gestion even as to what has become of the original. The Principal Sudder Ameen was, therefore, undoubtedly wrong in admitting this document as evidence.

The petition, dated the 15th Falgoon 1257, has been read to us. It contains no admission of the *bona fides* of the alleged deed of partition. It appears that, when the defendant came of age, he petitioned the Collector for the removal of his guardian, and for registry of his name on the Collector's rent-roll. We cannot understand how the Principal Sudder Ameen could have construed the terms of this petition into an admission of the *bona fides* of the alleged deed of partition. The subscribing witnesses to the said deed are not examined by the plaintiff. Some *Mujleesee* witnesses have been examined, of whom two who are Hindoos depose that they know nothing about the deed; the others, who are Mahomedans, depose in such a manner to facts of which they are not likely to have had any cognizance, that we wholly discredit their testimony. The defendant examined one of the subscribing witnesses to the alleged deed, Debnarain, who tells us that the document was written 25 days after the death of the party said to have executed it. The proceeding of the Collector, alluded to by the Principal Sudder Ameen, simply removes the guardian from his post, and directs the plaintiff's name to be enrolled on the distinct *Towjee*.

The decision of the Privy Council, Vol. VIII., page 447, referred to by the Principal Sudder Ameen in his judgment, did not turn upon the validity or otherwise of the alleged deed of partition. That suit was based on a *kistbundee*, and their Lordships observed "that it was impossible to permit the respondents in that appeal, the plaintiff and defendant in the present suit, after the death of their guardian, now to dispute their liability for payment of the debt which they had deliberately undertaken to pay."

The issue in that appeal was whether the respondent executed the *kistbundee* or not. The question of the validity or *bona fides* of the deed of partition was not raised.

As, therefore, the plaintiff has wholly failed to prove the deed upon which he relies, and which alone would prevent the operation of the ordinary and legal rule of succession, we reverse the decision of the Principal Sudder Ameen, which we consider to be any thing but creditable to him, and decree this appeal with all costs in both Courts to be borne by the respondent with interest.

The 9th January 1866.

Present:

The Hon'ble H. V. Bayley and Shumbhoonath Pundit, *Judges.*

Jurisdiction—Suit for land as Mal—Decree of Resumption Court declaring it invalid Lakheraj.

Case No. 307 of 1865.

Regular Appeal from a decision passed by Mr. T. E. Ravenshaw, Officiating Judge of Beerbhoom, dated the 16th June 1865.

Bishonath Dutt and others (Plaintiffs), *Appellants,*

versus

Fool Chand Birjobashee and others (Defendants), *Respondents.*

Mr. R. T. Allan and *Baboo Kishen Succo Mookerjee* for Appellants.

Baboos Kishen Kishore Ghose, Juggadanund Mookerjee, and *Dwarkanath Mitter* for Respondents.

A suit will not lie for the declaration, as part of a formerly-settled mâl estate of land declared by a Resumption Court liable to assessment as a resumed invalid tenure, and brought after such resumption on the rent-roll as an estate totally separate from the plaintiff's.

In this case, plaintiff sued on the 27th May 1864 to cancel certain survey-proceedings and a map, and thereby to have certain lands declared as part of his mâl estate, and also to be confirmed in possession of those lands.

The Judge has held that the suit is not in time; that such a suit cannot be entertained as against the decision of a Resumption Court; and that plaintiff does not prove that possession for the confirmation of which he sues.

It is sufficient for us in this case to record our opinion that the suit will not lie.

It is to all intents and purposes a suit to cause that land to be declared plaintiff's *mâl of a formerly-settled mâl estate,* which land has been declared by a Resumption Court to be liable *to assessment as a resumed rent-free tenure* held on an invalid title, and brought after such resumption on the rent-roll as an estate totally separate from plaintiff's.

The case of Hur Gobind Ghose, page 131, 17th July 1847, of Carrau's Summary Reports, and that of Lal Beharee, 2nd September 1850, page 459, Sudder Dewanny Adawlut Decisions, support this view, and nothing is shewn to us to contradict it.

We accordingly dismiss this appeal with costs.

The 10th January 1866.

Present:

The Hon'ble W. S. Seton-Karr and A. G. Macpherson, *Judges.*

Mahomedan Law (of Inheritance)—Sister's Son—Widow.

Case No. 2295 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Dacca, dated the 20th May 1865, reversing a decision passed by the Moonsiff of Naraingunge, dated the 29th February 1864.

Moonshee Mahomed Noor Buksh and others (Defendants), *Appellants,*

versus

Moulvie Mahomed Hameedool Huq (Plaintiff), *Respondent.*

Baboo Woomesh Chunder Banerjee for Appellants.

Baboos Onoocool Chunder Mookerjee and *Kalee Mohun Doss* for Respondent.

According to Mahomedan Law, where a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share.

THE appellant raises a point, which was not raised in the Lower Court, to the effect that the plaintiff was not in a position to sue at all for the inheritance of Moheeooddeen, while the wife of this person was alive and was entitled to the property. We have heard the pleaders on both sides, and have referred to Macnaghten's Mahomedan Law on this subject, Section 3 of Inheritance, and Case 15 of Precedents of Inheritance. We find that the law, read carefully, and interpreted by the Precedent of Case 15, is decidedly adverse to the appellant's claim. The widow, under no circumstances, can be entitled to more than one-fourth of her husband's property, the rest going to sister's sons and to various other distant members after the widow's share has been satisfied. The law of the precedent, Case 15, says: "A widow takes one-eighth where "there are children, and a fourth where "there are none. The remainder goes to "the legal sharers; in default of them, to "the residuary heirs; in default of them, to "the distant kindred."

On this point, then, we have no hesitation in pronouncing the appellant's contention not warranted by the law. The plaintiff, as a sister's son, is clearly among the legal heirs, and only claims his inheritance after the widow has obtained her one-fourth. There were no children of Moheeooddeen in this instance.

On a *second* point urged, the Lower Court has expressly found that, by oral and documentary evidence, the plaintiff has been in possession through his brother Kootubooddeen. This is a finding of fact with which we cannot interfere.

We dismiss the appeal with costs.

The 10th January 1866.

Present:

The Hon'ble H. V. Bayley and Shumbhoonath Pundit, *Judges.*

Mahomedan Law of Dower—Proof of—Largeness of amount of.

Case No. 35 of 1865.

Regular Appeal from a decision passed by Moulvie Syud Mahomed Waheedoodeen Khan, Principal Sudder Ameen of Bhaugulpore, dated the 28th September 1864.

Mulleeka and others (Defendants), *Appellants,*

versus

Beebee Jumeela and others (Plaintiffs), *Respondents.*

Mr. C. Gregory, Moonshee Ameer Ali, and *Baboo Kalee Kishen Sein* for Appellants.

Mr. W. A. Montriou and *Baboo Aushootosh Dhur* for Respondents.

The production of a deed of dower is not indispensable to the truth and validity of a claim for dower; nor is such a claim to be set aside by reason of the largeness of the amount of dower.

IT is admitted by both the parties before us that all that has to be decided in this appeal is the question what was the amount of dower proved to have been fixed at the time of the marriage, and that the remand order of Justices Norman and Loch was made only for the purpose of evidence being given on this point, and the case being decided accordingly.

The remand order was this: After holding that the dower was recoverable from the estate of Syed Mahomed, the Judges added these words: "But, as we have no "evidence before us to determine satisfacto-"rily the amount, we think that the Lower "Court will be able to come to a satisfactory "conclusion on this point. We reverse the