

the plaintiff's right to the property in question, but also for its protection or exemption from sale in execution of the defendant's decree. The latter prayer was, in my opinion, superfluous; for, if the plaintiff succeeded in obtaining a decree declaratory of his right, he could on the strength thereof apply to the Court executing the decree to release the property from attachment and to refuse to proceed to the sale thereof. As, however, he was so ill-advised in framing his suit as to pray for consequential relief which he did not need to obtain by means of the decree passed in the suit, it is impossible to hold that his suit is not one of the nature described under letter *c*, cl. iv., s. 7 of the Court Fees' Act. I confine my remarks to the particular case under reference, and refrain from noticing or commenting on the decisions to which our attention has been drawn. The distinction between suits under letter *c*, cl. iv., s. 7, and suits under cl. iii., art. 17, sch. ii. of the Act is plain; the former are suits for a declaratory decree where consequential relief is prayed; the latter are suits of the like kind where no consequential relief is prayed. There is no scope for argument in the matter.

SPANKIE, J.—I concur.

OLDFIELD, J.—I am of opinion that in this case, looking to the relief sought, there is a claim for consequential relief, and the court-fees should be levied under letter *c*, cl. iv., s. 7 of the Court Fees' Act.

STRAIGHT, J.—Plaintiff rightly estimated the nature of the relief she was seeking in her suit, by paying a court-fee of Rs. 60-12-0 in the first Court. It was not a mere declaration of her right at which she aimed, but she sought consequential relief as well. The defendant-appellant has therefore inadequately stamped his petition of appeal and he will have to make up the deficiency.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v RAM KUAR.

Buying or disposing of a person as a slave—Act XLV of 1860 (Penal Code), s. 370.

R, having obtained possession of D, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her,

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and such person received her with that intent. *Held* that *R* could not be convicted of disposing of *D* as a slave under s. 370 of the Indian Penal Code. *Queen v. Mirza Sikundur Bukhut* (1) remarked upon.

THIS was a case called for by Spankie, J. under s. 294 of Act X of 1872 and subsequently referred by him to the Full Bench. The accused Ram Kuar had been convicted by Mr. W. C. Turner, Sessions Judge of Agra, of disposing of one Deoki as a slave, an offence punishable under s. 370 of the Indian Penal Code. The main facts upon which this conviction was based were as follows:—The accused, on a certain day, in the town of Agra, met Deoki, who was a married girl, aged about eleven years, and living with her uncle, and telling her that she would provide well for her, took her, against her will, to the house of one Udai Ram a *Jât* by caste. There the accused, alleging that Deoki was a *Jât*, whereas she was in fact a *Gararia*, disposed of her to Udai Ram's brother, with a view to marriage, for Rs. 4 and a buffalo. The following extract from the Sessions Judge's judgment contains the grounds upon which he convicted the accused under s. 370 of the Indian Penal Code: "Apparently by this section the traffic in all human beings is prohibited, and when the substance of the transaction is an attempt to give a property in the person and services of a human being, that person is disposed of as a slave within the meaning of this section, whatever force the parties to the transaction may attempt to give it. In the present case, it is clear that Ram Kuar took this young girl, who was at the time without protection, and, for a consideration, disposed of her to a *Jât*, knowing at the time that the girl was not by caste a *Jât* but a *Gararia*. Her conduct brings her within the meaning of this section"

The order referring the case to the Full Bench was as follows:—

SPANKIE, J.—Upon the facts found in this case I have come to the conclusion, as at present advised, that the conviction under s. 370 of the Penal Code ought not to be maintained. It cannot, I think, be said that there was in the transaction any buying or disposing of the girl as a slave. The section was not, in my opinion, intended to apply to such a case as the one before me. But I have

(1) H. C. R., N.-W P., 1871, p. 146.

found a decision of a Bench of this Court, which, there can be no doubt, supports the view taken by the Sessions Judge in this case. The decision to which I refer will be found in the volume of this Court's Reports for 1871, and at p. 146,—*Queen v. Sikundur Bukhut*.

