right rather than to a right which contradicts the ownership." *Ram Chandra* v. *Sadashiv* (1). In the case of a co-sharer holding mortgaged property after redemption by him of the mortgage, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title. At the date of the transactions to which we have referred, we do not think it can be rightly held that the plaintiff asserted an exclusive title. This being so, whether the possession of the plaintiff was adverse or not prior to the redemption of the mortgage of the Bank by the defendants, second party, is immaterial. By the transactions above referred to the prior possession, if adverse, was interrupted, and limitation could only be deemed to run as from their date.

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For these reasons we think that the learned District Judge came to a right conclusion, and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

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SUKHDEI (OPPOSITE PARTY) v. KEDAR NATH (APPLICANT).*

Act No. V of 1882 (Indian Easements Act), section 13—Easement of necessity—Definition.

An easement of necessity is an easement without which a property cannot be used at all, and not one merely necessary to the reasonable enjoyment of the property. *Wheeldon* v. *Burrows* (2) followed. *Union Lighterage Company* v. *London Graving Dock Company* (3) and *Ray* v. *Hazeldine* (4) referred to.

THE facts of this case were as follows:—

On the 19th of December, 1908, a decree was passed for partition of movable and immovable property, which, among other things, provided that the plaintiff should have a two-thirds share in the immovable property and ordered "that the plaintiff should get possession of the house marked yellow and green in the map which is incorporated in the decree." This house was only 25 feet wide, was surrounded by other houses on three sides, and had a road to the north on which a door situate in the yellow portion opened. Upon the plaintiff applying for execution of the decree in her favour, the

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* First Appeal No. 409 of 1909, from a decree of Srish Chandra Basu, Subordinate Judge of Allahabad, dated the 11th of September, 1909.

(1) (1886) I. L. R., 11 Bom., 422.
(2) (1879) L. R., 12 Ch. D., 31.
(3) (1902) 2 Ch. D., 557.
(4) (1904) 2 Ch. D., 17.

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judgement-debtor objected that the said door and the passage over the yellow portion to which it gave access should be kept open for his benefit. The Subordinate Judge allowed the objection and said :—

"The defendant, however, has not lost by partition the easement over the other portion of the house for purposes of egress and ingress. The decree-holder cannot stop that by building a partition wall . . . No doubt, this right of passage will make the decree-holder's share also almost useless, but fear I cannot help it."

The plaintiff appealed, and on his behalf *Bolye Chunder Sen* v. *Lalmoni Dasi* (1) and *Kadombini Debi* v. *Kali Kumar Halder* (2) were cited, and it was argued that the executing court was not competent to read any terms into the decree or recognise any right not reserved thereby, and that so long as there was unity of ownership, there could be no right of easement. KNOX and KARAMAT HUSAIN, JJ., remitted the following issue to the court below, namely :—"Is the door way over which the lower court has granted a right of passage the only possible means of egress and ingress to the defendant's property?" The finding returned was to the following effect :—

"At any rate I do not think there is any other such convenient possible means of ingress and egress to the house of Kedar Nath as to keep his house capable of residence. I may further remark that if a partition wall be erected to separate his share, his house will be unfit for residence on sanitary grounds."

Dr. *Satish Chandra Banerji*, for the appellant, contended that the court below had confounded convenience with necessity; and relied upon *Union Lighterage Co.* v. *London Graving Dock Co.* (3), *Ray* v. *Hazeldine* (4), Goddard on *Easements*, (ed. 6,) pp. 38-9. Gale on *Easements* (ed. 8,) p. 172. Peacock on *Easements*, (ed. 2,) p. 21 and *Wutzler* v. *Sharpe* (5).

The Hon'ble Pandit *Sundar Lal*, for the respondent, urged that the map clearly showed that the portion of the house allotted to the defendant could not be enjoyed as heretofore if he were not permitted to use the old passage and had to pull down some walls and fill up a well. It would practically amount to a rebuilding of the house. The easement therefore was one of necessity.

(1) (1887) I. L. R., 14 Calc., 797.
(2) (1899) 3 C. W. N., 409.
(3) (1902) 2 Ch. D., 557, 573.
(4) (1904) 2 Ch. D., 17.
(5) (1893) I. L. R., 15 All., 270 (292).

