he had been married to his wife for many years and they had 5 children, but now she was living with another man and refused to return. The defence was that the suit was barred by the law of limitation.

Held: The failure of wife to return to her husband is a continuing wrong and as per S. 23 of Limitation Act, 1908 fresh period of limitation starts at every moment of continuing wrong.

(1936) 38 BLR 526

Talakchand Kasturchand Gujar v/s. Bhau Maruti Giranje  
Sir Macklin, J

The suit was filed to recover money due on a mortgage. W was indebted to T (Plaintiff). N was indebted to W. B (Defendant) purchased sugar cane from N and to raise money to pay for this, mortgaged his land to T. The consideration money was

not paid in cash. The trial Court dismissed suit on the ground that the consideration for mortgage was not proved.

Held: Where the consideration for a mortgage consists of a havala, which has been duly carried out, it is for mortgagor to prove failure of consideration, if he wishes to escape liability under the mortgage and not for the mortgagee to prove that there was consideration. This principle applies to cases under the Dekkhan Agriculturists' Relief Act, 1879. The correct frame of such issue is, "what was the consideration for the transaction in suit" with the burden thrown neither on the Plaintiff, nor on the Defendant.

(1936) 38 BLR 535

Prahlad Madhoba Ruikar v/s. Aboobaker Abdul Rehman & Co.  
Sir Beaumont, CJ & Sir Rangnekar, J

The Plaintiff obtained an Award in Bombay against the Defendants.

The Defendants executed a legal mortgage of their property in Banares in favour of the Plaintiffs in Bombay in order to secure payment which was due under the award. In another litigation in Yeotmal, the Court levied an attachment on the Defendants' immovable property.

The Plaintiffs filed a suit in the Bombay High Court for enforcing mortgage against the Defendant praying that they had first charge on the property for payment of mortgage.

Held: Where immovable property situated in Benares is mortgaged in Bombay to a person residing in Bombay, a suit to enforce the mortgage can lie in the Bombay High Court and that Court has jurisdiction to decide whether the mortgage has priority over a charge on the property created by any other Court.

## 1937

AIR 1937 BOM 19

Jagannath v/s. Shivnarayan  
Sir Wadia & Sir Macklin, JJ

In a dispute referred to arbitration, an award was made in favour of the Plaintiff and a charge was levied on some immovable property of the Defendant in Poona District. A

decree was passed by Ahmednagar Court in terms of the award. The Plaintiff got transferred the decree for execution in Poona Court, where the Defendant objected on the ground that the property being outside the jurisdiction of Ahmednagar Court, Ahmednagar Court had no jurisdiction.

Held: The executing Court is not entitled to question the validity of the decree upon the ground that the decreeing Court had no jurisdiction territorial, personal or pecuniary to pass it.

(1937) 39 BLR 306

Annu Bhujanga Chigare v/s. Rama Bhujanga Chigare  
Sir Wadia & Sir Divatia, JJ

The father of the Petitioner and the Respondent executed a will. The will was attested by two persons, who put their thumb impression in token of attestation instead of affixing signatures. While the Petitioner applied to the Court for a letter of administration, the Respondent challenged the validity of the will on the ground that the will was not properly attested within the meaning of S.63 of the Indian Succession Act, 1925.

Held: The word 'sign' in S.63, cl. (c) of the Indian Succession Act, 1925 includes a mark. Hence, a will is validly attested if it bears only the marks even of attesting witnesses.

(1937) 39 BLR 471

Demibai Gengji Sojpal v/s. Rowji Sojpal  
Sir Wadia, J

The Plaintiff filed a suit to recover maintenance from her deceased husband's brothers. The Defendants filed their written statement contesting the Plaintiff's claim. During pendency of the suit one Cooverji published four articles in a newspaper which made allegations against the Defendants. The Defendants took out a rule *nisi* for contempt of Court against Cooverji.

Held: Where a person has been charged with contempt of Court for abusing the parties to a pending suit in relation to their defence and thereby prejudicing a fair trial by publishing articles, the test is not whether the writings have in fact obstructed or interfered with administration of justice, but whether they are calculated to do so. Thus, the intention of the writer is of secondary importance.

