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HARDEI  
v.  
RAM LAL.

The second question is, are there materials before us which sustain the inference that the donee Musammat Hardei obtained possession under the deed of gift. Looking to the matters detailed by the learned Judge and to all the facts stated in the judgment, it seems to me they are consistent with the plaintiff having received possession under the deed of gift, at any rate there are no facts inconsistent with that view, and I think we may fairly assume that she did have possession.

With regard to the finding as to the wall, that seems to be more or less in accordance with what was found by the first Court. I would suggest that the proper order to be made is that the appeal of the plaintiff being allowed and the decree of the learned Judge set aside, that of the first Court should be restored, and the plaintiff-appellant will have her costs in all the Courts.

EDGE, C.J.—I am of the same opinion, and for the same reasons as given by my brother Straight.

TYRRELL, J.—I concur.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.*

IMTIAZ BANO (PLAINTIFF) v. LATAPAT-UN-NISSA AND OTHERS (DEFENDANTS).\*

*Partition—Question of title—Act XIX of 1873 (North-Western Provinces Land Revenue Act), s. 113—Appeal from order under first part of s. 113—Practice—Successful preliminary objection to appeal—Costs.*

No appeal lies to the High Court from a decision of a Collector or Assistant Collector under the first part of s. 113 of the North-Western Provinces, Land Revenue Act (XIX of 1873, declining to grant an application for partition until the question in dispute has been determined by a competent Court.

Where a preliminary objection was successfully taken to the hearing of an appeal, the High Court refused to follow the practice adopted in bankruptcy appeals in England by depriving the respondent of costs on the dismissal of the appeal on the ground that the appellant had no previous notice of the preliminary objection. *Ex parte Brooks* (1), and *ex parte Blease* (2) referred to.

\*First Appeal No. 107 of 1887 from a decree of Munshi Gursaran Das, Deputy Collector of Badaun, dated the 22nd May, 1887.

(1) L. R., 13 Q. B. D., 42.

(2) L. R., 14 Q. B. D., 123.

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January 28.

THE facts of this case are sufficiently stated in the judgment of the Court.

The Hon. *T. Conlan* and Mr. *G. E. A. Ross*, for the appellant.

Mr. *A. H. S. Reid* and Pandit *Sundar Lal*, for the respondents.

EDGE, C.J., and TYRRELL, J.—This appeal has arisen out of an application in the Revenue Court for partition. The Deputy Collector, having looked into the objections which were filed and the matters to which those objections referred, exercised the discretion that was given to him under the earlier portion of s. 113 of the North-Western Provinces Land Revenue Act (XIX of 1873) and declined to grant the application until the questions in dispute had been decided by a competent Court. He did not adopt the other alternative given him by the section of proceeding to enquire into the merits of the objections, which would have necessitated his recording a proceeding declaring the nature and extent of the interest of the party or parties applying for the partition and any other party or parties who may be affected thereby. The judgment or whatever it may be called of the Deputy Collector is mistranslated in the paper book before us. As a matter of fact, in the vernacular record the phraseology is that used in the vernacular translation of the earlier portion of s. 113.

A preliminary objection has been taken on behalf of the respondents that the appeal does not lie. We are of opinion that that objection must prevail, there being no appeal to us from a declining to grant the application under the earlier portion of s. 113. We are asked by the appellant to deprive the respondents of costs on the dismissal of the appeal on the ground that the appellant had no previous notice of the preliminary objection that has now prevailed. Two English cases in bankruptcy have been cited as authorities, which it is contended that we should follow. The first is *ex parte Brooks* (1) and the other is *ex parte Blease* (2). In each of those cases the preliminary objection only required to be stated to succeed. We, however, see no reason to depart from the practice of this Court

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in these matters. We do not see any reason why we should follow what apparently is the special practice of Courts in England in deciding bankruptcy appeals. The appeal is dismissed with costs.

*Appeal dismissed.*

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 January 29.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

HAR SARAN DAS (PLAINTIFF) v. NANDI AND ANOTHER (DEFENDANTS).\*

*Hindu law—Hindu widow—Re-marriage—Act XV of 1856, s. 2—Re-marriage of widow who could have remarried before the Act was passed.*

Act XV of 1856 was not intended to place under disability or liability persons who could marry a second time before the Act was passed. It was intended to enable widows to remarry who could not previously have done so, and s. 2 applies to such persons only.

*Held* therefore that a widow belonging to the sweeper caste, in which there is not, and in 1856 was not, any obstacle by law or custom against the remarriage of widows, did not by marrying again forfeit her interest in the property left by her first husband; and that the reversioners could not prevent the sale of such interest in execution of a decree for enforcement of hypothecation.

THE facts of this case are sufficiently stated in the judgment of Straight, J.

Pandit *Moti Lal Nehru*, for the appellant.

Munshi *Madho Prasad*, for the respondents.

STRAIGHT, J.—This appeal relates to a suit brought by the plaintiff before us under the following circumstances:—Prior to the year 1884, the defendant Musammat Nandi was married to a man of the name of Kashmiri, who, it is alleged, had monetary transactions with the plaintiff. He died, and on the 14th December, 1884, Musammat Nandi made a hypothecation bond for the consideration of a sum of Rs. 200 in respect of two kothas which had belonged to her deceased husband, Kashmiri. Subsequent to the execution of the bond defendant married a person of the name of Bhujjo, and afterwards the plaintiff brought a suit upon the hypothecation bond of the 14th December, 1884, against the defen-

\* Second Appeal No. 1084 of 1887, from a decree of Maulvi Saiyid Muhammad, Subordinate Judge of Saharanpur, dated the 14th April, 1887, confirming a decree of Babu Ganga Saran, Munsif of Saharanpur, dated the 20th August, 1886.