

1913

KUNDAN
LAL
v.
SHANKAR
LAL.

in order to entitle him to succeed in this suit. I concur in the proposed order.

By THE COURT.—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

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September, 17.

APPELLATE CRIMINAL.

Before Mr. Justice Sir George Knox and Mr. Justice Ryves.

EMPEROR v. MAN SINGH AND OTHERS.*

Criminal Procedure Code, section 284—Assessors—Trial with only one duly appointed assessor—Trial illegal.

Of two assessors assisting the Sessions Judge in the trial of a sessions case, one only had been duly summoned to act as an assessor in that case. The other was a gentleman of some position who had formerly been on the list of assessors but had been exempted on the recommendation of the District Magistrate. *Held* that in these circumstances there was no lawful trial before a lawfully constituted tribunal, and that a new trial must be ordered. *Queen-Empress v. Badri* (1) followed.

THIS was an appeal against a conviction and sentence had and passed at a sessions trial. At the hearing a preliminary objection was taken that the tribunal by which the appellant had been tried was not lawfully constituted, inasmuch as there was only one properly appointed assessor. The other assessor was in fact a gentleman who was at one time on the list of assessors, but whose name had been removed therefrom on the recommendation of the District Magistrate upon the ground that he was a large zamindar and his position in life and status were much better than those of persons of the class from which assessors were ordinarily selected.

Babu *Girdhari Lal Agarwala*, for the appellants.

The officiating Government Advocate (*Mr. W. Wallach*), for the Crown.

KNOX and RYVES, JJ.—On this appeal being called on for hearing *Mr. Girdhari Lal Agarwala*, who appeared for the appellant, called our attention to the fact that out of the two assessors who

* Criminal Appeal No. 642 of 1913 from an order of E. C. Allen, Sessions Judge of Mainpuri, dated the 16th of August, 1913.

(1) Weekly Notes, 1894, p. 207.

sat with the learned Judge, one assessor, namely, Thakur Dirgbijoy Singh, had not been summoned as an assessor for the purposes of this trial. We ordered an inquiry to be made, and we find that Thakur Dirgbijoy Singh was up till 1910 on the list of assessors, but since that date he had been removed from the list. As a reason for his removal, the learned Sessions Judge gives that the Magistrate recommended this on the ground that he was a large zamindar and his position in life and status were much better than those of persons of the class from which assessors are ordinarily selected. If this be the case, we are surprised to find that this recommendation should have been made and should have met with approval. It is surely not too much to ask from Indian gentlemen of position and rank that they should assist in the administration of justice, as the sitting as an assessor can, if the list be properly prepared, occur very rarely, and probably only once in the course of three or four years. However this may be, there is no doubt that the trial of these accused persons, when one of the assessors only was an assessor summoned for the particular session is illegal, as has been pointed out in *Queen-Empress v. Badri* (1). In such a case there has been no lawful trial before a lawfully constituted tribunal. We set aside the trial, conviction and sentences and direct that the accused be retried by the court of session according to law.

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 EMPEROR
 v.
 MAN SINGH.

Appeal allowed.

APPELLATE CIVIL.

 1913
 July 29.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.
 NARAIN DAS (DEFENDANT) v. HAR DAYAL (PLAINTIFF) AND RUP
 NARAIN (DEFENDANT.)*

Hindu law—Joint Hindu family—Mortgage—Guardian ad litem—Suit on mortgage executed by father prior to birth of son—Father appointed son's guardian ad litem.

Held that, inasmuch as an after-born son cannot in a suit on a mortgage made by his father set up the defence of the immoral nature of the debt on account of which the mortgage was executed, it cannot be said that the

* First Appeal No. 111 of 1913 from an order of Kunwar Sen, Additional Judge of Moradabad, dated the 8th of April, 1913.