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amply manifested in the case, to take one example only, of the salary paid to His Majesty's Judges. There was certainly a solemn covenant entered into between the Government and His Majesty's Judges that their salary should be at such and such rate. There is equally no doubt that subsequent legislative enactment reduced that salary, notwithstanding the covenant that was in fact passed, and this enactment was perfectly valid. This was so both in England and in India. No question can, therefore, be entertained of any breach of covenant however gross, and in so saying I do not wish to commit myself in any way to the view urged on behalf of the assessee that there was in this case any covenant at all.

The question that was formulated for our decision was—

“ Whether on the terms of the *Kaoolnama*, dated the 22nd November, 1803, the petitioner's income from his *Kauika Raj* are exempt from taxation under the Indian Taxation Act, 1922? ”

I would answer this question in the negative and the assessee having failed must pay ten gold mohurs by way of costs in addition to the Rs. 100 which he has deposited.

JAMES, J.—I agree.

Order accordingly.

APPELLATE CIVIL.

Before Varma and Rowland, JJ.

SHEIKH GHASIT MIAN

v.

THAKUR PANCHANAN SINGH.*

Hindu Law—decree against widow on the basis of hand-note—recersioners, whether liable—test—legal necessity, proof of, whether sufficient—frame of the suit.

* Appeal from Appellate Order no. 67 of 1935, from an order of J. A. Saunders, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 8th of December, 1934, affirming an order of Babu R. Ghosal, Additional Subordinate Judge, Hazaribagh, dated the 12th June, 1934.

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A money decree obtained against a Hindu widow on the basis of a hand-note makes her liable personally and does not bind the reversioners, even if the debt was for legal necessity, unless there is some indication in the suit that the creditor wanted to bind the entire estate so as to make the reversioners liable for the payment of the debt.

Rameshwar Mondal v. Procabati Debi(1), *Dayamoyce Ray Choudhury v. Lalit Mohan Pal Ray*(2), *Lalit Mohan Pal Roy v. Srimati Dayamoyi Roy Chowdhurani*(3), followed.

Rameoomar Mitter v. Ichamoyi Dasi(4), *Hurry Mohan Rai v. Gonesh Chunder Dass*(5), *Giribala Dassi v. Srinath Chandra Singh*(6), *Baijun Doobey v. Brij Bhookun Lall Acusti*(7), *Dhiraj Singh v. Manga Ram*(8), *Kallu v. Faiyaz Ali Khan*(9), *Pahalwan Singh v. Jivan Das*(10), *Sarju Prasad Rao v. Mangal Singh*(11), *Regella Jogayya v. Nimushakavi Venkataratnamma*(12), *Ramsami Mudaliar v. Sellattanmal*(13), *Venkayya v. Mokkarala Bangarayya*(14), *Sakrabhai Nathubhai v. Maganlal Mulchand*(15), *Gadgeppa Desai v. Apaji Jivanrao*(16), *Bhagwantrao Abaji v. Ramnath Kaniram*(17), *Dhondo Yeshrant Kulkarni v. Mishrilal Surajmal*(18), *Baramdeo Singh v. Lal Bahadur Sah*(19), *Kongshi v. Kandaji*(20), reviewed.

Appeal by the decree-holder.

The facts of the case material to this report are set out in the judgment of Varma, J.

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- (1) (1914) 19 Cal. W. N. 313.
 (2) (1925) A. I. R. (Cal.) 401.
 (3) (1927) A. I. R. (P. C.) 41.
 (4) (1880) I. L. R. 6 Cal. 36.
 (5) (1884) I. L. R. 10 Cal. 829, F. B.
 (6) (1908) 12 Cal. W. N. 769.
 (7) (1875) I. L. R. 1 Cal. 133.
 (8) (1897) I. L. R. 19 All. 300.
 (9) (1908) I. L. R. 30 All. 394.
 (10) (1919) I. L. R. 42 All. 109.
 (11) (1925) I. L. R. 47 All. 490.
 (12) (1910) I. L. R. 33 Mad. 492.
 (13) (1881) I. L. R. 4 Mad. 375.
 (14) (1925) A. I. R. (Mad.) 401.
 (15) (1901) I. L. R. 26 Bom. 206.
 (16) (1879) I. L. R. 3 Bom. 237.
 (17) (1928) I. L. R. 52 Bom. 542.
 (18) (1936) A. I. R. (Bom.) 59, F. B.
 (19) (1934) 15 Pat. L. T. 583.
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B. C. De and *Jyotirmoy Ghosh*, for the appellant.*S. S. Bose* and *P. B. Ganguly*, for the respondents.

