before the Board of Revenue, *Sital Prasad* v. *Bishan Dat* (1), quite a contrary view appears to have been taken by the Board. This case was decided on the 22nd day of August, 1912. In that case one Rahman had been the occupancy tenant. On his death prior to the passing of the present Agra Tenancy Act his widow Musammat Naraia became entitled to possession. She died after the new Act came into force leaving two daughters and a daughter's son. The Senior Member of the Board of Revenue stated in the clearest way possible that upon the death of the widow, who had only been in possession for her life, her daughters became entitled and were then the occupancy tenants. On behalf of the appellants the following cases were relied upon :—*Deoki Rai* v. *Musammat Parbati* (2), *Nathu* v. *Gokalia* (3), *Dulari* v. *Mul Chand* (4). The two first mentioned cases are no doubt clearly distinguishable, and the question which we have to decide in the present case was not decided. In *Dulari* v. *Mul Chand*, there was the distinction which has been pointed out by the learned Judge of this Court that the plaintiff's right had already accrued to her before the present Act came into operation and her rights were only postponed by reason of the fact that she was rich while her sister poor. We think that the decisions of the courts below were correct and ought to be restored. We accordingly allow the appeal, set aside the decree of this Court and restore the decree of the lower appellate court and we direct that the parties do pay their own costs in this Court.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

1916 *January*, 13.

MUHAMMAD KHALIL (PLAINTIFF) *v.* MUHAMMAD IBRAHIM (DEFENDANT).*

Pre-emption—Muhammadan Law—Talab-i-ishtishhad.

Held that a Muhammadan pre-emptor cannot validly make the *talab-i-ishtishhad* by letter when he is in a position to do so in person.

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* Second Appeal No. 692 of 1914, from a decree of D. Dewar, District Judge of Saharanpur, dated the 14th of February, 1914, reversing a decree of Piari Lal, Munsif of Saharanpur, dated the 18th of May, 1912.

(1) (1915) 30 Indian Cases, 804. (3) (1915) I. L. R., 37 All., 658.

(2) (1914) 30 Indian Cases 804. (4) (1910) I. L. R., 32 All., 314.

1916

MUHAMMAD KHALIL v. MUHAMMAD IBRAHIM.

THE facts of the case were as follows:—

The defendant No. 2 sold a house situate in the district of Saharanpur to the defendant No. 1 by a sale-deed, dated the 7th of September, 1910. The plaintiff brought the present suit for pre-emption under the Muhammadan law on the ground of his being a neighbour and a partner in the rights of easement of the vendor. The plaintiff alleged that he was an Inspector of Partition Amins of the Bareilly division and used to reside at Bareilly, that while on tour, he heard of the sale at Budaun, on the 14th of October, 1910, and immediately performed the *talab-i-mawasibat* in the presence of witnesses and owing to his being at a distance from the vendee, performed the *talab-i-ishtishhad* by sending a letter by post to the vendee claiming the right of pre-emption and stating that the first demand had been properly made. The letter was written in the presence of witnesses and it was duly received by the vendee. The court of first instance held that both the demands had been validly made, and the suit was decreed. On appeal, the learned District Judge held that the *talab-i-ishtishhad* had not been duly made in the manner required by the Muhammadan law, and the suit was dismissed. The plaintiff appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellant:—

Under the Muhammadan law *talab-i-ishtishhad* could under circumstances such as existed in the present case, be validly performed by a letter. The plaintiff was in the Government service at a distance from the vendee and the property sold; he could therefore make the demand by letter; *MacNaughten*, Principles and Precedents of Muhammadan Law, p. 183; *Baillie, Muhammadan Law*, p. 489; *Ameer Ali, Muhammadan Law*, Vol. I, 3rd Ed., p. 607; *Wilson, Anglo-Muhammadan Law, 4th Ed.*, p. 418; *Syed Wajid Ali Khan* v. *Lala Hanuman Prasad* (1) and *Ali Muhammad Khan* v. *Muhammad Said Husain* (2). The *talab-i-ishtishhad* was required to be made so that the vendee should have notice of the pre-emptor's claim, and the presence of witnesses was necessary to secure evidence of the fact that such notice had been given. Both these purposes were wholly served by sending a written

(1) (1839) 4 B. L. R., A. C., 139. (2) (1896) I. L. R., 18 All., 309.

notice under registered cover. The rules in the ancient text books prescribing various formalities and technical formulæ for the making of the demands should under the changed and progressive conditions of modern civilization, be liberally construed in a reasonable manner; *Sarabai* v. *Rabiabai* (1).

The Hon'ble Mr. *Abdul Raoof*, for the respondent, was not called upon.

RICHARDS, C. J., and TUDBALL, J:—This appeal arises out of a suit for pre-emption based on Muhammadan law. The second demand (*talab-i-ishtishhad*) was made by letter. The lower appellate court has held that this was not a compliance with the Muhammadan law, and has dismissed the plaintiff's suit. On the facts as found there was no reason why the plaintiff should not have made the second demand in person. It is urged, however, in appeal here that under the Muhammadan law as properly understood the pre-emptor has an option and he is entitled, if so he pleases, to make his second demand by letter. In support of this proposition certain learned authors on Muhammadan law have been cited including Baillie, MacNaughten and Ameer Ali. All these authors touch on the question as to how the second demand may be made. But their views are all based upon a text from Fatwa Alamgiri and must be read therewith. This has been translated for us and no exception is taken to the translation. It is as follows:—"If a pre-emptor comes to know of the sale while he is on his way to Mecca and makes the *talab-i-mawasibat*, but is unable to perform the *talab-i-ishtishhad* personally, he ought to appoint a vakil to make the claim of pre-emption for him. If he cannot find anyone whom he may appoint his vakil, but finds a messenger, he ought to write a letter and in this letter he ought to appoint a vakil. If he fails to do so his right of pre-emption will be lost. But if he can neither find a vakil nor a messenger his right of pre-emption will not be lost until he finds one." It is quite clear that the plaintiff was not unable to make these demands himself, nor is there anything to show that he was unable to appoint a vakil. We think the view taken by the court below was correct and ought to be affirmed. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1905) I. L. R., 30 Bom., 537.