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v.  
SOHAN.

that the convictions under section 201 of the Indian Penal Code are not bad in law.

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In the light of these findings I hereby set aside the convictions and sentences of Sohan, Murli, Pyare Lal, Laltu, Panwa, Gulab, Mahadeo and Kallu Kurmi under section 302/115. I also set aside the conviction and sentence of Kallu Kurmi under section 307 of the Indian Penal Code. The convictions and sentences passed on all the appellants except Bahadur Singh under sections 201 and 201/109 are upheld, and the conviction and sentence passed on Bahadur Singh under section 147 is also upheld.

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### REVISIONAL CIVIL.

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*Before Mr. Justice King and Mr. Justice Thom.*

RAM CHARAN LAL (PLAINTIFF) v. HANIFA KHATUN  
AND ANOTHER (DEFENDANTS).\*

1932  
April, 14.

*Muhammadian law—Succession—Liability of heirs for debt due by deceased person—Whether joint and several, or proportionate to their respective shares in the inheritance—Creditor exempting one of the heirs—Effect of—Civil Procedure Code, section 2(11)—“Legal representative.”*

A creditor of a deceased Muhammadan sued his three heirs for recovery of the debt. One of the three heirs was a minor, and there being some difficulty about the appointment of a guardian *ad litem*, the plaintiff exempted this heir from the suit. The debt was proved and the question was whether a decree could be passed against the two remaining heirs for the whole debt or only a part of the debt proportionate to their shares of inheritance in the property of the deceased, the decree being in each case realisable only from the assets of the deceased in their hands. *Held* that the decree could be passed only for the proportionate part of the debt. The two remaining heirs had not, by sharing in the estate, rendered themselves liable for the whole of the debt,

Muhammadan law allowing the heirs of a deceased person to divide his estate notwithstanding a small debt is due therefrom, and as a decree against such heirs would not bind the other heirs, a decree should not be passed against such heirs for the whole debt but only for a part thereof proportionate to the share of the estate they had taken.

Each one of the legal representatives of a deceased debtor is not necessarily liable, jointly and severally, for the whole debt, nor is the creditor entitled, in all circumstances, to a decree for the whole debt against any one of the legal representatives whom he chooses to implead. Further, in this case the plaintiff had expressly exonerated one of the heirs from liability, and it was inequitable that by doing so he should impose a greater liability upon the remaining heirs.

The definition of "legal representative" introduced by section 2(11) of the Civil Procedure Code of 1908 does not alter the law on the subject.

Mr. P. M. L. Verma, for the applicant.

Mr. M. A. Aziz, for the opposite parties.

KING and THOM, JJ.:—This is an application in revision against a decree of the court of small causes. The suit was upon the basis of a bond executed by one Zahur Ahmad. Zahur Ahmad died before the institution of the suit and the creditor impleaded his widow, his father and his daughter, who were alleged to be in possession of his property as his heirs and legal representatives. There was some difficulty in the appointment of a guardian *ad litem* for the daughter who was a minor, and the plaintiff discharged her from the array of defendants. The plaintiff's claim was proved and the trial court passed a decree against the father and the widow only in proportion to their shares of inheritance in the property of Zahur Ahmad deceased, subject to the usual condition that the decree should be executed against the defendants to the extent of Zahur Ahmad's assets in their possession. It is contended by the plaintiff in revision that the trial court was wrong in passing a decree against the two defendants only for sums proportionate to the extent of their respective shares in the estate of Zahur Ahmad.

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The applicant argues that the trial court should have passed a decree for the whole debt against the two defendants, namely the father and the widow, although he concedes that the decree could only be executed to the extent of Zahur Ahmad's assets in their possession.

