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like (25) then the fact of conferring benefits on the proprietor of the wealth by means of the offering of oblations and the like only excludes those that do not confer such benefits." Dr. Raj Kumar Sarvadhikari renders the last part of this passage thus: "The benefit conferred on the late owner by the offering of the cake and the water determines the title to inheritance." (26)

In the case of *Bhyah Ram Singh v. Bhyah Ugur Singh* (27) the Board affirmed this rule in the following words:—"When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty."

For these considerations their Lordships are of opinion that the conclusion arrived at by the High Court is well founded, and this appeal should be dismissed with costs. And they will humbly advise His Majesty accordingly.

*Appeal dismissed.*

Solicitors for the appellants:—*Ranken Ford, Ford & Chester.*

Solicitors for the respondents:—*Pyke Parrott & Co.*

J. V. W.

## APPELLATE CRIMINAL.

*Before Mr. Justice Tudball.*

EMPEROR v. EWAZ ALI AND OTHERS.\*

Act No. XLV of 1860 (*Indian Penal Code*), sections 366 and 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution.*

A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time. Later he made her over to certain persons who representing that she was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true.

*Held* that Ewaz Ali was neither guilty of an offence under section 366 of the *Indian Penal Code* inasmuch as he did not take or entice her away from her legal custody nor of an offence under section 372 of the said *Code*. *King-Emperor v. Ram Chander* (1), and *Empress of India v. Sri Lal* (2) followed. *Emperor v. Jetha Nathoo* (3) referred to.

\* Criminal Appeal No. 899 of 1915, from an order of B. C. Forbes, Additional Sessions Judge of Muttra, dated the 26th of April, 1915.

(25) Dr. Raj Kumar Sarvadhikari construes the word "like" as meaning "other classes of heirs."

(26) "*Tagore Law Lectures*," for 1860, p. 629. (1) (1914) 12 A. L. J., 265.

(27) 1870 18 Moo., I. A., 373.

(2) (1860) I. L. R., 2 All., 694.

(3) (1904) 6 Bom. L. R., 785.

THE facts of this case were as follows:—

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Musammat Jamni, a chamar girl about the age of 13 or 14 years, who lived with her husband and his parents, for reasons best known to herself ran away apparently more than once from her home, and on the present occasion she got clean away, and was making her way along the public road to Agra when she was met by the appellant Ewaz Ali who was a road chaukidar. He stopped her and at first decided to take her to the police station. Subsequently, however, after questioning her he agreed to take her into his house and she stayed with him for about a month. At the end of that month he made her over to the three appellants Hira Lal, Shankaria and Musammat Surja. Apparently these persons were well aware of the circumstances of the girl. They bored her nose and made her as far as possible appear to be a *jat* female. They then passed her off as Musammat Surja's niece and made her over to Ghure Jat on payment of Rs. 80, to be married to Sukhdeo. The deception was subsequently discovered, the girl was returned to these three persons and the money demanded back. Apparently it was returned. The girl was then made over to the fifth appellant Tota who is related to Musammat Surja. Tota kept the girl and then finally sold her for a sum of Rs. 70, representing her to be his niece. She was sold to Kallu and Samai Singh for the purpose of being married to the brother of Kallu, for whom a wife was being sought. While Kallu and Samai Singh were taking the girl away to Kallu's village, they were stopped by the chaukidar Sobha Ram and the whole matter was brought to light. Upon these facts the court below convicted Ewaz Ali of an offence under section 366 of the Indian Penal Code and sentenced him to six months' rigorous imprisonment and a fine of Rs. 40.

Babu Kena Ram Mukerji, as *amicus curiæ*, for the accused.

The Government Pleader (Babu Lalit Mohan Banerji) for the Crown.

TUDBALL, J.—The five appellants have been convicted by the learned Sessions Judge on the following facts as found by the court below. Musammat Jamni is a chamar girl about the age of 13 or 14 years. She was married and she lived with her husband and his parents. For reasons best known to herself she

