

off the debt he owed. He simply relies on a plea of limitation. It is admitted that the decision of the court below is in accordance with a decision of two Judges of this Court. He in turn is met with a counterplea of limitation in this appeal. This is not a hard case. What is sauce for the respondent is in this case sauce for the appellant. I therefore would not admit the appeal out of time.

WALSH, J.—I entirely agree. The Code is quite free from ambiguity upon the point. The Calcutta case may have been rightly decided upon the facts, but, for the reason given by my learned brother, I am unable to agree with its construction of the Code, which was unnecessary for the decision. I agree in dismissing the appeal.

ORDER OF THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Piggott.

PAHALWAN SINGH (PLAINTIFF) v. JANKI AND OTHERS (DEFENDANTS).*
Hindu law—Bond—Suit on bond executed by deceased Hindu against his widow and brothers.—Form of decree.

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Plaintiff, after the death of the obligor, a Hindu, sued his widow and brothers to recover the amount due on a bond. It was found that the obligor and his brothers were joint. *Held* that the plaintiff was still entitled to a decree against the widow which might be executed against any self-acquired property of the deceased obligor in her hands.

THIS was a suit by the obligee of a bond to recover the amount due thereon from the widow and brothers of the obligor, who had died before suit. The bond was proved, but the suit was nevertheless dismissed on the ground that the obligor and his brothers had been joint and that on his death his brothers became the owners of the property by right of survivorship and that his widow inherited nothing. The plaintiff applied in revision to the High Court.

Munshi *Baleshwari Prasad*, for the applicant :—

The bond being proved, the court should have decreed the claim as against any assets of Baldeo which might be in the hands of the defendants. It was not for the court at that stage

* Civil Revision No. 97 of 1917.

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to enter into the question whether Baldeo left any, and, if so, what assets. That question would arise at the time when the decree would be sought to be executed; *Lallu Bhagvan v. Tribhuvan Motiram* (1), *Madho Ram v. Dilbur Mahul* (2), and Civil Revision No. 18 of 1917, decided by KNOX, J., on the 2nd of May, 1917, (Unreported.) It has been found that Baldeo was joint with his brothers. But there is nothing to prevent a member of a joint Hindu family from holding at the same time some self-acquired separate property. If Baldeo left any such property, it would be inherited by the widow and would be his assets in her possession, and the decree could be executed against it. The court should have contented itself with passing, as it was bound to pass, a decree against the assets of Baldeo, if any.

PIGGOTT, J.—On the findings of the court below there should have been an *ex parte* decree against Musammat Janki, widow of Baldeo, for the sum claimed, with costs, such decree to be recoverable only against any self-acquired property of the deceased Baldeo which might be found in the possession of the widow. The lower court was quite entitled on the pleadings to try an issue whether Baldeo had died joint or separate from his brothers Chunni, Gokul and Bachchu; and having come to the finding that, at the time of Baldeo's death, the four brothers were members of a joint undivided Hindu family, it has rightly held that the joint family property, whatever it may be, in the hands of the remaining brothers by survivorship could not be liable for a debt incurred by Baldeo, in the absence of any evidence that it was incurred on behalf of the joint family or for the benefit of that family. I doubt whether the modification of the decree of the court below, to which I think the plaintiff is entitled as a matter of law, will be of any particular benefit to him. The object of this application seems to have been to obtain a decree against the brothers. However, as the matter has been taken up in revision by this Court, and as the decree of the court below appears open to objection on this point, I am prepared to modify it. The suit will therefore stand dismissed as against the defendants Chunni, Gokul and Bachchu, with costs both here and in the court below. It will be decreed, with costs in the

(1) (1889) I. L. R., 13 Bom., 653. (2) (1870) 2 N.-W. P., H. C. Rep., 449.

court below, as against the defendant Musammat Janki, with this proviso, that the amount of the decree will be recoverable only from any self-acquired property of the deceased Baldeo which may be in the possession of this judgement-debtor.

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Decree modified.

REVISJONAL CRIMINAL.

Before Mr. Justice Tudball and Mr. Justice Piggott.

EMPEROR v. RAM SARAN LAL AND ANOTHER. *

*Act No. II of 1899 (Indian Stamp Act), section 62; schedule I, article 5—
Stamp—Petition to court intimating compromise of suit—Agreement.*

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The parties to a suit came to terms out of court, and presented a joint petition to the court stating the terms of compromise arrived at and asking that a consent decree might be given in accordance therewith.

Held that such petition was to be stamped merely as a petition to the court and did not require to be engrossed on a general stamp.

THE facts of this case were as follows :—

One of the accused, Sheo Narain, sued the other accused, Ram Saran Lal, in suit No. 977 of 1916 in the Munsif's court at Farukhabad to recover some money on the basis of a simple mortgage. The parties came to terms out of court. They agreed "orally" that the defendant was to pay down a certain part of the debt in cash; that the plaintiff was to have a decree for the rest of the money payable in annual instalments, and that in case of any default the plaintiff was to be able to execute his decree at once for the whole sum then due. The agreement was not reduced to writing. The parties walked into court and presented a petition to the Munsif praying that a decree might be passed in the case in the terms of the compromise at which they had arrived out of court, and in that petition they informed the court of the terms of the compromise. The court thereupon passed a decree in favour of the plaintiff, but it sent the petition to the stamp officer on the ground that it was an agreement which ought to have been stamped with a general stamp. The Collector directed the prosecution of these two persons for an offence under section 62 of the Act, and they were fined Rs. 5 each.

* Criminal Reference No. 566 of 1917.