(1869) 04 CAL CK 0006

Calcutta High Court

Case No: Special Appeal No. 2100 of 1868

Kali Prasad Sing		APPELLANT
	Vs	
Jainarayan Roy and Others		RESPONDENT

Date of Decision: April 14, 1869

Judgement

Markby, J.

In this case the plaintiff sued to recover possession of Mauza Niz Kurnopore, which he claimed as part of his darpatni talook Kurnopore. It seems that in 1271 (1863) he sued some persons, as ryots in that mauza, in the Collector''s Court, for rent, when the defendant, Shibnarayan Roy, one of the patnidars, under whom the plaintiff held, intervened and alleged that the lands, in respect of which the ryots were sued, were situate in Mauzas Batsole and Belgurria, and not in Niz Kurnopore, and were not included in the plaintiff''s darpatni. The objection was allowed, and the plaintiff''s claim for rent dismissed by the Revenue Court. The plaintiff then brought this suit against Shibnarayan Roy, Umesh Chandra Roy, and Iswar Chandra Roy, describing them as patni talookdars, and also against, Nandi Lal Sing, Thakar Lal Sing, Radbanath Sing, Sheonath Dey, Dinaram Pal, Khetu Dey, Bali Dey, Badan Dey, Gobardhan Panja, Juggeswar Mala, tenants. Shibnarayan and the other persons, described as patni talookdars, pub in a joint written statement on the 1st December 1865, in which they objected that the mauza in dispute was in the joint possession of themselves, together with one Ganesjanoni Debi, who ought to have been made a party. On the 5th January 1866, four persons of the name of Jainarayan Roy, Ramdhan Roy, Prasanna Kumar Roy, Bani Madhab Roy and Sudamayi Debi, applied to be admitted as parties defendants, in the suit, on the ground that they were separate owners of an undivided six anna share in the patni, and that they had a right to appear and defend their interests. They were, accordingly, ordered to be made defendants in the suit. No notice was taken of the defendants'' statement as to Ganesjanoni Debi.

2. Shibnarayan and the other original defendants did not, in reality, defend the suit at all, and the first Court, with apparent inconsistency, having refused to receive any

of the documents tendered by the added defendants in support of their title, the suit was decided, generally, in favor of the plaintiff.

3. The added defendants then appealed, and the Judge remanded the case to the Principal Sudder Ameen for re-trial.

4. The Principal Sudder Ameen, upon the re-trial, found that the added defendants were entitled to the six anna share in the patni which they claimed, and that the plaintiff had failed to prove that the disputed land was comprised within his darpatni. He, therefore, made a declaration, which I take to mean that the added defendants are entitled as patnidars to a six anna share of the disputed land; and that, as between the plaintiff and those defendants, this land is to be considered as not included within the plaintiff''s darpatni; whereas as between the plaintiff and the original defendants, it is to be considered as included within it.

5. The plaintiff appealed against this decision, urging that Jainarayan and the other persons, added as defendants, ought not to have been made parties to this suit; that they had not proved their title to, or possession of, the share which they claimed in the patni; and that, on the evidence, the Principal Sudder Ameen ought to have found that the disputed land was not within the Mauzas Balsote and Belgurria, but within the Mauza Niz Kurnopore. The Zilla Judge overruled the objection as to the addition of parties; be also found that these defendants were entitled to the share in the patni which they claimed; and that their contention, as to the situation of the land, was the right one. He, accordingly, affirmed the decree of the Principal Sudder Ameen, and dismissed the appeal with costs.

6. The plaintiff has now appealed to this Court, and the only substantial objection which he has made is that Jainarayan and the others ought not to have been made defendants. The plaintiff contends that, as against the original defendants, he has proved his case, and got a decree; that he was not bound to prove his case against anybody else; and that be never did, and does not now, desire to have a decree against any other party. He has relied very much upon the case of Jai Gobind Das v. Gour Persaud Shaha 7 W.R. 202. There the plaintiff sued for a declaration of his right to certain lands, and to recover possession of certain other lands, as comprised within his talook. Thereupon, Jai Gobind Das applied to be made a party to the suit, alleging that part of the lands which the plaintiff claimed were neither in the plaintiff''s talook, nor the defendant''s talook, but in his (Jai Gobind''s) talook. It was then ordered that Jai Gobind should be made a party to the suit. The Chief Justice, according to the report, says that this was wrong; for, though Jai Gobind Das claimed a portion of the subject-matter of the suit, he was not likely to be affected by the result of the suit, "because claiming adversely to the title, both of the plaintiff and the defendant, and not being a party to the suit, he would not have been bound by the decision." Looking strictly at these words it would seem, if the question, as to Jai Gobind''s being bound by the decision was made to depend, not on whether he claimed adversely to the plaintiff or defendant, but solely on whether he was a party

to the decision. The reasoning, according to the report would be this, that, as Jai Gobind was not a party to the suit he would not have been bound by the decision; that as he would not have been bound by the decision, he was not likely to be affected by the result; and unless he was likely to be affected by the result, he ought not to be made a party to the suit.