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VARMA, J.—This is an appeal on behalf of the decree-holder who obtained a money decree against Rani Jagdamba Kumari of Hazaribagh. The decree-holder had obtained the decree on two hand-notes, one executed by herself and the other by her agent and after her death the decree-holder applied for execution of the decree by selling the property which came into the hands of the reversioners of the estate. They happened to be the sons of a daughter of Rani Jagdamba Kumari's co-wife. In the execution proceedings the reversioners objected under section 47 of the Civil Procedure Code that as the decree was passed against Rani Jagdamba Kumari personally her husband's estate which is under attachment could not be sold in execution of the same.

Before the first court the decree-holder relied upon the cases of *Regella Jogayya v. Nimushakavi Venkataratnamma*⁽¹⁾, *Ramcoomar Mitter v. Ichamoyi Dasi*⁽²⁾, *Hurry Mohun Rai v. Gonesh Chander Doss*⁽³⁾ and *Kongshi v. Kandaji*⁽⁴⁾ for the proposition that the reversioners are bound to repay the debts incurred by the widowed Rani for the benefit of her husband's estate. On the other hand the cases of *Dayamoyee Ray Choudhury v. Lalit Mohan Pal Ray*⁽⁵⁾, *Lalit Mohan Pal Roy v. Srimati Dayamoyi Roy Chowdhurani*⁽⁶⁾ and *Baramdeo Singh v. Lal Bahadur Sah*⁽⁷⁾ were relied upon by the court of first instance for the proposition that a money decree against a widow on the basis of a hand-note makes her liable personally and does not bind the reversioners although if the suit

(1) (1910) I. L. R. 33 Mad. 492.

(2) (1880) I. L. R. 6 Cal. 36.

(3) (1884) I. L. R. 10 Cal. 823, F. B.

(4) (1929) A. I. R. (Nag.) 191.

(5) (1925) A. I. R. (Cal.) 401.

(6) (1927) A. I. R. (P. C.) 41.

(7) (1934) 15 Pat. L. T. 533.

were so framed as to claim relief against the estate, the estate could have been bound for the debts incurred for legal necessities by the widow.

The decree-holder went in appeal before the Judicial Commissioner of Chota Nagpur who, relying further upon the case of *Dhiraj Singh v. Manga Ram*(¹) and distinguishing the case of *Sarju Prasad Rao v. Mangal Singh*(²), dismissed the appeal.

Mr. B. C. De, appearing on behalf of the appellant, relied upon the case reported in *Ramcoomar Mitter v. Ichamoyi Dasi*(³) in which it was held that in the case of a Hindu widow who borrowed money for the purpose of defraying the marriage expenses of her grand-daughter it could not be properly considered a charge on the estate yet on the death of the widow the sum was legally recoverable from the heirs who succeeded to the possession of such estate. What appealed to their Lordships in that case was that if the daughters had not been married before they attained the age of puberty, spiritual consequences of a most serious kind might be expected according to Hindu doctrines to arise both to their deceased father and deceased grand-father, and therefore the widow must be held to have been right in doing what she did to avert such consequences.

The next case is the case of *Hurry Mohan Rai v. Gonesh Chunder Dass*(⁴). This was a case in which a daughter who succeeded to the estate of her father ordered a quantity of lime for the purpose of making repairs to the house but before paying off the debt the lady died and at the time she died a large amount of money was due to her as rent which she had not collected. The question that was referred to the Full Bench was whether the amount due from the lady was realizable from the estate which was in the hands of

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(2) (1925) I. L. R. 47 All. 490.

(3) (1880) I. L. R. 6 Cal. 26.

(4) (1884) I. L. R. 10 Cal. 823, F. B.

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the reversioner and whether it was realizable from the rents that yet remained uncollected by the widow. It was held that the plaintiff was entitled to be paid out of the arrears of rent collected; it was further held that he was also entitled to enforce his claim against the heirs of the last full owner of the estate generally.

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Mr. Satya Sundar Bose appearing on behalf of the respondents has referred to the case of *Giribala Dassi v. Srinath Chandra Singh*⁽¹⁾ in which it was held that a simple bond executed by a Hindu widow for legal necessity did not bind any immovable property and the interest of the reversioners was not affected by the sale. In this case their Lordships relied on the case reported in *Baijun Doobey v. Brij Bhookun Lall Awusti*⁽²⁾. The case of *Baijun Doobey v. Brij Bhookun Lall Awusti*⁽²⁾ was a case in which the widow was sued for a maintenance debt and in execution of that decree the widow's right, title and interest left by her husband were sold. Neither the decree nor the sale proceedings declared the property itself to be liable for the debt. After the death of the widow the reversioners brought a suit to recover the property. It was held that the purchaser at the execution sale took only the widow's interest and not the absolute interest and the plaintiff therefore was entitled to recover.

