BOMBAY HIGH COURT

Pandappa Mahalingappa

Vs.

Shivalingappa Murteppa

(Lokur, J.)

13.08.1943

JUDGMENT

Lokur, J.

1. This appeal arises out of a suit for possession of two-thirds of five patilki watan lands of Devapur which were held by one Mahalingappa Gadigeppa Naik till his death and after him by his widow Gaurawa and her adopted son Basappa. Mahalingappa died about the year 1903 and the lands were entered in the revenue records in the name of his widow Gaurawa. Her adopted son Basappa died unmarried in 1919. Gaurawa, whose name had already been entered in the Record of Rights in 1904, continued to be in possession of the watan lands and in February 1921 she leased them cut to Hanmant Venkatesh and Hanmant Balkrishna for a period of twenty years. On June 24, 1921, she executed a deed of adoption in favor of defendant No. 1 Pandappa, purporting to have taken him in adoption on April 9, 1921. In 1922 one Bhagawa filed a suit against Gaurawa, through her next friend, claiming possession of the lands in suit on the ground that she was the widow of Basappa. The dispute was referred to arbitration and an award was passed recognising Bhagawa as Basappa's widow and allowing maintenance to Gaurawa. A decree was passed in terms of the award, but before that decree was passed, the two lessees, Hanmant Venkatesh and Hanmant Balkrishna, filed a suit against both Gaurawa and Bhagawa for a declaration that Gaurawa was the lawful heir of Basappa and not Bhagawa and that they were enti led to be in possession of the lands as Gaurawa's tenants for a period of twenty years from the date of the lease. It was held in that suit that Bhagawa was no the widow or Basappa and that Gaurawa was Basappa's heir after his death. That suit was decided on November 13, 1923. After that decision Bhagawa disappeared from the scene, although she had obtained an award decree in her favor, and the lands continued to be in the enjoyment of Gaurawa through her tenants. Defendant No. 1, Pandappa, though he claims to have been adopted in 1921. did not take any steps to take pessassion of the lands till 1929. On June 10, 1929, he gave an intimation to the village officers of Devapur that his name should be entered against the lands in the Record of Rights as he had been Liken in adoption by Mahalingappa's widow Gaurawa. Gaurawa first opposed his request and contended that she had not taken him in adoption, but eventually she admitted having adopted him and his name was substituted in the Record of Rights on October 19, 1929. It is not clear from the record whether thereafter the tenants paid rent to Gaurawa or to defendant No. 1 Gaurawa died in 1933 and then by some arrangement with the tenants defendant No. 1 took actual possession of the lands. The six plaintiffs and defendants Nos. 2, 3 and 4 claim

to be the great-great-grandsons of Mahalinganna's great-grandfather's brother Kalasaraddi. The plaintiffs, therefore, filed this suit to recover their two-thirds share in the watan lands of Mahalingappa, alleging that they were reversioners after Gaurawa's death and that defendant No. 1 was not her legally adopted son. Defendants Nos. 2, 3 and 4, who would in that case be entitled to the remaining one-third, did not appear in the suit, but defendant No. 1 contended that the plaintiffs were not in any way related to Mahalingappa or Basappa, that they belonged to Tiganibidari family, while Mahalingappa and Basappa belonged to the Naik family, that he was the validly adopted son of Gaurawa and as such entitled to the property in suit, and that even if his adoption be not proved, he had acquired a title to that property by the continuous adverse possession of Gaurawa and himself.

2. Both the Courts below have held that defendant No. 1's adoption by Gaurawa is not proved and that the plaintiffs and defendants Nos. 2, 3 and 4 are entitled to the lands in suit as the nearest reversioners after Gaurawa's death. They have further held that defendant No. 1's adverse possession commenced only in 1929 and he cannot tack his adverse possession to that of Gaurawa. The trial Court further held that Gaurawa's possession was that of a Hindu widow, and even if she was in adverse possession, he could acquire only a widow's estate in the property in her possession. The plaintiffs' claim was, therefore, decreed by the trial Court and the decree was confirmed in appeal.

