within the six degrees of the same line for the purpose of inheritance among collaterals.

The grandson of the uncle is, therefore, to be preferred to the widows of other uncles of the propositus.

We affirm the order of the lower Court. The parties may have their costs out of the estate.

<div align="right">

1911.

KASHIBAI
v.
MORESHVAR
RAGHUNATH.

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<div align="right">

Decree affirmed.

G. B. R.

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APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

LAKHMICHAND REWACHAND (ORIGINAL PETITIONER), APPELLANT, *v.*
KACHUBHAI GULABCHAND AND OTHERS (ORIGINAL OPPONENTS),
RESPONDENTS.*

<div align="right">

1911.
April 10.

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Civil Procedure Code (Act V of 1908), Order I, Rule 10—Limitation Act (IX of 1908), Article 171—Partition suit—Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty days—In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice.

On the 5th April 1892 the plaintiff obtained a decree for partition and died in October 1893, leaving him surviving a minor son, who attained majority in February 1907. At a very late stage of the execution-proceedings, the son made an application on the 16th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree.

Held, that as soon as the Civil Procedure Code (Act V of 1908) came into force the suit abated so far as regarded the applicant's father who was a party, and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Article 171 of the Limitation Act (IX of 1908), the application was time-barred.

Held, further, that in a partition suit all the parties should be before the Court, and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice.

* Appeal No. 51 of 1910 from order.

the applicant's father who was a party, and the application to
set aside the abatement by adding the applicant as the legal
representative, not having been made within sixty days, is barred
by Article 171 of the Limitation Act of 1908. It is obvious,
however, that in a partition suit all the parties should be before
the Court. The suit has actually reached the stage of a
commission to divide the property, and the applicant is a
sharer. Nothing in the Code limits or affects the inherent
power of the Court to make such orders as may be necessary
for the ends of justice, and under Order I, Rule 10, the Court
may, at any stage of the proceedings, order that the name
of any person whose presence may be necessary in order to
enable the Court effectually and completely to adjudicate upon
and settle all the questions involved in the suit, be added. We,
therefore, order that the applicant be added as a defendant in
the suit, being bound by all the proceedings up to date.

Costs costs in the cause.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

SUBRAYA BIN VENKATESH BUDDA SHETTI AND OTHERS (ORIGINAL
PLAINTIFFS), APPELLANTS, *v.* GANPA *alias* GOVIND NARAYAN NAIK
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Mortgage—Mortgagee failing to pay a part of consideration as provided in
the mortgage-deed—Failure of consideration—Subsequent payment cannot
be taken as part of mortgage-debt—Transfer of Property Act (IV of 1882),
sections 56, 81, 88—Marshalling of securities.*

In 1896, G. mortgaged some lands (Serial Nos. 1—10) to V. for Rs. 400, of
which Rs. 200 were paid in cash and Rs. 200 were to be paid to N., a prior
mortgagee. V. having failed to pay to N., G. sold to defendant No. 5 some of
the lands mortgaged (Serial Nos. 6—10) and other property and redeemed N.'s
mortgage by paying Rs. 200 to him. Subsequently V. paid Rs. 200 to G.

* Second Appeal No. 797 of 1907.