Advocate General contended that the fact of another name being introduced as a party, distinguished the present case from others. But that cannot be so in this case. Otherwise every case of estoppel by judgment *inter partes* might be got rid of by introducing a man of straw as a plaintiff or defendant in the subsequent suit. Here the additional party is the alleged mortgagor who makes no defence, and the mortgage being invalid, the other defendants are admittedly entitled to the nine houses as his execution-creditors. As to the tenth house the case is admitted by the first defendant, and the plaintiff must have a verdict for it. The defendants DeSouza and Cammiade are entitled to a verdict as to the remaining nine.

1863. *March* 4. O S No 44 of 1862.

The second and third defendants will have their costs in full. The plaintiff will have his costs against Muhammad Ibrahim down to the time of the settlement of issues.

ORIGINAL JURISDICTION. (*a*)

BRASS *against* TIRUVENGADA PULLAI.

The High Court has no power under the Civil Procedure Code to award costs to the defendant when the plaintiff withdraw, not having asked leave to do so with liberty to bring another suit for the same matter.

THIS case was in the daily cause-paper, but the plaintiff, before it was called on for trial, withdrew from the suit, without having asked permission of the Court to do so with liberty to bring another suit for the same cause of action.

1863. *March* 4.

Branson for the defendant applied for costs, and referred to Sections 97 and 187 of Act VIII of 1859.

PER CURIAM :—We cannot grant costs. Sections 97 and 187 are the sections in the Civil procedure Code which empower the Court to award costs. The former sections does not apply, as the plaintiff has not asked for leave to withdraw and bring a fresh suit for the same matter. Section

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

1863. *March* 4.

187 provides that "the judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion;" and though it goes on to say "and the Court shall have full power to award and apportion costs in any manner it may deem proper," it must necessarily be read as only applicable when judgment is given.

Application refused.

APPELLATE JURISDICTION. (*a*)

Special Appeal No. 25 *of* 1862.

KONDI MENON.....*Appellant.*

SRÁNGINREAGATTA AHAMMADA..... *Respondent.*

According to Malabar law a sale of family property is valid when made with the assent, express or implied, of all the members of the tarawád, and when the deed of sale is signed by the káranavan and the senior anandravan if sui juris.

Such signature is prema facie evidence of the assent of the family, and the burden of proving their dissent rests on those who allege it.

1863. *March* 5. *S. A No.* 25 *of* 1862.

THIS was a special appeal against the decree of H. D. Cook, Civil Judge of Calicut, in Appeal Suit No. 219 of 1861, affirming the decree of the District Munsif of Kacheri in Original Suit No. 195 of 1858.

The suit was instituted for the possession of a paramba with arrears of porapád; and the question was whether a sale by the káranavan and the eldest anandravan for the benefit of the tarawád was valid, the appellant, a junior member of the tarawád, not having joined in the deed whereby the sale was effected. The Civil Judge found that the sale had been made to pay debts which a former karanavan had incurred for the benefit of the family, and that the instrument of sale had been executed by the káranavan and the senior anandravan.

Mayne, for the appellant, the fourth defendant, contended that it was necessary to the validity of the sale that all the anandravans should execute the instrument of sale, or at all events that the chief anandravans should give their assent in writing. He cited Strange's *Manual of Hindu*

(*a*) Present: Frere and Holloway, J.J.