3. The concurrent finding of both the Courts below that defendant No. 1 is not proved to be Gaurawa's legally adopted son cannot be assailed in second appeal. But it is urged that the plaintiffs and defendants Nos. 2, 3 and 4 are not proved to be the agnates of Mahalingappa, and even if the are proved to be the agnates, it is not proved that their common ancestor was a watandar of the same watan. It is also urged that defendant No. 1's adverse possession can be tacked to the adverse possession of Gaurawa and, therefore, the suit, which is brought more than twelve years after Gaurawa's possession became adverse on the death of Basappa, is not tenable. Both the Courts have held that the plaintiffs and defendants Nos. 2, 3 and 4 are the nearest agnates of Mahalingappa and Basappa. That is prima facie a finding of fact and is binding in second appeal. But Mr. Shah contends that the finding is based on evidence which is legally inadmissible and, therefore, cannot be sustained.

4. The trial Court has relied upon four documents among others and all those four are challenged as not legally admissible in evidence. They are exhibits 50, 48, 68 and 69. Exhibit 50 is the deposition of plaintiff No. 1 in the tenants' suit of 1922. He stated in that suit that he was a near bhauband of Basapna's adoptive father Mahalingappa. After all it was an admission made by the plaintiff himself, and although it may not carry any substantial evidentiary value, it is relevant under Section 157 of the Indian Evidence Act to corroborate his statement in this suit. But I do not think that the trial Court was right in relying upon the judgment in that suit (exhibit 48) to which neither the plaintiffs nor the defendants were parties.

5. Exhibit 69 is an agreement executed by Mahalingappa's father Gadigeppa and plaintiff No. 1's father Murteppa in favor of one Govindappa Joshi in 1863. In that agreement they referred to a certain land which was held as an inam by both of them but it does not appear that the land referred to was any of the lands in suit. The document was admitted in evidence as being more than thirty years old, and it is contended hat there is no evidence to show that it was produced from proper custody, and that being executed in favor of Govindappa Joshi, it is not explained

how it came into the possess on of the plaintiffs who produced it. On the other hand, it is pointed out that there is a provision in the agreement that it should be returned to the executants after the period of the agreement, viz. one year. It may therefore, be presumed that at the end of the year the document was returned to the executants, and as it is produced by one of the executant's heirs, it has come from proper custody. After all it does not carry the plaintiffs' case further and is not referred to in the judgment of the learned District Judge Hence the finding recorded by the learned District Judge cannot be said to have been vitiated by the admission of these three documents by the trial Court as he has not relied upon any of them.

6. Exhibit 68 is a certified copy of a registered mortgage deed passed by Murteppa the father of plaintiffs Nos. 1 and 2, in favor of one Ramgouda Krishnappa mortgaging his lands to him for ₹ 800/- in 1878. The certified copy was produced at an early stage along with exhibit 25, but there was no evidence to prove that the original of the mortgage deed had been lost. The plaintiffs, therefore, made an appli-cation. exhibit 66 requesting that permission should be given to them to lead evidence on that point. The application was opposed, but the trial Court allowed the plaintiffs to lead evidence on that point. Plaintiff No. 1 was then examined and he made a statement on oath that the original of the mortgage deed was lose. The trial Court then allowed secondary evidence of the mortgage deed to go on record.

7. As held in *Srimati Rani Hurripria v. Rukmini Debi*[1] and *Ningawa v. Ramappa*[2] the discretion exercised by the trial Court in admitting secondary evidence on the ground that the original is lost should not be interfered with in appeal. But it is urged that the certified copy should not have been exhibited without proof of its execution. From the application (exhibit 66) and the roznama it appears that the trial Court exhibited it under Section 90 of the Indian Evidence Act on the ground that it was more than thirty years old. In the lower appellate Court the admissibility of the document does not appear to have been challenged. It is urged that as held in *Narhari Hari v. Ambabai*[3] the erroneous omission before the lower Courts to object to the admission of evidence does not make that evidence relevant. The principle of that ruling, however, applies only where the document is per se irrelevant or inadmissible and no objection was taken to its admissibility *Babui Shamsunder Kuer v. Ramkhelawan Sah*[4] Where evidence is admitted in the trial Court without any objection to its reception, and the evidence is admissible and relevant, then no objection will be allowed to be taken to its reception at any stage of the litigation on the ground of improper proof. But if the evidence is irrelevant or inadmissible, as for instance owing to want of registration, omission to take objection to its reception does not make it admissible, and the objection may be raised even in appeal for the first time *Miller v. Bubu Madho Das*[5] As observed by Das J. in *Kalikanand v. Shiva Nandan*[6] "the question of relevancy is a question of law, and can be raised at any stage, but the question of proof is a question of procedure, and is capable of being waived." In this case the secondary evidence of the mortgage deed was held to be admissible as the original was lost. What is now urged is that the execution should have been proved and this objection was not raised

