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v.  
LAKHMI  
CHAND.

being adopted as being based on common sense. In the later case of *Motilal Bechardass v. Ghellabhai Hariram* (1) the same question was considered, and the conflicting decisions of the High Court of Calcutta and the High Court of Allahabad were discussed. The learned Judges, BAYLEY and FARRAN, JJ., held that the Allahabad High Court was correct and that the representatives of a deceased partner are not necessary parties to a suit for recovery of a debt which accrued due during the lifetime of the deceased partner. In that case the provisions of the Contract Act were considered and dealt with. In the later case of *Debi Das v. Nirpat* (2) BLAIR and BURKITT, JJ., followed the earlier ruling of this Court. In view of these decisions the case before us was rightly decided by the courts below. We are not prepared to dissent from well considered judgements of the Court. We dismiss this appeal with costs.

*Appeal dismissed.*

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June 2.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.*  
RAMPHAL THAKUR (PLAINTIFF) v. PAN MATI PADAIN AND OTHERS

(DEFENDANTS)\*

*Hindu law—Mitakshara—Succession—Daughter's daughter's sons—Bandhus—Alienation by Hindu widow—Legal necessity.*

*Held* that under the Mitakshara law a daughter's daughter's son is a *bandhu*, and in the absence of any other heir is entitled to succeed to the estate of the last owner. *Ajudhia v. Ram Sumer Misir* (3) followed.

THIS was a suit to enforce payment of money secured by a mortgage, dated the 31st of January, 1896, executed by one Musammat Phulmani deceased. The property mortgaged, originally belonging to one Beni, upon his death descended to his widow Musammat Chunna, and on her death to Musammat Phulmani. Musammat Phulmani had two daughters, Pan Mati and Parbati, and the latter two minor sons Sundar and Ram Piare. The Court of first instance (Munsif of Deoria) decreed the claim, but on appeal this decree was reversed and the plaintiff's suit dismissed by the District Judge of Gorakhpur upon the

\* Second Appeal No. 1089 of 1909, from a decree of F. D. Simpson, District Judge of Gorakhpur, dated the 26th of July, 1909, reversing a decree of Laddi Prasad, Munsif of Deoria, dated the 10th of December, 1908.

(1) (1892) I. L. R., 17 Bom., 6. (2) (1898) I. L. R., 20 All. 365,  
(3) (1909) I. L. R., 31 All., 454.

ground that Musammat Phulmani had only a limited estate and that the plaintiff had failed to prove that the mortgage was made for legal necessity. The plaintiff appealed to the High Court.

Pandit *Baldeo Ram Dave* (with him *Munshi Iswar Saran*), for the appellant.

*Munshi Govind Prasad*, for the respondents.

STANLEY, C. J., and GRIFFIN, J. :—This is an untenable appeal. The plaintiff sued to enforce payment of a debt secured by a mortgage bond of the 31st of January, 1896, executed by one Musammat Phulmani, deceased, and her daughter Musammat Pan Mati. The court of first instance decreed the claim, but upon appeal the decision of that court was reversed and the plaintiff's suit dismissed on the ground that Musammat Phulmani had only a limited interest in the mortgaged property, namely, a widow's estate, and that the plaintiff had failed to prove that the mortgage in suit was made for legal necessity.

We think that this decision is correct. The property formerly belonged to Beni, and upon his death it descended to his widow, Musammat Chunna. After her death it came to Musammat Phulmani. Musammat Phulmani had two daughters, namely, Musammat Pan Mati and Musammat Parbati. Musammat Parbati has two minor sons, the defendants, Sundar Pande and Ram Piare Pande. According to the Hindu law Musammat Parbati and Musammat Pan Mati, the daughter's daughters of the owner Beni, could not inherit his property. Consequently Musammat Pan Mati had no interest in the property which she could mortgage. The mortgage not having been shown to have been made for legal necessity, it is clear that no interest passed to the mortgagee beyond the life estate of Musammat Pulmani. But it is contended that this mortgage ought to prevail in the absence of reversionary heirs to dispute its validity. It is said that there are no reversionary heirs, but this is not the case. It has been held by a Bench of this Court, and we think rightly, that under the *Mitakshara* the son of a daughter's daughter is an heir. In the case of *Ajudhia v. Ram Sumer Misir* (1) our brothers BANERJI and TUDBALL held that a daughter's daughter's son is a

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*bandhu*, and in the absence of any other heir he is entitled to succeed to the estate of the last owner. The plaintiff in that case was the son of the daughter's daughter of one Sheo Narain and our learned brothers observe:—"He is clearly a *sapinda* of Sheo Narain within the meaning of the *Mitakshara*, and being a *bhin-nagotra sapinda*, who claims through a female belonging to the family of Sheo Narain, namely, his daughter Chaura; he is Sheo Narain's *bandhu*. In the absence of any other heir he is entitled to succeed to the estate of Sheo Narain. It is urged that he, being the son of Sheo Narain's daughter's daughter, cannot be regarded as a *bandhu*. In the Tagore Law Lectures for 1882, the descendant of a daughter's daughter of the same family to which the deceased belonged is specifically mentioned as a *bandhu* of the deceased (see p. 688), and on page 707 the daughter's daughter's son is specified in the list of the man's own *bandhu*. Having regard to the definition of a *bandhu* as understood in the *Mitakshara*, we must hold the plaintiff, who is the daughter's daughter's son of Sheo Narain, the last owner, is his *bandhu* and, as such, the heir to his estate." Applying the ruling in that case to the present, Sundar Pande and Ram Piare Pande being the sons of a daughter's daughter of Beni are, as such, in the absence of other heirs, the heirs to his estate. We dismiss the appeal with costs.

*Appeal dismissed.*

## MISCELLANEOUS CRIMINAL.

*Before Mr. Justice Tudball.*

EMPEROR v. WAHID ALI KHAN.\*

*Criminal Procedure Code, sections 526 ; 107, 117, 118—Security for keeping the peace—Transfer—Jurisdiction.*

Section 526 of the Code of Criminal Procedure enables the High Court to transfer criminal proceedings initiated under section 107 of the Code, once they have been properly instituted, to any other criminal court of equal or superior jurisdiction (and which otherwise would have no jurisdiction) and the order of the High Court will give jurisdiction to the court to which the case has been so transferred to make an inquiry under section 117 and to pass an order under section 118. *In the matter of the petition of Anar Singh* (1) not followed.

THIS was an application under section 526 of the Code of Criminal Procedure asking that certain proceedings which had

\* Criminal Miscellaneous No. 99 of 1910.

(1) (1898) I. L. R., 16 ALL, 9.

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June 4.