

1929

KING-
EMPEROR
v.
BALJNATH.

Stuart, C. J.

possession with the object of preventing a breach of the peace. These orders have no effect as to title. The law considers that it is desirable in order to prevent a breach of the peace to retain in possession the person who is in possession whatever his title may be but a special exception is made in favour of persons who have been very recently dispossessed. This exception may have been made on the view that person recently ejected might endeavour to take forcible possession again. But whatever the reason may have been the law lays down as the period, the period of two months from the order. If the law meant to lay down a period of two months from the complaint it should have said so. It does not say so. I cannot see that any case arises of balancing the advantages of a liberal interpretation against the advantages of a literal interpretation. To my mind the words "two months from the date of the order" means two months from the date of the order and not two months from the date of the complaint. In these circumstances agreeing with the learned District Magistrate I set aside the order.

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

MUSAMMAT MARIAM (COMPLAINANT-APPLICANT) v.
KADIR BAKHSH (OPPOSITE PARTY.)*

1929
October, 3.

*Criminal Procedure Code (Act V of 1898), section 488—
Maintenance—Muhammadan wife, whether entitled to
maintenance only during Iddat or even after that period.*

Where a Muhammadan lady applied for maintenance under section 488 of the Code of Criminal Procedure and the husband divorced her before the Court, *held*, that she was entitled to maintenance during the period of Iddat and not after that period has expired. *In the matter of the petition*

*Criminal Reference No. 37 of 1929.

of *Din Muhammad* (1), *Shah Abu Ilyas v. Ulfat Bibi* (2),
relied on. *Daulat v. Musammat Jadi* (3), referred to.

1929

MUSAMMAT
MARIAM
v.
KADIR
BAKHSH.

STUART, C. J. :—The question for decision in this case is as follows :—

The applicant Musammat Mariam was married to Kadir Bakhsh. She applied under section 488 of the Code of Criminal Procedure for maintenance. Kadir Bakhsh proceeded to divorce her before the court. The question is whether she can in these circumstances be granted maintenance against him, and if so for what period and at what rate? I have no doubt as to the fact that she can obtain maintenance against him during the period of *Iddat*. The question was discussed at length by the late Mr. Justice MAHMOOD in the matter of the petition of *Din Muhammad* (1), and again before a full Bench of the High Court of Allahabad in *Shah Abu Ilyas v. Ulfat Bibi* (2). The decision in King-Emperor through *Daulat v. Musammat Jadi* (3) does not determine the question as to whether maintenance is payable for a period of *Iddat*. In any circumstances it is not a decision which is binding on me. I consider the Allahabad view correct. Thus Musammat Mariam is entitled to maintenance during the period of *Iddat* and not after that period has expired. She is thus entitled to a maintenance for three months. I fix the rate of maintenance at Rs. 10 per month.

Reference accepted.

(1) (1882) I. L. R., 5 All., 226.

(2) (1896) I. L. R., 19 All., 50.

(3) (1914) 17 O. C., 260.