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the authority of the case cited above I am of opinion that that decision is wrong, and that if the Munsif and the Subordinate Judge believed the evidence of the scribe to be true, they were quite at liberty on that evidence alone to find that the bond had been executed. This case has been decided on the preliminary point that the evidence of the scribe was legally insufficient to prove the bond. I set aside the decree of the lower Court and remand the case to the Court of first instance with instructions that, if the evidence of the scribe be in its opinion credible, that Court is at liberty on that evidence to find the bond proved. Costs of this appeal will follow the result.

Appeal decreed and cause remanded.

REVISIONAL CRIMINAL.

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July 23.

Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Aikman.

QUEEN EMPRESS *v.* BEHARI LAL.*

Act No. I of 1892 *(Local) (N.-W. P. and Oudh Lodging House Act), section* 5, *sub-section* 2—*Lodging house—House of "pragwal" used for accommodation of pilgrims.*

Held, that a "pragwal" who, according to custom, affords accommodation to his clients when they come to Allahabad for religious purposes, is bound, under the North Western Provinces and Oudh Lodging House Act, 1892, to take out a license in respect of such houses as he may use for the accommodation of his clients.

IN this case one Behari Lal, a *pragwal* living in Kydganj, a mohalla of the city of Allahabad, was charged before a Magistrate of the third class of the Allahabad district with keeping without a license three lodging houses in respect of which licenses were necessary. It was found that, besides the house in which he himself lived, which was also used at times for similar purposes, Behari Lal kept two other houses which were used by him to accommodate the pilgrims who came from time to time to Allahabad and there availed themselves of Behari Lal's professional services. The case for the prosecution was that these houses were habitually used for the accommodation

* Criminal Revision No. 401 of 1898.

of pilgrims, and that, although no direct consideration was received for their use from the pilgrims, some indirect consideration was received in the shape of presents, which on their departure the pilgrims customarily made to their priest. For the defence it was contended that the houses were not habitually used as lodging houses, but only on certain occasions when the occurrence of religious festivals brought pilgrims to Allahabad, and it was also argued that the presents given by the pilgrims were the same whether they received any accommodation or not, and that the reciprocal functions of priest and client were hereditary and the client was not at liberty to change his priest, so that no part of the presents made by the clients could be regarded as consideration for the accommodation afforded to them by the priest.

The third class Magistrate convicted Behari Lal under section 5 (2) of the N.-W. P. and Oudh Lodging House Act and fined him Rs. 50. He appealed to the District Magistrate, and the appeal was transferred by order of the High Court to the Sessions Judge. On this appeal the Sessions Judge found both that the houses in question were used more or less at all times throughout the year for the accommodation of pilgrims, and also that some indirect consideration was received by Behari Lal in return for the accommodation so afforded. The Judge accordingly dismissed the appeal.

Behari Lal thereupon applied to the High Court for revision of the order of the Magistrate and of the Sessions Judge.

Mr. *W. Wallach* for the applicant.

The Officiating Government Advocate (Mr. *A. E. Ryves*) for the Crown.

KERSHAW, C. J., and AIKMAN, J.—This is an application for revision of an appellate order of the Sessions Judge of Allahabad confirming a conviction of the applicant under section 5, sub-section 2, of Act No. I of 1892 of the Local Legislature (The North-Western Provinces and Oudh Lodging House Act), and a sentence of fine imposed thereunder. The applicant relied on the contention that the houses in respect of which he had been

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convicted did not, for two reasons, come within the definition of lodging house in section 1, sub-section 3, of the Act above-mentioned. In the first place, it was argued that the houses were not ordinarily used for the purpose of affording temporary accommodation to persons, and, secondly, that, if they were so used, the applicant did not receive any compensation, direct or indirect for such use. The first contention of the applicant is negatived by the finding of fact of the Judge, who says:—"I think there is no doubt that pilgrims are lodged in these houses of the appellant at all times and seasons of the year, and that the houses are used ordinarily as lodging houses." The Court accepts that finding of fact. We find that there was evidence amply sufficient to support it, and we are therefore not justified in interfering where the question is one of fact, and where the fact has been found in a sense hostile to the applicant by the tribunal from which he has appealed. The second point under this sub-section 3 made by the applicant's counsel is that the applicant's houses do not come within the definition in that sub-section, inasmuch as the applicant did not receive any consideration, direct or indirect, for their user. The Magistrate has found that the persons who at various times of the year received temporary accommodation at the houses of the applicant did indirectly pay the applicant for such accommodation. Presents were received by him on the departure of the persons accommodated at his houses. We are of opinion that a portion of the value of those presents is to be ascribed to the accommodation which was given and received. The applicant derived his income from such presents. It was necessary that accommodation of some sort should be provided in order to enable him to keep his clients and so to receive in future such presents as they might give him. Under these circumstances we think that he was indirectly paid for the accommodation which he gave to those clients, and therefore that his houses come within the definition in the sub-section mentioned, and that he was rightly convicted. We therefore dismiss this application.