(1937) 39 BLR 476

Abbobaker Latiff v/s. The Reception Committee of the 48<sup>th</sup> Indian National Congress  
Sir Wadia, J

The petition is to set aside an award of the arbitrator. It was alleged that the arbitrator was guilty of misconduct as he made the award without giving notice of the same to the parties. The further ground was that the arbitrator mixed up the matters of the arbitration between the petitioner and the Respondent with the matters of other two arbitrations.

Held: Legal misconduct of an arbitrator does not necessarily involve any moral turpitude or dishonesty on his part. It is misconduct in the judicial sense of the word, and means an erroneous breach of duty on the part of the arbitrator, however honest, which causes miscarriage of justice. The Court does not sit in appeal from the award of an arbitrator. Its function is to see whether the grounds of misconduct alleged by the petitioner to have the award set aside are strictly proved.

(1937) 39 BLR 591

Chanbasappa Rachappa Shettar v/s. Madiwalappa Gurshiddappa Shettar  
Sir Broomfield & Wassoodew, JJ

An adopted son died leaving behind him surviving two daughters as his only heirs, his wife having predeceased him. The adoptive mother thereafter adopted another son to her husband. The validity of the second adoption was challenged.

Held: Under Hindu Law, the existence of the daughters of the deceased son did not deprive the widow of her power to adopt again to her husband. Merit lies in having a son, either natural or adopted, who might under certain circumstances be competent to perform the religious ceremonies necessary for the salvation of the soul of the deceased. One adoption may not satisfy the thirst of 'a person destitute of a son'.

Hence, the adoption of the Appellant cannot be questioned.

## 1938

(1938) 40 BLR 155

British India General Insurance Co., Ltd. v/s. Janardan Vishwanat Naik  
Norman, J

The deceased was a passenger in a motor omnibus obtained by its driver from a motor agency on hire-purchase. Due to the driver's negligence, the omnibus overturned and the deceased received fatal injuries. The legal representatives of the deceased sued the driver, the motor agency and the insurance company where the omnibus was insured for damages. The Court had to decide whether the legal representatives could sue the insurance company for damages when a clause in the insurance agreement gave power to the company to enforce rights of insured against third party.

Held: The clause in the insurance policy was merely an agreement between the insurer and the insured which did not add to the rights of either party against a third person and thus representatives of the deceased who was a stranger to the contract had no right to sue. Further, the indemnity clause in the policy did not constitute the deceased as a beneficiary under an implied trust since the policy was taken out for the benefit of the insured and not for the benefit of any passenger.

(The position in law has changed upon compulsory third party insurance)

AIR 1938 BOM 325

Mahadev Balkrishna v/s. District Deputy Collector, Poona  
Sir Rangnekar, J

The village was granted in Inam originally to one Damoder Karve. As per the Sanad, Inam was to be continued in the family so long as there may be in existence descendants of the original grantee in the male line. The village was partitioned under a decree of Civil Court and every Inamdar sharer was in possession of his share. The Appellant/claimant was purchaser of 2/5<sup>th</sup> share. In the proceedings for compulsory acquisition of land, the Land Acquisition Officer made an award directing that amount of compensation should be credited to the Government and the Inamdars should be paid certain annual cash allowance. This was done in view of condition in sanad referred above. On reference under S. 18 of the Land Acquisition Act, 1894 the District Court also directed that the amount should be deposited in Court and invested in Government Securities and the interest thereon should be paid to the Appellant during his lifetime and after his death to his descendants so long as any male descendant in his family was in existence. The Appellant appealed against this order.

Held: The person holding a limited interest cannot be said to be a person not competent to alienate the land within the meaning of S. 31(2) or S. 32(1) of the Act. A person may have limited title to convey the property but that interest is one which is capable of being valued for the purpose of the acquisition of land. The chance of the Inam coming to an end by failure of the male line was contingent and could scarcely be appreciable by a money value and government has no legal interest in awarding compensation. Hence the sharer was entitled to receive the whole amount.

AIR 1938 BOM 97

Lingo Bhimrao v/s. Dattatraya Shripad

Sir Divatia, J. on difference between Sir Barlee & Tyabji, JJ

The Plaintiff, who was the adopted son, sued for a declaration that the alienation including the gifts affected by his adoptive mother between the date of the death of her husband and the adoption were null and void and also for possession. The suit was claimed to be time barred.