In *Rameshwar Mondal v. Provabati Debi*⁽³⁾ it was held that where a Hindu widow obtains a loan she is at liberty to bind herself personally or when for the purpose for which she borrows is a necessity she is at liberty to bind her husband's estate and the intention must be gathered from the statement in the deed or in the surrounding circumstances. It was further held that the mere fact that the widow intended to create a liability on the estate is not enough. The creditor is also to show that he intended to enforce such liability and the true test is to see whether the proceeding was

(1) (1908) 12 Cal. W. N. 789.

(2) (1875) I. L. R. 1 Cal. 133.

(3) (1914) 19 Cal. W. N. 313.

brought against the widow personally or with a view to affect the whole inheritance.

Now, in *Dayamoyee Ray Chaudhury v. Lalit Mohan Pal Ray*⁽¹⁾ a similar view was expressed. In that case it was held that if a decree against a Hindu widow is merely a personal decree it binds only her and not the reversionary interest, but a creditor suing such a female can so frame his suit as to make it clear that he intends to bind the entire estate and not merely the limited heir personally so as to put other persons interested on their guard and to enable them to protect the estate if they care to do so, for a Hindu female heir represents the entire interest in respect of her interest as well as the reversionary interest. This case went to Privy Council [*Lalit Mohan Pal v. Srimati Dayamoyi*⁽²⁾] and their Lordships of the Judicial Committee expressed their agreement with the decision of the Calcutta High Court and especially quoted a passage from the judgment of the Calcutta High Court. The passage quoted runs as follows:—

“ It is possible that although no charge was created, the original debt having been for lawful purposes, the creditor might have recovered his debt from the estate left by Bharat, if he had chosen to do so (Bharat was the last male holder). But in order to make the estate liable he ought to have framed his suit in a proper manner. What he asked for was simply to have a personal decree against Monomohini and the guardian who was made the second defendant. The Court passed a decree against the minor alone. It does not appear anywhere that the minor was made a party to the suit as representing her father's estate.”

So far as the Allahabad High Court is concerned the case of *Dhiraj Singh v. Manga Ram*⁽³⁾ has been

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relied upon by the lower appellate court in this case. This case is in favour of the respondents and lays down that the creditor of a Hindu widow cannot after her death have recourse to the ancestral property in the hands of the reversioners in respect of which property the widow had enjoyed only a widow's life-estate, if in fact no instrument charging the property beyond the widow's life-time has been executed by the widow, even though the debt sued upon was incurred for legal necessity and was one in respect of which such property might have been made liable beyond the widow's life-time.

The Allahabad High Court distinctly differs from the case reported in *Ramcoormar Mitter v. Ichamoyi Dasi*⁽¹⁾ but they referred to the case reported in *Ramsami Mudaliar v. Sellattammal*⁽²⁾ and the earlier cases of the Allahabad High Court. They held that unless they (creditors) wanted to make the estate liable for having the charge created by the widow upon the estate, they could not sue the reversioners who inherited the estate.

The next case of the Allahabad High Court is the case of *Kallu v. Faiyaz Ali Khan*⁽³⁾. In this case the case of *Dhiraj Singh v. Manga Ram*⁽⁴⁾ was followed and it was held that where money is lent to a Hindu widow on her personal security, a decree for such a debt and a sale of property late of the widow's husband in execution of such decree binds only the widow's estate, notwithstanding that the original debt may have been incurred for legal necessity. There is another case of the Allahabad High Court [*Pahalwan Singh v. Jivan Das*⁽⁵⁾] to which reference has been made which, although a case of alienation by a Hindu widow, is of importance

(1) (1880) I. L. R. 6 Cal. 36.

(2) (1881) I. L. R. 4 Mad. 375.

(3) (1908) I. L. R. 30 All. 394.

(4) (1897) I. L. R. 19 All. 300.

(5) (1919) I. L. R. 42 All. 109.

inasmuch as it refers to the case of *Sakrabhai Nathubhai v. Maganlal Mulchand*(¹). In this case difference had been drawn between the case of a widow alienating immovable property which she inherited from her husband and of a widow who inherited a trade or business belonging to her husband. It was held that in the case of immovable property she could sell only her life-estate whereas she had greater powers in the case of trade or business. The case of *Sarju Prasad Rao v. Mangal Singh*(²) is the next case from Allahabad and is a case of alienation but there a difference was drawn between a debt which is a charge upon the estate and a debt which is not.

