

1897

MANGLI
PRASAD
v.
DEBI DIN.

holding that limitation should be computed from the date of the auction purchase by Ganesh Rai, the plaintiff's predecessor in title. As I have said above, if possession was delivered to the auction purchaser in the mode prescribed by section 318 or 319 of the Code of Civil Procedure, the date of such possession would give to the plaintiff a fresh start for the computation of limitation. In this case section 319 was the section applicable. The learned Subordinate Judge has not clearly found whether possession was delivered in accordance with the provisions of that section. I therefore refer to him the following issue under section 566 of the Code of Civil Procedure for a clear finding :—“ Was possession delivered to Ganesh Rai in the manner prescribed by section 319 of the Code of Civil Procedure, and if so, on what date ? ” The Court below will receive such evidence as may be tendered on the above question, and on the receipt of its finding ten days will be allowed for filing objections.

Issue referred.

MISCELLANEOUS CRIMINAL.

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

QUEEN-EMPRESS v. SHAKIR ALI AND OTHERS.*

Procedure—Criminal Procedure Code section 211—Witnesses—Right of accused to have witnesses summoned in his defence when he has refused to give in a list in the Magistrate's Court.

If an accused person, on being called upon under section 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-Emress v. Har Gobind Singh* (1) referred to.

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

* Criminal Miscellaneous No. 34 of 1897.

(1) I. L. R., 14 All., 242.

Mr. A. H. C. Hamilton, for the applicant.

EDGE, C. J. and BLAIR, J.—This is an application to transfer a case pending in a Court of Session to another Court of Session on the ground that the Sessions Judge declined to summon certain witnesses for the accused. It appears that these applicants were asked in the Magistrate's Court if they had any witnesses to call. They stated that they reserved their case for the Court of Session and would not file any list of witnesses. Later on, and after commitment, they applied to the Magistrate to summon certain witnesses for the defence. The Magistrate declined on the ground that he was not bound to do so under the Code of Criminal Procedure. Application was then made to the Sessions Judge to have these witnesses summoned. He also declined. It has been contended that this Court, in the case of *Queen-Empress v. Har Gobind Singh* (1), decided that where an accused person has declined to file a list of witnesses during the inquiry before the Magistrate he is entitled after committal to have the Magistrate summon any witnesses he may name, and, if an application to be made to the Judge before trial, at the trial he is equally entitled to have any witness whom he names summoned. This Court decided nothing of the kind in *Queen-Empress v. Har Gobind Singh* (1). The Court was dealing there with what had actually taken place. We were referring to certain comments made on the procedure of the Magistrate. It appears to us that if an accused person, on being called upon under section 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. He is of course entitled to call any witnesses in the Court of Session whom he may have in Court, whether or not he has caused such witnesses to be summoned. The Sessions Judge may in his discretion cause any witness to be summoned for the accused on an application made during the trial, and he is bound to procure the attendance

(1) I. L. R., 14 All., 242.

1897

QUEEN-
EMPRESS
v.
SHAKIE
ALI.

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.