The learned advocate for the applicant refers to the definition of "legal representative" in section 2, clause (11), of the Code of Civil Procedure and argues that as the two defendants against whom the decree was passed are "legal representatives" of the deceased debtor, therefore a decree should have been passed for the whole debt against these two legal representatives. Several authorities have been cited for the applicant, but we have not been shown any authority which clearly supports his contention. He has not established the proposition that each one of the legal representatives of a deceased debtor is necessarily liable jointly and severally, for the whole debt, and that the creditor is entitled, in all circumstances, to a decree for the whole debt against any one of the legal representatives whom he chooses to implead. Much reliance is placed upon the ruling in *Kaniz Abbas v. Bala Din* (1). This was a case where a Muhammadan mortgagor died after a preliminary decree for foreclosure had been passed against him. He left a widow and a brother. His widow was in possession of his estate and her name was mutated with respect to the entire share of the deceased. The widow alone was impleaded as legal representative of the deceased and the final decree for foreclosure was passed. It was held that this final decree, passed against the widow, was binding on the brother also. Their Lordships took the view that the mortgagor's estate was sufficiently represented, for the purpose of the foreclosure decree, by the widow. In our opinion, this ruling is no clear authority for the contention advanced by the applicant in this case. The suit which was the subject-matter of this ruling was of a totally different nature, and the decision was that

(1) A.I.R., 1925 Oudh, 330.

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the final decree for foreclosure which had been passed against the widow only was nevertheless binding upon the brother. We do not see how this ruling can have any application to the facts of this case. The suit is of a different nature, as already stated. Moreover, we have this distinguishing feature that the daughter was originally impleaded and was expressly exempted by the plaintiff from the array of defendants. In such circumstances, we cannot see how a decree passed against the remaining defendants could possibly be held binding upon the minor daughter.

For the respondents several rulings have been cited which are directly in point. The case of *Pirthi Pal Singh v. Husaini Jan* (1) clearly supports the view taken by the trial court. In that case the heirs to a deceased Muhammadan divided his estate among themselves according to their shares under the Muhammadan law of inheritance, a small debt being due from the estate at the time of division. Two of the heirs were subsequently sued for the whole of such debt. It was held that as such heirs had not, by sharing in the estate, rendered themselves liable for the whole of such debt (Muhammadan law allowing the heirs of a deceased person to divide his estate, notwithstanding a small debt is due therefrom), and as a decree against such heirs would not bind the other heirs, a decree should not be passed against such heirs for the whole of such debt, but a decree should be passed against them for a share of such debt proportionate to the share of the estate they had taken. The judgment of the court below is precisely in accordance with this ruling. This ruling has also been followed in *Bussunteram Marwary v. Kamaluddin Ahmed* (2). According to these two authorities, which do not appear to have been overruled or even dissented from, it is clear that the plaintiff in the present case is only entitled to a decree against the two defendants proportionate to the extent of the shares of Zahur Ahmad's estate which

(1) (1882) I.L.R., 4 All., 361.

(2) (1885) I.L.R., 11 Cal., 421

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devolved upon them. This would be the result even if the plaintiff had inadvertently omitted to implead the daughter. In the present suit, the plaintiff's claim is further weakened by the fact that he has expressly exonerated the daughter from liability. It is inequitable that he should, by exonerating one of the heirs, impose a greater liability upon the remaining heirs.

We do not see that the definition of "legal representative" which was introduced into the Code of Civil Procedure of the year 1908 has altered the rule of law which has been enunciated in the decisions cited. No authority has been shown for the view that the law on this point has been altered.

In our opinion the trial court has correctly decided that the plaintiff, after exempting the daughter from the array of defendants, is only entitled to a decree against the two remaining defendants for sums proportionate to the shares of Zahur Ahmad's estate which devolved upon them.

We accordingly dismiss the application with costs.

*Before Mr Justice King and Mr. Justice Thom.*

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 April, 19.

AZIZ ULLAH KHAN AND OTHERS (APPLICANTS) v.  
 COLLECTOR OF SHAHJAHANPUR (OPPOSITE PARTY).\*

*Civil Procedure Code, sections 151, 152, 153—Amendment of accidental error—Misdescription of mortgaged property in mortgage deed, plaint, decree, sale certificate and dakhlanama—Whether such mistake of parties can be amended—Inherent powers—Evidence Act (I of 1872), section 95.*

Property in village Nawadiya Zamania Nagla was mortgaged, but by an accidental slip the name of the village, was wrongly given in the mortgage deed as Nagla Zamania Nawadiya. In the suit for sale brought on the mortgage the same mistake crept into the plaint, the decree, the sale certificate and *dakhlanama*. The mistake came to light when the auction purchaser, who was the mortgagee himself, applied in the revenue court for mutation of names and his application was refused on the ground that according to the

\*Civil Revision No. 379 of 1931.