would be the same thing as a legacy, and *seisin* would not accompany the gift.

But we also think that, under the circumstances, the special appellant must fail in this suit, although we may admit that the owner of the property, Lall Mahomed, was capable of conveying it, on the undoubted maxim of Mahomedan Law, that (*vide* Macnaghten's Mahomedan Law, Chapter V., page 51) no one can make a gift of any part of his property on his death-bed to one of his heirs, it not being lawful for one heir to take a legacy without the consent of the rest. Now, the special appellants in this case are Lall Mahomed's grand-children, and, as such, his heirs in conjunction with the other members of the family; and, if they are allowed to take the one-third under the mokurruree as a death-bed gift, it is manifest that the co-heirs would be damaged to that extent.

It may be urged that this ground of objection has never been taken by those interested. But the law permits this Court to raise and adjudicate upon such points when they are apparent on the face of the pleadings, even when the parties to the suit are silent. Indeed, were we not to take this question into consideration, we should be deciding the suit on grounds diametrically opposed to the law which we are bound to administer.

We think, therefore, that the mokurruree having been executed when Lall Mahomed was dangerously ill, and in contemplation of death, can only be considered in the light of a death-bed gift; and, that being the case, the special appellants, who are with others the natural heirs of the donor, cannot take anything under it, but must be satisfied with such share of the deceased's property as Mahomedan Law gives them.

The special appeal is dismissed with costs.

The 25th May 1865.

Present:

The Hon'ble C. B. Trevor and J. P. Norman, *Judges.*

Lessee (Rights of)—Principals and Agents—Shareholders (Powers of)—Manager (Revocation of appointment of)—Partition.

Case No. 250 of 1864.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Monghyr, Zillah Bhaugulpore, dated the 20th August 1864.

Bulakee Lall and others (Plaintiffs), *Appellants,*

versus

Mussamut Indurputtee Kowar and others (Defendants), *Respondents.*

Mr. C. Gregory and *Baboo Unnodapershad Banerjee* for Appellants.

Baboos Dwarkanath Mitter and *Chunder Madhub Ghose* for Respondents.

A lessee can take no greater rights than his lessor, and is bound by the decree in a suit against his lessor to the same extent as the latter.

A principal can determine at his mere pleasure the authority given to an agent. So one shareholder cannot resist the revocation by another shareholder of the authority given to a manager, there being no stipulation in the deed providing for the appointment of a manager, that the authority should continue for any definite time.

Any act or declaration showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes a complete severance or partition.

THE plaintiff sues to recover two annas of talooka Kuttree Iktyarpore, to which he claims to be entitled under two leases, dated respectively the 7th Choitro 1267, and the 3rd Joistee 1268 Fuslee, executed by Nawab Singh and others.

The defendant Indurputtee Kowar claims the same property under a zur-i-peshgee lease granted by Indurjeet Singh on the 12th Assin 1266 (October 1858) to secure Rupees 10,000 borrowed by him to defray the marriage expenses of his daughter.

The property in question is a part of four annas of the talook which was purchased in the name of Gunnesh Dutt, the father of Indurjeet Singh. Before the date of the defendant's lease, *viz.*, in September 1858, Nawab Singh and others, brothers of Gunnesn Dutt, brought a suit against Indurjeet Singh, alleging that the property, though standing in the name of Gunnesh Dutt, was not his, but purchased by Maghoo Singh, their father, in his name. This suit ended in a compromise, in pursuance of which, on the 13th of June 1859, a decree was passed that, of the said four-anna share, four annas should belong to the said Indurjeet and Lutchmun Singh his brother, and that, of the remaining twelve annas, each of the other sons of Maghoo Singh should receive two annas eight gundahs; that the parties were

to take possession of their shares from that day.

The solenamah also contained clauses as follows: "It is necessary that one man should "be appointed general manager. As Rada "Singh (the eldest surviving son of Maghoo) "is the eldest and wisest of us all, and very "honest, he is appointed as the manager; he "will collect the rents, pay the necessary "expenses, and out of what remains in his "hands, he will render an account every "three months. If any shareholder is dis-"satisfied with the management of the mana-"ger on account of fraud or dishonesty, he "has a right to revoke his authority; in such "case he will collect separately, but will pay "the Government revenue jointly. After "Rada Singh, Indurjeet will succeed him "as manager, &c. The manager will grant "pottahs to the ryots and leases to the far-"mers, and the sunnuds of appointment of "the servants will bear the signature of the "general manager, and shall be given with "the consent and advice of the other co-"sharers. Debts shall be paid from the ge-"neral fund, for whatever debts may be "contracted subsequent to the deed, the "party contracting them shall alone be liable. "If there be any occasion for borrowing "for general purposes, all the co sharers will "borrow together, and shall be jointly "liable."

The Principal Sudder Ameen dismissed the suit, on the grounds that the deed of arrangement was still in force, and that no evidence had been given on the part of the plaintiffs to prove the authority of their lessor to grant the pottah.

The plaintiffs appeal.

We think that they are entitled to a decree. The lessors were legally entitled to the property in dispute at the date when leases were granted.

Without entering into the question whether the zur-i-peshgee lease by Indurjeet Sing, set up by the defendants, is a genuine and *bonâ fide* document; and, assuming it to be so, it was executed after the institution of the suit against Indurjeet. The defendant can, therefore, take no greater rights than their lessors had, and are bound by the decree in the suit against Indurjeet to the same extent that he himself is. The deed providing for the appointment of a manager contains no words disabling the shareholder from interference in the management, or restraining any one of them from revoking the authority of the managers as far as regards his share at any time. It is clear that the manager as such could not successfully object to the revocation of his authority. It is a well-known principle of law that a principal has a right to determine the authority given to an agent at his mere pleasure; for since the authority is conferred by his mere will, and is to be executed for his own benefit and his own purposes, the agent cannot insist upon acting when the principal has withdrawn his confidence, and no longer denies his aid. (*See* Story on Agency, section 464, &c.) Neither could any co-sharers resist the revocation of the authority given to the manager, there being no distinct stipulation that the authority should continue for any definite time. The parties are not in a position substantially different from that of a joint Hindoo family. In such cases a separation may, at any time, take place at the will of any member of the joint family. And any act or declaration, showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes a complete severance or partition. In the Vyuvuharee Muyooku, translated by Borradaile, p. 52, it is said that, even when there is no property, a partition may be made by a mere declaration—"I am separate from thee." *See* also the same work, p. 110.

It was, however, contended before us that the zur-i-peshgee lease was confirmed by the clauses in the solenamah, which provides that all debts should be paid out of the common fund. We need not express our opinion whether or not this debt is one of those which were contemplated by this provision. It may or may not be that the defendant Indurputtee has a right to be paid out of the common fund arising from the income of the property to be distributed. Be that as it may, we think it clear that it never could have been the intention of the parties to the solenamah that the shares which were allotted to the plaintiff by the decree in pursuance of that instrument were to be taken, not absolutely, but subject to unknown encumbrances created by Indurjeet. If that were otherwise, the compromise would have been wholly illusory.

We think, therefore that the clause which provides that debts should be paid from the general fund was not intended to keep alive any securities for such debts being encumbrances wrongfully created by Indurjeet upon the shares surrendered by him.

The plaintiff is, therefore, entitled to a decree with costs in all the Courts and interest.