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to the same effect as that of the Full Bench at Calcutta in the present case.

The widow has never been degraded or deprived of caste. If she had been, the case might have been different, subject to the question as to the construction of Act XXI of 1850; for upon degradation from caste, before that Act, a Hindu, whether male or female, was considered as dead by the Hindu law, so much so that libations were directed to be offered to his manes as though he were naturally dead. See Strange's Hindu Law, 160 and 261; Menu, Chap. XI, s. 183. His degradation caused an extinction of all his property, whether acquired by inheritance, succession, or in any other manner. Dayabhaga, Chap. I, paras. 31, 32, and 33. The opinion of Mr. Colebrooke in the *Trichinopoly case* is founded on the distinction between mere unchastity and degradation.

It is unnecessary to determine what would have been the effect of Act XXI of 1850, if she had been degraded or deprived of her caste in consequence of her unchastity.

Their Lordships, for the above reasons, will humbly advise Her Majesty to affirm the judgment of the High Court.

Appeal dismissed.

Agents for the appellants: Messrs. *Barrow & Rogers.*

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

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July, 22
and Mar. 9.

BEMOLA DOSSEE (PLAINTIFF) *v.* MOHUN DOSSEE AND OTHERS (DEFENDANTS).

Hindu Law—Joint Family—Dayabhaga—Joint Family Business—Power of Managing Member to bind Members of Partnership.

Adult members of an undivided Hindu family governed by the law of the Dayabhaga, who have an interest in a family business carried on by the managing member of the family, and who are maintained out of the profits of such business, must, in the absence of evidence, be taken to possess the knowledge, that the business might require financing, and to have consented to such financing.

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Where, therefore, a managing member of such a family, in carrying on the family business, obtains an advance necessary for the purposes of the business by pledging the joint family property, the mortgage is binding on all the members of the partnership.

APPEAL from a decision of WILSON, J.

This was a suit brought by a Hindu widow for a declaration that a certain mortgage be set aside so far as it affected her share in the family property.

The plaintiff stated that one Ramlochun Soor, subject to the Dayabhaga school of law, many years ago, commenced, and carried on up to the time of his death, in co-partnership with one Doorga Churn Dhur, the business of a general trader at Dacca and Calcutta, each of the partners having an equal share in the business.

Ramlochun died intestate, leaving three sons,—Obhoy Churn Soor, Sree Churn Soor, and Gour Churn Soor. In June 1868 Obhoy Churn Soor died, intestate and without issue, leaving the plaintiff his sole widow and heiress. In May 1872 Sree Churn Soor died, intestate and without issue, leaving Mohun Dossee (*one of the defendants*) *his widow and heiress.* The business, after the death of Ramlochun, was carried on by his co-partner and the sons of Ramlochun. The plaintiff stated that, on her husband's death, she requested her husband's brothers to adjust and settle the partnership accounts, but no account was ever rendered. She further stated that, at the time of the death of her husband, the firm owed little or nothing to the defendants; but that, on the 6th March 1874, the representatives of the firm of Ramlochun Soor mortgaged to the defendants, without the knowledge and consent of the plaintiff, certain properties, in which the plaintiff, as heiress of her husband, had a share; and that the mortgagees had, on 8th June 1876, instituted a suit and obtained a decree for the money secured by such mortgage, and a direction to sell such of the properties as would cover the debt.

The plaintiff thereupon brought this suit for the purpose above-mentioned.

The defendants (the mortgagees) contended, that the managing member of the firm had full power to mortgage the property, and that if, as the plaintiff had contended, she had no interest in

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the firm after the date of the death of her husband, she had then no right to bring the suit; and they further contended that the suit was barred by limitation.

Mr. *Jackson* (with him Mr. *Trevelyan*) for the plaintiff.

Mr. *Bonnerjee* for Mohun Bebee, defendant No. 3.

Mr. *Phillips* (with him Mr. *T. Apcar*) for the defendants, the mortgagees.

