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endorse with his own hand a statement that it (i.e. a document proved or admitted in evidence) was proved against or admitted by the person against whom it was used. That course was in many instances not followed at the hearing of these two cases; with the result that embarrassing and perplexing controversies arose on the hearing of these appeals as to whether or not certain documents, prints of which were bound up in the record, had been given in evidence. There is no possible excuse for the neglect, in this manner, of the duty imposed by the Statutes, since, so long ago as the 3rd March, 1884, a circular was addressed by the then Registrar of the Privy Council to the Registrar of the High Court of Calcutta calling attention to the requirements of the then existing law and the necessity of observing them. A copy of this circular was sent not only to the High Courts of Madras, Bombay and Allahabad, but, in addition, to the Judicial Commissioner of Oudh and other Judicial Commissioners. Their Lordships, with a view of insisting on the observance of the wholesome provisions of these Statutes, will, in order to prevent injustice, be obliged in future on the hearing of Indian appeals to refuse to read or permit to be used any document not endorsed in the manner required.

Appeals allowed.

Solicitors for the appellant : *Watkins and Hunter.*

Solicitors for the respondents : *Barrow, Rogers and Nevill.*

J. V. W.

APPELLATE CRIMINAL.

Before Mr. Justice Sundar Lal.

EMPEROR v. ABDUR RAHMAN *

Act No. XLV of 1860 (Indian Penal Code), sections 361, 366, 109—Kidnapping from lawful guardianship—Completion of offence—Continuous offence—Abetment.

The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship. There can be no abetment of the offence by conduct which commences only

* Criminal Appeal No. 351 of 1916 from an order of J. H. Cuming, Sessions Judge of Saharanpur, dated the 28th of March, 1916.

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after the minor has once been completely taken out of the keeping of the guardian, and the guardian's keeping of the minor is completely at an end. *Regina v. Samia Kaundan* (1), *Queen Empress v. Ram Dei* (2), *Queen Empress v. Ram Sundar* (3), *Chakutty v. Emperor* (4), *Nemai Chatteraj v. Queen Empress* (5), *Chanda v. Queen-Empress* (6), referred to.

THE facts of the case are fully stated in the judgement of the Court.

Mr. A. H. C. Hamilton, for the applicant.

Babu Sital Prasad Ghosh (for the Government Pleader),
for the Crown.

SUNDAR LAL, J.—This is an appeal against the conviction and sentence passed on the appellant under section 366, read with section 109, of the Indian Penal Code, by the Sessions Judge of Saharanpur. Along with the appellant two other persons, viz., Yusuf and Haidar Bakhsh, were put on their trial under section 366 of the Indian Penal Code; but have been acquitted by the learned Sessions Judge for reasons given in his judgement. The charge framed against the appellant by the committing Magistrate ran in the following terms, viz.

“That you on or about the 21st day of October, 1915, at Dehra Dun, instigated Haidar and Yusuf, accused, to kidnap Musammat Khatun in order that she may be forced or seduced to illicit intercourse, which offence was committed in consequence of your abetment and thereby committed an offence punishable under section 366/109 of the Indian Penal Code and within the cognizance of the Court of Session.”

Musammat Khatun, whose age has been found to have been under sixteen years was, as found by the learned Sessions Judge, the wife of one Sharif Ahmad and, at the time the offence has been said to have been committed, was living with her husband at Dehra Dun. The other two accused persons, viz., Haidar and Yusuf, are related to Sharif Ahmad who has stated that they are the sons of the foster-brother of his father. Musammat Azizan, whose name figures in the evidence, is the wife of Haidar. Sharif Ahmad about this time was out of employment and was maintaining himself by bringing fuel or wood from the jungle for sale in the town. On the day following the Bakr Id, Sharif Ahmad left his house as usual in the morning for the jungle, and on returning

(1) (1876) I. L. R., 1 Mad., 173.

(4) (1902) I. L. R., 26 Mad., 454.

(2) (1896) I. L. R., 18 All., 350.