Dr. *Satish Chandra Banerji*, in reply, submitted there was no question of rebuilding the house, and no authority in favour of the contention that the old conditions should be completely maintained. The case in 2 Ch. for 1904, supported the opposite view.

KNOX and KARAMAT HUSAIN, JJ.—One Sukhdei got a decree for a portion of certain buildings and the rest was given to Kedar Nath. It is admitted that the buildings before partition belonged to one owner and that the decree reserved no easement of way in favour of Kedar Nath.

Sukhdei, in execution of the decree, applied for the possession of the share allotted to her. Kedar Nath objected that he had the easement of way over the doorway in question. The court below granted the easement claimed by him. Sukhdei appealed to this Court, and her learned advocate contended that the court below, as an executing court, could not grant an easement which had not been awarded by the decree. We, by our order, dated the 11th of July, 1910, remitted the following issue to the Court below for trial:—"Is the doorway over which the lower court has granted the right of passage the only means of egress and ingress to the defendant's property?"

The findings of the court below are to the effect that a door can be opened on the north, in Kedar Nath's share, but that it will not be convenient, inasmuch as the utility of the house will be very much reduced, and that excepting the doorway in question there is no other possible and convenient means of egress and ingress to the share of Kedar Nath. The learned advocate of Sukhdei urges that the findings fail to establish an easement of necessity which is founded upon *absolute* necessity and not upon a more convenient use of the dominant tenement. This contention of the learned advocate in our opinion is sound.

The English law on the subject is that an easement of necessity arises only when it is *absolutely* necessary, and not when it is necessary to the reasonable enjoyment of the dominant tenement.

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The leading case on the point before us is *Wheeldon* v. *Burrows* (1), and was followed in *Union Lighterage Company*, v. *London Graving Dock Co.* (2) in which, at page 573, we find the following passage:—

"In my opinion an easement of necessity such as is referred to, means an easement without which the property retained cannot be used at all, and not one merely necessary to the reasonable enjoyment of that property."

The cases of *Wheeldon* and *Union Lighterage Company* are referred to in *Ray* v. *Hazeldine* (3), and, as the judgement of KEKEWICH, J., is highly instructive, we quote the following portion therefrom:—

"If a vendor of land desires to reserve any right in the nature of an easement for the benefit of his adjacent land which he is not parting with, he must do it by express words in the deed of conveyance. That is settled law, and expresses the result of the decision in *Wheeldon* v. *Burrows* (1), where the Court of Appeal affirmed the decision of BACON, V. C. That is the general rule, but the rule is subject to certain exceptions. One of them is the well-known exception of an easement of necessity, that is to say, where the enjoyment of the alleged right over the adjoining land is necessary to the property which is not conveyed, then the court will consider the easement as impliedly reserved, though it has not been reserved by express words Such easement, or right in the character of an easement, may be a right to the access of light to a particular window. In a large majority of cases a window which lights a room is deemed necessary to the lighting of that room and is, on the whole, essential to the comfortable enjoyment of that room, but it does not follow that the right to access of light is an easement of necessity. Where are you to draw the line? Suppose the blocking up of the window largely interferes with the comfort and enjoyment of the room, is the grantee of the adjacent land entitled to block it up, or does the exception stand? It seems to me that the line to be drawn is pointed out by STIRLING, L. J., in *Union Lighterage Co.* v. *London Graving Dock Co.* (2). His Lordship makes a distinction between an easement of necessity and an easement necessary to the reasonable enjoyment of property. After refering to the two rules laid down in *Wheeldon* v. *Burrows* (1) and the exception thereto, he says:—

'The appellants did not dispute that there is no express reservation in the conveyance to the plaintiffs, but they contended that the easement claimed by the defendants is an 'easement of necessity' within the recognized exception to the second rule. Now, in the passages cited, the expression 'way of necessity' and 'easement of necessity' are used in contrast with the other expressions, 'easements which are necessary to the reasonable enjoyment of the property granted' and 'easements . . . necessary to the reason-

(1) (1879) L. R., 12 Ch. D., 31. (2) (1902) 2 Ch. D., 557.
(3) (1904) 2 Ch. D., 17.