The following judgment was delivered by

WILSON, J.—The plaintiff in this case contends that a mortgage executed by the defendant Gour Churn and another in favor of the defendants Sonatun Doss, Rooplal Doss, Roghunath Doss, and Mohiny Mohun Doss, is void as against her, and claims relief founded upon that allegation. It was proved at the trial that Ramlochun Soor (who is the common root of title of all the parties in this suit) carried on business for many years in Dacca and Calcutta, in partnership with Doorga Churn Dhur, his son-in-law.

While both these persons were living, the properties now in question were purchased. Two of those mentioned first in para. 9 of the plaint were purchased in the joint names of Ramlochun and Doorga Churn; and it is expressly admitted in the plaint that they were purchases out of partnership funds. The other four properties, those subsequently mentioned in the same para., were purchased by Ramlochun, whether out of the proceeds of the business or not does not appear.

Ramlochun died some fourteen years ago, leaving three sons,—Obhoy Churn, Sree Churn, and Gour Churn. Obhoy Churn died in 1868, intestate and without issue, leaving the plaintiff his widow and heiress; Sree Churn died in 1872, intestate and without issue, leaving the defendant Mohun Dossee his widow and heiress; Doorga Churn died in 1877. The three brothers, after their father's death, were and continued a joint family, and there has never been any partition or severance in estate.

The business was carried on after Ramlochun's death, by his

three sons and Doorga Churn; and by the survivors of these persons down to about three years ago, when it became insolvent.

Now it is clear, that the property left by Ramlochun, including his share in the business, was, in the hands of his sons, joint family property; and it so continued throughout, though the several deaths that occurred altered the constitution of the joint family. Ramlochun's share, therefore, in the first two properties now in question, and his exclusive interest in the other four, were, at all times after his death, joint family property; the business was a partnership business, in which Doorga Churn was interested on the one side, and the joint family on the other.

It was proved that, at one time, the partnership had capital of its own; but before the death of Ramlochun that capital had been lost, and the business had since been carried on with borrowed money. It was further proved that, for very many years past, since long before Ramlochun's death, the funds so needed for the business, except so far as they were obtained from time to time by means of hundis, have always been advanced upon hath-chittas by the firm now represented by the defendants, the Dosses.

Early in 1874, the defendants, the Dosses, became alarmed in consequence of a heavy loss from the failure of another firm, to whom they had been making advances in like manner for many years, and pressed for security. The amount then due to them was Rs. 21,145-5-3. It was very important to the partnership to obtain an immediate fresh advance, because another creditor was pressing for payment of his debt. Accordingly, on the 6th March 1874, Gour Churn and Doorga Churn (Obhoy Churn and Sree Churn being then dead) executed the mortgage in question. It includes the properties now in dispute, together with others as to which no controversy arises, and it was to secure the existing debt of Rs. 21,145-5-3, and further advances up to a maximum of Rs. 31,000.

An immediate further advance was made, and the advancer continued to make advances as before; sums were from time to time repaid them; the balance varied, but in June 1876 the balance due to them was Rs. 29,605-5-3

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On the 8th June 1876 the Dosses brought a suit upon their mortgage against Gour Churn and Doorga Churn, which suit was, at a later stage, on the death of Doorga Churn, revived against his representatives.

On the 17th August, the defendants not appearing, a decree was made for an account and payment of the amount due, and for sale of the property upon default. The accounts were taken and the property sold. These are all the material facts proved to my satisfaction.

Evidence was given, it is true, on the part of the plaintiff to show that, soon after the death of her husband Obhoy Churn, she told Gour Churn, that she wished no longer to be interested in the business, and that he thereupon promised to render accounts. But I am not satisfied with that evidence. I should always be slow to believe witnesses who profess to relate conversation which they say they overheard many years ago, in which they took no part, and which they had no special reason for observing or remembering accurately. Moreover the plaintiff herself has not been examined on this point, nor has Gour Churn been called; though I think it is almost, if not quite, certain, that this suit is brought as much in his interest as in anybody elses. Further, if that evidence were ever so satisfactory, I do not see how it would alter the matter. In the case of a joint family business, I do not think a mere expression of an intention on the part of one member to withdraw not followed by partition or any other step whatever, can alter the rights of the parties as against strangers dealing with the firm.