7. This reasoning wholly excludes a line of argument which has been adopted in the present case, and which appears to me to have some foundation. It has been alleged, and the fact cannot be denied, that many persons, though not bound in law by the result of a suit, because they are not parties to it, are still deeply interested in its result, and that this which occurs everywhere, occurs more frequently in this country than anywhere else, because the decrees of a Court of Justice can be here easily carried beyond their real scope, and because suits are, as a matter of fact, constantly brought against sham defendants, in order to obtain decrees which may be made use of against parties who have the real right; and it is urged, that knowing this to be the case, the Legislature may have intended by the words "likely to he affected by the result," to include, not only such persons as would be actually bound, but also such persons as might be in this sense affected by the result. On the other hand, if the words "likely to be affected by the result" mean only such persona as would be bound by the result, the section would have no operation at all; because in that sense, no one, not already upon the record, could be affected, and no one, therefore, could be brought upon the record for that reason.

8. I think there is much force in this argument; and seeing that the report of the decision in question is in other respects manifestly incorrect, and the passage, as it stands is not very clear, I think it cannot exactly represent what the Chief Justice said. I think be probably meant that where a party claimed adversely to both plaintiff and defendant, and was not a party to the suit, he could not in law be bound by the decision, and would not, as a matter of fact, be likely to be affected by the result. By "claiming adversely" may be, and probably is, intended a claim not to a community of interest such as that of joint owners, or a superior interest, such as that of landlord, or an inferior interest, such as that of tenant, or a substituted interest, such as that of the next heir taking after a Hindu widow, or many others of a similar character, but a claim to exclude the actual parties to the suit altogether from any share or interest whatsoever in the subject-matter of the suit; in which case it would certainly be very unlikely that the party so claiming would be affected by the result.

9. The matter came before another Division Bench of this Court shortly afterwards. In that case Sarodaprasaud Mitter v. Koylas Chunder Banerjee 7 W.R. 315, a mortgagee brought a suit for possession of certain land, and for foreclosure against the mortgagor, who admitted the mortgage, but objected to the sufficiency of notice. One Koylas Chandra Banerjee, however, appeared, and alleged that the mortgage was a collusive transaction between the plaintiff and defendant, the

object of which was to oust him, from a mourasi tenure held under the defendant. Koylas Chandra Banerjee was, thereupon, made a defendant. The first Court, holding that notice had been properly served and that the mortgage was not collusive, gave the plaintiff a decree. The second Court, on appeal, held that the mortgage was collusive, and dismissed the suit. The plaintiff then appealed on the ground that Koylas Chandra ought not to have been made a defendant. The Court (Kemp and Glover, JJ.) overruled the objection, and held that Koylas Chandra had a right to come in and assert as he did, that the whole proceeding was a fraudulent one, intended to deprive him of his interest as mokurraridar; that the Courts below had power to raise that question as an issue in the suit; and that the allegation having been found to be true, the suit was rightly dismissed. The previous case was referred to and considered distinguishable, but it is not quite clear from the report upon what ground it was distinguished; but, as a matter of fact, there is this distinction between the two cases; that whereas, as already pointed out, in the first, the added defendant was claiming altogether adversely to the plaintiff and the original defendant; in the second, the added defendant claimed an interest, subordinate to that of the original defendant, as is mokurrari tenant. There is also the distinction, though the Court does not advert to it for that purpose, that the very object of the suit in the second case was found to be a fraud upon the added defendant.

10. In the case of Ahmed Hossein v. Mussamut Khadija [(1)], the plaintiff sued two widows of his cousin, claiming 12 annas out of 16 annas of all the property of the deceased. The widows denied the plaintiff''s right of inheritance, and also set up a claim to the property in their own right, and to a lien upon it for dower. A number of persona presented separate petitions, each attacking the plaintiff''s title; not denying his general right by inheritance, but denying that certain portions of the property claimed belonged to the estate of the deceased. All these persons were admitted to come in as defendants. The Court below determined the question of inheritance in favour of the plaintiff, but held that the widows were entitled to a portion of the property in their own right, and also that these had a claim for dower, which entitled them to retain possession of another portion. With regard to the claims of the added defendants, it decided them partly in favor of, and partly against, the plaintiff.

