1935.

RAJA BRAJA SUNDAR DEB v. RAM CHANDRA PAIKARA.

SIR JOHN WALLIS.

4, the first four respondents here, a decree for possession against the plaintiff if possession had been delivered to him.

Their Lordships agree with the learned Judges of the High Court and are of opinion that the issue as to forfeiture having been abandoned by the plaintiff, defendants 1 to 4 are entitled to recover possession in this suit, and will humbly advise His Majesty that this appeal be dismissed with costs.

Solicitors for the appellant: *Hy. S. L. Polak and Co.*

Solicitors for respondents 1 to 4: *W. W. Box and Co.*

REVISIONAL CRIMINAL.

1935.

September, 18, 19. October, 2.

Before Varma and Rowland, JJ.

AJABLAL RAI

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860), *sections* 224 *and* 225—*escape from lawful custody—unlawful assembly—common object of rescuing from lawful custody—joint trial of persons escaping from lawful custody and persons rescuing, if legal—'same transaction', meaning of—Code of Criminal Procedure*, 1898 (*Act V of* 1898), *sections* 235 *and* 239.

A, a proclaimed offender, was arrested by a defadar and after his arrest other persons assaulted the dafadar and his party and thereby they effected the escape of *A* from lawful custody. *A* was charged under section 224 of the Penal Code for escaping from lawful custody and the other persons were charged under sections 147 and 225 of the Penal Code for being members of an unlawful assembly and intentionally offering resistance to the lawful apprehension of *A* and rescuing him. *A* and the other persons were tried jointly and the legality of the joint trial was questioned.

* Criminal Revision no. 405 of 1935, from an order of L. J. Lucas, Esq., I.C.S., Sessions Judge, Monghyr, dated the 9th July, 1935, affirming an order of Babu Hardip Singh, Deputy Magistrate, First Class, Monghyr, dated the 28th May, 1935.

Held, that it was clear that the man charged under section 224 escaped from lawful custody and the rescuers helped him to escape from lawful custody. The intention of all was to secure the release of the man in lawful custody and the various acts formed part of the same transaction as contemplated by section 239(*d*) of the Code of Criminal Procedure, 1898, and the joint trial was legal. That by application of section 38 of the Penal Code A was guilty under section 224, Penal Code and the others under section 225.

The expression "same transaction" has not been defined in the Code of Criminal Procedure, 1898, and it is not desirable to attempt to frame any precise definition and not safe to lay down any single test of what "one transaction" means. The illustrations to sections 235 and 239 of the Code in the form in which these sections stood before the amendment of 1923 declare the intention of the legislature to include such cases as are described; but the illustrations were not clearly meant to be exhaustive.

Held, also, that under section 235 of the Code proximity of time and place were not essential and the illustrations to that section cover cases where—

(*1*) the different offences form part of a continuous series of acts, as well as cases where (*2*) several distinct offences are committed at the same time, and cases where (*3*) though an interval of time has elapsed the specific criminal intent is common to all the alleged acts.

And that any of the matters set forth above may in the circumstances of a particular case suffice to indicate prima facie that the events under consideration form one transaction and all these matters are properly to be considered in deciding whether it is so or not. It is after all a question of fact in each particular case.

Queen-Empress v. *Fakirapa*(1), relied on.

Temezkhan v. *Rajjabali*(2), *Tepanidhi Govinda Chandra Bharati* v. *The King-Emperor*(3), *Raghu Dusadh* v. *Emperor*(4),

(1) (1890) I. L. R. 15 Bom. 491.
(2) (1927) 31 Cal. W. N. 337.
(3) (1919) 5 Pat. L. J. 11.
(4) (1930) A. I. R. (Pat.) 159.

1935.

AJABLAL RAI v. KING-EMPEROR.

Sita Ram Jha v. *King-Emperor*(1), *Mahammed Kazi* v. *Emperor*(2), *Kartick Chandra Maity* v. *The King-Emperor*(3), *Kalu* v. *Emperor*(4), *Ganeshi Lal* v. *Emperor*(5), *Nathu Thakur Marwari* v. *Emperor*(6), *Gujja Lal* v. *Fateh Lal*(7), *Emperor* v. *Darab*(8), *Khilinda Ram* v. *The Crown*(9), and *Shriniwas Krishna Shariralkar, In re*(10), referred to.

