

Appeal No. 104.

1867.
Aug. 23.

BOMBAY COAST and RIVER STEAM NAVIGATION CO.

v.

RENE HELEUX, Master of the Ship *Gabriel*.*Collision at Sea—Damages—Cross-suit—Admiralty Jurisdiction—
Rejection of Plaintiff—Setting aside—Costs.*

One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-suit for damages caused by the same collision, although himself residing out of the jurisdiction of the court.

An order rejecting, for want of jurisdiction, a plaintiff brought under such circumstances, was set aside on appeal; and the costs of the appeal ordered to be costs in the suit.

THIS was an appeal from an order made by ARNOULD, J., rejecting a plaintiff for want of jurisdiction.

The suit was for damages caused to the plaintiffs' ship the *Lord Clyde*, by a collision at sea. The plaintiff stated the fact of the collision, and that it was caused by the negligence of the defendant and his crew; and submitted that the defendant was subject to the jurisdiction of the court, on the ground that he had instituted a suit against the plaintiff's ship the *Lord Clyde*, for damages caused by the same collision.

The appeal was heard before COUCH, C.J., and WESTROPP, J., *Green*, for the appellant:—The defendant, by instituting a suit for damages, had subjected himself to the jurisdiction of the court; and rendered himself liable to be sued for damages alleged to be caused by the same collision. Even the power of attorney filed in the suit brought by the defendant [Admiralty Suit No. 2 of 1867] authorises Mr. Acland to sue and be sued. The rejected plaintiff was also presented in the Admiralty jurisdiction of the court: 1 Robinson, Adm. Ca. 387. It was competent for the plaintiffs here to proceed *in rem* against the ship, or *in personam* against the master or the owners. The ship was not in Bombay when the plaintiff was presented. The Admiralty jurisdiction of the court is the same as that of the Supreme Court: Original Letters Patent, Sec. 31; Amended Letters Patent, Sec. 32;

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Supreme Court Charter, Secs. 53, 54. The practice in Chancery is to stay the proceedings in a suit, until an answer in the cross-suit is filed.

The following authorities were cited:—*The Seringapatam* (a); *The Camco* (b); Coote's Admiralty Practice, 28; *Murray v. Vibart* (c); *Ex parte Mahomed Feroz Shah* (d); 1 Morley's Digest, Jurisdiction, 147.

PER CURIAM:—We set aside the order rejecting the plaint, and order it to be received and filed: and we order the costs of this appeal to be costs in the suit.

(a) 3 W. Robinson 41
(c) 1 Philips 521.

(b) 5 Law Times, N. S. 773.
(d) Tayl. & Bell, 74.

Aug. 19.

Original Suit No. 1507 of 1866.

LAKSHMIBÁI, widow of Krishnanáth

Morobá.....*Plaintiff.*

GANPAT MOROBÁ, NÁRÁYAN MOROBÁ,

and SATYABHÁMABAI, widow of Vi-

náyak Morobá.....*Defendants.*

Hindu Law—Family Property—Partition—Will—Testamentary Power—Coparcenary—Tenancy-in-Common—The words “share and share alike”—Construction—Life—Estate of Widow in Immoveables—Doctrine of Mitakshara—Reunion—Joint Enjoyment.

V. and M., Hindus residing in Bombay, made a deed of partition, in 1823, of the whole of the family property, moveable and immoveable, which had come into their exclusive joint enjoyment on the death of their father. V. died in 1850, having made a Will, prepared by an English solicitor, in the English language and form, by which, after various bequests to members of the family, he disposed of the residue of his estate: one third share to his son V. absolutely: another third to his son L. absolutely: and the remaining clear third share to my grandsons K., V., G., and N., the sons of, my late son Morobá deceased, their and each of their respective heirs, executors, administrators, and assignee share and share alike." These residuary bequests, it was provided, were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life; but the estate was divided by the award of arbitrators, in 1855, after making a provision for the widow, in substantial accordance with the directions of the will. V. and L. immediately thereafter took possession of their respective third shares of the moveable and immoveable estate;