11. The plaintiff appealed as to that part of the decree which related to the claim of one of the widows. Those of the added defendants, who had been unsuccessful in the Court below, appealed also.

12. This Court affirmed the decree as regarded the claim of the widow. Upon an objection raised that the added defendants ought not to have been brought on the record, it was said:-- "It is clear that if the plaintiff in the suit which he institutes against the two widows had recovered a decree for any portion of the property which belonged to the intervenor, and of which they are in possession, be could not

have turned the intervenors out of possession under the decree, nor would the rights of the interveners have been affected by the decree. The intervenors, therefore, were not persons likely to be affected by the result of the suit as originally framed, and they had consequently no right to intervene and to be made parties to the suit." Here also I understand the Court to be observing upon the facts, a consideration of which ought to have shown the Court below that the persons in question ought not to have been made defendants; but I do not understand that any positive rule of law is intended to be laid down.

13. It is also desirable to observe that the decision of the Court in this case 3 B.L.R. A.C.J. 28, Note, in so far as it touches at all upon the question now under consideration, was only to this effect; that when sufficient has been determined to show that the plaintiff''s case fails, the functions of the Court are, as far as relates to that suit, at an end, and that the Court had no power after that to go on and determine issues raised between the defendants.

14. Something of this kind also is, what I understand to be referred to by Story 1 Eq. Jur. 522 (885), in the passage quoted in the first of these two cases, when he says that only the plaintiff can have a decree. It cannot he meant by that author, that under no circumstances whatsoever will the English Court of Chancery decide questions which arise between defendants. On the contrary that Court sometimes requires that parties should be made defendants for the express purpose of raising and deciding such questions. As for instance, where there is a debt for which the real estate is clearly liable, but which may ultimately fall upon the personal estate, the party, who seeks to recover the debt, is compelled to bring both the heir of the real estate, and the party who represents the personal estate before the Court, in order, as was said, to do complete justice, not only as regards the claim of the plaintiff, but as regards the rights of the defendants inter se, Knight, v. Knight 3 P. Wms. 333. If in such a case the plaintiff failed to show he had any debt at all, no doubt the English Court of Chancery would consider the case at an end, and would, in that case, refuse to consider any question between the heir and executor; but it is not the law in England, nor, as far as I am aware, has it ever been held here that no questions can, in any case, be raised and decided between rival defendants.

15. It does not appear to me, however, that much assistance can be derived from a consideration of the practice of the English Court of Chancery upon this subject. In the first place that practice is itself, if not altogether arbitrary, at least, extremely indefinite and uncertain, and has never been reduced to any satisfactory principle. In the next place, it has never been suggested, as far as I am aware, that such general considerations, as influence that Court, ought to weigh with the Courts here. The Court of Chancery in England, according to Lord Talbot, "delights to do complete justice, and Dot by halves." Knight v. Knight 3 P. Wms. 333. According to Lord Redesdale, "all persons materially interested in the subject, ought generally to be parties to the suit, plaintiffs or defendants, however numerous they may be, so

that the Court may be enabled to do complete justice, by deciding upon and settling the rights of all persons interested, and that the orders of the Court may be safely executed by those who are compelled to obey them, and future litigation may be prevented" Midford on Pleading, 164. According to Lord Hardwicke, "the general rule is that you must have all parties before the Court, who will be necessary to make the determination complete, and to quiet the question." Poore v. Clarke Atkyns, 155.

16. Moreover, the aspect under which the question of adding parties generally presents itself here, is one in which it very rarely, if ever, presents itself in the English Courts of Chancery. There the question almost invariably arises in consequence of an objection that the suit, as framed, cannot proceed; here the question generally arises, not on any objection of that kind, or indeed upon any objection at all by the parties, plaintiff or defendant, but upon a petition presented by outsiders to be allowed to come in and take part in the proceedings. This distinction in the mode in which the question arises is quite sufficient to render necessary an entirely different practice.