[1](1892) L.R. 19 I.A. 79 [3](1919) I.L.R. 44 Bom. 192: S.C. 22 Bom. L.R. 57 [5](1896) L.R. 23 I.A. 106
[2](1903) 5 Bom. L.R. 708 [4](1929) I.L.R. 8 Pat. 783 [6][1922] A.I.R. Pat. 122

either in the trial Court or in the lower appellate Court. It is, however, true that no evidence was adduced to prove the execution of the original of exhibit 68 as the trial Court was prepared to raise the presumption in favor of the genuineness of the document under Section 90 of the Indian Evidence Act. Whether such a presumption can be raised or not is a question of law, and it can, therefore, be urged at any stage of the litigation.

8. It is now well settled by the ruling of the Privy Council in *Basant Singh v. Brijraj Saran Singh*[7] that the statutory presumption under Section 90 of the Indian Evidence Act cannot be made in respect of a document merely on production of its copy under Section 65 of the Act. Their Lordships observed (p. 811):

> Section 90 clearly requires the production to the Court of the particular document, in regard to which the Court may make the statutory presumption. If the document produced is a copy, admitted under Section 65 as secondary evidence, and it is produced from proper custody, and is over thirty years old, then the signatures authenticating the copy may be presumed to be genuine.

9. In *Gopinath Maharaj v. Moti Chiwa* it has been held that the presumption was equally applicable to copies as to the originals when the copy was proved to be a true copy of the original, but that view was expressly overruled by the Privy Council.

10. In *Basangouda v. Basalingappa*[8] it is held when a certified copy is allowed to be produced under Section 65 of the Indian Evidence Act, no presumption can be drawn under Section 90 as to the genuineness or execution of the original. It may, there. fore, be said that the trial Court should not have admitted exhibit 68 merely on the ground that it was a certified copy of a mortgage deed more than thirty years old and should have called for proof of the execution of the document. But such proof is to be found in the certified copy itself. The deed being registered, the certified copy bears the necessary endorsements of the Sub-Registrar before whom the executant acknowledged the execution and was duly identified. As held in *Thama v. Govind* , Sections 58, 59 and 60 of the Indian Registration Act provide that the facts mentioned in the endorsement may be proved by those endorsements, provided the provisions of Section 60 have been complied with.

11. The facts in *Vishwanath Ramji v. Rahibai*[9] were quite akin to the facts of this case. There also the certified copy of a deed of adoption was admitted in evidence merely on the ground that the original was lost and that it was more than thirty years old. The first appellate Court held that as the execution of the deed had not been proved it should not have been exhibited. Then in second appeal Baker J. observed (p. 107):

> As to the proof, the document in this particular instance has been registered and bears the necessary endorsements by the Sub-Registrar before whom the executant was identified by the kulkarni of the village. The effect of registration has been considered by this Court in *Thama v. Govind*[10] where it was held that Sections 58, 59 and 60 of the Indian Registration Act provide that the facts mentioned in the endorsement may be proved by those endorsements, provided the provisions of Section 60 have been complied with. The endorsement

[7](1935) 37 Bom. L.R. 806 P.C
[8](1935) 38 Bom. L.R. 593, 602
[9](1930) I.L.R. 55 Bom. 103: S.C. 32 Bom. L.R. 1385
[10](1907) 9 Bom. L.R. 401

> of the Sub-Registrar in the present case shows that Ramji the executant admitted execution of the document and gave his thumb impression and that he was identified before the Sub-Registrar by Keshav Hari Talati who was known to the Sub-Registrar. In

these circumstances the view of the first Court that the copy of the adoption deed is admissible in evidence and that it is sufficiently proved appears to be correct.

