APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice Bisheshwar Nath Srivastava.

LACHHMAN DEI, MUSAMMAT (PLAINTIFF-APPELLANT v. BEHARI LAL AND ANOTHER (DEFENDANT-RESPONDENTS).* 1931 January, 30.

Wajib-ul-arz—*Interpretation of* wajib-ul-arz—Lawalad *and* khandan qaribi shauhar *in a* wajib-ul-arz, *meaning of—Provisions in a* wajib-ul-arz *that if widows are* lawalad *then after their death inheritance is to devolve on* khandan qaribi shauhar se *and "that widow has power of adoption from her husband's family and in default of adoption inheritance is to go to* qaribi shauhar, *interpretation of—Daughters, exclusion of, by implication.*

The words *khandan qaribi shauhar* frequently occur in *wajib-ul-araiz* prepared in Oudh. Generally they are intended to refer to the nearest male collaterals. So the provision that after the death of the *lawalad* widows the inheritance is to devolve on the *khandan garibi shauhar se*, seems to be more consistent with the interpretation of the word *lawalad* as sonless than with its interpretation as issueless and it is contemplated that the inheritance after the death of the widows should go to the brothers and nephews and not to the daughters.

Where a *wajib-ul-arz* lays down that the widow has got the power of making an adoption from the family of her husband and that if the widow does not make an adoption then after her death, the inheritance would go to the *qaribi shauhar*, the intention of the framers of the *wajib-ul-arz* was that the property should remain in the husband's family and should not go out of it as a result of any adoption. These provisions therefore seem to clearly import the idea that the daughters are to be excluded both in case of the widow making an adoption and in the case where no adoption is made. *Sheomangal Singh* v. *Jagpal Singh* (1), *Bandi Din* v. *Dharammangal Singh* (2), *Baij Nath Singh* v. *Rajju Singh* (3), and *Balgobind* v. *Badri Prasad* (4), referred to.

*Second Civil Appeal No. 233 of 1930, against the decree of Babu Jagdamba Saran, Additional Subordinate Judge, of Gonda, dated the 24th of April, 1930, reversing the decree of Sheikh Ali Hammad Munsif of Gonda, dated the 27th if September, 1929.

(1) (1908) 12 O.C., 63. (2) (1913) 22 I.C., 138.
(3) (1925) 12 O.L.J., 571. (4) (1923) 26 O.C., 217.

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Mr. *Haider Husain*, for the appellant.

Mr. *Radha Krishna*, for the respondents.

HASAN, C. J. and SRIVASTAVA, J. :—This is a plaintiff's appeal against the decree, dated the 24th of April, 1930, of the Additional Subordinate Judge of Gonda reversing the decision, dated the 27th of September, 1929, of the Munsif of that place.

The plaintiff appellant Musammat Lachhman Dei is the daughter of one Mahabir. She claimed a decree for possession in respect of a 1 anna 10 pies $17\frac{3}{4}$ krants share in village Rakhpurwa a hamlet of village Ram Bhari, and an 11 pies 8 krants share in village Kapurjote, on the allegation that the shares above-mentioned were owned and possessed by her father Mahabir who died on the 11th of July, 1902. He was succeeded by his widow, the plaintiff's mother, Musammat Phulesra who also died on the 18th of May, 1923. She also alleged that Musammat Phulesra had executed three sale deeds in respect of the property in suit in favour of the defendants and pleaded that the sales in question were made without legal necessity and were not binding on the plaintiff. She however expressed her readiness to pay any portion of the consideration of the aforesaid sale deeds which was found to be for legal necessity. On the above allegations the plaintiff claimed to be entitled to succeed to the property in suit after the death of Musammat Phulesra as the heir of her father Mahabir.

The defendants resisted the suit on various grounds. Two of them with which we are concerned in this appeal were that by virtue of a custom obtaining in the family of Mahabir, widows inherit their husband's property as full owners with complete right of alienation and daughters are absolutely excluded from inheritance. Thus they pleaded that Musammat Phulesra had full power to alienate the property and that the plaintiff was not entitled to maintain the suit as she was excluded from inheritance.

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The finding of the learned Munsif was against the defendants in respect of both the customs set up by them. In dealing with the other issues which arose in the case, he found that Mahabir owned only a 1 anna 10 pies $17\frac{3}{4}$ krants share in Rakhpurwa and a 6 pies $9\frac{5}{16}$ krants share in Kapurjote and that only Rs. 150 out of the consideration for one of the sale deeds was for legal necessity. As a result of these findings he decreed the plaintiff's suit for possession of the shares just mentioned subject to the condition of the plaintiff paying Rs. 150 to the defendants.