Looking at the various acts which constitute an offence under section 224, it appears that the question of rescue does not arise in the case of " resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted or attempts to escape from any custody in which he is lawfully detained for any such offence ", because if he succeeds in resisting, he is not arrested; if he successfully offers illegal obstruction, he has not yet come into lawful custody; if he attempts to escape from any custody in which he is lawfully detained, the custody is still there. It is only in the case of his escaping from lawful custody that the question of rescue would arise.

Looking at the elements of section 225 it is clear that if the resistance has been offered successfully no question of any lawful custody arises. The same remark applies to illegal obstruction to lawful apprehension. In an attempt to rescue the offence under section 225 may be committed but the party in custody may continue in custody. It is only in the case of rescue, if successful, that the person in custody is released from custody. There may be several variations in the offences committed under sections 224 and 225 and the question whether the particular series of acts form part of the same transaction will depend on the facts and the circumstances in which the offences were committed.

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

(1) (1933) Cr. Rev. 223 of 1933 (unreported).
(2) (1916) I. L. R. 43 Cal. 1161.
(3) (1930) 13 Pat. L. T. 135, 167.
(4) (1933) A. I. R. (Lah.) 159.
(5) (1923) A. I. R. (All.) 88.
(6) (1919) 53 Ind. Cas. 496.
(7) (1880) I. L. R. 6 Cal. 171, F. B.
(8) (1927) I. L. R. 50 All. 412.
(9) (1922) I. L. R. 3 Lah. 359.
(10) (1905) 7 Bom. L. R. 637.

1935.

AJABLAL RAI v. KING-EMPEROR.

The appeal first came on for hearing before Macpherson, J. who referred it to a Division Bench by the following judgment :—

MACPHERSON, J.—The question arising in this rule is whether the joint trial of the petitioners Ajablal Rai under section 224 of the Indian Penal Code on the charge of escaping from lawful custody and the other petitioners on charges under section 225 of the same Code of having rescued him from lawful custody and under section 147 of rioting with the common object of rescuing him from lawful custody, and their conviction at such trial is legal. Upon conviction a sentence of six months' rigorous imprisonment was imposed under section 224 and also under section 225 but no additional sentence was passed under section 147. The appeal of the petitioners was dismissed by the learned Sessions Judge.

The facts lie in narrow compass. The first petitioner Ajablal Rai was a proclaimed offender. He was arrested by the dafadar and chaukidars and declined to proceed to the thana but was taken a few laggas. Meantime a companion, Jagdeo Rai, who was not on trial, went and brought the other petitioners who are relations of Ajablal. Ajablal now attempted to escape from lawful custody and the other petitioners used force to the dafadar's party and thereby rescued him and he made off along with them.

On behalf of the petitioners Mr. S. N. Sahay urges first, that the facts do not warrant conviction and secondly, that the joint trial is not warranted by law inasmuch as the offence under section 224 charged against Ajablal was not committed in the course of the same transaction as the offences under sections 225 and 147 charged against the other petitioners within the meaning of section 239(*d*) of the Code of Criminal Procedure, which is the only provision under which the joint trial would be legal.

The first submission is quite unfounded. The second point, however, is such that, in my opinion, it is necessary to refer it to a Division Bench.

The previous decisions of this Court, so far as they have been mentioned at the Bar, comprise *Tepanidhi Gobinda Chandra Bharati* v. *The King-Emperor*(1), *Raghu Dusadh v. Emperor*(2) and *Sitaram Jha* v. *The King-Emperor*(3) wherein I issued the rule, even then contemplating that it might be necessary to take the course which I adopt in the present circumstances.

In the first of these decisions it was held that the joint trial of the first accused under section 354 and of the other two accused under section 323 of the Indian Penal Code was not valid, where the first

(1) (1919) 5 Pat. L. J. 11.
(2) (1930) A. I. R. (Pat.) 159.
(3) Cr. Rev. 223 of 1933 (unreported).

1935.

