

1862.  
December 9.  
SS. A.A. Nos.  
286 & 299 of  
1861.

self to claim, should he elect to do so, what may be his due. In the meanwhile there can be no valid objection to the property remaining in its normal state of a joint inheritance.

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

*Appeal allowed.*

ORIGINAL JURISDICTION (a)

*Original Suit No. 15 of 1862.*

JEYASANKIRA-DEVI against NAGANNÁDA-DEVI.

Act VIII of 1859 sec. 313 does not apply where a reference is agreed to at and during the hearing.

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of 1862.

**D**URING the hearing of this case the parties agreed to refer all matters in dispute between them to arbitration. Thereupon a question was raised as to whether, under Act VIII of 1859, sec. 313, it was necessary to file written authority to apply for an order of reference.

Act VIII of 1859, sec. 312 empowers the parties to apply for such an order, and sec. 313 provides that "the application shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument in writing, which shall be presented to the Court at the time of making the application, and shall be filed with the proceedings in the suit."

SCOTLAND, C. J. :—We think that section 313 applies where the case is not before the Court and being finally heard at the time of making the application; and that it does not properly apply when the reference is agreed to by all the parties present in open Court at and during the course of the final hearing. No written authority therefore need be filed.

BITTLESTON, J. concurred.

*Branson* for the plaintiff.

*The Advocate General* and *Arthur Branson* for the defendants.

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