On the other side some evidence was given with the view of showing that the plaintiff was cognizant of the mortgage at the time. This evidence was, however, at least as unsatisfactory as the other, and I discard it. These being the facts, the plaintiff claims as follows:—

That the proceedings in the said suit and the decree and subsequent orders therein may be declared fraudulent and void as against the plaintiff, and that the same may be set aside, so far as it affects the interests of the plaintiff.

That an account may be taken of the rents and profits come to the hands of the defendant Gour Churn Soor, or to the

hands of any other person by his order or for his use, or which but for his wilful neglect or default might have been so received; that the plaintiff may be paid her share of the amount found due on the taking of such account.

That a partition may be made of the said property, and that a commission of partition may issue for that purpose, and that all proper and necessary directions may be given for the carrying such partition into effect.

That the portion thereof to which the plaintiff is entitled, or her share, may be allotted to her in severalty, and that the sum may be duly made over to her.

That the plaintiff may have such further or other relief as the nature of the case may require.

The main question then is, whether Gour Churn had, under the circumstances, power to mortgage the family property? I think he had: the ancestral business of an undivided family is a piece of family property, just as much as inherited land.

It follows, I think, upon principle, that the managing members of the family must have the same power to pledge the credit or property of the family, for the maintenance of the business as for the preservation of any other piece of property;—that is to say, they must be able to do so when a sufficient case of necessity for the benefit of the estate arises. *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree* (1), and the authorities there cited are to the same effect. It was so held by the Bombay High Court in the case of *Ram Lall Thakursidas* v. *Lakhmi Chand Muniram* (2) and in the case of *Trimbak Anant* v. *Gopalshet Mahadu* (3). This view was approved by Pontifex, J., in the case of *Johurra Bebee* v. *Srée Gopal Misser* (4), and by Ainslie and Kennedy, JJ., in the case of *Sham Narain Singh* v. *Rughoobur Dyal* (5). See also *Joykisto Cowar* v. *Nittyanund Nundy* (6) with regard to the question of necessity, when a business is carried on upon credit, whether it be an English house, living upon the discount facilities given by European bankers, or a native firm living

(1) 6 Moore's I. A., 393, 423.
(2) 1 Bom. H. C. R., App., 51.
(3) 1 Bom. H. C. R., A. C., 27.
(4) I. L. R., 1 Calc., 470.
(5) I. L. R., 3 Calc., 508.
(6) *Id.*, 788.

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upon advances made by native shroffs upon hath-chittas; in either case if the banker insists upon security, it is, I think, a commercial necessity to give the security. The alternative is the stoppage of the business.

For these reasons I am of opinion that the mortgage was good, and that therefore the plaintiff's suit must fail.

Several questions were argued by counsel, which, having regard to the view I take of the main question, it is not necessary to decide. English authorities were cited to show that a partner has no authority, as such, to borrow money on mortgage. Whether the rule would apply with the same strictness in this country, where the English distinction between realty and personalty do not exist, it is not necessary to say. This is a case not of a mere contractual partnership, but of a joint family.

The question was argued on both sides whether such a suit as this could be maintained by one partner without first settling accounts with the partnership, and several cases were cited bearing upon the question. It is unnecessary to express any opinion on this matter. The question of limitation also was much discussed: upon this question I express no opinion.

There are other points which were not raised at the hearing, but which might perhaps have proved obstacles in the plaintiff's way, had the decision been in her favor upon the main question. She claims, not to set aside the mortgage, but to have it and the decree declared void, so far as it affects what she calls her share of the properties. It is at least doubtful whether such a suit could lie in any case: See *Rajaram Tewari* v. *Luchmun Prasad* (1) and *Mussamat Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy* (2).