AJABLAL RAI v. KING-EMPEROR.

accused seized a woman with the intention of forcibly having intercourse with her and the other two accused assaulted her husband when he attacked the first accused. It was held that the joint trial was illegal in the absence of proof that the three accused were acting for a common purpose in execution of a common design. Substantially it was held that the arrest and the subsequent assault were not part of the same transaction. This decision was in 1919 and was under the unamended section 239 which provided

> When more persons than one are accused of the same offence or of different offences committed *in the same transaction* ..... they may be charged and tried together or separately as the Court thinks fit.

whereas the present provision is:—

> "The following persons may be charged and tried together—
> (*d*) persons accused of different offences committed *in the course of the same transaction.*

It is to be observed that there was no question of arrest of the first petitioner and escape by him from lawful custody, or rescue of him from lawful custody by the other two petitioners.

In the next case (to which I was a party) one of four persons who were committing theft, was arrested by the owners of the field who after they had walked a short distance were attacked and assaulted by a mob of twenty persons who rioted to rescue the arrested man: it was held that the joint trial of the persons who were committing theft with the persons who had subsequently committed riot to effect the release of the captive thief, was bad unless there was evidence that the rescuers had been in collusion with the thieves committing the theft and stood by with the object of effecting a rescue since otherwise a connection is not established between the two sets of acts so as to make them one and the same transaction.

The third case, which is unreported, expressly followed the decision in *Tepanidhi Gobinda Chandra Bharati* v. *The King-Emperor*(1). The first petitioner had been caught in the act of theft and the other two petitioners rescued him from the custody of his captor. They were tried jointly, the first petitioner on a charge of theft and the other two on a charge of rescuing the first petitioner from lawful custody and all three on a charge of assaulting the captor of the first petitioner. It was held on the authority mentioned that the joint trial was bad in law.

My own opinion is that in a case like the present the rescue from lawful custody and the escape from lawful custody ought to be held to be different offences committed in the course of the same transaction and that the above decisions in this Court are not relevant and that if they are held to be relevant, then the position requires further examination. None of them contained charges under section 224 and 225 together: in the first (which was also under the old law) there was no charge under either section and in the others there was only a charge under section 225 which was jointly tried with a charge of the offence which had led to the arrest. But the point has given trouble in the Courts below and is likely to continue to do so until guidance is given by a Division Bench, to which therefore I now refer it.

(1) (1919) 5 Pat. L. J. 11.

1935.

AJABLAL RAI v. KING-EMPEROR.

On this reference.

S. N. Sahay and *C. P. Sinha*, for the petitioners.

Assistant Government Advocate, for the Crown.

VARMA, J.—This petition has come before us on a reference by Macpherson, J. as he considered that a decision by a Division Bench was necessary on the question of law arising in the case. Of the 7 petitioners, petitioner no. 1 Ajablal Rai has been convicted under section 224 of the Indian Penal Code on a charge of escaping from lawful custody. Petitioners nos. 2 to 7 were convicted under section 225 of the Indian Penal Code on a charge of having rescued petitioner Ajablal Rai from lawful custody as well as under section 147 of rioting with the common object of rescuing him from lawful custody. All the petitioners were sentenced to six months' rigorous imprisonment under sections 224 and 225 but no separate sentence was passed under section 147. The question that comes before us for decision is whether the joint trial of the petitioners, viz., of Ajablal Rai under section 224 and the other petitioners under sections 225 and 147 is legal.

The case for the prosecution was that Ajablal Rai, a proclaimed offender, was arrested by dafadar Ajablal Dusadh on the 19th January, 1935. He was arrested outside the shop of one Madho Sahu at mauza Permanandpur and sooon after the arrest the other six petitioners slapped and assaulted the dafadar and his party, which consisted of chaukidars including Baudhu chaukidar, Bhikho chaukidar and Basant chaukidar, and thereby effected his escape from lawful custody. The escape was effected after the petitioner Ajablal Rai had been taken a few laggas off by the dafadar and chaukidars in spite of his resistance to proceed to the thana. The charge framed against petitioner Ajablal Rai was as follows:—

"That you, on or about the 19th day of January, 1935, at Sansarpur, police-station Khagaria, escaped from the custody of Ajablal

1935.

AJABLAL RAI v. KING-EMPEROR.

VARMA, J.

Dafadar in which you were lawfully detained for the offence of murder under section 302, Indian Penal Code, and thereby committed an offence punishable under section 224 of the Indian Penal Code."

