

the Court of first instance with directions to find, after taking evidence, whether the rate for the period of the non-occupation of the house was paid by or on behalf of the applicant, and I order accordingly. When the finding has been certified to this Court the case will be put up for hearing.

Before, however, a return could be made to this remand the applicant died. The Court accordingly passed the following order:—

BANERJI, J.—Sumer Chand, the applicant in this case, died before a return could be made to the order of this Court dated the 21st of December 1906. The application for revision therefore abates. It will be so recorded.

1907

 EMPEROR
 v.
 SUMER
 CHAND.

Before Mr. Justice Richards.

EMPEROR v. DEBI.*

1907

 March 11.

Act No. XLV of 1860 (Indian Penal Code), section 223—Criminal Procedure Code, section 51—Escape from lawful custody—Chaukidar.

The police of an adjoining Native State arrested in British territory one Paran Singh suspected of having committed an offence in the Native State, and made him over to one Debi, a chaukidar, from whose custody he escaped. *Held* that neither the original arrest nor the subsequent custody by the chaukidar were lawful, and therefore that the chaukidar could not properly be convicted under section 223 of the Indian Penal Code. *Empress of India v. Kallu* (1), *Kalai v. Kalu Chaukidar* (2) and *King-Emperor v. Johri* (3) referred to.

ONE Paran Singh, a subject of a Native State bordering on British territory, was "wanted" by the police of his own State. They came into British territory in search of him and having arrested him there made him over to the custody of one Debi, a chaukidar. From this custody Paran Singh managed to escape. The chaukidar was tried for an offence under section 223 of the Indian Penal Code, convicted by the Joint Magistrate of Hamirpur and sentenced to three months' rigorous imprisonment. The District Magistrate of Hamirpur, being of opinion that the custody from which Paran Singh escaped was not a legal custody, referred the case to the High Court under section 438 of the Code of Criminal Procedure recommending the acquittal of Debi.

* Criminal Reference No. 82 of 1907.

(1) (1880) I. L. R., 3 All., 60. (2) (1900) I. L. R., 27 Cal., 366.

(3) (1901) I. L. R., 23 All., 286.

1907

EMPEROR

v.
DEBI.

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

RICHARDS, J.—The facts out of which this reference arises are as follows:—The native police of Alipur, a Native State, suspecting one Paran Singh of theft, searched his house in British India, arrested him in British India, and handed him over to the custody of one Debi, chaukidar of Gedo, a place situated in British India. Debi permitted Paran Singh to escape. He was thereupon charged under section 223 of the Indian Penal Code, that being a public servant he was bound as such public servant to keep Paran Singh in confinement, Paran Singh being a person charged with, or convicted of, an offence, or lawfully committed to custody. Now Paran Singh had neither been charged with, nor convicted of any offence. The question is—was he lawfully committed to custody? He had been arrested by the Native State Police in British territory, and it is quite clear that they had no right to arrest him there. The Magistrate in his explanation says that the chaukidar Debi was a police officer, and under section 54, cl. (7), he was entitled to arrest Paran Singh without a warrant. In the case of *Empress of India v. Kallu* (1) the contrary was held. In *Kalai v. Kalu Chowkidar* (2) the Court, following the case I have just mentioned, held that where a person had committed a theft and had been made over to the custody of a village chaukidar, the accused could not be convicted under section 225 of the Indian Penal Code, for rescuing the alleged thief from lawful custody. The Court held that the chaukidar was not “lawfully detaining” the alleged thief. The same view was taken by this Court in the case of *King-Emperor v. Johri* (3). I think the conviction ought to be set aside as suggested by the District Magistrate. I accordingly set aside the order of the Magistrate dated 20th December 1906, acquit Debi of the offence with which he was charged, and direct his immediate release. His bail bond will be vacated.

(1) (1880) I. L. R., 3 All., 60. (2) 1900) I. L. R., 27 Cal., 366.

(3) (1901) I. L. R., 28 All., 266.