doned his rights to the property in his natural family and had long rendered his services in that of his quasi adoptive father. There are many other points in the case, and although we cannot disguise from ourselves that the present is an extreme application of the doctrine of changed situation, we think that it would now be manifestly inequitable to permit the plaintiff to undo partially to his own advantage what cannot be undone so far as it has prejudiced the defendant.

1873. *April* 4. *R. A. No.* 33 *of* 1869.

The situation is the result of the conduct of the whole family of plaintiff continued through a long course of years, and we think that we cannot properly decree for the plaintiff upon the footing that the defendant is wholly unentitled to any part of the family property. On the contrary we are of opinion that although the adoption was invalid and inadequate of itself to create communion, that communion has been created by the course of conduct of the plaintiff and his family, coupled with the defendant's changed situation which has resulted. We would willingly, if possible, have made a decree putting an end to this long and discreditable litigation, but the mode in which this case has been conducted would, perhaps, on the present allegations make a partition more unfavorable to the plaintiff than it ought to be. We shall, therefore, simply dismiss the appeal, but without costs.

Appellate Jurisdiction.(a)

Regular Appeal No. 55 *of* 1873.

SANTAIYA.....*Appellant.*

RA'MARA'YA.....*Respondent.*

Plaintiff sued for confirmation of an award delivered by arbitrators appointed by agreement of parties to decide upon his claim to a share of ancestral property. Defendant objected that the award was illegal, principally upon the ground that he had cancelled his submission some time before the award was passed. The District Judge ordered the award to be filed, on the authority of *Pestonjee* v. *Maneckjee* (III, M.H. C. R., 183, affirmed 12, Moo., 112.) The defendant appealed. *Held* that no appeal lay.

1873. *July* 16. *R. A. No* 55 *of* 1873.

THIS was a Regular Appeal against the decision of A. C. Burnell, the Acting District Judge of Mangalore, in Original Suit No. 2 of 1872.

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

1873. July 16. R. A. No. 55 of 1873.

Plaintiff prayed, under Section 327 of the Civil Procedure Code, for confirmation of an award delivered on the 5th May 1872 by Manjeshiwar Rangappa, Kollyad Manjunathaya, U. Babu Rau and N. Shiva Rau, the arbitrators appointed by agreement of parties to decide upon the claim of plaintiff for division, awarding to plaintiff the property therein specified, as one-third share due to him from ancestral property.

The usual notice having been issued to the defendants to show cause why the award should not be filed, the 1st defendant stated the following objections :—

I.—That the defendant having in time repudiated his part of the agreement empowering the arbitrators to settle the matter, their award is illegal.

II.—That his mother Rukumuni Amah, who is entitled to, and is in possession of the disputed land, was not a party to the agreement in question.

III.—That of the 4 arbitrators who gave the award, 3 are related to the plaintiff, and the 4th is a relative of the 1st defendant's enemy, and therefore they have unjustly passed the award through bias.

The Court of First Instance delivered the following judgment—

" This is an application under Section 327 of the Civil Procedure Code to have an award filed. One of the parties objects on three grounds :—

I.—That he revoked his consent.

II.—That no provision has been made for his mother and others.

III.—That he has been charged with the realization of debts due to the estate and payment of the other parties' share before realization.

It appears that the award was made by four out of five arbitrators who are thoroughly experienced vakils and merchants, and that the submission to the award of the majority is voluntary and good. Nothing has been put in to show

1873. *July* 16. *R. A. No.* 55 *of* 1873.

that counter-petitioner revoked his assent, nor, if it were proved, do I consider that such an act would be a sufficient cause for refusing to file this award, as in an analogous case where the submission was made through a Civil Court, this was held not to be a sufficient cause (*Pestonjee* v. *Maneckjee*, III, M. H. C. R., 183).

As regards the other two causes alleged, I am of opinion that I am not competent to consider the form of the award, or to entertain an appeal on details, but to consider only causes which invalidate the award. I have (as agreed to by counter-petitioner) not examined any witnesses.

I accordingly order, under Section 327 of the Civil Procedure Code, that this award be filed and that it may be enforced accordingly."

Defendant appealed on the following grounds :—

1. The defendant was competent to revoke the authority of the arbitrators, and he did so before they made their award.

2. The award is null and void, as the authority of the arbitrators to adjudicate on the matter referred to them without the intervention of the Court ceased from the moment of such revocation, and the decision of the High Court in III, M. H. C. R., 183, does not apply to the case.

3. The defendant cited the respondent and other witnesses to prove the revocation, but was unable to examine them, the Civil Judge having ruled that such revocation would be no bar to the award being filed.

4. One out of the five arbitrators took no part whatever in the proceedings of the others.

5. The arbitrators exceeded their jurisdiction in debiting against the defendant the outstanding debts of the family which are irrecoverable.

Bashyam Iyengar, for the appellant, the 1st defendant.

V. Sanjiva Rau, for the respondent, the plaintiff.

The Court delivered the following judgment :—

HOLLOWAY, Ag. C. J.—The point here urged in appeal does not arise, for there was no evidence before the Lower Court that there had been any attempt to withdraw.

1873. *July* 16. *R. A. No.* 55 *of* 1873.

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) aliened 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.

1873. *July* 23. *R. A. No.* 56 *of* 1873.

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.