

1912

JAMBU  
PRAGAD  
v.  
MUHAMMAD  
AFTAB ALI  
KHAN.

We, therefore, dismiss the appeal in so far as the suit on the mortgage-deed of the 2nd July, 1882, is concerned. We allow the appeal in so far as the suit on the mortgage-deed of the 25th October, 1892, is concerned. The respondents will receive their proportionate costs in both courts in so far as they have been successful. The costs of the appeal in so far as the suit on the second mortgage is concerned will be costs in the cause. We remand the case for decision on the merits in respect of the mortgage-deed of the 25th October, 1892.

*Decree reversed.—Cause remanded.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Sir George Knox.*

EMPEROR v. JASAUJI.\*

*Act No. XLV of 1860, (Indian Penal Code), section 366—Kidnapping—  
Taking out of custody.*

Where two girls under the age of 16 years ran away from their houses and remained for one or two days in the house of a woman who belonged to the caste of *Naiks* in Kumaun and no report was made to the padhan or the patwari; *held* that the woman in whose house the girls stayed was properly convicted of an offence under section 366 of the Penal Code, *Queen v. Gunder Singh*, (1) dissented from.

Two girls, inhabitants of Kumaun, both of them under the age of sixteen years, ran away from their homes and were discovered some distance away in the house of one Musammat Jasauli, a Naik, where they had been for one or two days. Jasauli had made no report of their arrival to the padhan or the patwari. On these facts Jasauli was prosecuted and convicted under section 366 of Indian Penal Code. Against her conviction and sentence Jasauli applied in revision to the High Court.

Mr. M. L. Agarwala, for the accused.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

KNOX, J.—Musammat Jasauli has been convicted of an offence under section 366, Indian Penal Code, and sentenced to five years' rigorous imprisonment. She has sent in a petition of appeal from jail and has been represented in this Court by learned counsel.

\* Criminal Appeal No. 878 of 1911 from an order of D. Calnan, Sessions Judge of Kumaun, dated the 20th of November, 1911.

(1) (1865) 5 W. R., Cr. R., 6.

1912  
February 14.

It is contended on her behalf that nothing more is established against her beyond this—that the two girls, Dhanauli and Gidauli, both of them under sixteen years of age, were wandering about and found their way to the village where Musammat Jasauli lives—Both girls admit that they had run away from their houses—and that they remained nearly one or two days in Musammat Jasauli's house; and that these facts are not enough to bring the Musammat within the four corners of section 366 and do not justify the sentence passed; at the outside the offence is merely a technical offence. I have considered all these points, also the evidence on the record and I consider that the view taken by the learned Sessions Judge is justified by the evidence on the record. I have been referred to the case of *Queen v. Gunder Singh* (1). With every respect to the learned Judges who decided that case, I find myself unable to agree with the view they took; there is the further element in this case that Musammat Jasauli belongs to the well-known caste of Naiks in Kumaun. I cannot think that she took these two girls out of charity. She made no report to the padhan or the patwari. I dismiss the appeal.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*  
**BELA RANI AND ANOTHER (PLAINTIFFS) v. MAHABIR SINGH AND OTHERS (DEFENDANTS).\***

*Act No. 1 of 1872 (Indian Evidence Act), sections 11 and 32—Evidence—Admissibility—Statements of deceased persons.*

*Held* that if the terms of a deposition made by a person since deceased do not fall within the provisions of section 32 of the Indian Evidence Act, 1872, the provisions of section 11 of the Act will not avail to make such deposition evidence.

THIS was a suit for possession of immovable property. One Beni Ram, who died in 1866, owned the property in dispute. He was succeeded by his wife, Musammat Mathuri, who died in 1878, and was succeeded by her daughter, Musammat Dasodri. After her death the plaintiffs, the transferees of the rights of the reversioners, brought this suit for possession of the property as against the defendants who were the transferees (or their

\* First Appeal No. 388 of 1910 from a decree of Achal Behari, Subordinate Judge of Banda, dated the 17th of June, 1910.

(1) (1865) 5 W. R., Cr. R., 6.

1912

EMPEROR  
 v.  
 JASAUJI.

1912  
 February 15.