Held: The period of limitation for setting aside invalid gifts starts from the date when the person discovers the true nature of the deeds sought to be set-aside and not from the date of gifts.

AIR 1938 BOM 231

Gangadhar Gopalrao v/s. Shripad Annarao

Sir Beaumont, CJ, Sir Broomfield & Wassoodew, JJ

The Plaintiff sued for mesne profits after executing a compromise decree in suit for partition of immovable property and possession. However, Compromise decree was silent about any claim of mense profits.

Held: Though the compromise decree is silent on future mesne profits, it does not bar second suit to recover the same from the institution of suit or the date of decree till delivery of possession under S. 11 Explanation IV of the CPC,1906.

(See also 1893 ILR 17 BOM 41)

AIR 1938 BOM 489

Emperor v/s. Shankar Sayaji Dalvi

Sir Beaumont, CJ & Sen, J

The Sessions Judge made a reference asking to quash the prosecution of a Police Patel of a village on the ground that no sanction from Government was obtained under S.197 of Code of Criminal Procedure.

Held: S.14 of village Police Act enables Police Patel to try and on conviction to punish any person charged with committing certain petty offences. He gives a definitive judgment as contemplated under S.19 of the IPC, 1898. Therefore, he is a Judge within the definition of S.19 and comes within protection afforded to Judges and public servants. Hence, sanction is necessary for his prosecution.

## 1939

(1939) 41 BLR 341

Janardan Govind Gore v.s. The Advocate General  
Sir Blackwell, J

The testator, a chitpavan Brahmin, made a will where by he left a sum of money towards medical relief for persons of his community or any other charitable purpose of utility to his community. A question arose whether by the expression "his community" the testator meant the chitpavan Bhramins only or the dakshini Bhramins as a whole.

Held: the words "his community" referred only to the sub community of chitpavan Brahmins only and not the community at large.

AIR 1939 BOM 129

Ramchandra Rango v/s. Emperor  
Wassoodew & Sen, JJ

The prosecution was based on the charges relating to the embezzlement of funds of the Dharwar Bank Ltd. and fabrication of accounts and evidence. The Directors of the Bank were convicted under Ss. 408, 409, 193 and 477A r/w 109 IPC, 1860.

Held: Merely because the Civil Court has decreed the claim of the bank to recover the sum alleged to have been embezzled, it will not amount to ratification of a criminal offence. Hence there can be no 'relating back' in case of an offence as a result of civil proceeding, although the criminal Court ought, as a rule, to take into consideration the Civil Court's judgment relating to such claim.

AIR 1939 BOM 354

Mahant Narsidasji v/s. Bai Jamna  
Sir Broomfield & Sir Macklin, JJ

The Plaintiff's husband disposed off his property by way of registered will and trust deeds in favor of a charitable institution making provision for payment of certain sum by way of maintenance to her. The Plaintiff sued to challenge the validity of the deeds and for maintenance suitable to her requirements and status according to Hindu Law. The suit was challenged on the ground that suit was governed by S.92 of CPC requiring leave of the Court which was not obtained.

Held: The Plaintiff was not asking to administer the trust but administer her husband's estate for the purpose of giving her proper maintenance. Hence the suit did not fall within S.92 of the CPC and was, therefore, not liable to be dismissed.

AIR 1939 BOM 449

Nurbai v/s. Abraham Mohammad  
Sir Broomfield & Sir Macklin, JJ

The mother of the Plaintiff gifted the suit house to her grandson who mortgaged the same. In execution proceedings of decree on the mortgage by mortgagee, the Plaintiff claimed the house as his property.

Held: The Parties being Sunni Bohras, are governed by Hindu law in matters of Succession and Inheritance and by Mohammedan Law in other respects. The validity of gift has, therefore, to be decided according to Mohammedan Law. Hence as the gift was without delivery of possession, it was incomplete and void and could be challenged.

## 1940

AIR 1940 BOM 22

Surajmal Deoram v/s. Motiram Kalu  
Lokur, J

A decree against the Plaintiff's father was passed before the birth of the Plaintiff. Thereafter a partition had taken place. In the partition, the suit property was allotted to the Plaintiff. In execution of the decree, the property was attached and sold. The Plaintiff was not a party to the execution proceeding.

Held: If decree is to be executed against the son after partition, he must be party to the execution proceeding; otherwise decree is not binding on the son.

