

When that case, however, is examined, it does not support the proposition for which it was cited by the respondents' pleader. It is not very satisfactorily reported, there being no note of the argument or statement of the facts; but so far as we can gather, there had been no attempt in the lower Court to give independent evidence of the consideration, the contention for the plaintiff being that there was a sufficient admission of the note in the written statement; and I think it highly improbable that, considering the Judges who decided the case, they intended, without any allusion to *Farr v. Price*, to overrule Lord Kenyon's decision in that case, which precisely governs the present appeal, in which it appears that the plaintiff did seek to give evidence of the advance, the form of pleading being as I said not material.

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GOLAP CHAND  
MARWARIE  
v.  
THAKURANI  
MOHOKOOM  
KOOAREE.

*Appeal allowed.*

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### PRIVY COUNCIL.

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BANNOO AND OTHERS (DEFENDANTS) v. KASHEE RAM (PLAINTIFF).

P. C.\*

1877

Dec. 6, 7.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Hindu Law—Joint Family—Joint Estate—Presumption.*

In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that every thing in the possession of any one member of the family belongs to the common stock. The onus of establishing the contrary rests on him who alleges separate property.

But this presumption does not arise where it appears that there has been a division of the family property, and a separation in the family, all the members of which are living separately.

THIS was an appeal from a judgment of the Judicial Commissioner of Oudh, dated the 26th February 1875, confirming decisions pronounced by subordinate Courts in Oudh, in favor of the respondent, who was the plaintiff in the suit.

The only question arising on this appeal was as to whether the plaintiff had established his claim to succeed to certain

\* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and  
SIR R. P. COLLIER.

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 v.  
 KASHEE RAM. property which had been held by his deceased uncle, by reason that, at the time of his uncle's death, he and the plaintiff were members of a joint undivided family, and that the property in question was joint family property.

Mr. *S. G. Grady* and Mr. *C. W. Arathoon* appeared for the appellants.

The respondent was not represented.

Their Lordships' judgment, reversing the judgments of the Court below, was delivered by—

SIR M. E. SMITH.—This is a suit brought in the Court of the Civil Judge of Lucknow, by Kashee Ram, a nephew of Ram Dyal, who died in the year 1873, against Mussamut Bannoo and Mussumut Munna, the widows of Ram Dyal, and Munna Lall his grandson, the son of his daughter. The claim is for an eight-anna share, or one-half, of all the property in possession of Ram Dyal at the time of his death. The property consists principally of moveable property, but the claim includes a pucca house and shop.

The claim is based on the foundation that Ram Dyal, at the time of his death, was a member of a joint family, consisting of himself and of the plaintiff Kashee Ram and his brother Kasho Ram,—those two being the sons of Ram Buksh, a brother of Ram Dyal. Kasho Ram did not join in this suit. The state of the family was this: Ram Gholam left four sons, Sheo Buksh, Ram Bilas, Ram Buksh, and Ram Dyal. Sheo Buksh and Ram Bilas are dead; one dying without a widow or children, and the other leaving a widow only. Ram Buksh had two sons, Kashee Ram, the plaintiff, and Kasho Ram. Ram Dyal had no son. The plaintiff admits in his plaint that his grandfather Ram Gholam divided the ancestral property amongst his four sons, though, according to his statement, the four sons did not take separately, but Sheo Buksh and Ram Bilas took one-half jointly, and so formed a separate family, and the other half was allotted to Ram Buksh and Ram Dyal. He contends that Ram Buksh and Ram Dyal remained a joint family. On the part of the present appellants, the defendants, it is stated,

that the division by Ram Gholam was not into two parts, as Kashee Ram contends, but that each of the sons took a separate share.

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There is no distinct proof, one way or the other, as to the nature of that division, but undoubtedly a division was made, and it may be taken as against the plaintiff that at all events the family was divided into two groups at that time. It further appears that, in the lifetime of Ram Dyal, Kashee Ram, the plaintiff, and his brother Kasho Ram, as between themselves, separated, and therefore the family was still further broken up. It also appears that, whatever the division of the property may have been by Ram Gholam, all the members of the family lived separately, and there was no commensality between them. In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found in possession of, belongs to the common stock. That is the ordinary presumption, and the onus of establishing the contrary is thrown on the member of the family who disputes it. Having regard, however, to the state of this family when the present dispute arose, their Lordships think that that presumption cannot be relied upon as the foundation of the plaintiff's case, and therefore, as he seeks to recover property which was in the possession of Ram Dyal and was ostensibly his own at the time of his death, it lies upon him to establish by evidence the foundation of his case, *viz.*, that the property was joint property to which he and his brother Kasho Ram, as surviving members, were entitled. It may be stated that the issue in the case, which is the only one material to be decided, raises distinctly that question. The issue is, "Was the plaintiff joint with Ram Dyal at his death?" The evidence is extremely scanty, and what there is of it is very unsatisfactory. That remark was made by the Commissioner upon the appeal from the Civil Judge, and was also made by the Judicial Commissioner when the question came before him on the right of appeal.

(Their Lordships, after analysing the evidence relied on by the plaintiff, and commenting on the judgments of the lower Courts, concluded by advising Her Majesty to reverse these

1877 judgments and to dismiss the plaintiff's suit with costs in the  
 BANNOO Courts below, and they allowed the appellant the costs of the  
 v. KASHEE RAM. appeal.)

*Appeal allowed.*

Agent for the appellants: *Mr. T. L. Wilson.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Ainslie and Mr. Justice Kennedy.*

1877 CHUTTERDHAREE LALL (DECREE-HOLDER) v. RAMBELASHEE  
 Dec. 21. KOER AND OTHERS (JUDGMENT-DEBTORS).\*

*Security Bond—Surety—Execution—Act VIII of 1859, ss. 204, 342.*

A bond given as security for costs under s. 342 of Act VIII of 1859 may be enforced in a summary way by proceedings in execution.

*Ram Kishen Doss v. Hurkhoo Singh (1) and Gujendro Narain Roy v. Hemanginee Dossee (2) distinguished.*

IN this case, Chutterdharee Lall, the present appellant, had obtained a decree against one Mohabir Persaud and another, in the Court of the Subordinate Judge of Tirhoot. An appeal was filed against this decree in the High Court. Before the hearing of the appeal, the then appellants were called upon, under s. 342 of Act VIII of 1859, to furnish security for costs of the appeal. One Brojo Coomar Singh stood surety for these costs, and signed a security bond to that effect. The appeal was thereupon heard and dismissed. Brojo Coomar Singh having in the meantime died, Chutterdharee Lall applied for execution of his decree for costs against his representatives. The Subordinate Judge refused such application, on the ground that the High Court had not specifically named the surety Brojo Coomar Singh in its final decree. Chutterdharee Lall appealed to the High Court.

Miscellaneous Regular Appeal, No. 218 of 1877, against the order of Baboo Grish Chunder Ghose, First Subordinate Judge of Zilla Tirhoot, dated the 24th of March 1877.

(1) 7 W. R., 329.

(2) 13 W. R., 35.