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The learned Judges in that decision remarked that it was "urged that to constitute a person a slave, not only must liberty of action be denied to him, but a right asserted to dispose of his life, his labour, and his property. It is true that a condition of absolute slavery would be so defined, but slavery is a condition which admits of degrees. A person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailor. It appears to us that the appellant asserted a right to restrain the liberty of Musammatt Paigya, and to dispose of her labour, and that she was detained in his house as a slave." In the present case the Sessions Judge seems to have had this judgment before him, and as it was the decision of a Divisional Bench (although at present I cannot agree that s. 370 meets either that or the case now before me), I am unwilling to dispose of the latter, without asking for the opinion of a Full Bench of the Court on the subject. I reserve for the present any expression of my reasons for thinking that s. 370 does not apply to the ordinary circumstances of kidnapping and disposing of young females to persons, either to be their wives or the wives of members of their families, or as mistresses, as the case may be. It is desirable that the case should be placed before the Court with as little delay as possible, as two cases in Criminal Revision are pending, which would be disposed of on my receiving the Full Court's judgment on the point submitted.

The following judgments were delivered by the Full Bench :

STUART, C. J.—The conviction in this case under s. 370, Indian Penal Code, cannot for a moment stand. The offence, if any, appears to have been one of kidnapping or abduction, but there is not a single element of the legal conception of slavery to be found under the facts. The Judge, in coming to his utterly mistaken conclusion

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that Deoki had been treated as a slave within the legal meaning of that status, was probably influenced by what I must call the extraordinary ruling by a Bench of this Court in the case of *Queen v. Mirza Sikundur Bukhut* (1). That was indeed really a much stronger case than the present, and yet it too was obviously a case not of slavery but of kidnapping or abduction. It is exceedingly difficult to understand what is meant by s. 370, Indian Penal Code. That section provides that "whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." This appears to assume the condition of slavery as a possible fact within the cognizance of the law, but such a condition is as much ignored by the law of this country as it is by the law of England. A slave is a creature without any rights or any status whatsoever, who is or may become the property of another as a mere chattel, the owner having absolute power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to any legal authority. Such is the determinate and fixed condition of the slave, and it is not, as ruled in the above case, a condition capable of degrees.

But such a position for any human being under the Government of India was utterly repudiated by an Act passed in 1843, Act V of 1843, entitled, "An Act for declaring and amending the law regarding the condition of slavery within the territories of the East India Company." And the Act, which is a short one, containing only four brief sections, provides as follows:—1. "No public Officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold, any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery." 2. "No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company." 3. "No person who may have acquired property

(1) H. C. B., N.-W. P., 1871, 146.

by his own industry or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave."

4. "Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery." There is by this Act a thorough repudiation by the law of India not only of the condition of slavery as a possible state of things, but of any rights or interests or estate which could be asserted in respect of it, and therefore, as I have said, it is exceedingly difficult to understand what is meant to be intended by s. 370, Indian Penal Code. The actual accomplishment of placing a human being in the condition of a slave could not have been contemplated, inasmuch as the possibility of accomplishing anything unknown to the law cannot be supposed to have been meant or intended; s. 370 therefore can only be understood as directed against attempts to place persons in the position of slaves, or to treat them in a way that is inconsistent with the idea of the person so treated being free as to his property, services, or conduct, in any respect.

Here the girl Deeki appears simply to have been enticed away by the accused Ram Kuar for the purpose of a marriage, which owing to an objection on the score of caste did not take place, and she was sent back to Ram Kuar. Whether in any case the marriage could have been carried out must be more than doubtful, as she herself states she had previously been married to Nangha, a fact which in all probability was not known at the time to Ram Kuar. But, whether that be so or not, it is perfectly clear that on the facts there is not the slightest pretence for holding that any offence whatever under s. 370 was committed.