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ran away apparently more than once from her home, and on the present occasion she got clean away, and was making her way along the public road to Agra when she was met by the appellant Ewaz Ali, who was a road chaukidar. He stopped her and at first decided to take her to the police station. Subsequently however after questioning her; he agreed to take her into his house and she stayed with him for about a month. At the end of that month he made her over to the three appellants Hira Lal, Shankaria and Musammat Surja. Apparently these persons were well aware of the circumstances of the girl. They bored her nose and made her as far as possible appear to be a *jat* female. They then passed her off as Musammat Surja's niece and made her over to Ghure Jat on payment of Rs. 80, to be married to Sukhdeo. The deception was subsequently discovered, the girl was returned to these three persons, and the money demanded back. Apparently it was returned. The girl was then made over to the fifth appellant Tota, who is related to Musammat Surja. Tota kept the girl and then finally sold her for a sum of Rs. 70, representing her to be his niece. She was sold to Kallu and Samai Singh for the purpose of being married to the brother of Kallu, for whom a wife was being sought. While Kallu and Samai Singh were taking the girl away to Kallu's village they were stopped by the chaukidar Sobha Ram and the whole matter was brought to light. Upon these facts the court below convicted Ewaz Ali of an offence under section 366 of the Indian Penal Code and sentenced him to six months' rigorous imprisonment and a fine of Rs. 40. Hira Lal, Tota, Musammat Surja and Shankaria have been convicted of cheating and have been sentenced—Hira Lal, Tota and Shankaria to one year's rigorous imprisonment each *plus* a fine, and Musammat Surja to six months' rigorous imprisonment. They have all appealed. No exception has been taken to the trial of all these persons together, at one and at the same trial. In regard to Hira Lal, Tota, Musammat Surja and Shankaria, there can be very little doubt as to their guilt, nor do the sentences imposed upon them call for interference. The case of Ewaz Ali is one of doubt. It is quite clear that when he met Musammat Jamni, the girl had got clean away out of the hands of her husband and his parents;

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The question is whether he can be said to have taken or enticed the girl out of the keeping of her lawful guardian. In the case of *Emperor v. Jeta Nathoo* (1), two Judges of the Bombay High Court pointed out the difference between the English Law on the subject and the Indian Law and the difference in meaning between the word "keeping" and the word "possession." One will have very little difficulty in fully agreeing with the decision in that case in view of the actual facts therein. There a girl under 16 years of age went out in search of work. She was induced by a deceitful promise of obtaining work to go to a certain house. There can be no doubt that in that case the offence of kidnapping was committed. In the present case the girl had voluntarily left the keeping of her guardian with intention to remain out of that keeping, and the accused Ewaz Ali, probably with full knowledge of the circumstances, gave her a home and finally transferred her to the keeping of Hira Lal, Shankaria and Musammam Surja on receipt of the sum of Rs. 40. It is very difficult under these circumstances to say that he either took or enticed away the minor out of the keeping of the lawful guardian. The case is very much akin to that of *King-Emperor v. Ram Chander* (2). In that case also a girl under sixteen years of age left the guardianship of her husband and father-in-law of her own free will and not for the first time, and then subsequently stayed with the accused quite voluntarily and without any force having been exercised upon her. The Judges before whom that case came for decision held that the act did not amount to taking or enticing the girl out of the keeping of her lawful guardian. In the judgement it was remarked as follows:—"On the admitted facts the leaving and the removal out of the keeping of the lawful guardian was the act of the girl herself long before she met the accused." In view of the above remarks in that case, it seems to me that the conviction of Ewaz Ali under section 366 cannot possibly stand. The question arises whether Ewaz Ali could or could not be convicted of an offence under section 372, that is, selling a minor with intent that such minor shall be employed or used for the purposes of prostitution or for any unlawful and immoral purpose, or knowing it to be likely

(1) (1904) 6 Bom. L. R., 785.

(2) (1914) 12 A. L. J., 265.

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that such minor will be employed or used for any such purpose. No doubt Ewaz Ali was well aware of what was about to happen to the girl. She was to be made to resemble as far as possible a *jat* female, and to be used for the purpose of cheating other persons and obtaining money. That no doubt was unlawful, but for the purpose of the section the object must also be immoral. The point is covered by the decision of the Full Bench of this Court in *Empress of India v. Sri Lal* (1). There again a low caste girl, as in the present case, was falsely represented by certain persons, as being a member of a higher caste, and another member of such higher caste was induced thereby to take her in marriage and to pay money for her in the full belief that such representation was true. It was held by the Full Bench that the accused could not be convicted on these facts of offences under sections 372 and 373 of the Indian Penal Code. The decision covers the facts of the present case and I am bound to hold that Ewaz Ali committed no offence under section 372 or 373 of the Indian Penal Code. It is clear that he did not attempt to cheat Hira Lal, Shankaria and Musammam Surja.

Under these circumstances, I must allow the appeal of Ewaz Ali. I set aside his conviction and sentence and direct that he be forthwith released. The appeals of the other appellants are all dismissed.

*Conviction of Ewaz Ali quashed.*

## REVISIONAL CRIMINAL.

1915  
June, 29.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.*

EMPEROR v. BATESHAR AND OTHERS.\*

*Accused summoned without the complainant being examined—Irregularity—Proceedings not vitiated—Hurt both simple and grievous—Cumulative sentences—Legality of.*

The complainants made a complaint to the police to the effect that the accused beat them causing grievous hurt. The police did not send up the case and the complainants applied to the Magistrate, who sent for the police papers and summoned the accused without examining the complainants. On the date fixed the complainants were absent and the accused were discharged.

\* Criminal Revision No. 341 of 1915, from an order of Mubarak Husain, Sessions Judge of Cawnpore, dated the 26th of April, 1915.

(1) (1880) I. L. R., 2 All, 694.