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On appeal the learned Subordinate Judge held that the learned Munsif made a mistake in giving the plaintiff a decree for a 1 anna 10 pies $17\frac{3}{4}$ krants share in Rakhpurwa and that she can in no case get a decree for more than a 1 anna 3 pies 13.5/16 krants share of that village. On the question of custom he agreed with the learned Munsif that the custom of exclusion of daughters had not been established but disagreed with him in respect of the other custom. His finding in respect of it was that a widow, according to the family custom, succeeds to the estate of her husband as full owner with power of alienation. His conclusion was that the plaintiff's suit must fail on this ground and he accordingly dismissed the suit.

The learned counsel for the plaintiff appellant has challenged the correctness of the finding of the learned Subordinate Judge with regard to the custom about widows succeeding as full owners. The learned counsel for the defendants respondents, on the other hand, has disputed the correctness of the finding of both the lower courts with regard to the custom of exclusion of daughters set up by them. So the only question which we are called upon to decide in this case is as regards the two family customs above stated. The parties are agreed that the determination of these customs rests entirely upon the construction to be placed upon the *wajib-ul-araiz* of Kapurjote and Ram

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Bhari, the two villages in which the properties in dispute are situate. There is no oral or any other documentary evidence on this point on either side. Both these *wajib-ul-araiz* were verified by all the co-sharers of the two villages, amongst whom is included Sheo Govind who was a brother of Mahabir, father of the plaintiff. The relevant portions of these *wajib-ul-araiz* may be translated as follows:—

Wajib-ul-arz of Kapurjote (ex. A 9).

Paragraph 4.—"The custom of division of inheritance and devolution of assets with regard to *aulad* is as follows:—

> On the death of a co-sharer, all the sons (*larkon*) get equal shares. If there be two legally married widows and one has got *aulad* and the other is *lawalad*, then the inheritance would go to the sons (*larkon*) alone. The issueless widow would get maintenance for her life from the *aulad* of the other widow. If both of them were *lawalad* then they would succeed in equal shares and after their deaths, the inheritance would devolve on the near relations of their husband's family (*khandan garibi shauhar se*). If any co-sharer is joint in mess with his brother and nephew and dies leaving a *lawalad* widow or even an unmarried daughter, then the widow would remain in possession without power of alienation and the responsibility for the marriage of the unmarried daughter would rest on the brothers and nephews. But if the share of the deceased be separate, then the widow would remain in possession of the share with powers of sale and mortgage. The widow has got the power

of making adoption from the family (*khandan*) of her husband."

Wajib-ul-arz of Ram Bhari. (*ex.* 10).

Paragraph 4.—"The custom of inheritance and division of assests in our family is as follows :—

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If any co-sharer dies leaving two legally married widows and they have got *aulad mukhtalif*, then inheritance would go to the sons (*larkon*) in equal shares after deducting *jethansi* right at Biswandh to the first born son (*farzand-i-auwal*). There is no custom of *stribhag* in our family. If one widow has got *aulad* and the other has got no *aulad pisri* and has only a daughter, she would get no share and the *aulad* and the other widow would get the inheritance and would be responsible for the maintenance of the sonless (*mahrumia aulad*) step-mother and the expenses of the marriage of the unmarried daughter. If both of the widows have no *aulad*, they would be in possession of the estate in equal shares. A widow whose husband dies in jointness with his brother and nephew, would get the inheritance without power of alienation but if the share of the deceased was divided in his lifetime, then his widow would be in possession with powers of an owner (*baikhtiyar malikana*). If the widow made no adoption then after her death the inheritance would go to the near relations of her husband (*qaribi shauhar*)."

Thus it is evident that in the scheme of succession laid down in both these *wajib-ul-araiz* a daughter does not find any place. Exhibit A9 provides that if "both the widows are *lawald*", "then after their death the