17. On the whole I can come to no other conclusion than that the Legislature by section 73 (2), intended to leave to the Courts of original jurisdiction in this country a discretion in such cases. I think it impossible to limit that section entirely to cases where the suit, as framed, cannot proceed; I also think it impossible that, by the words "persons who may be likely to be affected by the result," the Legislature could have meant persons on whom the result was legally binding; the words" may be-likely" imply an uncertainty which could not exist if that were the meaning. These words seem to me necessarily to indicate an exercise of discretion and not a rule, which is capable of being accurately and rigidly applied; and according to general principles, the exercise of such a discretion is for the Court to whom the application is made. It may be that this Court has power, and may one day sea fit to lay down some rules for the exercise of this discretion, but that has not as yet been done. Certainly the present case appears to me to be one in which the Court of first instance might perhaps have acted properly, in bringing the additional parties upon the record. The circumstances which induced it to do so are not before us; and all I can say is that there is nothing apparently wrong in its having done so.

18. At the same time it may not be out of place here to point out the very important duty which the Courts of first instance have to perform under this section. To bring persona upon the record, whose interests are not identical with either plaintiff or defendant, necessarily complicates the proceedings, and greatly impedes the progress of the suit. This disadvantage very frequently outweighs the advantage arising from finality of litigation, which is upon the whole the best justification for bringing in fresh parties. This alone ought to make the Courts of first instance very careful in the exercise of the power granted by s. 73. Those Courts also probably act not infrequently, upon the same impression as that which undoubtedly induces a

great number of persons to apply to be admitted as parties, namely, that the suit has some sinister object detrimental to the interests of persons who are not parties to it. It would, however, be well to recollect that the very fact that an application to come in had been made by the persons whose interests were supposed to be threatened, and had been rejected upon the distinct ground that the applicants, not being parties to the suit, would not be bound by the result, would, in the majority of cases, give as complete security as the applicants could require. If this application were filed with the record with the decision upon it to this effect, the supposed sinister object, if it existed, would, in most cases, be entirely frustrated. I should also agree entirely with the view which this Court (as shown above) has expressed on two occasions that where the person applying to be let in claimed altogether adversely to both the original parties, it was to the last degree improbable that he would be affected by the result, and that his application ought, as a matter of discretion, except possibly under very peculiar circumstances, to be rejected.

19. I would also further point out that the Court of first instance was wrong in giving a contradictory decree; such as has been done in this case. It was an issue raised by all the defendants in common, what the situation of these lands was, and should have been found in one way with reference to all. The decree as it stands would lead to the most absurd and inconvenient results, and was one which, in my opinion, the Principal Sudder Ameen had no power to make. Although, therefore, all the defendants have not appealed, I do not think we ought to allow such a decree to stand, but that we ought to draw up one in accordance with the Principal Sudder Ameen''s finding, declaring that, as between the plaintiff and all the defendants, the land in question is not included within the plaintiff''s darpatni, and that his suit be dismissed. There is no reason why we should disturb the orders of the Courts below as to costs, that is to Bay, that the original defendants should pay a ten annas share of the costs of the first Court, and the plaintiff the remainder. The plaintiff should, I think, pay the costs of the lower appellate Court and of this Court, the appeal being dismissed.

Jackson, J.

20. I concur generally in this judgment, and I think Mr. Justice Mark by has put the right interpretation, on the decision of this Court in the case of Jai Gobind Dass v. Gouri Persad Skaha 7 W.R. 202, for which decision I WAS responsible. There is, no doubt, a good deal of difficulty in defining the circumstances under which parties are to be brought upon the record, under s. 73, Code of Civil Procedure, but I quite agree that the words "likely to be affected by the result," mean something quite different from being "bound by the decision:" because it is clear that no one could be bound by the decision, unless he either was, or in some way represented, a party to the suit. The distinction between the case cited, and the case before us is as clear as possible, and is very wide. There the intervening parties did not assert a common title, with either plaintiff or defendant, hut set up a title adverse to both.

[1] Before Sir Barnes Peacock, Kt., C.J., and Mr. Justice Mitter.

Ahmed Hossein (Plaintiff) v. Mussamut Khadija and Others (Defendants).

The 13th November 1868.

JUDGMENT.

Peacock, C.J.--The plaintiff in this suit claimed to be entitled, as cousin of the late Moulvi Mohammed Ibrahim, to 12 annas out of the whole 16 annas of the entire estate left by the late Moulvi, and he commenced this suit against the two widows or the late Moulvi, to whom a certificate had been granted, under Act XXVII of 1860, to set aside the certificate, and to be put into possession of the said 12 annas share, with mesne profits, from the date of the death of the Moulvi. In a schedule to his plaint, he detailed the property, which he claimed to belong to the estate.

