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commencement of the inquiry or trial resulting from such an investigation: and that as in Calcutta investigations by the police are not effected under the provisions of Chapter XIV the operation of section 164 cannot be brought into play. I can only say that in my view this is a narrow construction of the section with which I do not feel that I can agree: although I am far from suggesting that it is not a possible construction. In my opinion even though the police in Calcutta may not conduct their investigations in precise accordance with the provisions of Chapter XIV a construction of section 164 which would exclude its utilization in Calcutta during a police investigation or at any time afterwards before the commencement of the enquiry or trial is to read it in a somewhat strained and unnatural sense.

As for the remaining points raised by the learned Counsel for these two appellants I can only say that I could see no ground for thinking that there was any irregularity in the way in which the confessions were recorded nor the least indication that they were not entirely voluntary. They bore too intrinsic evidence of truth and though the appellants have now retracted them, they were in my opinion most amply corroborated.

*Appellant no. 1 acquitted.*

*Appeal of appellants 2 and 3 dismissed.*

## APPELLATE CIVIL:

*Before Das and Adami, J.J.*

RAM CHANDRA SINGH

*v.*

JANG BAHADUR SINGH.*

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*July, 22, 23, 27.*

*Hindu Law—karta, power of, to charge the estate—speculative transaction, whether binds the estate—test to be applied.*

* Appeal from Appellate Decree no. 14 of 1923, from a decision of J. R. Sweeney, Esq., I.C.S., District Judge of Gaya, dated the 13th June, 1922, reversing a decision of B. Rajnarain, Subordinate Judge of Gaya, dated the 9th November, 1921.

The power of the manager of an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power; and the power of a karta of a joint Hindu family stands on the same footing as that of a manager.

The test to be applied in each case is whether the transaction is one into which a prudent owner would enter.

*Held*, therefore, that it is not in the power of the karta to bind the joint family by entering into speculative transactions and that the question of benefit must be determined by reference to the nature of the transaction and not by reference to the result thereof, although the result may properly be taken into consideration in determining whether the transaction was one into which a prudent owner would enter.

*Hanuman Prasad Panday* v. *Mussammat Babooee Munraj Koonweree* (1), *Rambilas Singh* v. *Ramyad Singh* (2) and *Sheotahal Singh* v. *Sitaram Singh* (3), referred to.

Appeal by the plaintiffs.

Dasarat, Nankhu and Ramlochan were three brothers: Ramlochan died leaving a widow Sahodra Kuer and a son Raghubar Dayal. Bhupnarain, cited as defendant no. 1 in this suit, was the son of Nankhu. Bishundayal, cited as defendant no. 8, was the grandson of Dasarat. Defendants 2 to 7 were the sons and grandsons of Bhupnarain. Defendant no. 9 was the son of Bishudayal and defendant no. 10 was the son of defendant no. 9. It was found as a fact by the Court below that Bhupnarain and Bishundayal, together with their sons and grandsons, constituted a joint family. It was also found that Raghubar Dayal was separate from Bhupnarain and Bishundayal.

Raghubar Dayal died leaving, according to the case of all the parties, three daughters, Phalindra Kuer, Lalpari Kuer and Sabinda Kuer. It was the case of Bhupnarain that Raghubar Dayal died leaving also a son Baburam who died shortly after the death of Raghubar; and that, in the events which happened

(1) (1854-57) 6 Moo. I. A. 393 (423). (2) (1920) 5 Pat. L. J. 622.
(3) (1920) 1 Pat. L. T. 186.

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Sahodra Kuer became entitled to succeed to the properties of Baburam on his death as his grand-mother, and that the daughters of Raghubar Dayal had no interest in the properties which were once of Raghubar Dayal but which on his death came into the hands of his son Baburam. Bhupnarain contended that he was the reversionary heir of Baburam and would be entitled to succeed to the properties upon the death of Sahodra Kuer. Sahodra Kuer on the other hand contended that Raghubar Dayal died leaving three daughters and she applied in the land registration department for registration of the names of the daughters of Raghubar Dayal who were all minors and whom Sahodra Kuer purported to represent in the matter of that application. On the 20th February, 1909, the land registration case was decided against Bhupnarain, and on the 27th April, 1909, Bhupnarain instituted a title suit as against Phalindra Kuer, Lalpari Kuer and Sabindra Kuer, in substance for a declaration that they, as the daughters of Raghubar Dayal, had no interest in the estate which was once of Raghubar Dayal, and that he was entitled to succeed to the properties on the death of Sahodra Kuer. The suit was resisted by the daughters of Raghubar Dayal; but was ultimately compromised on the 14th February, 1912, by which Bhupnarain got 7 dams 13 kowris out of 10 dams 13 kowris mukarrari in mauza Senaria and 32 bighas of raiyati land, and the daughters of Raghubar Dayal got 3 dams of mukararri in the same village and certain other properties.