She asks to have the decree for sale declared void as against her interest. But there is no evidence of any fraud or misconduct on the part of those who obtained it. Suit dismissed with costs on scale No. 2.

The plaintiff appealed.

Mr. *Bonnerjee* (with him Mr. *Allen*) for the appellant.—The partnership was not contractual, it had its existence in law only,

(1) 4 B. L. R., A. C., 118. (2) L. R., 3 I. A., 27; S. C., I. L. R., 1 Calc., 226.

its members being coparceners. The managing member had no right to mortgage our property without obtaining our signature to the mortgage-deed. There was no acquiescence on our part—*Dindyal Lal* v. *Jugdeep Narain Singh* (1) and *Suraj Bunsi Koer* v. *Sheo Prosad Singh* (2). The former of these cases lays down that a mortgagee, when endeavoring to enforce his debt against the property mortgaged and the co-sharers therein who were not parties to the bond, must make all the co-sharers parties. This was not done in the suit by the mortgagee. [PONTIFEX, J.—How could they make a title?] They do not make the case that the property stood in the name of Gour Churn, but they make a case against him personally. Our case is very similar to *Johurra Bebee* v. *Sreegopal Misser* (3). [PONTIFEX, J.—That case is an authority for saying, that although they may not be liable on the mortgage, they are liable for the debt.] Certainly, so long as we gave no notice of dissolution to creditors, we should be liable. But there is no reason why the mortgage should be upheld even supposing we were liable for the debt. The case cited in the judgment, *Joyhisto Cowar* v. *Nittyanund Nundy* (4), decided only that the share of a minor is liable for debts contracted by his guardian in the course of the family business. The present case is governed by the law of the Bengal school, and the case of *Rajaram Tewari* v. *Luchmun Prasad* (5), which is a case under the Mitakshara law, does not apply. Under the Bengal school, each person has a defined share, whereas under the Mitakshara, the share of each member is undefined. There is only one authority to show that where there are adult members of a family, the managing member alone has been allowed to sell the property, and that is the case of *Gopal Narain Mozoomdar* v. *Mudoomutty Guptee* (6). The principle, that a manager cannot represent the rest of the family, unless in exceptional cases, is laid down in the Mitakshara, Chap. i, sec. 1, vv. 27, 28, 29; *à fortiori* would it be under the Dayabhaga. The notes of Mr. Macnaghten in *Prannath*

(1) L. R., 4 I. A., 247; S. C., I. L. R., 3 Calc., 198.
(2) L. R., 6 I. A., 88; S. C., I. L. R., 5 Calc., 148; 4 Calc. L. R., 233.
(3) I. L. R., 1 Calc., 470.
(4) I. L. R., 3 Calc., 738.
(5) 4 B. L. R., A. C., 118.
(6) 14 B. L. R., 21.
(7) 1 Sel. Rep., 45; New Ed., 60.

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Das v. *Calishunkur Ghosal* (7) are to the effect that a manager cannot bind other members of his family when they have not consented to his acts. The case of *Aushutosh Day* v. *Mohesh Chunder Dutt* (1) shows, that a manager of a Hindu family may bind the family for necessities, but it must be shown that the money was applied *bonâ fide* to the purpose for which it was required.

Mr. *Allen* on the same side cited *Kounla Kant Ghosal* v. *Ram Hurree Nund Gramee* (2) and Macnaghten's Hindu Law Vol. II, pp. 291, 294.