Nasiram and other persons, who claimed to be entitled to a portion of the property specified in the schedule, and who had not been made defendants in the suit, intervened and asked to be made defendants u/s 73 of Act VIII of 1859.

It is cleat that, if the plaintiff in the suit, which he instituted against the two widows, had recovered a decree for any portion of the property which belonged to the interveners, and of which they are in possession, he could not have turned the interveners out of possession under the decree, nor would the rights of the intervenors have been affected by the decree. The intervenors, therefore, were not persons likely to be affected by the result of the suit, as originally framed, and they had, consequently, no right to intervene, and to be made parties to the suit. The Subordinate Judge, however, ordered them to be made parties, the plaintiff not having objected, and he laid down an issue as to what part of the property, comprised in the schedule, belonged to the estate of Mohammed Ibrahim, and what part of it belonged as of right to, and was in the exclusive possession of the widows and of the intervening defendants, respectively. In the case of Jaygobind Doss v. Goureepersaud Sahu and others 7 W.R. 202 and which was cited by Mr. Montrion in his argument, it was held that a person cannot be made a party to a suit, u/s 73, Act VIII of 1859, unless he is likely to be affected by the result of it. In that case it was said that it would be most inconvenient and contrary to all principle, if every person, claiming a title adverse to those set up, both by the plaintiff and the defendant in the suit, should be allowed to intervene, and be introduced into the suit.

What the plaintiff really wanted to try in this suit was whether he was entitled to succeed to a 12 annas share of the property of the late Moulvi Mohammed Ibrahim, and to recover from the widows the possession of that portion of the property. The widows did not dispute the fact that the property mentioned in the schedule, formed part of the estate of the deceased, or that they were in possession of it. The widow, Khadija, however, admitted Nasiran''s title. That admission would have been no ground for allowing the plaintiff to recover it from Nasiram as part of the estate

of Ibrahim. It is clear, therefore, to my mind that the Subordinate Judge ought not to have ordered the intervenors to be made parties to the suit.

Another of the issues, raised by the Subordinate Judge, was, whether, according to the Mohammedan law, the plaintiff was entitled, by right of inheritance, to 12 annas out of the whole estate of Mohammed Ibrahim, or whether the widows of the said Mohammed Ibrahim, on account of dower due to them, were entitled to retain possession of the whole estate.

The cases which were cited in argument (special appeal decided on 6th of February 1663 before the 1st Bench), Syud Atabur Ali v. Aliap Fatima and others, dated the 6th February 1863, which is not printed, and the case of Mussamut Janeekhanum v. Mussamut Amatul Fatima Khanum 8 W.R. 51 held that the widow of a Mohammedan, in possession of her husband''s estate, under a claim of dower, has a lien upon it as against those entitled as heirs, and is entitled to possession as against them, till her claim to dower is satisfied. The same point was held, as regards the Sheea sect, by the Privy Council in the case of Amironnissa v. Muradoonnissa 6 M.I.A. 211.

One of the widows defendants in this suit, Mussamut Amatul Fatima entered into a compromise with the plaintiff, which has been carried into effect by the decree of the Subordinate Judge. The other defendant, Mussamut Khadija, defended the suit; and according to the decisions to which I have already referred, I think that she was entitled to a lien upon her husband''s estate for the amount of any dower which remained due to her.

The predecessor of the Subordinate Judge, who decided this suit, laid down an issue as to what was the amount of the dower of the widows; but the Subordinate Judge, Syud Saudut Hossein, by whom this case was decided, subsequently struck out that issue upon the ground, as I understand that it was not material to determine what was the amount due on account of dower; and that the material question was whether the widows were entitled to a lien for dower. It was admitted by the parties that some amount of dower was due. Assuming, then, that the plaintiff, as the heir of the deceased Moulvi, was entitled to a 12 annas share of the whole of his estate, be was not according to the decisions to which I have referred, entitled to recover possession of that estate from the widows, so long as any portion of the dower remained unsatisfied, nor could he be entitled to mesne profits.

