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If there had, however, and simply upon the ground that the appellant did not like his agreement, and such withdrawal was allowed to defeat a completed award, this curious consequence would follow ;—

No man can withdraw from his contract to submit, and that contract can be filed despite this objection while the arbitration is going on. If, however, the matter proceeds to its natural and legally compellable conclusion, a matter which would be wholly ineffective to stay any part of the proceeding at any stage of its progress, is adequate to destroy it when all the stages have been passed and the goal reached.

It would be very difficult to persuade me that an argument so logically self-destructive can be sustained. The quotation of English cases and rules on this matter is mere waste of time. The doctrine as stated (III, M. H. C. R., 183, affirmed, 12, Moo., 112) is the very opposite of the English in the mode in which the contract is to operate. There is clearly no appeal in this case and the application must be dismissed with costs.

KINDERSLEY, J.—I agree.

Appellate Jurisdiction.(a)

Regular Appeal No. 56 of 1873.

SAMI CHETTI.....Appellant.

AMMANI ACHY and 30 others.....Respondents.

Plaintiff alleged that, his father having died while he was a young child, during his minority his father's widows (defendants 1, 2 and 3) alienated the whole of the estate, in portions, to different people at different times. He, therefore, brought this suit against all the alienees to recover the estate as a whole. The District Judge dismissed the suit on the ground of mis-joinder of causes of action. Upon appeal, *Held*, that the Judge was wrong. That plaintiff's cause of action, the right, was his relation to the family to which the property appertained and on this right, if established, and if he be not otherwise barred, he would be entitled to recover. The fact that various persons, during his minority, affected to purchase portions of the property did not destroy the unity of his ground of action.

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THIS was a Regular Appeal against the decision of J. H. Nelson, the Acting Civil Judge of Tranquebar, in Original Suit No. 17 of 1871.

(a) Present: Holloway, Ag. C. J. and Innes, J.

This was a suit for possession of an estate.

The plaintiff's case was that his father died seventeen years before suit brought, when the plaintiff was yet a young child, and that during his minority the first three defendants, his father's widows, aliened the whole of the estate, bit by bit, and by several alienations, to the defendants from 4 to 31, both inclusive. The plaintiff therefore sought to procure the annulling the several alienations made, and to get possession of the estate as a whole.

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The following is taken from the judgment of the Court of First Instance :—“ The 31st defendant appeared and stated that he had satisfied the plaintiff's claim as against himself: this was admitted to be true: and satisfaction was entered up accordingly.

The 30th defendant pleaded in limine that the suit was bad for mis-joinder of causes of action and of persons, with reference to Section 8 of the Code of Civil Procedure, and as such must be dismissed.

An issue relating to this point was framed, and upon the plaintiff failing to give a satisfactory reason for joining all the defendants in one suit, I decided that the suit must be dismissed.

Section 8 of the Code of Civil Procedure, which was framed upon a consideration of the English practice obtaining with reference to the joinder of several causes of action, makes it necessary that the causes to be joined shall be causes by and against the same parties, whereas in the present case, assuming the statements in the plaint to be true, the causes against the several defendants are quite separate and distinct. Defendant A, who bought part of the estate at one time, can be in no way interested in an alienation of another part of the estate made in favor of defendant B solely, at another time, and vice versâ. The evidence against defendant A will not at all affect defendant B, and vice versâ. Defendant A may have to pay the value of mesne profits accruing in respect of one parcel of land, whilst defendant B may have to pay the value of mesne profits accruing in respect of another parcel of land. And so with regard to

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various other causes of action, there is really no connection or interdependence whatever between the several defendants. It is as if the plaintiff were to charge the defendants jointly before a Criminal Court with several trespasses, on the ground that although the trespasses were in deed separate and distinct, yet the body and property affected by the trespasses belonged to him solely, and to none other.

The decisions in *Rajah Ram Tewary v. Lachman Prasad*, (F. B.) 12, W. R., 478; *Munshi Maniraddin Ahmed v. Baboo Ram Chand*, 2, B. L. R., A. C., 341; *Cazi Muzhur Hossein v. Dinobundoo Son*, Bourke, 8; *Sooloo Singh v. Rajender Saha*, 8, Suth. W. R., 364; and other cases, appear to show beyond the possibility of doubt that a suit like the present will not lie in India any more than it will in England, and I therefore consider that I must dismiss the suit with all costs, except as against the 31st defendant.

The plaintiff appealed on the ground that—The Civil Judge was wrong in having dismissed the suit on the ground of mis-joinder of different causes of action against different parties.

Bhashyam Iyengar for *Gurumurti Ayyar*, for the appellent.

The Court delivered the following judgments :—

HOLLOWAY, AG. C. J. :—This suit has been dismissed upon the favorite ground of mis-joinder. No practitioner of this Court would have thought of making the objection as such suits are of daily occurrence.

The Judge says that the cause of action against each of the purchasers is a distinct one. The plaintiff claims his share of family property. His cause of action, the right, is his relation to the family to which the property appertains, and on this right, if established, and if he is not otherwise barred from recovering, he will be entitled to that share wherever found. The fact that various persons during his minority have affected to purchase parcels of the property does not destroy the unity of his ground of action. It will lie upon those who so purchased, upon the establishment of

his right, to shew that the sales which they set up are binding upon him. There appears no objection whatever to the frame of the suit. The decree will be reversed and the case remanded for decision.

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INNES, J. :—I agree that there is no objection whatever on the frame of the suit. See as to this, *the Commissioners of Sewers of the city of London v. Glasse (Epping Forest Case)* reported in 41, L. J. CHY., p. 409.

Appellate Jurisdiction. (a)

Regular Appeal No. 80 of 1873.

JANAKI AMMA'L.....*Appellant.*

KA'MALATHAMMA'L.....*Respondent.*

In a former suit the present defendant sued as owner by right of inheritance to recover the property of her deceased husband, and the present plaintiff resisted that suit on the ground of her preferable right to inherit. Having failed in that suit, plaintiff brought the present suit to recover half the property on the basis of a family agreement made between her and the present defendant's deceased husband. This agreement was designedly suppressed at the period of the former suit. *Held*, that the suit should be dismissed. That plaintiff in the present suit insisted upon a valid family compact varying the ordinary rules of inheritance, having, however, previously appealed to that general rule and designedly kept back the compact upon which she now sought to insist. That there could be no stronger case of an absolute waiver of that contract and of conduct rendering it wholly inequitable to permit her now to insist upon it.

Seemle, where a defendant has been sued by a plaintiff upon his right of ownership, plaintiff's recovery negatives all grounds of defence to that action then existent and within the plaintiff's knowledge.

THIS was a Regular Appeal against the decision of E. B. Foord, the District Judge of Chingleput, in Original Suit No. 22 of 1872.

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The plaint stated that plaintiff's late husband, Arumuga Mudali, and defendant's late husband, Kumarasámi Mudali, were brothers that 9 days after the death of Arumuga, in accordance with an arrangement made by the relatives of the family, plaintiff and Kumarasámi jointly executed an agreement (A) on plain paper, dated 13th April 1859, which was subsequently engrossed on a stamp paper (B) on

(a) Present : Holloway, Acting C. J. and Innes, J.