In the course of this litigation Bhupnarain had to borrow certain sums of money from time to time from the plaintiffs who were the appellants in the High Court. The money was required by Bhupnarain to enable him to prosecute the suit as against the daughters of Raghubar Dayal. Five mortgage bonds in all were executed between September 1909 and November 1910. Of these, four mortgage bonds were executed by Bhupnarain and Bishundayal, and one was executed by Bhupnarain during the illness of

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Bishundayal. The suit out of which this appeal arose was instituted by the appellants to enforce these mortgage bonds as against the entire joint family consisting of Bhupnarain, Bishundayal and their sons and grandsons. The suit was not resisted either by Bhupnarain or Bishundayal; but it was resisted by their sons and grandsons, and the only question was whether the plaintiffs were entitled to a mortgage decree in this suit. It was conceded that they were not entitled to any personal decree as against Bhupnarain and Bishundayal inasmuch as the suit was brought more than six years after the execution of the mortgage bonds.

The Court of first instance dismissed the suit on the ground that the money was borrowed by Bhupnarain and Bishundayal without any legal necessity. The District Judge reversed the decision on the ground that the expenditure of the money resulted in a benefit to the joint family and that accordingly the creditors were entitled to a mortgage decree as against the joint family.

*S. M. Mullick* and *S. N. Rai*, for the appellants.

*Hasan Jan* and *Kailas Pati*, for the respondents.

*Cur. adv. vult.*

Das, J. (after stating the facts set out above, proceeded as follows): There is one passage in the judgment of the learned District Judge which requires immediate attention. He says:

"At the outset I may say that I have not been able to find any authority for the proposition of law advanced by the learned Subordinate Judge, that is, that speculative expenditure will not bind a joint family however beneficial be the result. The law would appear to be that the test of the transactions is the question of the actual benefit, and that, if the joint family derived actual benefit from the expenditure incurred by the kartas, it would be bound by the expenditure, even though the latter may have been speculative at the outset."

I entirely differ from the learned District Judge. It is necessary to remember that "the power of the manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified

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power ". I may point out that it is settled law that the power of a karta of a joint Hindu family stands on the same footing as that of the manager. In the leading case of *Hunooman Persaud Pandey* v. *Musst. Babooee Nunraj Koonweree* (1) the position in regard to the power of the manager to charge an estate which belongs to an infant heir is stated in these terms: " It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bonâ fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded ". It is obvious, therefore, that the test which must be applied by the Court in each case is—is it a transaction into which a prudent owner would enter? Now I hold that a prudent owner would never think of entering into a speculative transaction which may benefit him, but which may also cause him loss. The question of the right of the creditor or the liability of the joint family cannot depend upon the spin of the coin or the throw of the dice. I may be possibly taking a very extreme case; but the test in my opinion is the same. In *Rambilas Singh* v. *Ramyad Singh* (2), the Chief Justice of this Court, after pointing out that it is not desirable to lay down any general proposition, which would limit and define the various cases, which might be classed under the term beneficial as used in the cases, said as follows: " It is clear, however, that all transactions of a purely speculative nature would properly be excluded ". I may refer to a passage in my judgment in *Sheotahal Singh* v. *Sitaram Singh* (3): " I quite agree that the manager of a joint family has no authority whatever to affect or dispose of any portion of joint family property in order to enable

(1) (1854-57) 6 M. I. A. 393 (423). (2) (1920) 5 Pat. L. J. 622.

