1863. *August* 1. *R. A. No* 4 *of* 1863.

have been responsible for the amount due if the defendant had not negligently omitted an enquiry which he was bound to have made. It is quite clear therefore that the parties dealt upon the principle of setting off against one another demands of a varied character, and the plaintiff having wholly failed to establish the negligence which he has set up, the decree of the Court below is clearly right and this appeal must be dismissed with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 75 *of* 1863.

TÁNDAVARÁYA MUDALI..................*Appellant.*

VALLI AMMÁL..........................*Respondent.*

A debt incurred by the head of a Hindu family residing together is under ordinary circumstances presumed to be a family debt.

But when one of the members is a minor, the creditor seeking to enforce his claim against the family property must show that the debt was contracted *bona fide* and for the benefit of the family.

Hunoomanpersaud Panday v. *Mussumat Babooee Munraj Koonweree* (6, Moo. I. A. Ca., 393) followed.

1863. *August* 6. *S. A. No.* 75 *of* 1862.

THIS was a Special Appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 69 of 1862, reversing the decree of the District Munsif of Dindigul, in Original Suit No. 956 of 1860. This suit was brought to recover certain lands, the property of an undivided Hindu family, which had been mortgaged to the plaintiff by the first defendant, who was the elder brother of the second defendant and the managing member of the family. At the date of the mortgage the second defendant was a minor. No evidence was given by the plaintiff, that the mortgage had been made for the benefit of the family.

Mayne, for the appellant, the third defendant contended that under the circumstances the burden of proof that the debt was for the benefit of the family lay on the plaintiff, and cited *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (*b*).

(*a*) Present : Phillips and Frere, JJ.

(*b*) 6 Moore I. A. Cases, 393.

1863. *August* 6. S. A. *No.* 75 *of* 1863.

The Court delivered the following

JUDGMENT :—This is a claim for land under a mortgage-bond said to have been executed in favour of the plaintiff by the first defendant in the year 1851, during the minority of the second defendant the younger brother of the first. It was stated in the plaint that on the 30th October of the above year the first defendant borrowed rupees 250 from the plaintiff, and assigned to her the lands in question as security for payment.

The second defendant resisted the claim, on the ground that the land was his own property and that the suit was collusive.

The District Munsif was of opinion that in the absence of any proof that the sum was borrowed for family purposes, the family property belonging to the two undivided brothers, the first and second defendants, could not legally be held liable for the plaintiff's bond, and accordingly dismissed the suit. This decision was, however, reversed in appeal by the Civil Judge who passed judgment in favour of the plaintiff's claim, on the ground that the debt which was incurred by the first defendant the elder brother and head of the family, must be presumed to be a family debt, for which the second defendant and the family property must be held liable.

We see no reason to question the doctrine laid down by the Civil Judge in this case, as regards a family of brothers or other co-parceners resident together under ordinary circumstances ; but in the present instance we observe that the Civil Judge has omitted to notice an important feature in the case, that the only co-parcener of the first defendant whose rights are affected by the act of the latter, was, according to the plaintiff's own statement, a minor at the time of the execution of the bond, and unable consequently to protect his own interests. Adverting therefore to the nature of the pleas urged by the second defendant we consider that on the principle ennunciated in the case *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree* (a). it was incumbent on the plaintiff to adduce some proof that the debt was contracted *bona fide*, and for

(a) 6, Moore, I. A. Cases, 393.

1863. *August* 6. *S. A. No.* 75 *of* 1863.

the benefit of the family ; but this she has altogether failed to do. We resolve therefore to modify the decree of the Civil Judge, and to pass judgment for the amount there stated against the first defendant personally, with all costs of suit.

Our decree will thus relieve the second defendant as well as the lands in question, from all liability on account of the decree.

Appeal allowed.

ORIGINAL JURISDICTION (*a*)

Original Suit No. 94 *of* 1863.

ARUMUGAM MUDALI *against* AMMI AMMÁL.

Under a bequest by a Hindu of ten rupees per month, followed by a direction to the following effect : " in this manner continue to pay in the legatee's name so long as he shall be alive : after his death continue to pay the same to his descendants from generation to generation."

Held :—1st. That the legatee took only a life-interest under the bequest.

2nd. That the words " from generation to generation," did not import more than " absolutely " and " for ever " import in an English instrument.

3rd. That the descendants in existence at the time of the tenant for life's death took absolutely as a class ; and

4th. That such descendants were entitled in equal shares to an amount sufficient to produce the monthly sum of ten rupees.

Remarks on the construction of Hindu wills.

' Descendants' of A in a Hindu will would include children and grand-children living at his deceased, but does not include A's brother or widow.

There is no rule of Hindu law imposing any restriction in point of time on the operation of a bequest creating a series of successive life-interest in each generation of a legatee's descendants. But

Semble : the grounds of the rule against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period.

1863. *June* 30. *August* 4 & 7. *O. S. No.* 94 *of* 1863.

THE plaintiffs P. Árumugam Mudali and his wife Sundaram Ammál by her husband and next friend sought to recover rupees 935 from the defendant as sole surviving executrix with probate of Manali Lutchmana Mudali deceased, being the arrears of a monthly sum of ten rupees bequeathed by the testator to M. Shanmuga Mudaliyár deceased and his descendants, due from the end of July 1855, when the last payment was made, to the 19th May 1863, when the plaint was filed.

(*a*) Present : Scotland, C. J. and Bittleston, J.