

asserting any of them thereafter. This dictum was cited and re-affirmed in *Woomatara Debia v. Unnopoorna Dasse* (1), decided by the Privy Council on May 13th, 1873. We must, then, allow the plea urged by the respondents and dismiss this appeal with costs. (2).

1875.

BALDRO SA-
HAI
v.
BATESHAR
SINGH.

APPELLATE CIVIL.

1875.

August 26.

(*Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Oldfield.*)

BALDRO DAS (PLAINTIFF) v. SHAM LAL (DEFENDANT).*

Hindú Law.—Undivided Hindú Family—Ancestral Immoveable property—Rights of Father and Son.

The sons in an undivided Hindú family, although they have a proprietary right in the paternal and ancestral estate, have not independent dominion.

Where, therefore, the plaintiff sued to eject the defendant, his son, from a portion of a house, partly self-acquired by the plaintiff and partly ancestral property, in which the defendant was living against the plaintiff's will, the Court decreed the claim.

THE plaintiff and the defendant, Hindús, were father and son. The plaintiff sued to eject his son from a portion of a house of which he had taken possession on its being vacated by a tenant. The defendant replied that the plaintiff had no right to eject him, the house being ancestral property, in which father and son had equal rights.

The first Court found that a portion of the house was ancestral property, and a portion acquired by purchase by the plaintiff from his brother, and decreed the claim, holding that, under Hindú law, a son could not enforce a right to possession of any property, whether ancestral or self-acquired, in his father's lifetime. The lower appellate Court dismissed the suit on the ground that, under Hindú law, sons have equal rights with their fathers in immoveable ancestral property.

(1) 11 B. L. R. P. C., at. p 169.

(2) See *Maktum Valad Mohidin v. Imám Valad Mohidin*, 10 Bom. H. C. R. 293, and *Janaki Annal v. Kámalathammal*, 7 Mad. H. C. R. 263.

* Special Appeal, No. 185 of 1875, from a decree of the Subordinate Judge of Moradabád, dated the 31st December, 1874, reversing a decree of the Munsif, dated the 14th May, 1874.

1875.

BALDEO DAS
" SHAM LAL.

The plaintiff appealed to the High Court. The pleas set out in the memorandum of appeal were that, under Hindú law, a son was not entitled to take possession of any portion of ancestral property without the father's consent; and that, as a moiety of the property in dispute was the plaintiff's self-acquired property, he was entitled to eject the defendant.

Munshi *Hanúmán Parshád*, Bábu *Oprokush Chandar*, and Mir *Zakír Husain* for the appellants.

Pandit *Ajudhia Náth* and Pandit *Bishambar Náth* for the respondent.

OLDFIELD, J. (who, often stating the facts as above, continued) :—

The decree of the Court of first instance should, in my opinion, be restored.

A son, no doubt, takes by birth a vested interest in immoveable ancestral property, and there is authority for considering that his interest in the father's lifetime, and before partition, is a present interest of a proprietary and coparcenary nature—(Mitakshara, ch. i, s. 1 and s. 5); and the power to enforce partition of the ancestral estate implies such an interest, looking to the definition of partition given in Mitakshara, ch. i, s. 1, para. 4, and ch. i, s. 1, para. 23. But even assuming such ownership on the part of the son, yet until partition takes place, or until the death of the father, natural or civil, the father, by reason of his paternal relation, and his position as head of the family, and its manager, is entitled to make lawful disposition of the property in the interest of the family. This is shown by ch. i, s. 5, paras. 9 and 10, Mitakshara, which, by marking the extent of the son's power of interference in the father's disposition of the property, shows that the power of disposition within certain limits is centered in the father. The son's enjoyment of the property is subject to the dispositions lawfully made by the father, and, if dissatisfied, the son's remedy will lie in any right he may possess to enforce partition of the estate.

In this case there has been no illegal disposition of the property on the part of the father. It appears that the defendant objects to live with his mother-in-law, and insists on occupying part of a house,

which used to be rented, and which his father desires to dispose of in the way he considers most advisable.

I would decree the appeal and decree the claim, but, looking to the relationship subsisting between the parties, they should bear their own costs in all Courts.

TURNER, OFFG. C. J.—I concur in decreeing the appeal. Sons who are members of an undivided Hindú family acquire by birth an interest in the paternal as well as the ancestral estate, and are entitled in certain events to interfere to prevent waste or to enforce partition in the lifetime and without the consent of their father; but, while their interest is proprietary, it lacks the incident of dominion. “They have not independent dominion, although they have a proprietary right.”—Colebrooke’s Digest of Hindú Law, Bk. v, ch. vii, 433, vol. ii, p. 562, 3d ed.

1876.

BALDEO DAS
v.
SHAM LAL.

APPELLATE CIVIL.

1875.
August 26.

(Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Oldfield.)

SIHUGAN CHAND (DEFENDANT) v. THE GOVERNMENT, NORTH-WESTERN PROVINCES (PLAINTIFF).*

Contract—Act IX. of 1872, s. 72—Liability of Person to whom Money is paid by Mistake.

A treasury officer, under the imposition of a gross fraud, paid money to the defendant, who was the innocent agent of the person who contrived the fraud. In paying the money the treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness.

Held that the defendant was bound to repay the money received by him, and that he could not defend himself by the plea that he had paid it to his principal: nor could the Court allow that the circumstance that the principal was himself a servant of the plaintiff, and in the course of his employment obtained facilities for committing the fraud, relieved the defendant from his liability.

THIS was a suit brought on behalf of the Government, North-Western Provinces, to recover Rs. 5,293-15-4, being an amount which the plaintiff by mistake paid to the defendant on his presenting to the officer in charge of the Civil Treasury in Dehra Dún, by

* Regular Appeal, No. 95 of 1874, from a decree of the Subordinate Judge of Dehra Dún, dated the 22nd June, 1874.