12. By parity of reasoning the certified copy of the mortgage deed in this case also is admissible in evidence, as it bears the requisite endorsement of the Sub-Registrar regarding the admission of its execution by the executant. It is true that the decision of the Privy Council is subsequent to the case in *Vishwanath Ramji v. Rahibai*. But there is no conflict between them. The document which the Privy Council was dealing with had not been registered, and all that the ruling lays down is that there can be no presumption under Section 90 of the Indian Evidence Act when only a certified copy of a document is produced and, therefore, the execution of the original has to be proved, whereas the ruling in *Vishwanath Ramji v. Rahibai* lays down that such proof can be afforded by the Sub-Registrar's endorsement appearing on the certified copy. It is true that in *Amjad Husain v. Musammat Raisunnisam*[11] a certified copy of a mortgage deed which had been registered was tendered in evidence under Section 65 of the Indian Evidence Act, and although secondary evidence was held to be admissible and the document was more than thirty years old, the certified copy was not admitted for want of proof of the execution of the original It does not appear to have been urged in that case that the necessary proof was supplied by the Sub-Registrar's endorsement, as in the case of *Vishwanath Ramji v. Rahibai*. It is suggested that the mere admission of execution by the executant before the Sub-Registrar is not sufficient to prove that the mortgage deed was duly attested by two witnesses, and execution includes proper atte:tation also. But the mortgage deed was executed in 1878 before the Transfer of Property Act was enacted and at that time mortgage deeds did not require to be compulsorily attested by two witnesses. I, therefore, hold that exhibit 68 was rightly admitted in evidence.

13. No other evidence relied upon by the learned District Judge is challenged as inadmissible and hence his finding of fact that the plaintiffs and defendants Nos. 2, 3 and 4 are the nearest heirs of Basappa and Mahalingappa cannot be challenged in second appeal. Moreover, even on merits the finding is justified. Among the lands mortgaged under the original of exhibit 68 are portions of Survey Nos. 66, 67 and 82 which correspond to the present Revision Survey Nos. 85, 86, 87, 88 and 89. The lands in suit are also portions of these very lands. The mortgagor Murteppa, the father of plaintiffs Nos. 1 and 2, in describing these lands says that they were allotted to his share as bhauband under the khatedar Gadigeppa bin Kenchappa, the father of Mahalingappa. That statement was made at a time when there was no dispute regarding the relationship between the two branches of the family. Exhibits 44 and 45 show that portions of Revision Survey Nos. 87 and 89 are in the possession of plaintiff No. 4 and defendant No. 2 and exhibits 25 and 26, which are extracts from the Record of Rights for 1922-23, show that portions of the other two lands are also held by them. It was argued in the lower Courts that the surname of the plaintiffs is Tiganibidari, while that of Mahalingappa and Basappa is Naik. But in exhibits 44 and 45 and also in the mortgage deed (exhibit 68) the surname of the plaintiffs' branch was given as Naik. It appears that the plaintiffs' family

[11](1941) I.L.R. 16 Luck. 778

has some lands at Tiganibidari and one of them was in the occupation of the Patil of the village. Hence perhaps they may have come to be known as Tiganibidari. But there is no doubt that their family surname is Naik, the same as the surname of Mahalingappa's branch.

14. The plaintiffs have produced a pedigree along with the plaint showing how they are related to

Mahalingappa's branch. Of course the plaintiff cannot be expected to have personal knowledge of his ancestors or the ancestors of Mahalingappa. But he and his witness Ramchandra have sworn that the plaintiffs are the bhaubands of Mahalingappa. In view of all this evidence the Courts below have rightly found that the two branches are descended from a common ancestor.

15. It is further contended that it is not enough if the plaintiffs and Mahalingappa are proved to have a common ancestor, but it must be also proved that the watan was acquired before the family branched off. In other words, it must be proved that the common ancestor was a watandar of the same watan and that the watan was acquired either by him or by his ancestor. This point was not specifically raised in the lower Courts and was not the subject of an issue. But the learned District Judge has definitely stated that the fact that the plaintiff admittedly held portions of the same patilki watan lands since the time of their ancestors clearly shows that they belonged to the same patilki watan family as Mahalingappa. That also is a finding of fact. Defendant No. 1 has offered an explanation of the possession of the patilki watan lands by the plaintiffs' branch of the family. In paragraph 5 of his deposition he says that Mahalingappa brought Kallappa and Murteppa from Tiganibidari as there were factions at Devapur and gave them some lands and allowed them to stay at Devapun for his safety. There is no evidence to bear out this version and it has been disbelieved by both the Courts below. If the plaintiffs were strangers to the watan, they would not be allowed to remain in possession of watan property, and in the mortgage deed, exhibit 69, it is stated that it had been allotted to the share of the plaintiffs' branch at a partition. This itself shows that the plaintiffs' branch is also a watandar family and the watan must have been acquired by the common ancestor or by an ancestor of his.