(5) (1900) I. L. R., 27 Cal., 1041.

(3) (1896) I. L. R., 19 All., 109.

(6) Punj. Rec., 1904, Cr. J., 19.

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home found that the outer door of his house was locked up and his wife away from the house. He made inquiries about her from the neighbours, but could find no trace of her for several days. I will leave Sharif Ahmad's story here and come at once to the account given by Musammat Khatun of the circumstances under which she left her husband's house. The day after the Bakr Id, at about 1. p. m. when she was alone in the house, Haidar and Yusuf came to her and told her that her brother-in-law (namely, her sister's husband) had come and had called her as her sister was very ill. Abdur Rahman is the name of the brother-in-law. He is, however, a person other than Abdur Rahman the accused, who is a stranger, and not related to the family of Musammat Khatun in any way. She demurred to going before the return of her husband, but on being pressed to do so by Haidar and Yusuf, she left with them after locking the outer door of her house and followed them to their house. There she did not find her sister's husband who, she was told, was coming by the evening train, she asked them to escort her back to her husband's house. They said they had then to go to the bungalow of the person in whose service they were, and that they would convey her back in the evening to her house and they left her in the house.

A little while after Abdur Rahman, the accused, came in, whereupon she went into the house as he was stranger. Abdur Rahman entered into conversation with Azizan and Imaman (who is the mother-in-law of Haidar), and he left them shortly afterwards, telling Azizan to come to his house as his wife was very ill. Azizan did not go and Abdur Rahman came back to summon her to go to his wife. At his request Azizan decided to go. She also induced Musammat Khatun to go with her, after she had promised to take her from there to her husband's house. The two women followed Abdur Rahman to his house and sat there for some time, when Azizan went out on some pretence and Khatun and Abdur Rahman were left alone in the place. Abdur Rahman locked the doors from inside and according to Musammat Khatun, had sexual intercourse with her by force. He refused to let her go back, and according to Musammat Khatun, is said to have told her that he had paid a lot of money to Azizan and Haidar and that he would let her go back if she gave back the

money. She was found a few days later by the police in the house of Abdur Rahman, concealed inside a box, over which were placed a couple of other boxes in a room in the house. Upon these facts the three accused persons were put on their trial. I am not concerned with the reasons given for the acquittal of the other two accused persons, for there is no appeal against their acquittal by the Local Government. The only question in appeal before me is whether the appellant has been rightly convicted of the offence charged, viz., abetment of the offence described in section 366 of the Indian Penal Code. Under section 361 of the Indian Penal Code "whoever *takes* or *entices* any minor . . . if a female under sixteen years of age . . . out of the keeping of the lawful guardian of such minor . . . without the consent of such guardian is said to kidnap such minor . . . from lawful guardianship." Where such kidnapping of any woman is with the intent that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, the offence comes within the purview of section 366 of the Indian Penal Code.

The question whether the offence of kidnapping is completed the moment the girl is taken out of the custody of her lawful guardian, or is a continuing offence until she returns back to her guardian has been the subject of consideration in several recent cases. In *Nemai Ghattoraj v. Queen-Empress* (1), a Full Bench of the Calcutta High Court (RAMPINI, J., dissenting) held that the offence was not a continuing one, but became complete the moment the girl was taken, or enticed out of the custody of her lawful guardian. The only case in support of the contrary view is that of *Regina v. Samia Kaundan* (2), in which the accused was charged with the offence of kidnapping a minor out of British India. In that case the offence was not completed until the minor crossed the limits of British India. This case was referred to in two cases of this Court, viz., *Queen-Empress v. Ram Dei* (3) and *Queen-Empress v. Ram Sundar* (4) and not followed. The judgement of this Court is on the same lines as the judgement of the Full Bench of the Calcutta Court already referred

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(1) (1900) I. L. R., 27 Calc., 1041.

(3) (1896) I. L. R., 18 All., 350.

(2) (1876) I. L. R., 1 Mad., 173.

(4) (1896) I. L. R., 19 All., 109.

