CASES IN THE APPENDIX.

B. L. R. Vol. V.

B. L. R. Vol. V, p. 9.

(Appendix.)

The 11th April 1870.

Before Mr. Justice Phear.

BROADHEAD *v.* BROADHEAD.

Divorce, Suit for—Adultery—Wife's Costs.

Mr. Woodroffe applied in this case that the respondent should be paid by the petitioner. The suit was one brought by the husband for a divorce, on the ground of his wife's adultery. The marriage had taken place in 1866. The wife had at the time of the marriage no property of her own. Mr. Woodroffe referred to the case of *Kelly* v. *Kelly* (1).

Mr. Hyde contended that, as the marriage had taken place subsequently to the Indian Succession Act, Section 4 of that Act applied, and the husband in that case would not be liable to his wife's costs. The principle in which the Courts in England ordered a husband to deposit a sum to meet the wife's costs was that the husband by marriage become entitled to the whole property of the wife. The wife in law could possess nothing, and the Courts in England, therefore, considering it right that she should have the means of prosecuting or defending a suit of a matrimonial nature, invariably ordered the husband when the wife had no separate property to deposit a sum for costs. Here the case was very different. Section 4 of the Indian Succession Act enacts that "no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried." East Indians married since the passing of that law neither acquire nor lose by marriage any right or interest in any property. The wife lost nothing by marriage, and might hold property, when married, as she did before. It might, therefore, be a question whether the Court under these circumstances would make any order for costs.

There was no evidence before the Court that the wife had any separate property, and PHEAR, J., granted the application, and made an order that the petitioner should deposit a sum for the respondent's costs.

Attorneys for the Petitioner: *Messrs. Sims* and *Mitter.*

Attorney for the Respondent: *Mr. Carapiet.*

(1) 3 B. L. R., App., 5 or 1 Suppl. Vol., p. 360.

B. L. R. Vol. V, p. 10.

(Appendix.)

The 20th April 1870.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

SRINATH SAHA *(Plaintiff)*,

versus

SARODA GOBINDO CHOWHRY and another *(Defendants).*

Special Appeal No. 921 *of* 1869, *from a decree of the Judge of Rajshahye, dated the 8th February* 1869, *reversing a decree of the Subordinate Judge of that district, dated the 20th July* 1868.

Stamp, Want of—Act X of 1862, s. 14—Act VIII of 1859, s. 350—Appeal.

An Appellate Court has no power to reverse the judgment of a Court of first instance merely on the ground that the document on which the suit was based did not bear a stamp at all.

Baboos Anukul Chandra Mookerjee and *Bhawani Charan Dutt* for Appellant.

Baboos Annada Prasad Banerjee and *Mahini Mohan Roy* for Respondents.

Norman, J.—THE plaintiff sued to recover the sum of rupees 3,461, deposited with the defendants, with interest thereon.

A receipt was put in evidence by the plaintiff written on unstamped paper.

The first Court received the document holding that it fell within the exception in Clause 61, Schedule A, of Act X of 1862, as a receipt for money deposited at interest in the hands of a banker, and did not require a stamp.

On appeal, the Judge of Rajshahye reversed the decision of the first Court in favor of the plaintiff, on the ground that the document was in reality a bond, and required a stamp as such, and that the defendants were not bankers, and consequently that the document did not fall within the terms of exemption in Clause 61.

Baboo Anukul Chandra Mookerjee, for the plaintiff who appeals, contended before us, that even if the Judge was right in holding that a document required a stamp, yet under the provisions of the 350th section of Act VIII of 1859, the Lower Appellate Court ought not to have reversed the decision of the first Court on that objection; the error in the decision on a mere question of stamp not being one which affects the merits of the case, or the jurisdiction of the Court, He cited two cases, *Lalji Sing* v. *Syad Akram Ser* (1), *Mark Ridded Currie* v. *S. V. Mutu Ramen Chetty* (2), which are expressly in point.

We think that these cases govern that now before us, and therefore we reverse the decision of the Judge with costs, and remand the case to the Judge for trial on the other issues.

(1) 3 B. L. R., A. C., 235.
(2) 3 B. L. R., A. C., 126.

B. L. R. Vol. V, p. 14.

(*Appendix.*)

The 20th April 1870.

Before Mr. Justice Norman and Mr. Justice Mitter.

AGHORI RAMASARG SING, *alias* DAU JHI (*Plaintiff*),

versus

J. COCHRANE and another (*Defendants*), (1).

Special Appeal No. 2158 *of* 1869, *from a decree of the Judge of Shahabad, dated the* 17*th July* 1869, *affirming the decree of the Subordinate Judge of that district, dated the* 5*th January* 1869.

Mitakshara—Sale of Ancestral Property—Cause of Action.

According to the Mitakshara, a son has a right during the life-time of his father to sue to set aside alienations of ancestral property made without his consent. His cause of action arises from the date when possession is taken by the purchaser.

Baboos Annada Prasad Banerjee and *Rames Chandra Mitter* for Appellant.

Baboo Mahes Chandra Chowdhry for Respondent.

Norman, J.—THE plaint states that the plaintiff, Aghori Ramasarg Sing, sues for the establishment of his right of possession by determination of his title to 5 annas 4 pie of Mouza Bhutolia lands in Kadia and other properties, by cancelling certain deeds of conditional sale dated the 13th of September 1859, and a mortgage dated the 30th of August 1862, executed by the plaintiff's father, Aghori Ram Jhiram Sing, and for the recovery of future mesne profits; that the suit is brought on the ground that the mouzas in question were acquired by the great grand father and ancestors of the plaintiff; that Aghori Ram Jhiram Sing, who is made a defendant, had no right to alienate the ancestral property, without his (the plaintiff's) consent, and no right to pledge or sell the ancestral property without legal necessity; that the property was acquired by the plaintiff's great-grand father out of his own funds, and out of the income of ancestral property; that the defendant, Aghori Ram Jhiram Sing, squandered his money in unauthorized expenditure, and in

See Rai Gorain *v.* Teza Gorain, 4 B. L. R., App. 99 or 1 Suppl. Vol., p. 534.