16. Basappa, who had been adopted by Gaurawa, died unmarried about the year 1919, and under Section 2 of Bombay Act V of 1886 his mother Gaurawa was not entitled to succeed to his watan property as his heir in preference to the plaintiffs, who are the nearest agnates in the watan family. It is argued that the plaintiffs have not proved that they are the nearest agnates, since they have not alleged nor led any evidence to show that there are no nearer agnates of Mahalingappa and Basappa. But defendant No. 1 has himself stated in his deposition that Mahalingappa had no bhaubands and it is not suggested at the trial that there is anyone who is nearer in relationship to Mahalingappa than the plaintiffs and defendants Nos. 2, 3 and 4. It is true that as held in *Surjan Singh v. Sardar Singh*[12] and *Girdkari tall Roy v. The Bengal Government*[13] the plaintiffs who claim to be the nearest heirs of Mahalingappa and Basappa ought to show that there is no one else nearer, but that burden is discharged by the admission of the defendant himself, and they were, therefore, the heirs of Basappa to his watan property in preference to his mother Gaurawa.

[12](1898) I.L.R. 23 All. 72 P.C

[13](1868) 12 M.I.A. 448

17. The plaintiffs did not, however, then put forward their claim and allowed Gaurawa to remain in possession. She leased out the lands for twenty years in February, 1921, and then passed a deed of adoption in favor of defendant No. 1 in June, 1921. But she continued in possession through her tenants till 1929 when defendant No. 1 got his name entered in the Record of Rights and took actual possession of the lands after Gaurawa's death in 1933. Assuming that when the revenue authorities entered defendant No. 1's name in the Record of Rights in October, 1929;, the lands in suit went into the possession of defendant No. 1, his adverse possession commenced only then and this suit was filed on March 31, 1937. It is obvious that Gaurawa's possession was also wrongful since the death of her adopted son Basappa in 1919. But she too was in possession only for ten years till 1929. It is urged that as defendant No. 1 claims through Gaurawa as her

adopted son, her adverse possession for ten years should be tacked on to his adverse possession for eight years and thus by this adverse possession for eighteen years his title was completed and the plaintiffs cannot evict him. Both the Courts below have held that as defendant No. 1's adoption is held not proved, he cannot be said to be claiming through Gaurawa and, therefore, the adverse possession of Gaurawa cannot be tacked on to his adverse possession. It appears from the entry in the Record of Rights that Gaurawa first objected to allow defendant No. 1's name to be entered as the occupant of the lands in suit and she denied having taken him in adoption. But subsequently she gave her consent and defendant No. 1's name was entered against the lands as the occupant, though the tenants were in actual occupation under Gaurawa's lease. Mr. Shah for defendant No. 1 argues that as Gaurawa herself willingly allowed defendant No. 1 to take possession of the land, her adverse possession and defendant No. 1's adverse possession were continuous and can, therefore, be tacked on to each other. He relies upon the passage in paragraphs 1014 and 1016 at p. 745 of Halsbury's Laws of England (Hailsham edition), Vol. XX, to the following effect:

> A person who is in possession of land without title has, while he continues in possession, and before the statutory period has elapsed, a transmissible interest in the property, but an interest which is liable at any moment to be defeated by the entry of the rightful owner ; and if such person is succeeded in possession by one claiming through him who holds till the expiration of the statutory period, such a successor has then as good a right to the possession as if he himself had occupied for the whole period.
> * * * * *
> If a series of trespassers, adverse to one another and to the rightful owner, take and keep possession of land continuously in succession for various periods, each less than, but exceeding on the whole, twelve years, the rightful owner is barred.

