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v.
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the complainant in the case. He, it appears, alleged that the intention with which the accused entered his house was to commit theft. This was not made out to the satisfaction of the Magistrate. But it was proved to the satisfaction of the Magistrate that the accused did enter the complainant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant, and it was further proved that he did so without the husband's consent. The facts of the case—*Brijbasi v. The Queen-Empress* (1),—cited by the learned Sessions Judge who has made this reference, were different from those of the present case. In my opinion the conviction is not open to objection on the ground of illegality, and I decline to interfere with it. If the accused was released on bail under the orders of the Sessions Judge, he must surrender to undergo the remaining term of the sentence.

APPELLATE CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. UMRAO LAL.*

Act No. XLV of 1860 (*Indian Penal Code*) sections 466, 471—*Forgery—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.*

Held, that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under section 471 of the *Indian Penal Code* for the use as under section 466 for the forgery.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu Sital Prasad Ghose, for the appellant.

The Government Pleader, (*Maulvi Ghulam Mujtaba*), for the Crown.

AIKMAN, J.—In this, case one Umrao Lal, a village patwari, has been convicted by the learned Sessions Judge of Shahjahanpur of having forged a register kept by him in his capacity of patwari. He has also been convicted under section 471, *Indian Penal Code*, of having used as genuine this forged document. It appears that a zamindar served a tenant with notice of ejection under section

* Criminal Appeal No. 957 of 1900.

(1) (1896) I. L. R., 19 All., 74.

36 of the North-Western Provinces Rent Act. The tenant filed an application before an Assistant Collector contesting his liability to be ejected. The main issue in the case was, whether or not the tenant had been in occupation of the land continuously for a period of twelve years so as to acquire a right of occupancy in it. The appellant, Umrao Lal, was called as a witness by the tenant to give evidence supporting the defence set up by him. In his evidence he stated "his tenure is twelve years." It appears that when he gave this evidence he had before him the village field book for 1306 F. An inspection of the entry in that book shows beyond any doubt that what was originally written was that the period of the tenant's cultivation was ten years, and that this entry has subsequently been tampered with so as to make it appear that the term of the tenant's cultivation was twelve years. The learned Judge and one of the two assessors concurred in finding it proved that the patwari, Umrao Lal, had himself tampered with the register and made the alteration in the tenant's favour. After going through the record and listening to all that can be urged by the learned vakil who appears in support of the appeal, I see no reason to differ from this finding. The learned Judge also found him guilty of using this forged document as genuine, and convicted him under section 471, Indian Penal Code. Section 471 provides that whoever fraudulently or dishonestly uses any document as genuine, knowing or having reason to believe it to be forged, shall be punished in the same manner as if he had forged such document. The concluding words of this section lead me to believe that it is directed against some person other than a person proved to be the actual forger. The section is useful as an alternative charge, when it is not certain whether the accused person is himself the forger of a document or has merely used it as genuine. But I cannot recall a case in which the forger has been punished both for forging a document and for using it as genuine. The learned Judge has convicted the appellant under both sections, and has imposed an aggregate punishment of five years' rigorous imprisonment. When an accused person is convicted of two different offences, separate punishment for each offence ought to be awarded. If necessary, the punishments may be made to run

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concurrently. For the reasons set forth above I am of opinion that the conviction under section 471 should not stand. I assume that the punishment for each offence was $2\frac{1}{2}$ years' imprisonment. I set aside the conviction under section 471. I sustain the conviction under section 466, and reduce the term of imprisonment to two and half years.

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November 15.

APPELLATE CIVIL.

Before Mr. Justice Knox and Mr. Justice Aikman.

BECHA (PLAINTIFF) v. MOTHINA AND OTHERS (DEFENDANTS).*

Hindu law—Hindu widow—Maintenance—Ancestral property not alienable in defeasance of widow's right of maintenance.

The holder of ancestral property cannot, where there exists a widow having a right to be maintained out of that property, alienate such property so as to defeat the widow's right to maintenance.

Musammat Lalti Kuar v. Ganga Bishan (1), Jamma v. Machul Sahu (2), and Devi Persad v. Gunwanti Koer (3), followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit Madan Mohan Malaviya (for whom Munshi Gokal Prasad), for the appellant.

Munshi Gobind Prasad and Munshi Jang Bahadur Lal, for the respondents.

KNOX and AIKMAN, JJ.—In this second appeal the appellant, Musammat Becha, is the widow of one Sheonandan. Sheonandan was the son of Debi Dat, and died in his father's lifetime. Debi Dat died some five years before the present suit out of which this appeal arises was brought. The respondents are Musammat Mothina, widow of Debi Dat, Baldeo Sahai and Dinbandhu, minor sons of Jagannath. Debi Dat made a will, under which he bequeathed all his property, including some *birt jajmani*, to the sons of his daughters. The plaintiff instituted the present suit, asking for maintenance at the rate of Rs. 6 per

* Second Appeal No. 363 of 1898 from a decree of Kunwar Mohan Lal, Subordinate Judge of Allahabad, dated the 30th March 1898, reversing a decree of Babu Ram Chandar Chaudhri, Munsif of Allahabad, dated the 1st December 1897.

(1) N.-W. P., H. C. Rep., 1875, p. 261. (2) (1879) I. L. R., 2 All., 315.
(3) (1895) I. L. R., 22 Calc., 410.