

1897

QUEEN-
EMPRESS
v.
SHAKIB
ALI.

of such witnesses, if he considers that their evidence may be material. It may be dangerous in some districts for the accused to run the risk of having his witnesses tampered with. It may thus be wise in some cases for the accused to decline to give a list to the Magistrate, and to reserve his evidence for the Court of Session. In order to entitle him to have his witnesses summoned, he must satisfy the Judge of the probability that such witnesses would be material. We have no doubt in the present case that if these accused do give to the Sessions Judge any reasons for concluding that the witnesses whom they ask to have summoned can give material evidence, the Sessions Judge will take the necessary steps to procure their attendance. We decline to interfere further in this case. The Sessions Judge will act on this application if any case is made out before him, showing that it is a reasonable application and not merely one for delay.

We dismiss this application.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

YASIN KHAN AND OTHERS (DEFENDANTS) v. MUHAMMAD YAR KHAN
(PLAINTIFF).*

Muhammadan law—Dower—Suit by heirs of Muhammadan widow for her dower—Alienation of property of the deceased husband by his heirs pendente lite.

While a suit for the dower debt due to a Muhammadan widow was pending on behalf of her heirs, the heirs of her deceased husband mortgaged certain property which had been of the deceased in his life-time. The heirs of the widow obtained a decree which could only be executed against the assets of the deceased husband. Held that this decree took priority over the mortgagee's decree and a sale held in execution thereof. *Bazayét Hossein v. Dooli Chand* (1) referred to.

THE facts of this case are as follows :—

The defendants, as representatives of one Musammat Nurbi, the widow of Wazir Khan, on the 4th of December, 1890, brought

* Second Appeal No. 82 of 1895 from a decree of J. E. Gill, Esq., District Judge of Mainpuri, dated the 25th September 1894, confirming a decree of Babu Gokul Prasad, Munsif of Shikohabad, dated the 10th March 1893.

(1) I. L. R., 4 Calc., 402.

1897
May 31.

a suit against Munir Khan, the son and representative of Wazir Khan, to recover a certain amount as Nurbi's dower, and obtained a decree on the 31st January, 1891. Before this decree was passed, Munir Khan, on the 3rd January, 1891, hypothecated two houses and certain other property by a bond to the plaintiff, who, having put that bond in suit, obtained a decree enforcing hypothecation on the 27th of July, 1891, and at an auction sale held in execution of his decree purchased 31 out of 48 sihams in the two houses on the 27th of November, 1891. On the 14th of February, 1892, the plaintiff obtained possession of the share he had purchased. Subsequently the defendants brought to sale, in execution of their decree of the 31st of January, 1891, 28 sihams out of 48 in the said two houses, and themselves became the purchasers on the 27th of June, 1892, and obtained possession on the 9th of September, 1892. The plaintiff had taken an objection to the attachment and sale of this share in the execution department, but his objection was disallowed. Subsequently he brought the present suit to recover possession of 28 out of 48 sihams in the houses in suit by invalidating the order of the 27th of June, 1892, and setting aside the sale of the 27th of June, 1892, on the ground that his decree and purchase had priority over the defendants' decree and purchase.

The suit was decreed in the first Court, and the defendants' appeal was dismissed in the Court of first appeal. The defendants thereupon appealed to the High Court.

Manvi Ghulam Mujtaba, for the appellants.

Babu Satish Chandar Banerji, for the respondent.

EDGE, C. J. and BLAIR, J.—A suit for dower was brought by the heir of a Muhammadan widow. While that suit was pending, the heirs of the deceased husband of the widow mortgaged the property which had belonged to the deceased husband in his lifetime. The heirs of the widow got a decree which could only be executed against the assets of the husband which the heirs of the husband had in their possession. The case is governed by the principle laid down by their Lordships of the Privy Council in

1897

YASIN KHAN
v. 1
MUHAMMAD
YAR KHAN.

1897

YASIN KHAN
v.
MUHAMMAD
YAR KHAN.

Bazayet Hossein v. Dooli Chund (1). Applying that principle, we allow this appeal, and set aside the decree of the Court below and the decree of the first Court, and dismiss the suit with costs in all Courts.

Appeal decreed.

1897
June 1.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, and Mr. Justice Burdett.

QUEEN-EMPRESS v. PANDEH BHAT.*

*Criminal Procedure Code Sections 307, 424—Judgment of Appellate Court—
What such judgment must contain.*

A Magistrate having special powers under section 34 of the Code of Criminal Procedure convicted one P. B. under sections 471 and 476 of the Indian Penal Code and sentenced him to four years' rigorous imprisonment. P. B. appealed to the Sessions Judge, and on that appeal the Sessions Judge recorded the following judgment:—"I have perused the record and see no cause for interference with the finding of the District Magistrate. As regards the sentence, it is not excessive, but, having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment with three months' solitary confinement."

Held that this judgment was in compliance with the provisions of section 307 of the Code of Criminal Procedure, read with section 424 of the same Code.

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

The Public Prosecutor (Mr. *E. Chamier*) for the Crown.

The judgment of the Court [EDGE, C. J., KNOX, BLAIR, and BURDETT, JJ.] was delivered by EDGE, C. J. :—

Pandeh Bhat was convicted by a Magistrate of the offences punishable under sections 471 and 476 of the Indian Penal Code. The Magistrate was a Magistrate having special powers under section 34 of the Code of Criminal Procedure. He sentenced Pandeh Bhat to four years' rigorous imprisonment in all. Pandeh Bhat appealed to the Sessions Judge of Kumaun. The Sessions Judge dismissed his appeal in the following

* Criminal Revision No. 208 of 1896.

(1) I. L. R., 4 Calc., 402.