The charges against the other petitioners were as follows:—

"*First.*—That you, on or about the 19th day of January, 1935, at Sansarpur, police-station Khagaria, were members of an unlawful assembly, and did, in prosecution of the common object of which, viz., to forcibly rescue prisoner Ajablal Rai from the lawful custody of the chaukidars and dafadar commit rioting an offence punishable under section 147 of the Indian Penal Code; and

Secondly.—That you, on or about the same day of January, 1935, at the same place intentionally, offered resistance to the lawful apprehension of Ajablal Rai for the offence of murder under section 302, Indian Penal Code, and rescued the said Ajablal Rai from the custody of Ajablal Dafadar and thereby committed an offence punishable under section 225 of the Indian Penal Code."

At this stage I think it proper to refer to sections 224 and 225 of the Indian Penal Code. Section 224 runs as follows:—

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Looking at the various acts which constitute an offence under section 224, it appears that the question of rescue does not arise in the case of "resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or attempts to escape from any custody in which he is lawfully detained for any such offence", because if he succeeds in resisting he is not arrested, if he successfully offers illegal obstruction he has not yet come into lawful custody, if he attempts to escape from any custody in which he is lawfully detained the custody is still there. It is only in the case of his escaping from lawful custody that the question of rescue would arise.

I now take up section 225 which runs as follows:—

"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues

or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; etc. etc."

Looking at the elements of section 225 it is clear that if the resistance has been offered successfully no question of any lawful custody arises. The same remark applies to illegal obstruction to lawful apprehension. In an attempt to rescue the offence under section 225 may be committed but the party in custody may continue in custody. It is only in the case of rescue if successful that the person in custody is released from custody. There may be several variations in the offences committed under sections 224 and 225, and the question whether the particular series of acts form part of the same transaction will depend on the facts and the circumstances in which the offences were committed. For instance, if a police officer wants to arrest *A* on the strength of a warrant, and *A* and his friends *B*, *C* and *D* obstruct the police officer in arresting *A*, there is no doubt that the acts of all the four were in the course of the same transaction, although by the application of section 38 of the Indian Penal Code *A* will be guilty under section 224 and *B*, *C* and *D* under section 225.

Now the question that arises in this case is whether the rescue of a man in custody and the escape of the man from lawful custody form part of the same transaction to enable a joint trial of the offenders. The expression "same transaction" has not been defined in the Criminal Procedure Code and it is perhaps not desirable to attempt to frame any precise definition and not safe to lay down any single test of what "one transaction" means. The illustration to sections 235 and 239 of the Code in the form in which those sections stood before the amendments of 1923 declare the intention of the legislature to include such cases as are described: but the illustrations were clearly not meant to be exhaustive.

1935.

AJABLAL RAI v. KING-EMPEROR.

Illustration (*b*) to section 239 of the Code of 1898 runs thus:—

"*A* and *B* are accused of a robbery, in the course of which *A* commits a murder *with which B has nothing to do*. *A* and *B* may be tried together on a charge charging both of them with the robbery, and *A* alone with the murder."

VARMA, J. Proximity in time and place was an element present in all the illustrations to section 239 as it then stood.

Section 235 of the Code was examined in *Queen Empress* v. *Fakirappa*(1) where it was pointed out that proximity of time and place was not essential.

The illustrations, as was then pointed out by Birdwood, J. cover cases where (*1*) the different offences form part of a continuous series of acts, as well as cases where (*2*) several distinct offences are committed at the same time, and cases where (*3*) though an interval of time has elapsed the same specific criminal intent is common to all the alleged acts.

These observations were applied in *Emperor* v. *Datta Henmant Shabapurkar*(2) to a case where the acts charged were separated by distinct intervals of time. It was held that "a series of acts separated by intervals of time *are not excluded*, provided that those jointly tried have been directed throughout by one and the same objective."

In that case, there was found to have been continuity of purpose from start to finish and it was said that this rather than proximity of time was the real test.

In some later decisions, the observations made in that case have been read as implying that identity of purpose was the sole test and that in the absence of complete identity of purpose among the parties to an incident it will not be deemed to be one transaction.

(1) (1890) I. L. R. 15 Bom. 491.
(2) (1905) I. L. R. 30 Bom. 49.

The Judges in *Emperor* v. *Datto Hanmant Shabapurkar*(1) did not, I think, intend to lay down such a general proposition, which would have been difficult to reconcile with illustration (*b*) to section 239 as it then stood.