enjoyment of the property conveyed, and the word 'necessity in the former expression has plainly a narrower meaning than the word 'necessary' in the latter. In my opinion an easement of necessity such as is referred to means an easement without which the property retained cannot be used at all, and not merely necessary to the reasonable enjoyment of the property.' Then after pointing out that the lights in *Wheeldon* v. *Burrows* was reasonably necessary to the enjoyment of the workshop, he says :—'So here it may be that the tie-rods which pass through the plaintiff's property are reasonably necessary to the enjoyment of the defendant's dock in its present condition, but the dock is capable of use without them, and I think that there cannot be implied any reservation in respect of them. That seems to me to draw the distinction between what is absolutely necessary and what is reasonably required for the enjoyment of the land or building as it stands. In my judgement this is a window to which the access of light cannot be reserved by implication upon the ground that the light is necessary to the pantry. It cannot be that there is any necessity by reason of its being used as a pantry, since it can be used for some other purposes. It cannot be said that a special use of light attaches to it as a pantry, and to say, as the defendant does, that the access of light to that window is reserved to him by necessity is giving to the word 'necessity' a meaning which it does not bear in this connection."

The reason of the law that there must be *absolute* necessity is very well stated by Goddard. He says :—

"In support of this view, the name by which they are known—easement of necessity—points to the fact that there must be *absolute* necessity before the law will compel a land owner to submit to so detrimental a right as an easement in his land—a right in reality though not in theory imposed on his land against his will. It must be borne in mind how detrimental generally it is to an estate to be burdened with an easement, what a nuisance it is to an owner of land to have another person walking at his pleasure over a field, or digging through the surface, or erecting a steam-engine thereon, and how such rights may prevent building on land or using it in many of the ways the owner may desire." Pp. 88, 89, 6th edition.

The above rule of the English law, so far as partition of land is concerned, is enacted in the following portion of section 13 of the Indian Easements Act (Act No. V of 1882).

"Where a partition is made of the joint property of several persons,-

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement."....
...."The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity."

It may be noted here that the Indian Easements Act was extended to these provinces by Act No. VIII of 1891 on the 6th of March, 1891, and the case is governed by the Indian Easements Act.

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Reading the findings of the court below in the light of the provisions of section 13 as to easements of necessity, we hold that Kedar Nath failed to prove facts which would entitle him to the right of way claimed, inasmuch as the user of that right is not *absolutely* necessary for the benefit of his share of the house. He certainly can open a door towards the north for access to his share. It is contended by his learned advocate that with reference to the existing state of the building and without any alteration therein, the use of the doorway in question for access to this share of the building is an absolute necessity. There is, however, no authority to favour the contention, and the share cannot be deemed to be absolutely useless without the right of way claimed.

For the above reasons we allow the appeal, set aside the decree of the court below and disallow the objection of Kedar Nath with costs.

Appeal allowed.

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Before Mr. Justice Richards and Mr. Justice Griffin.

SUMER SINGH (DEFENDANT) v. LILADHAR AND OTHERS (PLAINTIFFS)*

Hindu Law—Debts—Sons' liability for father's debts—Money borrowed to defend a suit for defamation not an immoral debt.

Held, that under the Hindu Law money borrowed by the father to defend a suit for defamation is a debt for which a Hindu son and grandson are liable.

THE facts of this case were as follows:—

One Rushton brought a suit for damages for libel against Chaube Rikhi Lal. The court of first instance dismissed the suit, but the lower appellate court passed a decree in his favour. Rikhi Lal borrowed money from a Bank to file a second appeal, and the defendant's father stood surety for him. The Bank realized its money from the surety, and Rikhi Lal executed a promissory note in favour of the defendant's father. The defendant obtained a decree against Rikhi Lal, and attached the ancestral property. The sons and grandsons of Rikhi Lal brought the present suit for a declaration that the property could not be attached and sold.

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* Second Appeal No. 367 of 1910 from a decree of H. W. Lyle, District Judge of Agra, dated the 14th of March, 1910, reversing a decree of Kalka Singh, Additional Subordinate Judge of Agra, dated the 5th of October, 1909.