PEARSON, J.—It is apparent upon the surface of the case that Deeki was sold to Udai Ram's brother and purchased by him not as a slave but for the purpose of becoming his wife. I therefore concur with the learned Judge who made the reference to the Full Bench in the opinion that the conviction of Ram Kuar under

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s. 370, Indian Penal Code, cannot be maintained. But I do not think that the decision of this Court in *Queen v. Mirza Sikundur Bukhut* (1) affords any support to the view taken by the Sessions Judge in this case.

SPANKIE, J.—I am still of the same opinion as I was when I referred the case, that s. 370 of the Penal Code does not meet it.

The Sessions Judge makes the following observations in his judgment: "Apparently by this section (370) the traffic in all human beings is prohibited, and when the substance of the transaction is an attempt to give a property in the person and services of a human being, that person is disposed of as a slave within the meaning of this section, whatever force the parties to the transaction may attempt to give it."

The precedent of this Court (1), to which I refer in submitting the case to the Full Bench, appears to me to support this view. The learned Judges say that a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or jailor. This doubtless is so. But the Judges go further and say: "The offence of which the appellant has been convicted is we are informed one of which instances are not uncommon in this country. Children are purchased from their parents or strangers, and are brought up as domestic servants, having little or no personal liberty conceded to them. These children are practically slaves, and it cannot be too widely known that their condition is such as will not be tolerated by English law, and that persons who detain them in their houses are liable to punishment under the Penal Code."

I have examined the records of Government with a view to ascertain the circumstances under which the section was framed.

In the draft Penal Code published by command in 1837, in the chapter on kidnapping, except in cl. 357, now represented by s. 367, there is no reference to slavery. The report, however, of the

(1) H. C. R., N.W. P., 1871, p. 146.

Commissioners recognizes slavery as existing. They say that they had collected information on the subject from every part of India, and that the documents collected have satisfied them that there is at present no law whatever defining the extent of the power of a master over his slaves, that every thing depends on the disposition of the particular functionary who happens to be in charge of a district, and that functionaries who are in charge of contiguous districts, or who have at different times been in charge of the same district, hold diametrically opposite opinions as to what their official duty requires. The result was that the Law Commissioners recommended to the Governor-General in Council that no act falling under the definition of an offence should be exempted from punishment because it was committed by a master against a slave.

It may be thought, they say, that by framing the law in this manner they do in fact virtually abolish slavery in British India. But their object was to deprive slavery of those evils which are its essence, and to do so would ensure the speedy and natural extinction of the whole system. "The essence of slavery," they observe, "the circumstance which make slavery the worst of all social evils, is not in our opinion this, that the master has a legal right to certain services from the slave, but this, that the master has a legal right to enforce the performance of those services without having recourse to the tribunals."

The Hon'ble Court of Directors in 1838 directed that the Government of India should lose no time in passing an enactment to the effect of the recommendation just referred to. The majority of the Commissioners framed a draft Act, but Mr. Cameron differed from them, and afterwards the Commissioners again differed amongst themselves in submitting another report on the subject in 1841. At last in 1843 Act V of that year was passed which carried out the original recommendation of the Law Commissioners. The first section forbade the public sale by any public officer in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, of any person, or of the right to the compulsory labour or services of any person on the ground that such person is in a state of slavery. S. 2

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declared that no rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company. S. 3 provides that no person shall be deprived of any property whatsoever, however obtained, on the ground that such person or that the person from whom the property may have been derived was a slave. S. 4 enacted that any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

After this in 1846 the Indian Law Commissioners again submitted a report on the Penal Code. In clauses 426 to 433 of their report, the Commissioners refer to kidnapping and sale of children. In cl. 435 they refer to Act V of 1843, and observe that the private sale of a free person for the purpose of being dealt with as a slave is not prohibited by this law. But as, under s. 4 of it, no person so sold could be dealt with as a slave against his will, it amounts to a virtual prohibition which may be effectual as regards adults who can avail themselves of the law, without any further provision. But with respect to children, it should be made penal to sell or purchase a child under any circumstances. I can obtain no clue to what happened after this report. This recommendation in the report of 1846 appears to have borne fruit, for ss. 370 and 371 were prepared.