Mr. *Phillips* for the respondent.—The only points raised in the Court below were, whether the alienation was good, and as to what were the powers of the partners. I shall contend that, supposing the consent of all the members of a family to an alienation of the family property to be necessary, a very small amount of acquiescence to such alienation will be sufficient. In the case of *Prannath Das* v. *Calishunkur Ghosal* (3) there is nothing to show that the family was joint. The real question is, whether a kurta has any, and if any what, power to alienate. He cannot alienate as a unit, but the alienation must be the aggregate alienation of the joint family, and such an alienation may be made by a kurta. The case of *Chuchun Lall Singh* v. *Poran Chunder Singh* (4) does not clearly show whether the family was governed by the Mitakshara or the Bengal school. Property may even be sacrificed for the benefit of the family, and it has been held that ancestral property may be applied for the purpose of carrying on a business—*Sham Narain Singh* v. *Rughoobardyal* (5). [PONTIFEX, J.—Your case would be stronger if you put it that the property was partnership property, and that a pledge by a member of the partnership would be sufficient as against the other partners.] If the property is partnership property, whatever were the rights as to alienation, the ladies could only come in for a share of the profits, but could not sue for a specific

(1) Fulton's Rep., 380.
(2) 4 Sel. Rep., 196; New Ed., 247.
(3) 1 Sel. Rep., 45; New Ed., 60.
(4) 9 W. R., 483.
(5) I. L. R., 3 Calc., 508.

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share. When the question is one of necessity, I come within *Hunooman Pershad Panday's case* (1), and all that is incumbent on us was, that we should satisfy ourselves that apparently there was necessity. We had been pressing for payment. [PONTIFEX, J.—The case of *Juggeewun Das Keeha Shah* v. *Ramdas Brijboohundas* (2) deals with the property there in suit as though it were partnership property, and there one member of the firm did not sign the mortgage. Yet it was held binding on him. The Privy Council seem to think that ancestral property belonging to a firm, which was also ancestral, may be taken as partnership property. [GARTH, C. J.—Can you treat the carrying on of the business, although it may be ancestral, as a necessity of the same kind as the payment of Government revenue? In the case before Mr. Justice Mitter and myself, we did so treat the ancestral property as part of the business. PONTIFEX, J.—What do you say as to the point of the form of the decree, the plaintiff says the decree does not bind her share.] Is she entitled to come in and set aside the sale, when she might redeem the property? Can she, in a suit brought for a different purpose, obtain equitable relief in a mortgage suit to which she was not a party, and without having shown that the ancestral property was not sufficient to pay off the debts?

Mr. *T. A. Apcar* on the same side.—This is really the suit of Gour Churn. The plaint is not verified by the lady. If the lady's share is to be freed from the charge, it should only be so on condition that she redeems those shares. The Full Bench case of *Modhoo Dyal Singh* v. *Golbur Singh* (3) lays down that, in absence of proof, that would give a purchaser an equitable right to compel a refund from a son who has recovered his ancestral estates from a purchaser from his father. The son would be entitled to recover without refunding, but if the son got the benefit of his share of the purchase-money, he must refund, and that decision is followed in the case of *Muthoora Koonwaree* v. *Bootun Singh* (4) and

(1) 6 Moore's I. A., 393.
(2) 2 Moore's I. A., 487.
(3) B. L. R., Sup. Vol., 1018; S. C., 9 W. R., 511.
(4) 13 W. R., 31.

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in the case of *Surub Narain Chowdhry* v. *Sheo Gobind Pandey* (1).

Judgment was delivered by

GARTH, C. J. (PONTIFEX, J., concurring).—The question we have to decide in this appeal is, whether two adult ladies, who are the widows of two members of an undivided Hindu family governed by the law of the Dayabhaga, are bound by a mortgage of joint family property made by the surviving brother and managing member of the family, as to which they allege they were not consulted, and by the subsequent decree for sale in a suit by the mortgagee against the managing member as sole defendant.

The plaintiff, who is one of the two ladies above-mentioned, the other of them being a defendant in the same interest with the plaintiff, by her plaint prays, that her rights in the mortgaged premises may be ascertained and declared; that it may be declared that her share is not affected by the mortgage; that the decree in the mortgage suit may be declared fraudulent and void as against her; that an account may be taken of the rents and profits, and her share ascertained and paid; and that the mortgaged property may be partitioned.

