

Wards does not deny the plaintiff's title but admits that it holds the property for the person legally entitled. The learned District Judge has referred to the case of *Goswami Ranchor Lalji v. Sri Giridhariji* (1). In our opinion this case has no bearing on the present case. The court in that case, we think, rightly held that the plaintiff's proper remedy was by way of a suit for possession against the parties who dispossessed him. The suit being a suit for possession, the period within which it could be brought was twelve years. This was the only matter which was discussed in the case.

We accordingly allow the appeal, set aside the decree of the court below, and remand the case to that court with directions to readmit the suit under its original number in the file and to proceed to hear and determine the same on its merits. Costs heretofore will be costs in the cause.

*Appeal allowed and cause remanded.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott.*

EMPEROR v. PARAS RAM DUBE.\*

*Act No. XLV of 1860 (Indian Penal Code), sections 32, 33—Offence of rape committed by a boy under fourteen—Presumption.*

*Held* that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India.

THIS was a case called for by the High Court on perusal of the Sessions statement for November, 1914, from the district of Basti. The material facts were that a boy named Paras Ram of 12 to 14 years of age was charged with the commission of rape on a little girl of about 7 years of age. The Additional Sessions Judge convicted him in the alternative under section 376 or section 354 of the Indian Penal Code not because he had any doubt as to the facts, but because he considered that there was a difficulty as to whether a boy of the age of the accused could be legally convicted of the major offence charged.

The parties were not represented.

\* Criminal Revision No. 33 of 1915.

(1) (1897) I. L. R., 20 All., 120.

1915

JAGANNATH  
GIR  
v.  
TIRGUNA  
NAND.

1915

January, 29.

1915

EMPEROR  
v.  
PARAS RAM.

PIGGOTT, J.—I called for the record of this case on examination of the Sessions statement from the District of Basti for the month of November, 1914. One Paras Ram, a boy described as being between 12 and 14 years of age, was charged with having committed the offence of rape on the person of a little girl about 7 years of age. The learned Sessions Judge has convicted in the alternative under section 376 or section 354 of the Indian Penal Code, not because he was in any doubt as to the facts, but because he considered that there was a difficulty as to whether a boy of the age of the accused could legally be convicted of the major offence charged. The presumption of English Law against the possibility of the commission of the offence of rape by a boy under the age of 14 years has no application in this country. The law on the subject of infancy in connection with criminal liability is laid down in sections 82 and 83 of the Indian Penal Code and nowhere else. It was a simple question of fact which the learned Sessions Judge had to try, as to whether, in the course of the assault perpetrated by the accused on the person of this little girl, such penetration had been effected as is required by law to constitute the offence of rape. If the statement of the girl Kolbaria is read in connection with the medical evidence, there can be no doubt that the offence of rape was committed. I thought it advisable to place these remarks on record in view of the difficulty felt by the Sessions Judge. I do not propose to interfere with the sentence passed by him. The question of the proper punishment for an offence of this sort by boys of tender age is not an easy one, and many Sessions Judges of experience are of opinion that a sentence of whipping only is the most appropriate one that can be inflicted in such cases. I think the accused Paras Ram has been somewhat leniently dealt with, but that interference on the part of this Court is not now called for. Let the record be returned.