Coming to Madras the earliest case on the point is the case of *Ramsami Mudaliar v. Sellattammal*(³). In this case the suit was upon a promissory note renewed in the name of the plaintiff by a Hindu widow. The first hand-note was executed much earlier. The money was borrowed for the purpose of defending her title to certain properties. The widow died and the plaintiff wanted to realise the debts from the properties in the hands of the reversioners. The case first came up for trial on the Original Side and was dismissed on the ground that no cause of action was shown. The case then came up in appeal. Of the two Judges, Innes, J., following the case of *Gadgeppa Desai v. Apaji Jivanrao*(⁴), was of opinion that this suit was rightly dismissed. He indicated in his judgment that a Hindu widow could charge the estate but it must be clear that she intended to charge her estate even after her death. Kindersley, J. was of opinion that a note was merely a personal security and there being nothing in the plaint to indicate that the estate was to be bound by that, he held that the suit was rightly dismissed.

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 (1) (1901) I. L. R. 26 Bom. 206.

(2) (1925) I. L. R. 47 All. 490.

(3) (1881) I. L. R. 4 Mad. 375.

(4) (1879) I. L. R. 3 Bom. 237.

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In the next case from Madras [*Regella Jogayya v. Nimushakavi Venkataratnamma*(¹)], decided in the year 1910, it was held that no distinction could be properly drawn between a case where a charge is formally created and in a case where the creditor lends for the necessary purposes of the estate. There reference was made to the case of *Ramsami Mudaliar v. Sellattammal*(²) and one of the learned Judges held that a reversioner was not bound by a debt unless it was a charge on the estate. The other learned Judge held that unless it was clear that a promissory note was made by the widow as a representative of the estate and alleged the circumstances which would make the reversioners liable under the Hindu law the reversioners were not bound. Their Lordships distinguished the case of *Ramsami Mudaliar v. Sellattammal*(²) by saying that neither of the Judges was of opinion as a matter of law that the reversioners cannot be bound unless the debt is made formally a charge on the estate, and later on they held that there is no distinction between a case where a charge is formally created and a case where the creditor lends for the necessary purposes of the estate.

In *Venkayya v. Mokkarala Bangarayya*(³) which is a single Judge decision the High Court refused to interfere with a decree against the reversioners for realizing debts incurred by a widow for family necessity. This case is important inasmuch as it refers to some of the decisions that I have mentioned already and shall mention later on.

In Bombay the earliest case is of *Gedgappa Desai v. Apaji Jivanrao*(⁴). In this case a Hindu widow had borrowed money from the plaintiff on an ordinary bond for the purposes of paying the Government assessment on a certain property and subsequently adopted a son and died. The son was sued after the death of the widow for the money due. It was held

(1) (1910) I. L. R. 33 Mad. 492.

(2) (1881) I. L. R. 4 Mad. 375.

(3) (1925) A. I. R. (Mad.) 401.

(4) (1879) I. L. R. 3 Bom. 237.

that the plaintiff could not recover his debt either from the defendant personally or from the property which was in his possession. His only remedy was against the widow's property, if any, in the hands of the defendant.

In the next case [*Sakrabhai Nathubhai v. Maganlal Mulchand*(¹), a trade was carried on by the lady on behalf of the family and for the purpose of carrying on the trade the debts were incurred. It was held that the assets of the business in the hands of the reversioners were even in the absence of a regular charge liable for the debts incurred by the lady.

In *Bhagwantrao Abaji Marathe v. Ramnath Kaniram*(²) it was held that the property in the hands of a reversioner is not liable to satisfy a personal debt not secured on such property which a widow, while enjoying a widow's estate, has properly incurred in the course of the management of the property. There their Lordships expressed an opinion that the case of *Sakrabhai v. Maganlal*(¹) had not expressly or by necessary implication overruled the case of *Gadeppa Desai v. Apaji Jivanrao*(³).