AIR 1940 BOM 40

Emperor v/s. Rautmal Kanumal

Sir Beaumont, CJ & Sen, J

The accused was charged under Ss.457 and 380 of the IPC. The First Class City Magistrate, Satara released him on bail. The case was transferred from the Court of City Magistrate to the Honorary Magistrate. The Prosecution applied for cancellation of bail on the ground that the accused was found tampering with witnesses. The Magistrate cancelled the bail bond and took the accused in custody.

Held: The Magistrate has inherent power to direct the arrest of accused if he is found tampering with prosecution witnesses for the ends of justice though he is earlier released on bail by another Magistrate from whose Court the case is transferred.

AIR 1940 BOM 58

Ratanchand Dhulaji v/s. Jasraj Kasturchand

Sir Beaumont, CJ & Sir Harilal Kania, J

A suit for partition was filed by the next friend of a minor. On attaining the majority he elected to not to proceed with the suit. Accordingly the suit was dismissed. Costs were demanded by the next friend of the minor as well as the Defendant.

Held: If minor on attaining the majority, elects to not to proceed with the suit, he must pay the costs of the Defendants and also the next friend.

AIR 1940 BOM 118

Irappa Lokappa v/s. Rachayya Madiwalayya

Sir Wadia & Wassoodew, JJ

The Plaintiff was the adopted son. He sued for recovery of possession of his half share in the joint family property from his parental uncle. The adoption took place after the death of his father. A partition had taken place before adoption.

Held: Once partition is made in the property, it ceases to be joint family property from the date of partition. Hence though the adoption of the Plaintiff was valid, he has no right to share in the property which was already partitioned.

AIR 1940 BOM 311

Gurusangappa Basappa v/s. Baslingappa Basappa  
Sir Harilal Kania & Wassoodew, JJ

An earlier suit filed by one of the Plaintiffs for declaration of ownership of the suit property against the Defendants was dismissed. The later suit was filed by four Plaintiffs for enforcement of a mortgage.

Held: The subsequent suit against the same Defendants is not barred by principles of res judicata as it is based on a different title and constitutes entirely different cause of action.

AIR 1940 BOM 313

Malikarjunagowda Rudragowda v/s. Venkawa Ramchandrapa  
Sir Beaumont, CJ & Sen, J

The property in the suit originally belonged to the husband of a widow. The widow adopted a son. She incurred a certain debt for legal necessity. She executed promissory note to secure the debt. A suit for recovery was filed against her. In execution of the decree, the suit property of widow's husband was attached and sold. Her adopted son sued to restrain the sale of property and for declaration that, the suit property was not liable to be attached in execution.

Held: The property of husband cannot be sold in execution of a personal decree passed against the widow, though the debt is for legal necessity.

(1940) 42 BLR 839

Kashavlal Tribhovandas v/s. Bai Dhabhi

Sir Broomfield & Sir Macklin, JJ

A Hindu, in a joint Hindu family consisting of himself, his wife and his son, deposited a sum of money in his name and in that of his wife, under a receipt that stated that the depositor is the owner of the money. The depositor having died, the money was claimed by the son.

Held: The ownership of the money deposited depended on the source from which it came. The wife having no interest in the money when deposited, it was either the depositor's money or the joint property of himself and his son. Also the mere fact that the money was deposited in her name does not prove that the same was a gift deed. The depositor, as a Hindu father, also had no power to make a will with respect to the joint property.

(Consider how the position in law has changed under such contracts requiring payment to the survivor)

## 1941

AIR 1941 BOM 203

Govindnaik Gurunathnaik v/s. Basawannewa Parutappa  
Beaumont, CJ & Sen, J

The Plaintiff No.1 as a next friend of Plaintiff No. 2 filed a suit for enforcement of the mortgage. A Preliminary decree was passed. The Final decree was to be passed. The next friend died. The minor attained majority and died in the same year. He was adopted by widow of Plaintiff No.1. She applied for the final decree. The suit was stayed under O.32 Rule 10. Question was in respect of limitation for filing application for final decree.

Held: The period during which the suit was stayed should be excluded in computing the period of limitation for making an application for final decree as the right to apply for a final decree is suspended during the period in which the suit is stayed. S.6 of Limitation Act, 1908 had no application to such a case, but S. 15 of the said Act is applicable.

