

1889

BRIJ
BHUKHAN
v.
DURGA DAT.

respects the suit of the plaintiff is dismissed. As this suit was necessitated by the action of these defendants in taking a very technical objection in the Court of Revenue, which in fact was an objection without substance or merits, we give the plaintiff Brij Bhukhan Pande his costs in all Courts in this civil suit.

Appeal decreed.

1898

February 1.

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

HADI ALI (DEFENDANT) v. AKBAR ALI (PLAINTIFF).*

Muhammadian law—Dower—Widow's lien for dower purely personal and not heritable.

The lien which a Muhammadian widow whose dower is unpaid may obtain on lands which have belonged to her deceased husband is a purely personal right and does not survive to her heirs. *Ali Muhammad Khan v. Azizullah Khan (1)* and *Ajuba Begam v. Nazir Ahmad (2)* referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgment in second appeal of Banerji, J. The facts of the case appear from that judgment, which is as follows:—

“The appellants brought the suit out of which this appeal has arisen to recover possession of his share out of the estate of his deceased uncle, Karim Bakhsh, one of whose heirs he was. The suit was brought against Huran Bibi, the widow of Karim Bakhsh, and Hadi Ali, the donee of a portion of the property from Huran Bibi. Hadi Ali is the son of a daughter of Karim Bakhsh, who predeceased Karim Bakhsh. The Court of first instance decreed the claim. † An appeal was preferred by Huran Bibi and Hadi Ali. Huran Bibi's appeal had reference to that portion of the estate which was not included in the gift to Hadi Ali. During the pendency of the appeal Huran Bibi died. Her legal representatives were her three daughters, who are admittedly alive, and not Hadi Ali, the son of a fourth predeceased daughter. The right as regards the property not comprised in the gift did not survive to Hadi Ali, therefore he alone could not maintain the appeal. As he was not one of the legal representatives of Huran

* Appeal No. 43 of 1897 under section 10 of the Letters Patent.

(1) I. L. R., 16 All., 50.

(2) Weekly Notes 1890, p. 115.

1898

 HADI ALI
 v.
 AKBAR ALI.

Bibi he could not be brought upon the record in the place of Huran Bibi, and as her legal representatives did not apply to be made parties to the appeal within the time allowed by law, the appeal of Huran Bibi abated, and, so far as the property in respect of which the appeal is concerned, the decree of the Court of first instance became final.

“As regards the property which is the subject of the alleged gift to Hadi Ali, the lower appellate Court has found that Huran Bibi was in possession of it in lieu of her dower. She was not entitled to transfer that property by way of gift or otherwise, and the gift was not legally valid. Having been put in possession in lieu of her dower, she was entitled to continue in possession so long as her dower debt remained unpaid : that was a right personal to her and became extinct on her death. Hadi Ali is not entitled to remain in possession of the estate left by Karim Bakhsh. The result is that the plaintiff is entitled to the decree granted to him by the Court of first instance.

“I allow this appeal with costs, and, setting aside the decree below with costs, restore that of the Court of first instance.”

From this judgment the defendant Hadi Ali appealed.

Babu *Durga Charan Banerji*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

EDGE C. J. and BURKITT, J.—This is an appeal under the Letters Patent from the decree of our brother Banerji. He decided that a lien for her dower which a Muhammadan widow had obtained on lands of her husband was a purely personal right and did not survive to her heirs. This decision is supported by *Ali Muhammad Khan v. Azizullah Khan* (1) and *Ajuba Begam v. Nazir Ahmad* (2). It is contended that the latter case is not an authority, as it does not appear that the widow had obtained the lien by consent of her husband's heirs. In our opinion it is a very direct authority. Mr. Justice Mahmood held, rightly wrongly, that the widow had obtained a lien—he may have been right or he may have been wrong on that point—

(1) L. L. R., 16 All., 50.

(2) Weekly Notes 1890, p. 115.

1898

HADI ALI
v.
AKBAR ALI.

and, holding that she had a lien he held that it did not survive. We agree with our brother Banerji that such a lien does not survive, but is purely personal, and we dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Knox.

QUEEN-EMPRESS v. AHMADI.*

Criminal Procedure Code, section 208—Evidence—Procedure—Duty of Magistrate inquiring into a case triable by the Court of Session to take the evidence of the witnesses produced by the accused.

A Magistrate inquiring into a case under Chapter XVIII of the Code of Criminal Procedure is not empowered to frame a charge or make out an order for commitment until and after he has taken all such evidence as the accused may produce before him for hearing.

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

Alston and Madan Mohan Malaviya, for the appellant.

KNOX J.—Musammat Ahmadi Begam was suspected of having committed the offence of murder. The case was under inquiry with a view to commitment, if necessary, to the Court of Sessions. The evidence produced in support of the prosecution had apparently been put forward up to the 4th of December. On that date a petition was put in by Musammat Ahmadi Begam asking the Court to take the evidence of her witnesses under section 208 of the Criminal Procedure Code before taking her statement. Upon that petition the first order passed is dated the 4th of December, and was as follows:—“It is too late to pass an order now, as it is about 5 p. m.” With this order apparently the proceedings of the 4th of December came to a close. I understand that the accused had witnesses present in Court on that day who could have been then and there produced and examined. In that case I do not understand what difficulty the learned

* Criminal Revision No. 684 of 1897.