

With respect to the particular debts upon which interest ought to be calculated it will be probably enough for me to say that in my opinion, following the judgments of Lord Eldon and Sir John Leach in *Ex parte Boyd (a)*, interest can only be allowed upon such debts as bear interest by the contract of the parties either express or implied; not upon judgments or any other debts with respect to which interest could only be recovered qua damages: see also *Ex parte Cocks (b)*, *Ex parte Mills (c)*, *Ex parte Williams (d)*.

1851.  
April 10.

I ought to mention the case of *William Marshall*, which occurred in this Court in May 1841, when Sir Robert Comyn appears to have made an order after notice to the creditors that Mr. Blunt (who was both common assignee and also executor under William Marshall's will) should as common assignee transfer to himself as executor the residue of the estate.

That case (as also the case of Col. Byng,) came under the 9 Geo. 4, c. 73, the provisions of which were not materially different, so far as this question is concerned, from those of the present Act, except, perhaps, that it was less favourable to creditors in not containing the provision authorising a judgment to be entered up so as to affect after-acquired property. But I do not find that on that occasion there was any opposition on the part of the creditors to the motion made by the common assignee, who happened to represent both the creditors and the insolvent, nor any argument upon the question which has been raised and argued in this present case.

(a) 1 Glyn. & J. 285.

(c) 2 Ves. 302.

(b) 1 Rose 317.

(d) *Ibid.* 399.

APPELLATE JURISDICTION. (a)

*Special Appeal No. 736 of 1862.*

PERAMMAL.....Appellant.

VENKATAMMAL.....Respondent.

A Hindu widow, whether childless or not, stands next in the order of succession on failure of male issue.

Daughters can only succeed on failure of widows.

Where A had two wives, B and C, and B predeceased A, leaving three daughters, and C survived A and was childless:—*Held*, that C succeeded to A's property in preference to the three daughters.

THIS was a special appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 60 of 1861, affirming the decree of J. D. Goldingham, Acting Subordinate Judge of Madura, in Original Suit No. 6 of 1859. In this suit the plaintiff claimed the whole of the immoveable and a moiety of the moveable property belonging to Venkatasvami Nayak, the father of his three minor grandchildren. Venkatasvami had two wives, one of whom predeceased him, leaving the three minor daughters: the other survived him, a childless widow, and was the first defendant in the suit. The question was whether under the circum-

1863.

February, 21.

S. A. No. 736  
of 1862.

(a) Present: Strange and Holloway, J. J.

1863.  
February 21.  
S. A. No. 736  
of 1862.

stances the minors were or the widow was entitled to take. The Subordinate Judge decided in favour of the daughters, and on appeal the Civil Judge affirmed his decree in the following judgment :—

“ The Court has given the case its best consideration, and after consulting Macnaghten and Strange on the law-point at issue, sees no cause for questioning the correctness and justice of the lower court's decision. The only point *pleaded in appeal*, calling for consideration, is, whether the fact of the minors' mother having died prior to her husband, affects the minors' claim: but this, the court is of opinion, it does not. Appellant (1st defendant) as a childless widow, cannot by Hindu law *inherit*. She is only entitled to maintenance, or a moiety of her husband's moveable property. Daughters *do inherit* and take by representation according to their mothers (Strange 324 : Sadr ' Adálat pandits, 3rd July 1854 (a). The court therefore confirms the lower court's decree—the appellant paying all costs in this appeal.”

*Branson (Sadagopacharlú and Rajagopacharlú with him)* for the special appellant, the first defendant. The minor daughters can only claim through their mother, and the estate never vested in her as she predeceased her husband.

*Mayne* for the special respondent, the plaintiff.

The Court did not call for a reply, and the following judgment was delivered by.

STRANGE, J. :—The plaintiff has brought this suit on behalf of three minor daughters of one Venkatasvámi Náyak. She is their grandmother and guardian, and she seeks to recover for them their father's estate.

The Acting Subordinate Judge has decreed in the plaintiff's favour and the Civil Judge has affirmed his decision.

We are unable to concur in the view taken by the lower Courts of the Hindu law of descent regulating the transmission of the property in dispute. We are not called upon to

(a) The passage in Strange's *Manual of Hindu Law* here referred to is as follows :—“ If succession be derived from the mothers, where the father may have had a plurality of wives, the daughters take by representation according to their mothers.” The meaning of this seems to be that the daughters in such case take *per stripes* and not *per capita*.

decide between the relative rights of the two wives of Venkatasvámi Náyak, namely, the mother of the minors in whose behalf the suit has been brought and the first defendant, the one as having borne children and the other as childless. Nor have we to say whether or not any such rights transmitted by their mother to the said minors would prevail against the first defendant. For the fact that the minors' mother died before her husband Venkatasvámi Náyak shows that the estate never vested in her, and consequently could not be transmitted through her. The minors have thus no rights derivable from their mother. Whatever rights they may possess must be traceable from their father Venkatasvámi Náyak. Now it is indubitable that widow, whether childless or not, stands next in the order of succession on failure of male issue, and that daughters can only succeed on failure of widows. The law being thus, the minor daughters of Venkatasvámi Náyak, can have no right to the estate during the lifetime of the widow the first defendant.

We therefore reverse the decree below and dismiss the suit with costs.

*Appeal allowed*

**NOTE.**—The law is the same in Bengal "If a wife shall die in the lifetime of her husband A, she (the deceased wife) having left a daughter B, if A the father of B shall then die, leaving a childless widow C and his daughter B surviving him,—C shall first take the estate and upon her death it shall go to B." Sir F. W. Macnaghten *Considerations on the Hindu Law*, p. 9 See too *Rucee Bhadr Sheo Bhadr v. Roopshunker Shunkerjee*, 2 Boor. 656, 1 Morl. Dig. 313: *Vyavahara Mayukha*, Chap. IV, sec. VIII, § § 3, 10, 11, 12: *Mitakshara*, chap. II, sec. I, § 6, sec. II § § 1—4.