AIR 1941 BOM 267

Ebrahim Mahomed v/s. Khurshedbai Ebrahim  
Beaumont, CJ & Sen, J

The wife and children filed an application for maintenance against husband/father. The application of wife was rejected on the ground that the husband had not refused or neglected to maintain her and children but that the children were residing with the wife and, therefore, he was not liable to pay maintenance to them.

Held: The object of S.488 Cr.PC, 1898 was to avoid vagrancy by providing that a Magistrate may upto a limited extent see that wife and children are maintained by husband or father able to maintain them. The father cannot refuse to maintain his children on the ground that they are residing with the wife. The father can sue for their custody if he does not want to pay separate maintenance to them.

(This position in law still prevails)

AIR 1941 BOM 290

Jaijibai Pestonji v/s. Bhikhibai Chandulal

Divatia, J

The Plaintiff sued for declaration. He applied for withdrawal of suit with liberty to file a fresh suit. Accordingly the application was allowed and permission to withdraw the suit was granted with liberty to file fresh suit subject to payment of full costs of the Defendants in cash before institution of fresh suit. The Plaintiff did not wish to accept the conditions. He filed application for modification of condition and in alternate for revival of suit.

Held: The suit comes to an end when withdrawal is permitted. The Plaintiff then cannot ask the Court to modify terms for revival of the suit as the suit has already ended when the order was made. At the most the Plaintiff at the time of applying for withdrawal itself might request the Court to acquaint him with the terms which the Court wishes to impose, before the final order is made. The Court can also suo moto intimate those terms. But all these must be done before the order of withdrawal is formally made.

AIR 1941 BOM 305

Bai Jaya v/s. Ganpatram Kalidas

Divatia, J

The Plaintiff has filed suit for declaration that the Defendant widow is not entitled to get maintenance of Rs.65/- per year as settled in the consent decree in a previous suit and for injunction to restrain her from executing the decree. The suit was filed on the ground that the income of the joint family was decreased and the widow was earning Rs.45/- per month by personal service.

Held: Once amount of maintenance is fixed for the widow, it is only the permanent reduction in the income of family property which would afford a valid reason for reducing the amount. The income of the widow from personal service will not have effect on the amount of maintenance.

AIR 1941 BOM 357

Raghunath Ambaidas v/s. Dwarkabai Jagannath

Divatia, J

The Plaintiff sued for recovery of arrears of maintenance from the joint family property in which her deceased husband had a half share. The defence was that she was not entitled to recover arrears of maintenance after the death of her husband.

Held: Under the Hindu Law the right of a wife or a widow for maintenance arises not out of contract, but attaches to her status as a member of the joint family. She has the right of maintenance attached to the property itself which is taken by the surviving coparcener of her husband and it is a burden on inheritance with the result that the widow is entitled to follow such property in the hands of the coparcener taking it. This rule applies even to the arrears of maintenance accrued due. Hence it was held that the wife was entitled for arrears of maintenance and future maintenance during life time of her husband as well as thereafter as long as the property against which it can be enforced remains in the hands of coparcener. Hence the surviving coparceners are also liable to pay maintenance if they are in possession of husband's property.

AIR 1941 BOM 369

Bayabai v/s. Esmail Ahmed

Kania J.

A daughter sued for arrears of maintenance and separate residence against her father. Her mother was divorced and she was living with her mother. The Plaintiff did not want to live with father because he was remarried and a lunatic. The father had not taken any steps for getting her custody.

Held: In Mohammedan Law an unmarried daughter can claim separate maintenance from her father till her marriage as it is the responsibility of the father to maintain her.

## 1942

AIR 1942 BOM 284

Kashinath Balkrishna v/s. Anant Murlidhar  
Broomfield & Sen, JJ

A Hindu adopted child at the age of 14 years. The adoption was challenged.

Held: There is no hard and fast rule that an adoption by a person who has not completed the age of 15 years is necessarily invalid. The question depends on the maturity of understanding of the person adopting.

AIR 1942 BOM 21

Shekh Zafarbai v/s. Chhaganlal Aditram  
Divatia, J

A lease for a long period was granted by the mutawalli. Its validity was challenged.

Held: Under Mohammedan Law it is competent to a Mutawalli to lease the wakf property for a longer period with the sanction of the Court and even if such sanction is not obtained the Court has power to grant retrospective sanction, if it is satisfied that the transaction is for the benefit of the institution.

