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capacity he is not on that ground alone to be deemed personally interested in the case. But if, in addition to a connection of that sort, he, in some capacity outside his magisterial or judicial functions, orders or directs the prosecution of a person for an offence, then he is deemed to be personally interested in the case and he cannot try it as magistrate or judge. The distinction is between having merely some public official connection with a case and ordering or directing the prosecution in some extra-judicial or extra-magisterial capacity." In the present case, as I have said, the magistrate ordered the prosecution of the applicant. I cannot accept the suggestion that the prosecution was directed by the secretary. He treated Mr. Collett's endorsement as an order to prosecute and merely set the machinery in motion. In accordance with the decisions which I have mentioned I hold that the Magistrate in this case must be deemed to have been personally interested within the meaning of section 556 of the Code of Criminal Procedure, and therefore was not qualified to try the case of the applicant. I set aside the conviction and direct that the case be retried by the District Magistrate or by some competent Magistrate nominated by him.

Conviction set aside—Retrial ordered.

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APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

UGAR SEN (DEFENDANT) v. LAKHMI CHAND AND ANOTHER (PLAINTIFFS).
Partnership—Suit by surviving member to recover debt due to firm—Representatives of deceased members not necessary parties to suit—Act No. IX of 1872 (Indian Contract Act), section 45.

Held 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. *Held* also that section 45 of the Indian Contract Act does not apply to a suit to recover a debt due to a partnership firm. *Gobind Prasad v. Chandrar Sekhar* (1), *Motilal Bechar Dass v. Ghellabhai Hariram* (2) and *Debi Das v. Nirpat* (3) followed.

* Second Appeal No. 1025 of 1909, from a decree of Udit Narayan Sinha, Subordinate Judge of Jhansi, dated the 12th of July, 1909, confirming a decree of P. K. Ray, Munsif of Jhansi, dated the 23rd of March, 1909.

(1) Weekly Notes, 1887, p. 133. (2) (1892) I. L. R., 17 Bom., 6.
(3) (1898) I. L. R., 20 All., 365.

THE facts which gave rise to this appeal were shortly these. One Ugar Sen borrowed money from Badri Das and Hira Lal, who were members of a partnership firm. Both died, Badri Das leaving a son Lakhmi Chand, and Hira Lal a minor son Chote Lal. After this the only surviving member of the partnership, Mohan Lal, joined with Lakhmi Chand in suing to recover the debt. The court of first instance (Munsif of Jhansi) gave the plaintiffs a decree, which was confirmed on appeal by the Subordinate Judge. The defendant appealed to the High Court urging that Chhote Lal also ought to have been made a party to the suit.

Babu *Satya Narain*, for the appellant.

Babu *Sital Prasad Ghosh*, for the respondents.

STANLEY, C. J. and GRIFFIN J.:—The suit, out of which this appeal has arisen, was brought by Lakhmi Chand and Mohan Lal to recover moneys alleged to have been borrowed from them by the defendant appellant Ugar Sen. The money was borrowed from Badri Das and Hira Lal who were members of a partnership firm, and both of them are dead. The only surviving member of the partnership is the plaintiff, Mohan Lal. The other plaintiff, Lakhmi Chand, is the son of Badri Das. Hira Lal left a minor son named Chote Lal. Both the Courts below have decreed the plaintiffs' claim. This second appeal has been preferred, and the ground of appeal pressed by the learned vakil for the appellant is that the plaintiffs are not entitled to maintain their suit without having before the court the legal representatives of the deceased Hira Lal. The learned vakil relies upon the provisions of section 45 of the Indian Contract Act. We are of opinion that that section in no way bars the present suit, which is one to recover a debt due to a partnership firm. In the case of *Gobind Prasad v. Chandar Sekhar* (1) the question was very fully considered by EDGE, C. J. and MAHMOOD, J., whether, in a suit such as the present, it was necessary for the plaintiff to implead the legal representatives of a deceased partner. It was held in that case that there was no such necessity. The reasons for the judgement are given at considerable length, the principle of the English law on the subject

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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.