

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

RAMKISHORE CHUCKERBUTTY AND ANOTHER (OBJECTORS) v.
KALLYKANTO CHUCKERBUTTY (DECREE-HOLDER).*

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Execution of Decree—Civil Procedure Code (Act X of 1877), s. 234—Representative of Deceased Husband's Estate—Form of Decree against Hindu Widow.

A Hindu widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died before execution for the costs was taken out, the decree-holder sought to take out execution against the next heirs of the late widow's deceased husband. *Held*, that the fact, that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate, to which in its entirety the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representatives" of the late widow's husband, under s. 234 of Act X of 1877.

Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry (1) distinguished.

In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband.

ONE Bissessuree Debia, a Hindu widow, sued to recover a share in certain immoveable property, which she claimed as forming a portion of her husband's ancestral estate, from which she had been deprived, since her husband's death, by two of the defendants; the remaining two defendants were the next heirs of her husband, and were joined as parties to the suit as holding another share in the property in question.

The suit was dismissed with costs in favor of the first two defendants, who alone appeared. The decree-holder attached certain property in the hands of the widow, but whilst execution was being taken out, the widow died, and the decree-holder took out

* Appeal from order No. 230 of 1880, against the order of T. M. Kirkwood, Esq., Judge of Mymensing, dated the 1st May 1880, reversing the order of Baboo Kanie Lall Mookerjee, Munsif of Nicklee, dated the 14th July 1879.

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execution against the next heirs of her husband. The decree-holder admitted that the widow left no property of her own, and that the property sought to be attached was held by her in her capacity as a Hindu widow. In examination it appeared that one of the objectors, who was one of the reversionary heirs, stated, that he had advised the widow to bring the suit, and had looked after it for her. The Munsif held, that the widow's life-interest having come to an end, nothing remained to be sold at auction, and he therefore dismissed the application.

The decree-holder appealed to the District Judge, who held that the debt under the decree was not a personal debt of the widow, but was one binding on the estate of her husband. He therefore allowed the appeal.

The objectors appealed to the High Court.

Baboo *Jogesh Chunder Roy* for the appellants.

Baboo *Bama Churn Banerjee* for the respondent.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J. (who, after stating the facts, continued):—In special appeal it is contended that the Judge has put a wrong construction upon the decree, which by its terms purports to be against Bissessuree Debia personally, and that they, special appellants, are not, within the meaning of s. 234 of the Civil Procedure Code, “legal representatives of the deceased.” In support of this contention they cite as an authority the case of *Mohima Chunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry* (1). They also refer to a recent, but unreported, case, decided in special appeal by a Division Bench of this Court. The judgment of Sir Richard Couch in the first quoted case supplies two reasons, which militate against the argument of the special appellants. Sir Richard Couch says:—“In the present case the debt was not due from the husband, and if the estate of the husband is to be charged either for the arrears of rent becoming due after his death, or for the bond which was given by the

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widow, it can only be upon the ground that the debts were necessarily contracted by the widow, or under such circumstances as to make the whole estate liable, and not merely the interest in it of the person who contracted them." And again: "Here the suits were against the widow only, she cannot be said to have been defending them as representing the reversioner, or as protecting his interest."

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Now it is manifest in this case, from the summary of the plaint which is embodied in the decree now sought to be executed, that the widow did not seek by her suit to recover any interest personal to herself, but that she contracted this judgment-debt in the effort to recover a portion of her husband's estate. It was only in her character as representative of that estate that she did, or indeed could have, instituted that suit, and any land which she might recover in it would necessarily form portion of her husband's ancestral estate which she enjoyed during her lifetime, and to which, at her death, the special appellants, as next heirs, have succeeded. But if we had any doubt regarding the nature of that decree, it would be removed by the conduct of the reversionary heirs, the special appellants before us. They were made parties to the suit, but made no opposition to the claim of the widow. On the contrary, the Judge points out that one of them admitted that he advised the widow in the conduct of the suit. There, it seems to us, are, to use the words of Sir Richard Couch, "circumstances which make the whole estate liable," and which render this case clearly distinguishable from the one which was then before him.

As to the unreported case referred to, the facts of it are not before us, and it seems to us from the judgment which has been read to us, that the learned Judges never intended to decide that, under no circumstances, could the estate in which a widow has only a life-interest be rendered liable in satisfaction of a decree obtained against her, unless such liability was expressly declared in the decree.

It would no doubt be more satisfactory if our Courts were always to be careful in recording whether a decree against a Hindu widow is a personal decree or one against her as representing her husband's estate and chargeable thereon,—and such

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a practice would materially diminish litigation; but in our experience this has not been hitherto the practice of our Courts.

Having regard, therefore, to these considerations, we are of opinion that the decree was against the widow Bissessuree as representing her husband's estate; and that, therefore, the special appellants, as succeeding to that estate by right of inheritance, are liable to satisfy that decree as the legal representatives within the meaning of s. 234.

We, therefore, dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.

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 Dec. 3.

IN RE MIR EKRAR ALI.
 THE EMPRESS v. MIR EKRAR ALI.*

Penal Code (Act XLV of 1860), ss. 192, 464, cl. 2—Fabricating False Evidence—Forgery—Alteration of Date of Document.

Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464 of the Penal Code, but fabricating false evidence within s. 192.

THE facts sufficiently appear in the judgment of the Court (GARTH, C. J., and FIELD, J.), which was delivered by

GARTH, C. J.—The accused presented a bond for registration on the 18th December 1879. This bond is said to have been originally dated the 6th August 1879. If this date had remained, the instrument was presented after the time within which such an instrument must be by law presented for registration. The accused is said to have altered the date to the 26th August in order to bring the bond within time; or to have presented it for registration, knowing that the date had been so altered. It appears to us that the alteration of

* Criminal Revision, No. 289 of 1880, called for by the High Court on Sessions Statement of Bhagalpore.