18. There can be no doubt that if the possession of one trespasser can be regarded as a continuation of the trespass of the previous occupant through whom he claims, then the adverse possession of the one can be tacked on to that of the other, and if the total period exceeds twelve years, then that possession ripens into full ownership under Section 28 and Article 144 of the first schedule to the Indian Limitation Act. Article 144 provides a period of limitation of twelve years for a suit for possession of im-moveable property and the period begins to run when the possession of the defendant becomes adverse to the plaintiff. "Defendant" is defined in Section 2(4) as including "any person from or through whom a defendant derives his liability to be sued". It follows, therefore, that if defendant No. 1 does not derive his liability to be sued from or through Gaurawa, then her adverse possession cannot enure for his benefit. The mere fact that he claims through her is not enough. The expression used in Section 2(4) of the Indian Limitation Act is that the defendant must have derived has liability to be sued through the person in possession before him, and since defendant No. 1 is held not to be the adopted son of Gaurawa, it cannot be said that he has derived his liability to be sued from or through her and he must be deemed to be an independent trespasser. As observed in *Sukhdeo v. Mt. Ram Dulari*[14] *314* one trespasser cannot add to his own possession the previous independent possession of another trespasser. When the possession passes from the first to the second trespasser, there is a constructive restoration, avert if a momentary restoration, of the true title to possession.

19. Moreover, the adverse possession of Gaurawa was not of the same kind as that of defendant No. 1. Gaurawa rightly or wrongly thought that after the death of Basappa his watan property devolved upon her, evidently being ignorant of the provisions of Bombay Act V of 1886. The plaintiffs, who should have really succeeded to the watan property of Basappa, seem to have also been equally ignorant and never put forward their claim. They tacitly allowed Gaurawa to continue in possession after Basappa's death. After the death of her husband Mahalingappa in 1904, she got her name entered in the Record of Rights and the entry clearly shows that she claimed as her husband's heir. In other words, she then claimed only a widow's estate in the property. The same entry continued till 1929, although Basappa as her adopted son was entitled to have his name entered in the Record of Rights. Basappa died in 1919 and no change was effected in the entries in the Record of Rights. She never claimed that she held the lands as their absolute owner after Basappa's death. It is well settled that when the possession of a Hindu woman is adverse, it has to as decided what was her animus possidendi:- Did she assert an absolute title in herself or did she claim to hold as the heiress of any person? The latter would be the ordinary presumption and those who claim for her anything more than a widow's limited interest must prove since when she began to assert absolute title in herself. The test is always to be found in the origin of the widow's possession. When she enters on, land under a title as heir, which is necessarily a limited title under the Hindu law, very cogent evidence is necessary to show that she afterwards asserted a title as absolute owner. This has been clearly laid down by the Privy Council in *Lajwanti v. Safa Chand*[15], Their Lordships observed (p. 1120):

> It was argued that the widows could only possess for themselves ; that the last widow Devi would then acquire a personal title ; and that the respondents and not the plaintiff were the heirs of Devi. This is quite to misunderstand the nature of the widow's possession. The Hindu widow, as often pointed out, is not a life renter but has a widow's estate that is to say, a widow's estate in her deceased husband's estate. If possessing as widow 3he possesses adversely to anyone as to certain parcels,, she does not acquire the parcels as Stridhan but she makes them good to her husband's estate.

20. Mr. Shah contends that this would apply only if a woman claims to be in wrongful possession as the widow of her husband, but not if she claims to be in possession as the

[14][1926] A.I.R. Oudh. 313

[15](1924) 26 BOMLR 1117

heir of her son. I do not see any reason to make such a difference. Even as the heir of her son she is entitled only to a widow's estate, and just as in the case of wrongful possession as the heir of her husband she can acquire only a widow's estate, so too, when she claims to be in adverse possession as the heir of her son, she can, after twelve years, claim to have acquired only a widow's estate and nothing more. by her wrongful possession the character of the watan is not changed, as held in *Anna v. Gojra*[16], and if she had been in possession for twelve years wrongfully, the plaintiffs could not have ousted her during her lifetime. But her widow's estate would have to come to an end on her death and then they could have claimed the watan property as reversioners. Thus the adverse possession of Gaurawa was such as would have conferred upon her a widow's estate after twelve years; whereas the adverse possession of defendant No. 1 since 1929 was such as would have conferred upon him an absolute title after twelve years. Hence these two, which are entirely different in ' character, cannot be tacked on to each otter, and, as I have already said, since defendant No. 1 does not derive his title through Gaurawa, he cannot get

the benefit of her adverse possession. The plaintiffs' claim is, therefore, not time-barred. The appeal is dismissed with costs.

[1](1928) 30 BOMLR 867, 114 Ind Cas 390