I do not concur with the learned counsel, Mr. Montrion, that, as a matter of law, a lien cannot be maintained for an amount which is not ascertained. A person may have a lien, as well as be entitled to a mortgage for a sum, the amount of which is not ascertained. If a person were to create a lien for a sum of money advanced, the lien would remain good, until the amount should be paid; and the lieu would continue so long as any part remained unpaid, although the parties might dispute as to the precise amount which remained due. So, a widow is entitled to a lien for

whatever dower remains duo to her, although there may be a dispute as to what is the amount actually due, having reference either to the amount originally fixed as dower, or to the amount satisfied by payments. Soma amount being admittedly due on account of dower, the plaintiff''s suit in this case was misconceived; and instead of bringing a suit to turn the widow out of possession, so long as she had a lien upon the estate for her dower, he ought to have brought a suit for an account of what was due to the defendant for dower, add prayed that, upon satisfaction of that amount, he might be put into possession of his share of the inheritance: that is, substantially, what was decided by the Privy Council in the case to which I have referred.

That was a suit instituted by Syud Abdulla, the ancestor of the appellant, in which he claimed as the full brother and heir-at-law of Syud Mustifa, and sought to recover very considerable, real as well as personal, estate belonging to his deceased brother, Syud Mastifa, with mesne profits. The respondent, Muradunnissa, was in possession, and she claimed a lien upon the same, as the widow of the deceased, under a deed of dower, executed by Syud Mustifa, in her favor, to the amount of rupees 61,000.

The Lords of the Judicial Committee, in delivering their judgment, say:--"Lastly, there remains the question of the distribution and administration of the deceased''s estate. No such relief is asked by the plaint. The claim made by the plaintiff is, as sole heir against the defendants, charging them with collusion in keeping him out of possession. He does not claim in the alternative that, if the marriage of the respondent Muradunnissa and the deed of dower are proved, then that he may have his share of the estate. It is possible it might have been competent to the Court below, in their discretion to have entertained such a question, it was a matter of discretion for the Judges of the Sudder Dewanny Adawlut. Independently of this, Muradunnissa was in possession by the consent of the local authorities, a possession very analogous to that of a testatrix here. That fact, however, is not sufficient to decide the point of right, but the plaintiff has not asked for an account. Again, he has burthened the record with a number of unnecessary parties, who ought not to have been there, and that would have created very considerable inconvenience in taking accounts. He has also excluded all the moveable estates and that portion of the immoveable estate, of which he himself obtained possession. We are of opinion, therefore, that the Judges, before whom the case has been heard in India, took the right and convenient course in dismissing his suit, and leaving him to bring another suit to obtain an account: that, no doubt, was the effect of their decision, though not in terms."

It appears to me that, according to the principle of that decision, this suit, which seeks to obtain possession and mesne profits before payment of the dower, ought to be dismissed, and that the plaintiff ought to have sued for an account of the dower due to the widow and to be let into possession upon payment of that

amount.

Having decided in favour of the defendants'' claim of lien for dower, which disposes of the plaintiff''s suit, it is unnecessary for us to enter into the question of heirship, or any of the other questions raised between the plaintiff and the defendant Khadija, or to determine what part, if any, of the property mentioned in the schedule belonged to Khadija in her own right, or formed part of the estate of her late husband. Whether it was her own private property, or formed part of the estate of her husband, is wholly immaterial for the determination of this suit; for whether it is the one or the other, the plaintiff is not entitled to recover possession and mesne profits, BO long as any portion of the dower is due.

It is unnecessary for us, therefore, to enter into the question raised in the cross-appeal or into the questions which have been raised between the plaintiff and the interveners. The latter ought never to have been made parties to this suit. No decision of ours in this suit could be binding upon the widow Khadija, with reference to the question as to whether any portion of the property, mentioned in the plaint, belonged to her husband''s estate, or to the intervenors.

We are of opinion that the decision of the Subordinate Judge, as regards the widow Khadija''s lien on the estate, for her unpaid dower, ought to be affirmed, and the plaintiff''s suit dismissed, as regards Khadija, with costs in the lower Court. With regard to the intervening defendants, they were volunteers; they asked to be made parties to the suit, and the costs they have incurred, have been brought upon them, solely by their own act of petitioning to be made parties to the suit. We think that the suit as against them, ought to be dismissed without costs, and the decree of the Subordinate Judge, awarding costs to them, reversed. The decision of the Subordinate Judge, as to their rights in the property, will then fall to the ground, and cease to have any effect The decree, as to the other widow, will stand; there being no appeal here with regard to it. The appellant will pay the costs of this appeal as regards Khadija, but not those of the other respondents.

(2) Section 73, Act VIII of 1859.--If it appear to the Court, at any hearing of a suit, that all the persona who may be entitled to or who claim some share or interest in the subject-matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit as the case may be. In such case the Court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.