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to. In a later case in the Madras Court, *Chekutty v. Emperor* (1), the Chief Justice Sir ARNOLD WHITE observed as follows:—
 “In support of the conviction it was argued that the offence of kidnapping was continuous and that the assault on the mother having been committed during the continuance of the kidnapping the two offences were committed in one series of acts so connected together as to form the same transaction. It has recently been held by a Full Bench of the Calcutta High Court in *Nemai Chatteraj v. Queen-Empress* (2), that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship and that it is not an offence continuing as long as the minor is kept out of such guardianship”. The case in I. L. R., 1 Mad., 173, was distinguished on the ground I have already indicated. In a very similar case which came up before the Punjab Chief Court, Sir MEREDYTH FLOWDEN and Mr. Justice ROE held that “speaking generally, the keeping of the guardian came to an end when the person of the minor had been transferred from the custody of the guardian, or some person on his behalf, in the custody of some person not entitled to the custody of the minor.” They further observed, at page 21:—“But there can be no abetment of taking by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian, and the guardian’s keeping of the minor is completely at an end. Whether the taking was or was not complete is a question for determination with reference to the circumstances proved in the particular case”; *Chanda v. Queen-Empress* (3).

I have now to see whether on the evidence it has been proved that Abdur Rahman instigated the kidnapping of Musammat Khatun.

[His Lordship then dealt with the evidence.]

Upon the evidence on the record therefore abetment of kidnapping has not been proved against the appellant, and the conviction therefore must be set aside. Whether the appellant is guilty of any other offence for which he has not been charged is not a matter for me to consider here. All that I have to see is—

(1) (1902) I. L. R., 23 Mad., 454. (2) (1900) I. L. R., 27 Calc., 1041.

(3) Punjab, Rec., 1904, Cr. J., 19.

whether the offence of abetment of kidnapping has been proved. I hold that there is no evidence to prove the offence charged. I accordingly allow the appeal, set aside the conviction and the sentence and direct that the appellant be released at once.

Appeal allowed.

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APPELLATE CIVIL.

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Before Mr. Justice Watsh and Mr. Justice Sundar Lal.

SHEO SHANKAR AND OTHERS (DECREE-HOLDERS) v. CHUNNI LAL
AND OTHERS (JUDGEMENT-DEBTORS)*

Civil Procedure Code, 1908, order XXI, rule 18—Cross decrees—Set-off—Decree for sale on mortgage against purchaser of portion of the mortgaged property—Personal decree for money—Parties not filling the same character.

A person against whom a decree foreclosing his right to redeem a property from sale is passed in his character as a puisne mortgagee or an attaching creditor is a judgment-debtor to that decree in a character different from the one in which he holds a decree made in his favour personally and which is enforceable against his judgment-debtor by the arrest of his person and the attachment of his property. In the one case he has obtained his decree for costs in his individual and personal capacity. In the other he is not ordered to pay any sum of money in his individual and personal capacity, but is only given an option to do so if he likes to save from sale some property in which he is interested. In such circumstances, therefore, rule 18 of order XXI of the Code of Civil Procedure will not be applicable. *Nagar Mal v. Ram Chand* (1) distinguished.

THE facts of the case for the purposes of this report are briefly as follows : —

Sheo Shankar obtained two decrees against Chunni Lal. Chunni Lal obtained three decrees for sale on the basis of three mortgages against a number of persons, among whom was Sheo Shankar, who had been impleaded as purchaser of a very small share of the mortgaged property. Sheo Shankar applied for the execution of his decrees against Chunni Lal. Chunni Lal pleaded that the amount of his three decrees should be set off against Sheo Shankar's decrees. Sheo Shankar objected to this on the ground that his character as decree-holder was quite different from his character as judgment-debtor in the decree for

* First Appeal No. 238 of 1915, from a decree of I. B. Mundle, Subordinate Judge of Jaunpur, dated the 20th of April, 1915.

(1) (1911) I. L. R., 38 All., 240.