It seems to me that any of the matters set forth in *Queen Empress* v. *Fakirappa*(2) may in the circumstances of a particular case suffice to indicate prima facie that the events under consideration form one transaction; and all these matters are properly to be considered in deciding whether it is so or not.

It is after all a question of fact in each particular case [*Tamezkhan* v. *Rejjabali Mir*(3)].

The case reported in *Tepanidhi Gobinda Chandra Bharati* v. *The King-Emperor*(4) is an instance in which the different offences were held to be not parts of the same transaction. A man committed an offence under section 354 against a woman; the woman's husband wanted to assault the man, whereupon his servants assaulted the husband; in that case it was held that it is not so much the proximity of time as the community of purpose which makes a certain set of acts parts of the same transaction. The facts themselves will show that the facts of that case are quite different from this case. The former offence was begun and ended before the latter offence and independently of it.

In the case of *Raghu Dusadh* v. *Emperor*(5) one of four persons who was committing theft was arrested by the owners of the field who, after they had walked a short distance, were assaulted by a mob of 20 persons and the arrested man was rescued. It was held that the trial of the persons who were committing theft with those people who committed riot

(1) (1905) I. L. R. 30 Bom. 49.
(2) (1890) I. L. R. 15 Bom. 491.
(3) (1927) 31 Cal. W. N. 337.
(4) (1919) 5 Pat. L. J. 11.
(5) (1930) A. I. R. (Pat.) 159.

1935.

AJABLAL RAI v. KING-EMPEROR.

VARMA, J.

with the object of securing the release of the arrested thief was bad. Here again the former offence was done before the latter offence began, and there was no evidence that the rescuers and the thief were acting in collusion, or that the two sets of facts were otherwise so connected as to make them parts of the same transaction.

In *Sitaram Jha* v. *King-Emperor*(1) a man was arrested for stealing a handful of radishes from the field of the complainant. He effected his escape by assaulting the complainant and two other persons rescued him from the custody of the complainant by assaulting the complainant. All these three were tried together. On appeal the learned Sessions Judge set aside the convictions under sections 224 and 225 but maintained the conviction under section 323. In revision it was held, relying on the case of *Tepanidhi Gobinda Chandra Bharati* v. *The King-Emperor*(2), that the various acts were not parts of the same transaction and, therefore, the joint trial was illegal.

The learned Assistant Government Advocate has referred to various cases in which persons charged under section 224 were tried jointly with persons charged under section 225, but the point of misjoinder was never raised in those cases.

In *Mohammed Kazi* v. *Emperor*(3) one of the petitioners was arrested for an offence under the Opium Act but he escaped with the aid of the others. He was convicted under section 224 of the Indian Penal Code and the others were convicted under section 225 of the same Code in the same trial. The point of misjoinder was not raised in that case.

In *Kartik Chandra Maity* v. *The King-Emperor*(4) Kartik Chandra Maity was convicted under

(1) (1933) Cr. Rev. 223 of 1933 (unreported).
(2) (1919) 5 Pat. L. J. 11.
(3) (1916) I. L. R. 43 Cal. 1161.
(4) (1930) 13 Pat. L. T. 135.

1935.

AMBIKA RAI v. KING-EMPEROR.

VARMA, J.

sections 224, 342 and 147 of the Indian Penal Code and the others were convicted under sections 224, 225 and 353 and also under sections 147 and 342 of the Penal Code. In that case many other points were raised but the question of misjoinder was never raised.

In *Kalu* v. *Emperor*(1) 25 men were sent up under sections 225, 233 and 392/149 and one man Kundan under sections 224 and 392, Indian Penal Code. Two of them were acquitted by the Magistrate. The remaining 24 were convicted, Kundan under sections 224 and 392, Indian Penal Code and the 23 others were convicted under sections 225 and 333/149. All of them were acquitted in appeal. On appeal by the Crown against the acquittals Kundan was convicted under section 224, and of the other group 13 were convicted under sections 225 and 332. No point about misjoinder of charges or trial was raised. The learned Assistant Government Advocate referred to these cases in view of the remark of their Lordships of the Judicial Committee of the Privy Council in *Brij Narain* v. *Mangal Prasad*(2). In that case their Lordships of the Judicial Committee observed that "When a long series of cases extending over a long period of time when parties were represented by eminent Counsel are decided in a way where if a plea which was evident had been taken and upheld, the decision would have been the other way, there arises an irresistible conclusion that the plea was not taken because it was felt to be bad".

