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and investing his transferee with, his estate. No doubt the services agreed to be given to the Rajah on his own application were most important and likely to be very beneficial to himself and his property, but the estate has still remained his, and is his, and his alone, and his name alone can be used in all judicial proceedings connected with its administration. As for Major Powlett, he, as Political Agent and Superintendent of the estate under the orders of the Government of India, has simply no *locus standi* whatever, nor could he be allowed to represent the Government of India, in such a suit, even if that Government had itself a better title than it has.

The appeal is allowed and the suit is dismissed with costs in both Courts.

PEARSON, J.—The property in suit is claimed as belonging to the Kota estate, and the claim is based on the proprietary right of the Rajah of Kota. If he be the proprietor of the property the subject of the claim, he should have been the plaintiff in the suit; on the other hand, if his right and interest therein has passed to the Government of India, the Government of India should be the plaintiff. The Political Agent and Superintendent of the Kota Raj does not profess to have any such proprietary right and interest in the property as to entitle him to sue as plaintiff for its recovery. The suit, as brought, must be dismissed, and the appeal decreed with costs.

Appeal allowed.

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January 9.

FULL BENCH.

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

EMPRESS OF INDIA *v.* SRI LAL AND OTHERS.

Act XLV of 1860 (Penal Code), ss. 372, 373—Buying or selling minor for the purpose of prostitution, &c.

Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true. *Held, per* STUART, C. J, that such persons could not be convicted, on these facts, of offences under ss. 372 and 373 of the Indian Penal Code. *Per* OLDFIELD,

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J. and STRAIGHT, J., that, if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purposes of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. *Per* PEARSON, J., and SPANKIE, J., that, such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and therefore such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections.

This was a reference to the Full Bench by Straight, J. The facts out of which the reference arose and the point of law referred are stated in the order of reference.

STRAIGHT, J.—These are appeals against a series of convictions by the Officiating Sessions Judge of Gorakhpur. The appellants were charged under ss. 372 and 373 of the Penal Code. The evidence establishes that they, by falsely representing certain girls of the Baniah, Dome and other castes to be members of Kayasth, Rajput, and Ahir families induced a number of Kayasths, Rajputs, and one Ahir to take these girls to wife and to pay money for them to the appellants in full belief that the representation was true. The question I have to refer for the decision of the Full Bench is whether under such circumstances the convictions on ss. 372, 373, Penal Code, can properly stand

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

The accused persons were not represented.

STUART, C. J.—On the facts as stated to us in this reference and as explained at the hearing, it is quite clear that the convictions under ss. 372 and 373 cannot stand. The offence apparently committed by the accused was cheating. There can be no doubt of the immorality of the purpose and motive on the part of the accused, but I hesitate to say that their conduct was unlawful in any absolute sense. On discovery the girls, who by fraud had succeeded in becoming wives, and who had in the meantime communicated loathsome disease to the unfortunate men who had married them,

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were turned out of their so-called husbands' houses, and it would appear from what was stated at the hearing that their course of life thereafter was that of prostitution, so that what began in fraud to the husbands has ended in the permanent degradation of the wives themselves. Again, the girls appear to have been parties to the fraud committed on their husbands, having been duly instructed beforehand by the accused as to the part they were to play and the deceit they were to practise on the unhappy men, and they acted the part so well that the ceremony of marriage was gone through without any suspicion being entertained that anything was wrong. That this state of things could not be reached by any law, civil or criminal, I hesitate to affirm. The appellants in the present case might have been tried for cheating under s. 415 of the Penal Code, and I am inclined to think that a very strong argument might be maintained in support of the opinion that these girls, wives though they be, were guilty of abetment and conspiracy, within the scope and meaning of s. 107. The convictions, however, under ss. 372 and 373 were altogether mistaken, and should be set aside.

