

Karam Ali appealed to the High Court.

Mir Akbar Husain, for the appellant, contended that Karam Ali was entitled to apply for execution of the decree, being admittedly the son of the original decree-holder, deceased. He relied on *Ikram Hossein v. Kirtee Chunder* (1); *Gopal Singh Deh v. Gopal Chunder Chukerbutty* (2); and *Kalee Churn Singh v. Ram Surun Singh* (3).

Babu Ram Das, for the respondent.

The Court delivered the following

JUDGMENT.—The Munsif appears to think that obtaining a certificate is indispensable to the competency of an heir to apply for execution under s. 208 of Act VIII of 1859. This is erroneous. A person who has not obtained a certificate may apply under that section. It will of course be open to the Court, in the exercise of the discretion vested in it, if there is any doubt that the person applying for execution is entitled by inheritance to the rights decreed, to refuse the application until a certificate has been obtained (4). The Munsif appearing to consider himself precluded from exercising his discretion, we must set aside his order and the order of the Judge, and remit the case to the Munsif that the discretion may be exercised. Each party will bear his own costs of the proceedings in the Judge's Court and in this Court.

*Cause remanded.*

## APPELLATE CIVIL.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Pearson.*

HAIKRI BAI (PLAINTIFF) v. THE EAST INDIAN RAILWAY COMPANY

(DEFENDANT).\*

*Act X of 1877 (Civil Procedure Code), s. 549—Procedure in Appeal from Decree—Security for costs.*

Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished, but if no application is made for such extension of time and such security is not furnished within the time ordered, it is imperative on the Court to reject the appeal.

\* First Appeal, No. 45 of 1878, from a decree of Rai Makhan Lal, Subordinate Judge of Allahabad, dated the 21st December, 1877.

(1) 3 W. R. Misc. 9.

(2) 7 W. R. 393.

(3) 11 W. R. 204.

(4) Where important questions arise, such as the legitimacy or illegiti-

macy of the heir, the Court executing the decree ought not to decide them—see *Abidunnissa Khatoon v. Amirunnissa Khatoon*, 1. L. R., 2 Calc., 334.

1878

KARAM  
ALI  
v.  
HALIMA.

1878  
June 27.

1878

HAIDRI BAI  
v.  
THE EAST  
INDIAN RAIL-  
WAY COM-  
PANY.

THIS was an appeal to the High Court from an original decree, in which the Court had, under s. 549 of Act X of 1877, demanded certain security from the appellant for the costs of the appeal, on the ground that the appellant was residing out of British India and was not possessed of any sufficient immoveable property within British India. The appellant failed to furnish such security within the time fixed by the Court.

Mr. *Hill*, for the respondents, defendants in the suit, applied for the rejection of the appeal, contending that, under s. 549 of Act X of 1877, it must be rejected.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), for the appellant, contended that the Court had discretion to extend the time fixed by it for the deposit of security.

The judgment of the Court was delivered by

TURNER, O. C. J.—Security not having been filed within the time ordered by the Court, the law is imperative that the Court shall reject the appeal.

If an application for an extension of time had been made before the expiry of the time within which it was ordered the deposit should be made, the Court might have extended the time ; it cannot do so afterwards.

The appeal is rejected with costs.

*Appeal rejected.*

1878  
March 5, 6, 8,  
April 13.

## PRIVY COUNCIL.

PRESENT :

*Sir James W. Colville, Sir Barnes Peacock, Sir Montague E. Smith, and Sir Robert P. Collier.*

SHEO SINGH RAI (DEPENDANT) v. DAKHO AND MURARI  
LAL (PLAINTIFFS).

On Appeal from the High Court of Judicature for the North-Western Provinces, Allahabad.

*Usage of Jains.—Estate of Sonless Widow—Her power to Adopt—Position of Adopted son.—Rights of Widow during Son's minority—Declaratory decree, when to be given—Obstruction to Title—Nuncupative will—Special leave to Appeal.*

On the evidence given in this case, held that, according to the usage prevailing in Delhi and other towns in the North-Western Provinces, among the sect of the