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inheritance devolves on the near relations of their husband's family." The indiscriminate use of the words *larka* and *aulad* in these *wajib-ul-araiz* does give a handle for the argument that the word *lawalad* should be construed as meaning issueless but if we construe the sentence reproduced above not as an isolated passage but in the light of the entire context, we think that the word *lawalad* must be taken as meaning *sonless*. The words *khandan garibi shauhar* frequently occur in *wajib-ul-araiz* prepared in Oudh. Generally they are intended to refer to the nearest male collaterals. So the provision that after the death of the widows the inheritance is to devolve on the *khandan garibi shuhar se* seems to be more consistent with the interpretation of the word *lawalad* as sonless than with its interpretation as issueless. In the succeeding sentence the responsibility has been cast upon the brothers and nephews for the marriage of the unmarried daughter. This clearly means that in the case dealt with in that sentence it is contemplated that the inheritance after the death of the widow should go to the brothers and nephews and not to the daughters. It would be absurd to suppose that the brothers and nephews are to bear the burden of the marriage expenses of the daughter while the inheritance also goes to her. Lastly we have the provision in exhibit A9 that the widow has got the power of making an adoption from the family of her husband and the provision in exhibit A10 that if the widow does not make an adoption then after her death, the inheritance would go to the *garibi shauhar*. There can be no gainsaying that a daughter after her marriage ceases to be a member of her father's family. The fact that the widows are required to make an adoption from the family of their husbands therefore shows that the intention of the framers of the *wajib-ul-arz* was that the property should remain in the husband's family and should not go out of it as a result of any adoption. These provisions therefore seem to us to clearly import the idea that the daughters are to be

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excluded both in case of the widow making an adoption and in the case where no adoption is made. We find ourselves unable to yield to the argument that the framers of the *wajib-ul-araiz* lost sight of the case of a widow leaving a daughter, because the reference to unmarried daughters in both the *wajib-ul-araiz* shows that the existence of the daughter was present in their mind when the two *wajib-ul-araiz* were dictated. Having given our careful consideration to the provisions contained in these *wajib-ul-araiz*, we are of opinion that the correct construction to be placed upon them is that the daughters must be deemed to be excluded from inheritance by necessary implication.

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In *Sheomangal Singh* v. *Jagpal Singh* (1), a Bench of the late Court of the Judicial Commissioner of Oudh held the custom of exclusion of daughter's sons proved by necessary implication even though they were not expressly excluded by the terms of the *wajib-ul-arz*. Similarly in *Bandi Din* v. *Dharammangal Singh* (2). Mr. LINDSAY (afterwards Sir BENJAMIN LINDSAY) held that although there was no express exclusion from inheritance in the language of the *wajib-ul-arz*, there might be exclusion by necessary implication. Again in *Baij Nath Singh* v. *Rajju Singh* (3), a Bench of the late Court of the Judicial Commissioner of Oudh to which one of us was a party dealing with the entries in a large number of *wajib-ul-araiz*, some of them more or less similar to the entries in the *wajib-ul-araiz* in this case, held that the recognition of the right of the nearest male heir of the propositus to succeed after the death of the widow, implied exclusion of the daughters and daughters' sons from succession. In *Balgobind* v. *Badri Prasad* (4), the *wajib-ul-arz* while expressly providing for the exclusion of the daughters by the sons, was silent as regards a case in which the propositus left daughters but no sons. However, the *wajib-ul-arz* contained a provision that

(1) (1908) 12 O.C., 63. (2) (1913) 24 I.C., 138.
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on the death of the widows the nearest relation of the husband succeeds to the share. Their Lordships of the Judicial Committee held that the only construction to which it is open was "that on the death of an owner of the village no daughter of his is under any circumstances entitled to a share in the property by right of inheritance whether he had left sons or not."

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For the above reasons disagreeing with the courts below, we are of opinion that the exclusion of daughters has been satisfactorily established. The plaintiff's suit must fail on this ground. It is therefore unnecessary for us to give a finding in respect of the other custom relating to the powers of widows.

The appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Bisheshwar Nath Srivastava.

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GAYA PRASAD, (ACCUSED-APPLICANT) *v.* KING-EMPEROR COMPLAINANT-OPPOSITE PARTY.)*

Indian Penal Code (Act XLV of 1860), section 411—Stolen property, dealing with—Receiving stolen property believing it to be stolen—The word "belief", meaning of—Circumstances giving rise to suspicion—Conviction, where justified on circumstantial evidence—Evidence Act (I of 1872), section 114 (b)—Accomplice—Statement of accomplice—corroboration—Conviction on uncorroborated statement of accomplice, if justified.

Held, that the word "belief" in section 411 of the Indian Penal Code is much stronger than the word "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have been fully convinced in his mind that the property, with which he was dealing, was stolen property. It is not sufficient in such a case to show that the accused person was careless or that he had reason to

*Criminal Revision No. 144 of 1930, against the order of G. C. Badhwar, Sessions Judge of Fyzabad, dated the 24th of October, 1930, upholding the order of M. B. Ahmad, Joint Magistrate of Fyzabad, dated the 3rd of September, 1930.