(3) (1920) 1 Pat. L. T. 136.

him to embark on speculative transactions ". In my judgment in that case I conceded that there is a certain element of risk in every business transaction and if we are to hold that when the business has succeeded and the entire family has benefited by it, we ought not to uphold the mortgage transaction entered into by the manager to enable him to embark on such a business unless the mortgagee satisfies us that the business was bound to succeed and that benefit was bound to accrue to the family, we would necessarily handicap the managers of joint Hindu families and place a limitation on their powers, which would have the effect of stopping all business transactions in every Mitakshara family But it is one thing to say that a manager of a joint Hindu family has complete power to enter into business transactions, where the particular business is part of the ancestral joint family property; it is another thing to say that he has power to enter into speculative transactions. I still adhere to the opinion which I expressed in that case that the test is not whether benefit was bound to accrue to the joint family; but it is still necessary for the mortgagee to show that the transaction was one into which a prudent owner would enter; and as soon as this test is laid down we must hold that it is not in the power of the karta of a joint family to bind the joint family by entering into speculative transactions. In my opinion the question of benefit must be determined by reference to the nature of the transaction, and not by reference to the result thereof; although the result may properly be taken into consideration in determining whether the transaction was one into which a prudent owner would enter. The proposition rests on principle and is covered by authorities and it is not necessary to pursue the subject.

The question, however, is somewhat different in this case. It is conceded that the creditor must establish that the transaction was for the benefit of the joint family. The money was borrowed and the mortgages were executed to enable Bhupnarain to

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establish his title to the estate of Baburam. On his own case Bhupnarain was the nearest heir of Baburam expectant on the death of Sahodra Kuer. Bishundayal was one degree removed from Bhupnarain and was not entitled in any case to succeed to the properties of Baburam. If Bhupnarain succeeded in the action he might establish his title to the estate of Baburam; but the joint family of which he was a member would not necessarily participate in the benefit that might accrue to Bhupnarain. What then was the position of the joint family? Bhupnarain might fail to establish his case in which case his suit would be dismissed and no benefit would accrue to the joint family; but Bhupnarain might succeed But if he succeeded the benefit would accrue to him and not to the joint family; for it is well established that unless he chose to share the property along with the members of the joint family the fruits of his victory would belong to him and not to the joint family. How can it then be said that the mortgage transactions were for the benefit of the joint family?

It is said that Bhupnarain has actually made over the property which he gained as a result of his suit to the joint family. That may be so; but the matter rested with Bhupnarain and the joint family could never have compelled him to make over the property to it Benefit has accrued to the joint family not as a result of the transactions which are the subject-matter of the suit, but as a result of an act of bounty on the part of Bhupnarain. If it be contended that there was an agreement between Bhupnarain and the joint family by which the joint family agreed to finance Bhupnarain in the litigation and Bhupnarain agreed to share the property which was the subject-matter of that litigation with the joint family. I would unhesitatingly say that the agreement being of a speculative nature could not bind the joint family.

In my opinion the decision of the learned District Judge cannot be supported. I would accordingly

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allow the appeal, set aside the judgment and the decree passed by the Court below and restore the judgment and the decree of the Additional Subordinate Judge. The result is that the suit is dismissed with costs in this Court and in the Court below. So far as the costs in the court of first instance are concerned, I agree with the learned Additional Subordinate Judge that each party should bear his own costs.

ADAMI, J.—I agree.

*Suit dismissed.*

## CIVIL REFERENCE.

*Before Mullick and Kulwant Sahay, J.J.*

1925.

*July, 23, 27.*

RUP LAL SINGH

*v.*

SECRETARY OF STATE FOR INDIA.*

*Bengal Troops Transport and Traveller's Assistance Regulation*, 1806 (*Regulation XI of* 1806), *section* 3(1)—"*Native officer*", *whether can impress a cart against the consent of the owner.*

Under section 2 of the Bengal Troops Transport and Traveller's Assistance Regulation, 1806, whenever a detachment of troops, or a single corps, shall be ordered to proceed by land or by water, through any part of the Company's territories, "the Commanding Officer is required to give timely notice to the Collectors of districts through which the troops are to pass". On receipt of such notice the Collector "shall", under section 3, "depute a creditable Native officer to accompany the troops through his jurisdiction.................It shall also be the duty of such Native officer to provide the troops with whatever bearers, coolies, boatmen, carts and bullocks, may be indispensably necessary to enable the troops to prosecute their route".

*Held*, that the Native officer referred to in section 3 can legally impress carts let on hire against the consent of their owners.

* Civil Reference no. 1 of 1925.