He has given us certain instances in which courts have held that although the different persons were guilty of different offences still if the offences are complimentary to one another, they could be tried jointly and for this he has referred to the case of *Ganeshi Lal* v. *Emperor*(3) in which a keeper of a gambling house and a person who had gone to gamble in that house were tried together and their trial was held to be legal.

(1) (1933) A. I. R. (Lah.) 159.
(2) (1923) I. L. R. 46 All. 95, P. C.
(3) (1929) A. I. R. (All.) 88

1935.

AJABLAL RAI v. KING-EMPEROR.

VARMA, J.

In *Nathu Thakur Marwari* v. *Emperor*(1) which is a single Bench decision of this High Court, Das, J. held that a gambler could be tried jointly with the keeper of the gambling house, because their acts came within the interpretation of the term "same transaction". Reference was made in this case to the interpretation put upon the term by Garth, C.J. in *Gujja Lal* v. *Fatteh Lal*(2) where the learned Chief Justice said: "A transaction, in the ordinary sense of the word, is some business or dealing which is carried on or transacted between two or more persons." The decisions in *Emperor* v. *Darab*(3) and *Khilinda Ram* v. *The Crown*(4) lay down the same principle.

In the case of *In re Shriniwas Krishna Shriralkar*(5) a person giving a bribe and a person accepting the bribe were tried together and when the point of misjoinder was raised their Lordships held, referring to sections 161 and 162, "Looking at these two sections it appears to us that "the same transaction" is involved in the giving to accused no. 2 herein and the taking and accepting by accused no. 1 herein. The latter is the principal and the former is the agent. The one obtains and the other receives. This transaction of course may have various branches and various details. Therefore it appears to us that there is nothing in the sections which have been referred to, which renders the joint trial of these persons in any way prohibited by any of the provisions of the Criminal Procedure Code".

It is not necessary to multiply instances. In this case as the charge stands it is clear that whereas the man charged under section 224 escaped from lawful custody the rescuers helped him to escape from lawful custody. The intention of all was to secure the release of the man in lawful custody. Therefore,

(1) (1919) 53 Ind. Cas. 496.
(2) (1880) I. L. R. 6 Cal. 171.
(3) (1927) I. L. R. 50 All. 412.
(4) (1922) I. L. R. 3 Lah. 359.
(5) (1905) 7 Bom. L. R. 637.

1935.

AJABLAL RAI v. KING-EMPEROR.

I am of opinion that the various acts which brought about the escape from lawful custody formed part of the same transaction as contemplated by section 239(*d*) of the Criminal Procedure Code and, therefore, the joint trial of the petitioners was legal.

I would, therefore, reject the petition. The sentence is not severe. The convictions and sentences will therefore stand.

VARMA, J.

ROWLAND, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

1935.

September, 6, 9, 10, 11, 12, 13, 16. October, 2.

Before Khaja Mohamad Noor and Saunders, JJ.

KANHYA LAL MISSIR

v.

MUSAMMAT HIRA BIBI.*

Will—construction of—rules of construction—construction of one will, whether true guide for the construction of another—Bequest to a Hindu female, if necessarily conveys a limited estate—Aulad, Warisa, meaning of—words of limitation—words of purchase—" wo unki aulad silsilewar yake bad digre warisa qarar pate jayenge ", *whether are words of inheritance or purchase—Succession Act*, 1925 (*Act XXXIX of* 1925), *sections 95 and 96—bequest to a class—Limitation Act*, 1908 (*Act IX of* 1908), *Schedule II, Articles* 120, 125—*Reversioner—suit for declaration that alienation by a Hindu female holding under a will was not binding on him, whether governed by Article* 120 *or Article* 125—*fresh cause of action, whether arises after sale in execution of a mortgage debt which is challenged.*

One *M* executed a Will, dated 21st December, 1881, whereby he bequeathed his estate to one *R*, a widow of his cousin, for life and after her death to her daughter *H* and her children (*aulad*) successively one after another. There was a proviso that in case a son was born to *H* he would take the

* Appeal from Original Decree no. 161 of 1931, from a decision of Babu Narendra Nath Chakravarti, Subordinate Judge of Patna, dated the 7th April, 1931.