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adopted exists among the common residents of Gwalior as was alleged in paragraph 2 of the plaint. No special custom of the family has been set up or proved. It is undoubtedly the law that when a person migrates from one country to another, there is a presumption that he carries with him his personal law, and, unless there is something to show that he has adopted the law of his new domicile, he must be deemed to be still governed by the old law. No previous act in the history of the family is forthcoming to show that it gave up the Mitakshara law under which it was governed in Ratnagiri and adopted any special law prevailing in Gwalior. The mere fact that the family accepted the *jagir* from the *Darbar* would not of itself be sufficient to show that the personal law was necessarily changed. Having regard to all these circumstances we are of opinion that it is impossible to interfere with the finding or decree of the court below.

The appeal is accordingly dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Dalal and Mr. Justice Pullan.*

ALI BAHADUR BEG AND ANOTHER (PETITIONERS) v.  
RAFI-ULLAH AND OTHERS (OPPOSITE PARTIES).\*

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November,  
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*Civil Procedure Code, order XXII, rules 4 and 10—Mortgage—Death of judgement-debtor after passing of preliminary decree—No application for substitution within prescribed time.*

A preliminary decree in a mortgage suit was passed on the 13th of May, 1920. The judgement-debtor died in July, 1920. No application for substitution was made, but the decree-holder applied for a final decree on the 12th of May, 1923.

\* Second Appeal No. 2267 of 1925, from a decree of Tufail Ahmad, Additional Subordinate Judge of Shahjahanpur, dated the 31st of August, 1925, confirming a decree of Banarsi Das Kankan, Munsif of Tilhar, dated the 16th of September, 1924.

*Held*, that the application was in order. *Tularam v. Tukaram* (1), not followed. *Lakshmi Achi v. Subbarama Ayyar* (2) and *Dakoju Subbarayudu v. Musti Rama Dasu* (3), referred to.

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THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Pandit *Uma Shankar Bajpai*, for the appellants.

Maulvi *Mushtaq Ahmad*, for the respondents.

DALAL and PULLAN, JJ. :—The question arising for decision in this second appeal is whether the suit has abated as no application was made for substitution within the time prescribed after the death of the judgement-debtor. A preliminary decree for sale in this mortgage suit was dated the 13th of May, 1920. The judgement-debtor died in July, 1920, and admittedly no application for substitution was made prior to the application for final decree on the 12th of May, 1923. It has been argued that in a case of this kind order XXII, rule 4, does not apply, because of the use of the words "right to sue," and rule 10 is more applicable to this case. This view is based upon a decision of the Nagpur court to which we have been referred, *Tularam v. Tukaram* (1). But we do not find ourselves in agreement with the reasoning in that decision. In our opinion the law has been more correctly laid down by the Madras High Court, in *Lakshmi Achi v. Subbarama Ayyar* (2) and in a later ruling in *Dakoju Subbarayudu v. Musti Rama Dasu* (3). *Mutatis mutandis* the observations of the learned Judges in that case are applicable to the one before us. They pointed out that rule 10 can only apply when an application under rule 3, here rule 4, is barred. In that case every condition required by rule 3 was present and here every condition required by rule 4 is present.

(1) (1920) 64 Indian Cases, 307.

(2) (1915) I.L.R., 39 Mad., 488.

(3) (1921) 68 Indian Cases, 942.

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The judgement-debtor died after the passing of the preliminary decree and the right to sue, which includes the right to continue the suit, survived. The appeal is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Kendall.*

EMPEROR v. RAMAN LAI.\*

1926  
November,  
24.

*Criminal Procedure Code, sections 234 and 235—Charge—*  
*Several offences of a similar nature extending over a period of more than one year joined together in one charge.*

The accused was charged with having, on or about a certain date, committed theft in respect of eight necklaces. The evidence, however, disclosed that he had committed criminal breach of trust in respect of two of the necklaces on different dates more than a year apart, and it was not clear as to when he had misappropriated the others.

*Held*, that although there was technically no misjoinder of charges, the trial was vitiated in the same way as if there had been a misjoinder of charges and this was not a mere irregularity. *Subrahmania Ayyar v. King-Emperor* (1) and *Emperor v. Kalka Prasad* (2), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Babu Piari Lal Banerji, Pandit Uma Shankar Bajpai, Babu Satish Chandra Das and Munshi Ram Nama Prasad, for the applicant.

Sir Charles Ross Alston, for the opposite party.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

\* Criminal Revision No. 557 of 1926, from an order of Kashi Prasad, Sessions Judge of Muttra, dated the 1st of September, 1926.

(1) (1901) I.L.R., 25 Mad., 61.

(2) (1916) I.L.R., 33 All., 42.