

whether the Hindu law on the subject has been rightly apprehended. So far as I know no text has yet been found which prohibits a demand for partition on the part of a minor, and it is upon this that the law at present proceeds. At the same time the idea of a minor in a Hindu joint family asserting a right to partition as against his father is something so strange that, but for the Courts having held as they have done, I should have ventured to question the decision.

Appeal decreed and cause remanded.

1907

BHOLA
NATH
v.
GHASI RAM.

REVISIONAL CRIMINAL.

1907

March 14.

Before Mr. Justice Banerji.

EMPEROR v. SUMER CHAND.*

Act (Local) No. 1 of 1891 (N.-W. P. and Oudh Water Works Act), sections 34, 40 and 41— Construction of Statutes—Omission to give notice of re-occupation of house—Water rate paid during period of non-occupation.

Held that the provisions of section 41 of the North-Western Provinces and Oudh Water Works Act, 1891, would not apply to the case of a person who had in fact regularly paid the water rate due in respect of the house during the period of its non-occupation.

SUMER CHAND was convicted by a Bench of Magistrates of an offence under section 41 (3) of the North-Western Provinces and Oudh Water Works Act, 1891, in that he had omitted to give notice to the Municipal Board of the re-occupation of a house belonging to him which had been vacant, and was fined two rupees. Sumer Chand admitted not having given notice, but pleaded that in fact the water rate had been paid for the whole time that the house was unoccupied. An appeal from this conviction to the District Magistrate was dismissed, and Sumer Chand then applied to the High Court in revision, urging that as he had in fact paid all that was due for water rate in respect of the house in question he ought not to have been convicted.

Mr. C. Ross. Alston, for the applicant.

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

* Criminal Revision No. 633 of 1906.

1907

EMPEROR

v.
SUMER
CHAND.

BANERJI, J.—This is an application for the revision of an order of a Bench of Magistrates convicting the applicant under section 41, sub-section (3) of the Water Works Act, No. I of 1891, and sentencing him to a fine. The application has been made on the ground that the order is not warranted by law.

Section 41, sub-section (1) of the Act provides, among other things, that “when any house which has been vacant is reoccupied, the owner shall, within fifteen days give notice thereof in writing to the Municipal Board. And by sub-section (3) any person failing to give the notice is punishable with fine. The applicant has been convicted of having omitted to give notice of the reoccupation of his house as required by the section. It was alleged on his behalf that he had paid the rates for the period during which the house remained unoccupied, and it is contended that the section does not apply to such a person.

Having regard to the scope and object of Chapter VII of the Act, this contention is, in my opinion, well founded. Section 40 lays down the mode in which arrears of water rates are to be recovered. Section 41, sub-section (1), requires that notice should be given of the erection of a new house or the rebuilding or enlargement of a house or of the reoccupation of a vacant house, and sub-section (3) lays down the penalty for omission to give such notice. The object of the section is clearly to ensure payment of water rate and to provide against evasion of payment. Section 41 should, I think, be read with section 34, under which a house which has remained unoccupied for three consecutive months is exempt from liability to payment. It is in respect of such a house that section 41 requires that notice should be given of reoccupation so that the rate payable in respect of it may be realized. Where the rate has been paid and there has been no evasion of payment, the penalty imposed by the section cannot be held to have been incurred. The language of the section is no doubt somewhat wide, but in my judgment the section should be reasonably construed, and so construing it I am unable to hold that the conviction of the applicant is legal, if, as he alleges, he paid the rate and there was no evasion of payment. As the Court which convicted the applicant did not determine whether his allegation as to payment was true, I must send back the case to

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.