1907

BETI JEO v. SHAM BIHARI LAL.

not apply under section 108 because the right given under section 108 is a right personal to the defendant and does not pass to his representative. This decision was considered by the Calcutta High Court in the case of *Ganoda Prasad Roy* v. *Shib Narain Mukerjee* (1). The Court would naturally lean toward giving as wide a construction as possible to section 108 so as to give the benefit conferred by that section on the defendant to his representative to contest the decree passed *ex parte* against the deceased. The case differs from the case of *Janki Prasad* v. *Sukhrani*, because in the present case the application was made during the life-time of the deceased defendant to set aside the decree. She died before any order could be made and the decree-holders gave notice to the present appellant and, in that sense, themselves brought her on to the record. Under these circumstances it is unnecessary to say anything more upon the authority cited in support of the respondent's proposition than that it does not apply to the present case. We allow the appeal, set aside the order of the Court below, and send the case back to the Court below for proceeding according to law. Costs will abide the event.

REVISIONAL CRIMINAL.

1907
May 27.

Before Mr. Justice Aikman and Mr. Justice Griffin.

EMPEROR *v.* PARSIDDHAN SINGH AND OTHERS.*

Act No. XLV of 1860 *(Indian Penal Code), section* 225—*Criminal Procedure Code, sections* 59 *and* 60—*Rescue from lawful custody—Definition.*

A private person lawfully arrested a thief in the act of committing theft and made him over to a village chaukidar to be taken to the nearest police station. On the way to the police station three persons seized the chaukidar, and the thief made his escape. *Held* that the rescuers were rightly convicted under section 225 of the Indian Penal Code. The arrest of the thief having been in the first instance lawful, the requirements of section 89 of the Code of Criminal Procedure were sufficiently complied with by the person arresting sending him to the police station in the custody of the chaukidar. *Queen-Empress* v. *Potadu* (2) followed. *King-Emperor* v. *Johri* (3) referred to.

THE facts out of which this case arose were as follows: One Mahabir caught a man called Dukhi in the act of stealing his jack fruit. Mahabir arrested Dukhi and made him over to the village

* Criminal Revision No. 188 of 1907.

(1) (1901) I. L. R., 29 Calc., 33. (2) (1888), I. L. R., 11 Mad., 480.
(3) (1901) I. L. R., 23 All., 260.

1907

EMPEROR v. PARSIDDHAN SINGH.

chaukidar to be taken to the police station. After the chaukidar and his captive had got a short distance on their way, Parsiddhan Singh and two other men followed them up from the village, seized hold of the chaukidar and made him release Dukhi, who ran off. The rescuers were charged before a Magistrate of the first class with the offence provided for by section 225 of the Indian Penal Code, were convicted, and were sentenced to two months' rigorous imprisonment each. From these convictions and sentences they appealed to the Sessions Judge, who dismissed the appeals. An application was then made to the High Court in revision, where it was contended that the custody of the chaukidar was not lawful, it being the duty of a private person making an arrest in accordance with section 59 of the Code of Criminal Procedure to "take" the person arrested to the police station. The chaukidar was not himself authorized to make the arrest, not having seen the person arrested committing any offence. The applicants were therefore not guilty of effecting any rescue from a lawful custody.

Mr. *M. L. Agarwala*, for the appellants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

AIKMAN and GRIFFIN, JJ.—This is an application for the revision of a judgment of a Magistrate of the first class convicting the three applicants of an offence punishable under section 225 of the Indian Penal Code and sentencing them to two months' rigorous imprisonment each. The convictions and sentences were affirmed on appeal by the learned Sessions Judge. The following are the facts of the case. One Mahabir caught a man called Dukhi in the act of stealing his jack fruit. Mahabir arrested him and made him over to the village chaukidar for conveyance to the police station. When the chaukidar and Dukhi had gone a short distance, the accused, according to the evidence, followed them up from the village, seized hold of the chaukidar and made him release Dukhi, who ran off. The case for the applicants has been ably argued by the learned counsel who appears on their behalf. After hearing him and the Assistant Government Advocate in support of the conviction we are of opinion that no sufficient ground has been made out for

interference in revision. The powers of village chaukidars as to arrest are regulated by the provisions of Act No. XVI of 1873. It is clear from section 8 of that Act that in the present case the chaukidar himself had no power to make an arrest as he had not found Dukhi in the act of committing any of the offences specified in that section. But it is equally clear from the provisions of section 59 of the Code of Criminal Procedure that Mahabir had power to make the arrest, inasmuch as Dukhi was in his view committing a non-bailable and cognizable offence. Section 59 directs that when a private person in the exercise of the right conferred by that section arrests any one "he shall without unnecessary delay make over the person so arrested to a police officer or in the absence of a police officer take such person to the nearest police station." The learned counsel points out the difference in the language of the section as compared with that used in section 60. In the latter section it is provided that a police officer making an arrest under the powers conferred on him by law "shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of the police station." It is ingeniously argued that as in section 60 we find the words "take or send" and in section 59 the word "take," the inference is that a private person making an arrest must himself take the person to the nearest police station if there is no police officer present to whom he can make over the person arrested. We are, however, unable to hold that it was the intention of the Legislature to impose such an onerous duty on private persons, a duty which in many instances it would be impossible for them to discharge. It may be that the Legislature used the expression "take or send" in section 60 as it might be supposed that in the case of a police officer it would be his duty when he makes an arrest himself to convey the person arrested before a Magistrate, and in order to provide for the inconvenience which might arise from this gave special power to police officers to delegate the duty to another; but we do not think that in the case of an arrest by a private person there would, *primâ facie*, be any inference that he himself was to act as a police officer and convey the person he had arrested to