If the case turned on a question of joint family property pure and simple, it would be doubtful whether, apart from consent, the plaintiff would be bound by a mortgage made by the managing member alone, or by a decree on the mortgage obtained against the managing member as sole defendant, even though the mortgage was made for a debt in respect of which she was liable jointly with the managing member.

It is certainly doubtful, under the law of the Mitakshara, where a member of a joint family before partition has no definite share, whether an adult would be bound by the mortgage or alienation for necessary purposes by the managing member of the family,—see *Sheo Bunshi Koer* v. *Sheo Prosad Singh* (2); and if there is any difference in this respect between the law of the Mitakshara and the law of the Dayabhaga, it would seem to be still more doubtful under the latter. The question to be

(1) 11 B. L. R., App., 29. (2) L. R., 6 I. A., 88, at p. 101.

determined in this case, however, is not in our opinion a question of joint family property pure and simple, for it is materially affected by other circumstances.

Ramlochun Soor was the father of Obhoy Churn, Sree Churn, and Gour Churn. During his lifetime Ramlochun carried on business in Calcutta in partnership with a third person, whom and whose representative we shall hereafter refer to as the independent partner. During Ramlochun's life the properties to which this suit relates were purchased, and two of those properties were actually purchased in the names of Ramlochun and the independent partner. Ramlochun died more than fourteen years ago intestate, and his property and his share in the partnership business were inherited by his three sons, who conducted and managed the same. Obhoy Churn, the plaintiff's husband, died in 1868, intestate and without issue; and Sree Churn died in 1872, intestate and without issue, leaving a widow, who is a defendant to this suit in the same interest with the plaintiff. After the death of Obhoy Churn and Sree Churn, Gour Churn continued to manage the family share in the partnership and the joint family property, and he and his brothers' widows continued to live as an undivided family, the profits of the family share in the business being blended with the income of the joint family property, and employed for the benefit and maintenance of the joint family, for we agree with the lower Court in altogether disbelieving the evidence adduced by the plaintiff, meagre as it is, as to her withdrawing from the business, or altering her position with respect thereto. The business had for years been financed by the defendants. In 1874 the amount due to them was over Rs. 21,000. The business had pressing need of further advances, and application was made to the defendants, who agreed to make advances, but insisted upon having security for the Rs. 21,000 and for further advances up to Rs. 31,000 on the whole. In March 1874 Gour Churn and the independent partner executed a mortgage accordingly, which not only covered the joint family property in respect of which this suit is instituted, but also property of the independent partner. Upon the execution of the mortgage a further advance was made.

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In June 1876 there was a balance due on the mortgage of over Rs. 29,000. On the 8th June 1876 the mortgagees instituted a suit on the mortgage against Gour Churn and the independent partner, and on the 17th August they obtained a decree, and under it one of the properties purchased by Ramlochun has been sold; but the purchaser has not been made a party to this suit.

This suit, in fact, except so far as it asks for partition, which we consider is asked for merely as a secondary relief, seeks only for a declaratory decree. It is apparent from the foregoing circumstances, therefore, that this is not simply a case in which Gour Churn mortgaged joint property as the managing member of the family. These ladies continued to be interested in the business; they must be taken to have known that it was financed by the defendants, and that it required advances; they allowed Gour Churn to stand forward as the ostensible owner of the family share; they participated in and were maintained out of its profits, and they were, in our opinion, certainly liable for the debts of the business. As authorised manager of the family share in the business, Gour Churn was clearly capable of making all necessary business contracts. Did it lie within his power as such manager to raise monies necessary for the business (as to which there is no question) by mortgaging the joint family property?

