

1925.

SIB SAHAI
LAL
v.
SIR
BIJAI CHAND
MAHTAB.

Subordinate Judge was right in taking the landlord's papers into consideration in ascertaining whether the excess in the cases before him was real or fictitious.

The result is that all the appeals before us are dismissed with costs.

KULWANT SAHAY, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J., and Macpherson, J.

1925.

May, 27.

SITA RAM SINGH

v.

KHUB LAL SINGH.*

*Evidence Act, 1872 (Act I of 1872), section 32(3)—
Admission, whether can be split up.*

In a suit by the reversioners of the last male holder to recover property which had been mortgaged by the latter's widow and subsequently purchased by the mortgagees in execution of a decree on the mortgage, the trial Court admitted in evidence, under section 32(3) of the Evidence Act, a statement made by the widow in a previous suit (the widow being dead when the present suit was instituted) to the effect that she had contracted the loan from the mortgagees for the performance of her husband's saradh and other necessary expenses. It was contended on behalf of the plaintiffs that the only part of the admission which was contrary to her pecuniary interest was the fact that she took the loan and not the remaining part that she took it for a particular purpose, and that, consequently, the latter part of the statement was inadmissible. *Held*, that the admission could not be split up into two parts and that the whole statement was admissible for the purpose of ascertaining exactly what the nature of the loan was.

Higham v. Ridgway (1), referred to.

* Second Appeal no. 814 of 1922, from a decision of B. Lala Damodar Prasad, Subordinate Judge of Patna, dated the 20th July, 1922, confirming a decision of M. Amir Hamza, Munsif of Patna, dated the 16th March, 1921.

(1) (1923) 2 Sm. L. C. 348.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Manuk (with him *S. Dayal*), for the appellant.

Sultan Ahmad (with him *S. N. Rai*), for the respondents.

1925.

SITA RAM
SINGH
v.

KHUB LAJ
SINGH.

DAWSON MILLER, C. J.—In my opinion the matters in dispute in this case are concluded by the findings of fact of the lower appellate Court. The suit was brought by the reversioners of Ramautar Singh against the mortgagees under a mortgage granted by his widow Dhanwanti Kuer after his death to secure payment of a sum of Rs. 400. The mortgage hypothecated certain property which formed part of the estate of her husband. That was in the year 1905. A suit was brought during the widow's lifetime by the mortgagees on the mortgage. They succeeded in that suit and put up the property for sale in execution of the decree and themselves purchased it. The widow died in 1920 and the present suit was brought by the reversioners claiming to recover the property.

The question for determination in the suit is whether the mortgagees were entitled to a charge upon the whole estate or only upon the life-interest of the widow and that again depends upon whether the sum borrowed was borrowed by the widow for purposes of legal necessity. The allegation of the defendants is that of the Rs. 400, Rs. 226 had been borrowed in order to pay for Dhanwanti's husband's saradh. Rs. 174, the balance, was for the cost of litigation and maintenance. The evidence shews that although the income of the estate was about Rs. 2,000 still after her husband's death Dhanwanti Kuer, the widow, was unable to get the estate into her possession. Therefore it seems highly probable that she was in a position in which it might be necessary to borrow the money for her expenses.

Both the trial Court and the Subordinate Judge on appeal found that the money was borrowed by

1925.

SITA RAM
SINGH
v.
KHEUB LAL
SINGH.
DAWSON
MILLER, C.J.

Dhanwanti Kuer for purposes of legal necessity and that she was in need of money at the time. That decision, however, has been challenged on the ground that the learned Subordinate Judge admitted in evidence a statement of Dhanwanti Kuer, who, as I have intimated, was dead at the time when the present suit was brought, made in a previous suit in the year 1908 in which she stated that she took a loan from Faujdar Singh and Sheoraj Singh to defray the expenses of the funeral rites of her husband. The learned Judge accepted that statement as admissible under section 32, clause (3), of the Indian Evidence Act. It has been contended that the only part of that admission which is an admission contrary to her pecuniary interest is the fact that she took the loan and not the remaining part that she took the loan for a particular purpose. I am not able to agree to this proposition. I think the whole statement must be taken in order to ascertain exactly what the nature of this loan was. There might be a difference in her pecuniary liability, certainly in the liability of the estate she at that time represented if the loan was borrowed for necessary expenses or if the loan was borrowed for purposes which were not to be regarded as necessary expenses, and I do not see very well how you can split up the admission into two parts. The whole thing works together and each part is necessary to explain the other. This I think is the view which has been taken in dealing with cases of this sort ever since the old case of *Higham v. Ridgway* (1) which was decided in the year 1823. The learned Judge accepted that statement which was not necessarily conclusive and not necessarily binding upon the reversioners but which I think he was entitled to accept as a corroboration of the defendants' story that in fact the money had been borrowed by Dhanwanti Kuer for purposes of legal necessity, and the further statement of one of the defendants himself that he had made enquiries at the date when the money was

(1) (1823) 2 Sm. L. C. 348,

borrowed and he found that it was required by Dhanwanti Kuer in order to pay for her husband's saradh. The learned Judge said :

" Having regard to the statement of Mussammat Dhanwanti Kuer above alluded to I see no reason to doubt the evidence of these witnesses that Rs. 200 was borrowed by Dhanwanti for her husband's sradh. It is clear from her deposition also that litigation commenced soon after her husband's death."

1925.
SITA RAM
SINGH
v.
KHUB LAL
SINGH.
DAWSON
MILLER, C.J

That is really the only criticism which has been made of this judgment and it does not seem to me that the criticism is a sound one. The matter is concluded by the findings of fact and I do not think that the learned Judge took into consideration any evidence which he was not legally entitled to consider. The appeal will be dismissed with costs.

MACPHERSON, J.—I agree.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Adami and Bucknill, J.J.

NIL MADHAB CHOWDHRY

v.

KING-EMPEROR.*

1925.
July, 10, 13,
14, 15, 23.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 164 and 337—approver, allowed to depose to a series of crimes not relevant to the enquiry—subsequent prosecution for offences not expressly covered by the pardon—section 164, applicability of, to confessions recorded by a Presidency Magistrate.

In connection with a case of forgery of currency notes the Calcutta police arrested N, H and S, together with others. All the three persons made full confessions before the Magistrate and in their confessions each of them started by

* Criminal Appeals nos. 80, 81 and 86 of 1925, from a decision of Promotho Nath Bhattacharji, Esq., Assistant Sessions Judge, Saran, dated the 28th March, 1925.