A recent Full Bench decision of the Bombay High Court in *Dhondo Yeshvant Kulkarni v. Mishrilal Surajmal*(⁴) has overruled *Bhagwantrao Abaji v. Ramnath Kaniram*(²) and *Gadeppa Desai v. Apaji Jivanrao*(³). Their Lordships applied the case of *Sakrabhai Nathubhai v. Maganlal Mulchand*(¹) and dissented from the view taken in *Ramsami Mudaliar v. Sellattammal*(⁵), *Dhiraj Singh v. Manga Ram*(⁶) and *Kallu v. Faiyaz Ali Khan*(⁷). They followed *Rameoocomar Mitter v. Ichamoyi Dasi*(⁸) and *Hurry Mohan Rai v. Gonesh Chunder Dass*(⁹). The judg-

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(3) (1875) I. L. R. 3 Bom. 237.

(4) (1936) A. I. R. (Bom.) 59, F. B.

(5) (1881) I. L. R. 4 Mad. 375.

(6) (1897) I. L. R. 19 All. 300.

(7) (1908) I. L. R. 30 All. 394.

(8) (1880) I. L. R. 6 Cal. 36.

(9) (1884) I. L. R. 10 Cal. 823, F. B.

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ment of the Court was delivered by Divatia, J. wherein it was held that there is no warrant in Hindu law for making a distinction between a secured and an unsecured debt provided they are both for legal necessity, and the opinion of the Court was that where the widow incurs the necessary liability in her character as such, that is, as representing the husband's estate, the intention of binding an estate as opposed to binding herself alone is to be implied because the reversioner's obligation depends upon the purpose of the debt rather than on the intention of the parties contracting it. In this Full Bench decision I find no reference to the case of *Dayamoyee Ray Chaudhury v. Lalit Mohan Pal Ray*⁽¹⁾ which was upheld by the Privy Council [*Lalit Mohan Pal v. Srimati Dayamoyi*⁽²⁾].

We then come to a case of the Patna High Court [*Baramdeo Singh v. Lal Bahadur Sah*⁽³⁾] which is a decision by Saunders, J. who later on as Judicial Commissioner of Chota Nagpur delivered the judgment which is under appeal. It was held in that case that the debt incurred by a widow on a hand-note was her personal obligation only and the reversioners were not bound to discharge the debt. There apart from the other cases reference was made to *Bhagwantrao Abaji v. Ramnath Kaniram*⁽⁴⁾ where it was pointed out that the decision in *Sakrabhai Nathubhai v. Maganlal Mulchand*⁽⁵⁾ did not overrule the earlier case of *Gadeppa Desai v. Apaji Jivanrao*⁽⁶⁾, and in *Bhagwantrao Abaji v. Ramnath Kaniram*⁽⁴⁾ it appears that the creditor relied upon these cases for the purpose of showing that there is no difference between a secured debt and an unsecured debt and if

(1) (1925) A. I. R. (Cal.) 401.

(2) (1927) A. I. R. (P. C.) 41.

(3) (1934) 15 Pat. L. T. 583.

(4) (1928) I. L. R. 52 Bom. 542.

(5) (1901) I. L. R. 26 Bom. 206.

(6) (1879) I. L. R. 3 Bom. 287.

legal necessity is proved of which there is no question in this particular case, the estate is liable in the hands of the reversioners.

A review of these cases makes it clear that there are differences of opinion on the question how and when a Hindu widow may incur a liability which can be enforced against the estate in the hands of the reversioners but so far as debts on hand-notes are concerned it is clear from the decisions in the cases of *Rameswar Mondal v. Procabati Devi*⁽¹⁾ and *Dayamoyee Ray Chaudhury v. Lalit Mohan Pal Ray*⁽²⁾ which was upheld by the Privy Council [*Lalit Mohan Pal v. Srimati Dayamoyi*⁽³⁾] that for a creditor it is not enough to show that the debt was for legal necessity so as to bind the reversioners but there must be some indication in his suit that he wanted to make the reversioners liable for the payment of the debt. The learned Subordinate Judge before whom this matter first came very aptly remarks that there is nothing to indicate that the creditor wanted to make the reversioners a party to the suit. The suit was filed in the life-time of the widow and the property was attached but this does not affect the rights of the reversioners.

Relying upon the cases of *Rameswar Mondal v. Procabati Devi*⁽¹⁾, *Dayamoyee Ray Choudhury v. Lalit Mohan Pal Ray*⁽²⁾ and the decision of the Privy Council in *Lalit Mohan Pal v. Srimati Dayamoyi*⁽³⁾, I am of opinion that in this case the reversioners are not liable. In the result the appeal fails and is dismissed with costs.

ROWLAND, J.—I entirely agree.

Appeal dismissed.

(1) (1914) 19 Cal. W. N. 313.

(2) (1925) A. I. R. (Cal.) 401.

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