If the joint family property can be considered as partnership property belonging to the family share of the business, we think there could be no doubt that he could pledge it. Mr. Justice Lindley, in his book upon partnership, states the English law, which in this respect is founded on reason and convenience, as follows:—"The writer is not aware of any decision in which an equitable mortgage made by a partner by a deposit of deeds relating to partnership real estate has been upheld, or the contrary; he can therefore only venture to submit, that such a mortgage ought to be held valid in all cases in which it is made by a partner having an implied power to borrow on the credit of the firm." (Page 229, 1st edition.)

In this case Gour Churn certainly had an implied power to borrow on the credit of the joint family as partners in the firm;

also we think, he had power to borrow on the credit of the joint family, as a joint family for the purposes of the firm. A joint family carrying on a business is necessarily a peculiar kind of partnership. It does not cease on death; but the shares in it are inheritable along with the shares in the joint family property. We agree with the decision at page 51, Appendix 1, of the first volume of the Bombay High Court Reports (approved at page 471 of the first volume of Indian Law Reports, Calcutta Series). In that case the following propositions were stated as law (pages 71 and 72):—"The power of a manager to carry on a family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes of that trade. Third parties, in the ordinary course of *bonâ fide* trade dealings, should not be held bound to investigate the status of the family represented by the manager whilst dealing with him on the credit of the family property. Were such a power not implied, property in a family trade, which is recognized by Hindu law to be a valuable inheritance, would become practically valueless to the other members of an undivided family, wherever an infant was concerned, for no one would deal with a manager, if the minor were to be at liberty, on coming of age, to challenge, as against third parties, the trade transactions which took place during his minority. The general benefit of the undivided family is considered by Hindu law to be paramount to any individual interest, and the recognition of a trade as inheritable property renders it necessary for the general benefit of the family that the protection which the Hindu law generally extends to the interests of a minor should be so far trenched upon as to bind him by acts of the family manager necessary for the carrying on and consequent preservation of that family property; but that infringement is not to be carried beyond the actual necessity of the case."

In the present case the question of necessity or propriety does not arise. And we can see no difference in respect of the law so laid down between families governed by the law of the Mitakshara and the law of Dayabhaga. But it is objected that the Bombay case relates only to the power of the manager to bind infants; and that it is no authority for the proposition that he can also bind adults, and no doubt that is so. But, having

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regard to the observations in that case as to the peculiar nature of a joint family business, and the opinion expressed by Mr. Justice Lindley in his book, with which we also agree, we think that the manager had at least power, for the necessary purposes of the business, to make an equitable pledge of the joint family property which would bind the plaintiff.

The circumstances of the case do not, in our opinion, render it necessary for us to express an opinion whether the plaintiff is bound by the decree in the suit to which she was not a party. The plaintiff is, in our opinion, distinctly liable for the debt, and bound by the pledges. She now sues without making any offer to pay off the debt. She is seeking the aid of equity without offering to do equity. If she had made such offer, she might perhaps have been entitled to have the decree reopened and the accounts retaken, for the purpose of giving her an opportunity of redeeming. She is either bound by the decree in the mortgage suit or not. If she is bound we cannot interfere. And if she is not bound, we ought not to interfere by making any declaration except upon the condition of her offering to pay the debt for which she is liable.

As she has made no such offer, we must confirm the decree of the Court below, and dismiss the appeal with costs on scale No. 2.

We may add that we are the more inclined to arrive at this conclusion, because we think it a highly suspicious circumstance that the lady was not examined by commission or otherwise, and has not ventured to affirm that she was not cognisant of and consulted with respect to this mortgage. Although we affirm the decree of the Court below, we think it is necessary for us to say that we do not concur in the doubt expressed by the learned Judge at the end of his judgment as to whether the plaintiff's suit would lie at all; for this case being governed by the Dayabhaga, the plaintiff would be entitled to a definite share in the joint property.

Appeal dismissed.

Attorneys for the appellant: Messrs. *Mitter* and *Bhunjo.*

Attorneys for the respondents: Mr. *C. O. Linton* and Messrs. *Beeby* and *Rutter.*