PEARSON, J.—If, as I understand the referring order to mean, the evidence establishes no more than this, that the appellants, "by falsely representing certain girls of the Baniah, Dome and other low castes to be members of Kayasth, Rajput, and Ahir families, induced a number of Kayasths, Rajputs, and one Ahir to take these girls to wife and to pay money for them to the appellants in full belief that the representation was true", then I am clearly of opinion that they cannot be convicted of the offence defined in s. 372, Indian Penal Code. For conviction of that offence it must be proved that the accused intended that the minor should be employed or used for the purpose of prostitution or for some unlawful and immoral purpose, and knew it to be likely that the minor would be so employed or used. Not only are we given to understand that evidence of such intent or knowledge is wanting; but it would seem that under the circumstances such intent or knowledge cannot certainly be presumed. The girls were disposed of for the purpose of being married, and, although the marriages might have been objectionable under Hindu law on the ground

of the inequality in respect of social status of the respective parties to them, it does not appear that they would have been wholly invalid. The offence of which the appellants were apparently guilty was cheating as defined in s. 415, Indian Penal Code.

SPANKIE, J.—I concur in the opinion of Mr. Justice Pearson.

OLDFIELD, J.—If the accused intended *bonâ fide* that the girls should be taken in marriage, although, by reason of difference of caste, no legal marriage might take place under Hindu law (and on this point it is unnecessary to give an opinion), yet the accused will not be guilty of an offence under ss. 372 and 373, Indian Penal Code, for it cannot be said that they acted with intent that the girls should be employed or used for purpose of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that they would be employed or used for such purpose. The reference does not require us to go further in our reply or to say what offence under the Penal Code the accused may have committed.

STRAIGHT, J.—Upon the question I have submitted to the Full Bench in this reference, I am of opinion, that the convictions under ss. 372 and 373 cannot be sustained. The main object and real intent of the accused was to get money and the representations made were merely the means to that end. I do not think it can be said, that the prohibited act was done with the intent, that the minor should be used for an "unlawful and immoral purpose." All the false statements were directed to convincing the proposed purchasers of the girls of their caste qualifications for *marriage*, and the Sessions Judge specifically found that the buyers were deceived. This is clear from the fact, that in each case the ceremony of marriage was gone through with all the accustomed formalities attending such proceedings, and it is equally plain, that the accused, never contemplating that discovery of their frauds would take place, intended, that the girls should live as the wives of their purchasers. It was contended by the Junior Government Pleader, that, as in point of fact no proper or recognizable marriage could take place between persons of these different castes, the accused must be assumed to have intended the

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natural consequences of their acts, namely, that the ultimate position of the girls would be that of mere mistresses. Even if this be so, which I very much doubt, it cannot be said, that that is an "unlawful and immoral purpose." It may be immoral, but it is impossible to say it is unlawful. The mischief aimed at by these sections was traffic in female minors for purposes of "prostitution," that is, in its perfectly well-understood sense, "or for any unlawful and immoral purpose" of a like description. But here a form of marriage, no matter what its precise character was, was gone through, and though the men who took part in it have been punished by being put out of caste for disregarding the rules and regulations of their community, it does not appear to me, that the girls should, for the purposes of the law, be regarded as any the less the wives of those excommunicated persons.

Entertaining the views I do, I am of opinion that the convictions under ss. 372 and 373, Penal Code, must be set aside.

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ruary 11.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

JANKI DAS (DEFENDANT) *v.* BADRI NATH (PLAINTIFF).*

Suit for money charged on Immoveable Property—Jurisdiction—Mortgage—First and second mortgages—Sales in execution of decrees enforcing mortgages—Auction-purchasers.

Held that a suit for money charged on immoveable property in which the money did not exceed Rs. 1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, such property being situate within the local limits of his jurisdiction.

Certain immoveable property was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864 and the other a charge created in 1867. *Held* that the purchaser of such property at the sale in the execution of the decree, which enforced the earlier charge, was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. *Ajoodhya Pershad* v. *Moracha Kooer* (1) distinguished.

* Second Appeal, No. 785 of 1879, from a decree of H. Lushington Esq., Judge of Allahabad, dated the 6th May, 1879, reversing a decree of G. E. Knox, Esq., Subordinate Judge, dated the 24th December, 1872.

(1) 25 W. R., 254.