AIR 1942 BOM 338

Channappa Girimalappa v/s. Bagalkot Bank  
Beaumont, CJ & Sen, J

The Plaintiff sued for possession of immovable property without making any claim for mesne profits. Thereafter he filed another suit claiming mesne profits.

Held: The right to claim mesne profit rests on exactly the same facts and law as the claim to the corpus of those properties and hence where a claim for mesne profits is not included in the suit for possession, a second suit for mesne profit is barred by O2 R2 of the CPC, 1906.

(See also 1893 ILR 17 BOM 41 and AIR 1938 BOM 231)

AIR 1942 BOM 258

Sangavva Gulappa v/s. Gulappa Kariyappa  
Broomfield & Wassodew, JJ

The Respondent filed an application for cancellation of the order of maintenance passed in favour of his wife on the ground that she was living in adultery. His application was allowed. In the meanwhile wife applied for recovery of arrears of maintenance which were due before cancellation of order.

Held: On the proof that the wife is living in adultery the Magistrate is justified in refusing and indeed bound to refuse to execute an order for maintenance. As the order for maintenance is cancelled on the ground of adultery, the effect of cancellation is that even the arrears of past maintenance cannot be recovered.

## 1943

AIR 1943 BOM 272

Totappa Virbhadrappa v/s. Sharanbasappa Sanghanbasappa  
Divatia & Lokur, JJ

The Plaintiff sued for partition against his uncle, step brother and mother. In the same suit his mother in her written statement claimed partition and separation of her share in the joint family property.

Held: When one son separates from his brother and uncles and the latter choose to continue joint, the mother becomes entitled to her share equal to that of her separating son.

(Consider S.3 of the Hindu Married Women's Property Act, 1937)

AIR 1943 BOM 266

Gyanu Kashiba v/s. Sarubai Biru  
Beaumont, CJ

The Plaintiffs were reversioners of one Biru who had died in 1935 leaving two widows i.e. Defendant No.1 and 2. Defendant No.1 had alienated a piece of land which came to her share from her husband's estate. The alienation was challenged by the Plaintiffs as

not being made for legal necessity. It was contended by the widow that she had to raise moneys for her past and future maintenance and therefore there was legal necessity to sell the property.

Held: A Hindu widow cannot sell her husband's property to provide for past or future maintenance. Hence she has no power to sell her husband's estate in return for a covenant to pay her in annuity for maintenance for the rest of her life.

(1943) 11 ITR 340  
CIT v/s. Edulji F.E. Dinshaw  
Beaumont, CJ & Kania, J

The judicial observation has been made on the decisions of the Income Tax Department which come up for consideration on points of law.

Held: I have been hearing Income Tax references in this Presidency for the last 13 years and I would say that in at least 90% of the cases which have come before this Court, the Assistant Commissioner has agreed with the Income-tax Officer and the Commissioner has agreed with the Assistant Commissioner, however, complicated and difficult the questions may have been. But although that may have been the result in practice of giving a right of appeal to Superior Income-tax Officers, I apprehend that that was not what was in the contemplation of the Legislature when they gave the right of appeal. I have no doubt they contemplated that Superior Officers would exercise their powers in a judicial spirit and consider on merits the cases which came before them.

(1943) 45 BLR 633  
The Government Telephones Board v/s. Hormusji Seervai  
Sir Beaumont, Kt., CJ & Kania, J

The shares of Bombay Telephone Company Limited which was in the business of establishing and maintaining telephones and telephone exchanges in Bombay, Karachi and Ahmedabad under licences of the Government of India under the Indian Telegraph Act, 1885 sought to transfer its shares to the Appellant. The Government had the right to acquire the assets of the company in 1943 under the licence. The Government gave notice to exercise the option. The assets of the company were lands, buildings, works, materials and the plants of the licencees. The company was anxious that the Government take over the assets (much as the companies in Calcutta and Madras). A valuer was appointed by the company. A reconciliation statement was prepared so that instead of the assets of the company, the shares of the company could be acquired by the Appellants. An offer was accordingly made by the Appellant as the transferee company. A copy was sent to the shareholders. A meeting of the shareholder was held. The Petitioners did not question the transfer. 90% of the shareholders agreed to sell