Looking at the former law, V of 1843, and specially at s. 4, I conclude that, so far as we are concerned in the case referred to, it would be necessary for the prosecution to show that the prisoner Ram Kuar asserted a right to dispose of the girl's liberty, and under pretext of her being a slave sold her as such and to continue such. The case before us does not present any such features. The section, therefore, does not apply.

The observations of the learned Judges in the latter part of the judgment in *Queen v. Mirza Sikundur Bukhut* (1) appear to me to go beyond the section. Ss. 365, 366, 367, 368, 372 and 373 seem to provide for the cases of kidnapping children, whilst s.

(1) H. C. B., N.W. P., 1871, p. 146.

374 declares that any one who unlawfully compels any person to labour against his will shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both. But s. 370 must be read as providing for the specific offence which it includes, *i. e.*, (i) the importation and exportation of a person as a slave; (ii) the disposal of a person as a slave (and here the presumption is that the act is against the will of the person); (iii) the acceptance, reception or detention of any person against his will as a slave, that is, it must be shown that the act done was done against the will of the person, who cannot be accepted, received or detained as a slave. When these conditions are not seen in any case, s. 370 does not appear to me to apply.

OLDFIELD, J.—I apprehend that the sections of the Penal Code with which this reference deals were enacted for the suppression of slavery, not only in its strict and proper sense, *viz.*, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another.

Slavery had the sanction of the Muhammadan and Hindu laws, and a form of slavery was prevalent in this country at the commencement of our rule, and Mr. Justice Spankie, whose written opinion on this reference I have had the advantage of reading, has abundantly shown that the law we are dealing with was enacted to suppress that practice.

To bring the act of the accused in the case before us within the meaning of s. 370, there must be a selling or disposal of the girl as a slave, that is, a selling or disposal whereby one who claims to have a property in the person as a slave transfers that property to another.

But the facts in this case do not show any thing of the kind; no such right of property in the girl appears to have been set up by the accused. The girl appears to have come under the protection of accused when in a state of destitution, and she was given

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over to Udai Ram in order that she might become his brother's wife, the accused receiving a gratification for her trouble. The facts do not, therefore, appear to me to constitute an offence under s. 370.

STRAIGHT, J.—Upon the facts as disclosed in the judgment of the Sessions Judge, I am of opinion that the conviction of Ram Kuar under s. 370 of the Penal Code cannot be sustained. There is no sufficient evidence that the girl Deoki was “sold or disposed of” to the brother of Udai Ram for the purpose of her being dealt with as a slave, or, in other words, that a right of property in and over her should be asserted by her purchaser in employing her in menial and enforced services against her will and by restraining her liberty. On the contrary, the proof appears to be, that the Rs. 4 and the buffalo were given by Udai Ram's brother under the belief that Deoki was a *Jât*, and his admitted object and intention in reference to her was marriage. Moreover, the moment it was discovered she was a *Gararia*, Udai Ram started to take her back to Ram Kuar and was only prevented from doing so by his arrest. Under all the circumstances, I think that the decision of the Sessions Judge should be set aside.

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Before Mr. Justice Spankie and Mr. Justice Straight.

PURAN MAL AND OTHERS (PLAINTIFFS) v. PADMA (DEFENDANT).*

Rent-free grant—Jurisdiction—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 30, 95 (c)—Act XIX of 1873 (N.-W. P. Land Revenue Act), ss. 79, 241 (h)

The plaintiffs in this suit, zamindars of a certain village, sued for the possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village-watchman, and the defendant had ceased to perform those duties, and was holding as a trespasser. The defendant set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor. *Held* that such assignment was not a grant within the meaning of Regulation XIX of 1793, and the plaintiffs' claim was

Second Appeal, No. 1029 of 1879, from a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Agra, dated the 8th June, 1879, affirming a decree of Maulvi Munir-ud-din, Munsif of Jalesar, dated the 26th March, 1879.