

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*  
**MAKHAN LAL (DEFENDANT) v. GAYAN SINGH AND OTHERS (PLAINTIFFS)\*.**  
*Hindu law—Widow—Money borrowed for legal necessity—Construction of well—Feast on return from pilgrimage—Daughter's marriage.*

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Money borrowed to defray the expenses of the marriage of the daughter of a Hindu widow in possession of her husband's property, is money borrowed for legal necessity, but a feast given on return from pilgrimage is not so connected with the pilgrimage as to justify its allowance as money expended for legal necessity.

Expenses incurred in the construction of a well may be a legal necessity if it be proved to be for the benefit of the estate.

THE facts of this case were as follows:—

The plaintiffs were the reverend heirs of one Nohar Singh. They instituted the suit out of which this appeal has arisen for a declaration of their title and for possession of the property of Nohar Singh. Nohar Singh left a widow, Musammat Mendo, who executed three hypothecation bonds in favour of Zalim Singh and Chandan Singh, both since deceased. Suits were brought upon these bonds, and the property now in question was sold in execution of decrees obtained in these suits and a portion of the property was purchased by the mortgagees. The suit of the plaintiffs in the present case was resisted on the ground that the mortgages in question were executed by Musammat Mendo to raise money for legal necessity. The court below (Additional Subordinate Judge of Aligarh) held that there was legal necessity for a portion only of the loan taken by her and gave a decree accordingly to the plaintiffs for possession and for mesne profits. The learned Subordinate Judge deducted, however, from the mesne profits, the sums representing the amount borrowed by Musammat Mendo for legal necessity.

Against this decree Makhan Lal, son of Chandan Singh, appealed to the High Court.

Dr. Satish Chandra Banerji, for the appellant.

Dr. Tej Bahadur Sapru, for the respondents.

STANLEY, C. J., and BANERJI, J.—The plaintiffs are the reverend heirs of one Nohar Singh. They instituted the suit out

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\*First Appeal No. 248 of 1909 from a decree of Jagat Narain, Additional Subordinate Judge of Aligarh, dated the 30th of April, 1909.

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Makhan Lal, a son of Chandan Singh, appeals against this decree. His case is that Musammat Mendo obtained the entire of the loans, and executed the bonds to which we have referred, for legal necessity. The consideration for the first bond is stated to be money due on account and cash for constructing a well. The second bond was for money taken to satisfy accounts and money due on a bond of the 21st of December, 1880. The third was for money raised to meet money due on accounts and a decree of one Maula Baksh. The accounts of Chandan Singh and Zalim Singh were examined to ascertain the particulars of the expenditure referred to in these bonds, and it was ascertained that the money was advanced under three principal heads:—(1) for the construction of a well; (2) for defraying the expenses of a feast on the return of Musammat Mendo from Gaya, and (3) for the expenses of the marriage of Mendo's daughter. The money borrowed for the expenses of the marriage of Mendo's daughter was clearly for legal necessity, and the court below rightly allowed the money so expended. But in respect of the other matters to which we have referred, it held that there was no legal necessity for the borrowing. Expenses incurred in the construction of a well may be a legal necessity if it be proved to be for the benefit of the estate; but there is no

evidence to satisfy us that the well which was constructed by Musammat Mendo was constructed for the benefit of the estate or for the good of her tenants and cultivators. We, therefore, think that the court below was right in disallowing this item. The other item, namely, the expenses of a feast on the return of Mendo from pilgrimage, appears also to us not to have been incurred for legal necessity. A feast given on the return of a pilgrim cannot be said to be so intimately connected with the pilgrimage as to justify its allowance as money expended for legal necessity. We know of no authority for allowing such an item as coming within the meaning of legal necessity and none has been cited to us. For these reasons we agree in the view taken by the court below and dismiss the appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Richards and Mr. Justice Tudball.*

SHADI LAL AND OTHERS (DEFENDANTS) v. MUHAMMAD ISHAQ KHAN AND OTHERS (PLAINTIFFS). \*

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*Custom—Evidence—Presumption—Inference of existence of a custom from continued user of land for a particular purpose.*

It is open to a court to infer from long enjoyment not exercised by permission, stealth or force, the existence of a custom. If after considering the evidence the court comes to the conclusion that an alleged custom is unreasonable or that the privilege is enjoyed as a result of permission given or that it is exercised by stealth or force the court is entitled to find against the custom. *Kuar Sen v. Mamman* (1) referred to.

THE facts of this case were as follows:—

The plaintiffs were the zamindars of the village Jahangirabad and the defendants were cloth printers and sellers. On a particular plot in the village rain water accumulated in the rainy season. The defendants made use of this water for the purposes of their trade, according to the plaintiffs with their permission on payment of rent. The plaintiffs alleged that the defendants prevented them from making other use of the pond and hence they prayed for an injunction to restrain them from interfering with them (the plaintiffs). The defendants denied the permission or payment of rent. They alleged that they

\* Second Appeal No. 1918 of 1908, from a decree of H. J. Bell, District Judge of Aligarh, dated the 3rd of June, 1908, reversing a decree of Pitambar Joshi, Additional Subordinate Judge of Aligarh, dated the 4th of March, 1907.