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would have to be determined, not by a Civil, but by a Revenue Court. The Code in other places, as, for instance, in s. 476 distinguishes between Civil and Revenue Courts, and as only a Civil Court is mentioned in s. 146, I am of opinion that that section does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights would have to be determined by a Revenue Court.

For the above reasons I quash the order of the Magistrate, dated the 28th of March, 1893. If the Magistrate is of opinion that there is any probability of a breach of the peace, he ought to exercise the preventive jurisdiction with which he is invested by Chapter VIII of the Criminal Procedure Code.

## APPELLATE CIVIL.

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June 20.

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

LIAQAT ALI AND OTHERS (DEFENDANTS) v. KARIM-UN-NISSA AND OTHERS  
(PLAINTIFFS).\*

*Muhammadian Law—Legitimacy—Acknowledgment.*

*Held* that a Muhammadan could not by acknowledging him as his son render legitimate a child whose mother at the time of his birth he could not have married by reason of her being the wife of another man. *Muhammad Allahdad Khan v. Muhammad Ismail Khan*, (1) followed.

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

Mr. *Amir-ud-din*, for the appellants.

Mr. *Abdul Mujid*, for the respondents.

EDGE, C. J. and BURKITT, J.—The suit in which this second appeal has arisen was brought by Musammat Karim-un-nissa and her two daughters, Musammat Rahiman and Musammat Aziman, against the widow of Muhammad Ali, deceased, and his surviving

\* Second appeal No. 26 of 1891, from a decree of G. L. Lang, Esq., Commissioner of Jhānsi, dated the 12th December 1890, reversing a decree of W. R. Tucker, Esq., Assistant Commissioner of Jhānsi, dated the 19th July 1890.

(1) I. L. R., 10, All., 289.

legitimate children, to obtain a decree for possession of certain shares in immovable property, which immovable property had belonged to Muhammad Ali. The suit was brought on the allegation that Musammat Karim-un-nissa was the widow, and the two other plaintiffs the daughters, of Muhammad Ali. As to some of the shares, they claimed to inherit them directly from Muhammad Ali, and as to others, from Anwar Ali, whom the plaintiffs alleged to have been the son of Muhammad Ali and to have inherited and obtained possession of portions of Muhammad Ali's property. Anwar Ali was the son of Muhammad Ali by Karim-un-nissa. Muhammad Ali died in 1881. The suit was brought in 1889. The defendants were and are in possession. It was found that before the time Musammat Karim-un-nissa went through the ceremony of marriage with Muhammad Ali she had been married to one Amir Ali. Amir Ali died about four years before this suit. The plaintiff endeavoured to prove that Amir Ali had divorced Musammat Karim-un-nissa before she went through the ceremony of marriage with Muhammad Ali. Only one witness was called to prove the alleged divorce. His evidence was merely that Amir Ali stated to him that he had divorced Karim-un-nissa. The Commissioner of Jhānsi in the first appeal very properly did not act on that evidence, which was in our opinion entirely insufficient on which to find a divorce, but the Commissioner of Jhānsi having regard to the fact that a ceremony of marriage between Muhammad Ali and Karim-un-nissa had been performed, the fact that they lived together for fifteen years until Muhammad Ali's death, and the fact that Muhammad Ali had treated Karim-un-nissa's children in the same manner as he treated his undoubtedly legitimate children; and from the fact that Musammat Kariman, who was the lawfully married wife of Muhammad Ali, had in 1881 acknowledged the legitimacy of Anwar Ali and that measures had been taken to secure Anwar Ali's succession and inheritance to Muhammad Ali, came to the conclusion that there was so strong a presumption as to amount to a positive proof of the legality of Karim-un-nissa's marriage. As the Commissioner of Jhānsi referred to

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these matters in connection with the question as to whether there had been a divorce, he must have come to the opinion that there had been a divorce. There was no direct finding that there had been a divorce prior to the ceremony of marriage between Karim-un-nissa and Muhammad Ali. Now none of those matters to which he referred are, in our opinion, separately or collectively evidence on which the Commissioner of Jhānsi could find that Amir Ali had in fact divorced Musammat Karim-un-nissa. The only direct evidence as to a divorce was that of the witness who stated that Amir Ali had told him he had divorced Karim-un-nissa. The Commissioner found that that evidence, coupled with the repudiation of Karim-un-nissa by Amir Ali and their total separation, was not sufficient to establish a divorce. The matters on which he relied having regard to what takes place in native families were as consistent with there having been a divorce as with there not having been a divorce. As we have said, Amir Ali died only four years before this suit, and if a divorce had taken place prior to the performance of this marriage ceremony between Muhammad Ali and Karim-un-nissa, positive evidence of that might have been forthcoming. We must take it, consequently, that there was no legal marriage established between Muhammad Ali and Karim-un-nissa. The result is that Karim-un-nissa is not a widow of Muhammad Ali, the other plaintiffs are not his legitimate daughters, and Anwar Ali was not his legitimate son. It is true that Anwar Ali was recognized by Muhammad Ali as his legitimate son, but, following the ruling in *Muhammad Aliahdad Khan and another v. Muhammad Ismail Khan and others* (1) we hold that the acknowledgment by Muhammad Ali of any child of Musammat Karim-un-nissa as his legitimate child was worthless, she being a person who was not capable of being married to him and consequently was not capable of bearing legitimate offspring to him. The result is that the plaintiffs are not entitled to inherit directly from Muhammad Ali, and Anwar Ali was not entitled to inherit from Muhammad Ali. The defendants are in possession. No title superior or equal to theirs has

(1) I.L.,R., 10, All 289.

been proved by the plaintiffs to disturb their possession, and consequently the suit fails. We allow this appeal and dismiss the suit with costs in all Courts.

*Appeal decreed.*

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

GULZAR SINGH (DEFENDANT) v. KALYAN CHAND (PLAINTIFF).\*

*Cause of action—Suit by zamindár to recover possession of occupancy holding against occupancy tenant and his alleged transferee in possession—Death of occupancy tenant after filing of suit but before notice—Act XII of 1881, s. 9.*

A plaintiff is not entitled to a decree in his suit unless, by proof or admission or default of pleading, he shows that when he instituted that suit he was entitled to a decree.

One K. C., a zamindár, sued in a Court of Revenue to recover an occupancy holding from one B. S., his occupancy tenant, and that tenant's transferee, G. S., to whom, by a transfer which was inoperative under s. 9 of Act No. XII of 1881 B. S. had purported to make over his occupancy holding. The occupancy tenant died after the suit was filed, but before he had received notice of it, and the transferee being in sole possession of the occupancy holding defended the suit. *Held* under the above circumstances that the zamindár's suit must fail, inasmuch as at the time when it was filed he was not entitled to immediate possession of the occupancy holding.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gobind Prasad*, for the appellant.

Munshi *Ram Prasad*, Babu *Datti Lal* and Lala *Sheo Charan Lal* for the respondent.

EDGE, C. J., and AIKMAN, J.—The suit was brought by Lala Kalyan Chand, a zamindár, against Baldeo Singh, who was a tenant having a right of occupancy, but was not a tenant at fixed rates, and against Gulzar Singh, who was a sister's son of Baldeo Singh, to whom Baldeo Singh had made a gift of all his interest in the occupancy holding. The suit was brought on the 13th of February 1890, in a Court of Revenue, and a decree for possession was claimed on the ground that Baldeo Singh, by making the gift,

\* Second appeal No 300 of 1891, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 4th February 1891, confirming a decree of Syed Mehdi Ali, Assistant Collector of Allahabad, dated the 13th March 1890.