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RAJA DEVI
v.
UMED SINGH.

property. In *Rani Anund Koer v. Court of Wards* (1) their Lordships of the Privy Council said:—

“If the nearest reversionary heir refuses without sufficient cause to institute proceedings or if he has precluded himself by his own act or conduct from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumptive reversioners would be entitled to sue.”

These remarks clearly cover the present case where the nearest reversionary heir was a female who supports the alienation in question, and the nearest reversionary heir presumptively entitled to the full ownership of the property was the person in whose favour the transfer complained of was made. In my opinion the courts below were right in holding that the respondent, Umed Singh, was competent to maintain this suit. It has not been suggested that they did not exercise a wise discretion in making a declaration in his favour. I would observe in conclusion that no question of acceleration of estates arises here, for Kan Singh, the donee, was not the next reversioner. I would dismiss the appeal with costs.

KARAMAT HUSAIN, J.—I agree with my learned colleague in the order proposed by him.

BY THE COURT.—Order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

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January, 10.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. BANSI AND OTHERS.*

Act No. XLV of 1860 (*Indian Penal Code*), section 426—Act No. VIII of 1873 (*Northern India Canal and Drainage Act*), sections 7, 70—Cutting walls of canal—Mischief—Penal provisions of the Canal Act not exclusive of the *Indian Penal Code*.

Held that section 70 of the Northern India Canal and Drainage Act, 1873, does not bar the prosecution of an accused person under any other law, for any offence punishable under the Canal Act: held also that it is an act of wilful mischief punishable under the *Indian Penal Code* for any person to make a breach in the wall of a canal.

* Criminal Revision No. 634 of 1911, from an order of E. C. Allen, Sessions Judge of Mainpuri, dated the 28th of October, 1911.

(4) (1880) L. R., 8 I. A., 14; I. L. R., 6 Cal., 764.

IN this case the applicants were convicted of having cut a canal bank for the purpose of irrigating their fields. They were charged under section 430 of the Indian Penal Code and sentenced to one year's imprisonment by the Magistrate which was reduced by the Sessions Judge to three months. The applicants applied to the High Court in revision.

Mr. C. Dillon, for the applicants :—

There is no evidence of a diminution in the supply of water. The case comes properly under section 70 of the Canals Act, (VIII of 1873), and not under section 430 of the Indian Penal Code. It is not proved what class of canal was cut. It was a time of general scarcity. The offence is very trivial. He cited *Emperor v. Tajuddin* (1).

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

There is no necessity to prove diminution of water supply ; the mere cutting of the embankment is an offence by itself.

TUDBALL, J.—The applicants have been convicted by the Magistrate of an offence under section 430 of the Indian Penal Code. They were sentenced to one year's rigorous imprisonment each. On appeal the Sessions Judge reduced the sentence to three months' rigorous imprisonment. In revision it is urged on their behalf that the convictions should be really under section 70 of Act VIII of 1873, in the absence of evidence to show that any diminution of the supply of water for agricultural purposes was caused or likely to be caused by the act done by the applicants. The object of this application is really to secure a reduction of sentence. I have examined the record, and there is nothing in the evidence to show of what class the canal was, the bank of which was cut ; that is, whether it was the bank of a main canal or of a distributary. It is impossible in the absence of evidence on the point to hold that the act done was one which caused or was likely to cause a diminution of the supply of water for agricultural purposes. It appears that the applicants wanted water for the purpose of sowing their field. As they were unable to obtain it in a lawful manner, they proceeded to steal it. As the record stands, it is impossible to uphold the conviction under

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section 430 of the Indian Penal Code. In any case mischief was committed. It is an act of wilful mischief for any person to make a breach in the wall of a canal. It is an act which causes such a change in property as destroys or diminishes its value or utility or affects it injuriously. There is nothing on the record to show the extent of damage done. The conviction must, therefore, be held under section 426 of the Penal Code. It is true that the act is also covered by section 70 of the Canal and Drainage Act. But the offence committed is far from trivial. Section 7 shows clearly that section 70 does not bar the prosecution under any other law of any offence punishable under the Canal Act. The maximum sentence under section 426 is three months' rigorous imprisonment. The sentence upheld by the lower appellate court is, therefore, not in excess of the maximum allowed by law. The offence is a serious one and the act done might have resulted in very great loss, not only to the accused but to other persons as well. In the circumstances of the case I see no object in interfering with the sentence as maintained by the lower court. I alter the conviction to one under section 426 of the Indian Penal Code and uphold the sentence. The applicants, if on bail, will surrender.

Conviction altered.