1907

EMPEROR v. PARSIDDHAN SINGH.

the nearest police station. The question before us was considered in the case *Queen-Empress* v. *Potadu* (1). In that case the learned Judges made the following observation in regard to the duties imposed on a private person under section 59 of the Code of Criminal Procedure:—"The direction that he shall make over the person arrested to a police officer without unreasonable delay is sufficiently complied with by his being forwarded in the custody of a servant or of the village servant as in this case. The intention is to prevent arrest by a private person on mere suspicion or information and not to impose on him the obligation of taking the party arrested in person to a police station. The original custody continued and did not terminate." In the case *King-Emperor* v. *Johri* (2), Blair, J., made the following remark:—"The question raised by the Government appeal as to whether a qualified person having made an arrest, and having then handed over the person arrested to the custody of an agent, such custody continues to be what it was originally, a lawful custody, is one which I should be disposed to answer in the affirmative in accordance with the ruling in *Queen-Empress* v. *Potadu* if it were necessary to do so." In the same case one of us remarked as follows:—"Had the arrest by Matabhik been lawful, I should have had little difficulty in holding, in accordance with the Madras High Court (see the case cited by my learned colleague) that the escape from the chaukidar's custody was an offence under section 224. But it is unnecessary to decide this point." These observations, it is true, were *obiter*, but we see no sufficient ground to dissent from them and from the law as laid down in the Madras case. We hold then that Mahabir sufficiently complied with the law when he made over Dukhi to the village chaukidar to be taken to the police station; that the village chaukidar was his agent for discharging the duty imposed on him by law, and that therefore Dukhi was at the time when he was rescued "lawfully detained" within the meaning of section 225 of the Indian Penal Code. The result is that we see no sufficient ground for disturbing the convictions. The applicants have been released on bail. We have examined the record. We note that the theft for which Dukhi was arrested was one of

(1) (1888) I. L. R., 11 Mad., 480. (2) (1901) I. L. R., 23 All., 266.

1907

EMPEROR v. PARSIDHAN SINGH.

a petty nature, and that in affecting his rescue from the chaukidar the applicants did not use violence, but were only guilty of a technical assault. The applicants have been in jail for upwards of six weeks, and this we think a sufficient punishment. Therefore, whilst affirming the convictions, we reduce the terms of imprisonment imposed on the accused to the terms already undergone. The result is that the bail upon which the applicants have been enlarged is discharged and they need not surrender.

APPELLATE CIVIL.

1907
May 27.

Before Mr. Justice Aikman and Mr. Justice Griffin.

RAM LAL (PLAINTIFF) v. GHULAM HUSAIN AND ANOTHER (DEFENDANTS). *

Act No XV of 1877 *(Indian Limitation Act), schedule II, articles* 48, 90, 115, 120—*Limitation—Suit to recover money given to defendant to be delivered to a third person.*

A. gave Rs. 300 to B. in order that it might be delivered to C., who had, a few days previously, executed a mortgage in favour of A. B. also executed a bond guaranteeing the repayment of the loan by C. On suit by A. against B. and C., which was decided on the 15th of January 1901, it was discovered that B. had never paid the money to C. On the 1st of December 1904 A. sued B. to recover the Rs. 300 paid to him as above described. *Held* that the rule of limitation applicable was that provided for by article 48, if not by article 90 or 115 of the Indian Limitation Act, 1877, and the suit was time-barred. *Rámeshar Chaubey* v. *Mata Bhikh*, (1) referred to.

THE facts out of which this appeal arose are as follows :—

On the 12th of April 1894 the plaintiff Ram Lal made over to the defendant Ghulam Husain a sum of Rs. 300 to be paid over to one Narotam. The plaintiff took from Ghulam Husain a stamped receipt. The money was to be lent to Narotam on the security of a mortgage which Narotam had executed in plaintiff's favour five days previously. Ghulam Husain also executed in favour of the plaintiff a bond guaranteeing repayment by Narotam of this loan of Rs. 300. On the 23rd of February 1900 the plaintiff sued both Narotam and Ghulam Husain to recover this

*Second Appeal No. 664 of 1905, from a decree of L. H. Turner, Esq., District Judge of Shahjahanpur, dated the 25th of April 1905, confirming a decree of Babu Nihal Chandar, Subordinate Judge of Shahjahanpur, dated the 5th of January 1905.

(1) (1883) I. L. R., 5 All., 341.