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February 12.

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

DHIRAJ SINGH (PLAINTIFF) *v.* MANGA RAM AND ANOTHER (DEFENDANTS).

Hindu law—Hindu widow — Reversioner — Debt incurred by a Hindu widow for legal necessity, but without any charge on the ancestral property in the hands of the widow — Such property not liable in the hands of the reversioners.

The creditors of a Hindu widow cannot after her death have recourse to ancestral property in the hands of the reversioners, in respect of which property the widow had enjoyed only a widow's life-estate, if in fact no instrument charging the property beyond the widow's life-time has been executed by the widow, even though the debt sued upon was incurred for legal necessity and was one in respect of which such property might have been made liable beyond the widow's life-time. *Shiamanand* v. *Har Lal* (1), *Ramasami Mudaliar* v. *Sellattammal* (2) referred to. *Ramcoomar Mitter* v. *Ichamoyi Dasi* (3) dissented from.

IN this case one Musammat Lari, a Hindu widow in possession as such widow of immovable property which had belonged to her husband in his life-time, borrowed from time to time from the plaintiff to the suit certain sums of money and some grain, the principal portion of the debt being incurred on account of the marriage of her granddaughter. The debt thus incurred was purely a book-debt, and no document of any kind was executed by the widow binding the ancestral property in her hands. On the 16th November 1890 the widow signed a statement of account in the plaintiff's books which showed the amount of the debt to be Rs. 862-7-9. On the 22nd March 1891 the widow died, and the immovable property above referred to passed into the hands of Manga Ram and Bhairon as heirs of the widow's late husband. On the 11th of April 1892 the plaintiff filed the suit out of which this appeal has arisen, seeking to recover from Manga Ram and Bhairon the amount due to him by Musammat Lari.

The plaintiff's suit was dismissed by the Court of first instance (Munsif of Jhánsi) on the ground that the fact of the loan was not proved. On appeal to the District Judge, the District Judge

* Second Appeal No. 845 of 1894, from a decree of R. Scott, Esq., District Judge of Jhánsi, dated the 30th November 1892, confirming a decree of Munshi Sakhawat Ali, Munsif of Jhánsi, dated the 15th July 1892.

(1) I. L. R., 18 All., 471. (2) I. L. R., 4 Mad. 375.
(3) I. L. R., 6 Calc. 36.

found that the plaint disclosed no cause of action and dismissed the appeal. The plaintiff appealed to the High Court (S. A. No. 237 of 1893), which remanded the case to the lower appellate Court for trial on the merits.

On the retrial the then Officiating District Judge found on one issue alone—that of legal necessity for the loan—and finding that issue against the plaintiff appellant, dismissed the appeal. The plaintiff again appealed to the High Court.

On this appeal the High Court referred certain issues to the Court below under section 566 of the Code of Civil Procedure. On these issues the lower appellate Court found that the loan was in fact made and the balance of account struck as alleged by the plaintiff, and that the money was borrowed for legal necessity, but that there was no agreement on the part of Musammat Lari to pay interest.

On return of these findings the appeal was again put up for hearing.

Babu *Durga Charan Banerji* for the appellant.

Mr. *E. A. Howard* for the respondents.

The judgment of the Court (EDGE, C. J. and BLAIR, J.) was delivered by—

EDGE, C. J.—The plaintiff in this case advanced moneys to the widow of a separated Hindu, partly to defray the expenses of the marriage of her granddaughter, partly for agricultural purposes and to some small extent for the payment of Government revenue. It is found by the Court below that the Hindu widow could and ought to have paid out of her own money the expenses of the marriage of her granddaughter. Our judgment, however, does not turn upon that finding. The defendants to the suit are the reversioners, who have succeeded to the possession of the ancestral property on the death of the widow. The widow gave no mortgage and executed no document which created a charge on the ancestral property in favour of the plaintiff. It is contended that the advance made by him to the Hindu widow of money for agricultural purposes, and for the payment of Government

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revenue, was an advance made for such necessary purposes as would have enabled the Hindu widow to have made a mortgage of the ancestral property, which would not have been limited to her own interest, and on behalf of the plaintiff the decision in *Ramcoomar Mitter* v. *Ichamoyi Dasi* (1) was relied on. If the decision in that case is good law, the plaintiff would be entitled to a decree. On the other side the decision in *Ramasami Mudaliar* v. *Sellattammal* (2) and the decision of this Court in *Shiamanand* v. *Har Lal* (3) have been relied on.

It appears to us that the case presents no difficulty. The plaintiff, if he had chosen, could, before lending his money, have obtained from the Hindu widow the security of the ancestral property by obtaining a mortgage. He did not choose to demand a mortgage before advancing his money; he accepted the personal liability of the widow. He now seeks to get a decree under which he can bring to sale the ancestral property in the hands of the reversioners. He seeks a decree which would bind that property. In other words, he is seeking a decree in this suit, there being no assets of the widow in the hands of the reversioners, which he could only have obtained if he had had a valid charge on the ancestral property. The plain answer to his suit is that the plaintiff lent his money on the personal liability of the widow, and, the defendants reversioners having no assets of the widow in their hands, the plaintiff cannot get a decree against them. We dismiss this appeal with costs.

Appeal dismissed.

CRIMINAL MISCELLANEOUS.

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Before Sir John Edge, Kt., Chief Justice.

IN THE MATTER OF THE PETITION OF LALJI AND OTHERS.

Criminal Procedure Code, section 526—Transfer—Magistrate, powers of—View of the scene of the occurrence by a Magistrate trying a criminal case.

It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the

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