

the basis of the law as it stood at the time when this decision was pronounced. It is worth while to note at once that the decision in *Colonel Lecky's* case was to the effect that the salary of an officer of the Royal Artillery, while serving in this country, was not capable of attachment. The line of reasoning followed by the learned Judges may or may not affect the somewhat different issue now before us ; but it is quite certain that the decision itself is no authority on the subject of the salary of an officer of the Indian Army. Moreover, it is to be observed that, whatever difficulty has been felt by any of the learned Judges with regard to the question now before us turned upon the wording of clause (b) of sub-section (2) of section 60 of the Code of Civil Procedure (Act V of 1908). That sub-section has been repealed by the Repealing and Amending Act No. X of 1914. On this ground, as well as because we agree generally with the line of reasoning followed and the conclusion arrived at by the learned Judges of the Oudh Court, we feel no hesitation about answering the reference. In our opinion the decision of the Ajmere court which has been referred to us was correct, and the order attaching one-half of the salary of the officer in question was rightly passed. The record may be returned with this answer.

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H. F. B. D.
HAY
v.
RAM
CHANDAR.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.*

EMPEROR v. PIARI LAL.

Act (Local) No. II of 1916 (*United Provinces Municipalities Act*), section 274 -
"Occupier."

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Held that a person of whom no more could be said than that he was held responsible for the upkeep and cleanliness of a temple by the former *adhibari* was not an 'occupier' of the temple and could not be convicted as such under section 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish on to the street.

THE facts of this case were, briefly, as follows :—

One Piari Lal was convicted under section 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish from a certain temple in Murtra on to the street and was fined Rs. 20.

* Criminal Revision No. 949 of 1916, from an order of G. R. Dampier, District Magistrate of Muttra, dated the 19th of October, 1916.

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He applied in revision to High Court, the principal ground being that he was not, within the meaning of the section, the 'occupier' of the temple.

Munshi *Galzari Lal*, for the applicant.

The Assistant Government Advocate (*Mr. R. Malcomson*), for the Crown.

KNOX, J. — One Piari Lal has been convicted of an offence under section 274 of the United Provinces Municipalities Act of 1916 and sentenced to pay a fine of Rs. 20. He has applied to this Court in revision and contends that he is not an occupier of the building from which rubbish has been thrown into one of the streets of Muttra. The District Magistrate who upheld the order of the trying magistrate, in his judgement says "it is clear to me from the evidence on this file and connected municipal files that the late *adhikari* held Piari Lal responsible for the upkeep and cleanliness of the temple and all work connected with it." This, in my opinion, does not bring Piari Lal within the term 'occupier' as used in the Act above mentioned. In section 2, clause (11), of the Act a definition is given of the word 'occupier' and we are told that it includes an owner in actual occupation of his own land or building. Piari Lal certainly cannot come under this meaning of the word 'occupier.' The definition, however, is not exhaustive, and it remains to be seen whether this word cannot be properly held to include a person holding the position of Piari Lal. No definition from any legal dictionary has been placed before me, and I have had to resort to the meaning of the word as ordinarily used in the English language. For this perhaps Mr. Murray is the best authority, and on consulting his find that 'occupier' is a person who takes or holds or is in actual possession of a piece of property such as house or land. This is the only meaning of the several meanings given in the dictionary which can in any way be applied to the present case. Even if the word 'occupier' could be held to cover Piari Lal because he is responsible for the upkeep and cleanliness of the temple and all work connected with it, all that we have on the record is that the late *adhikari* held Piari Lal responsible for this. There is a present *adhikari* named Ohhagan Lal. There is nothing in the judgement to show that Ohhagan Lal holds Piari Lal

responsible for these several works. I am not satisfied that Piari Lal can in any sense be considered to be the 'occupier' of this temple. The Municipal Act is a penal Act and must be strictly construed in favour of the subject. The offence of which Piari Lal has been convicted is not established by the evidence. I set aside the conviction and order passed under section 274 of the Municipalities Act. The fine, if paid, will be refunded.

Conviction quashed.

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice
Sir Pramada Charan Banerji.*

SURJA KUNWARI AND ANOTHER (DEFENDANTS) v. HARNARAIN RAM
AND OTHERS (PLAINTIFFS). *

Construction of document—Will—Dedication of property for religious purposes—Expenditure on religious objects amounting to only a small portion of the income, the rest being assigned for the maintenance of the testator's family.

The will of a Hindu provided that the worship of certain idols should be maintained out of the property dealt with thereby, but the rest of the property was assigned to the maintenance of the heirs of the testator generation after generation. The income of the property was about Rs. 7,000 annually, but the customary expenses of the religious rites and ceremonies amounted to only some Rs. 500 per annum.

Held on a construction of the will, that it created a charge on the estate for the expenses of the idols, and that, subject to that charge, the property was to go to the testator's legal heirs, who were fully entitled to appropriate all the income of the property. *Sonatum Bysack v. Sreemutty Juggutsoondree Dossee* (1) and *Ashulosh Dutt v. Doorga Churn Chatterjee* (2) referred to.

THE facts of this case were as follows :—

One Babu Sukhmangal Singh Deo executed a will, dated the 29th October, 1903, of which the material portions are given below. The plaintiffs, with the permission of the District Judge, brought the suit, out of which this appeal arose, under Act No. XX of 1863 on the allegation that the will created a waqf of certain properties for the benefit of Hindus in favour of the

* First Appeal No. 53 of 1915, from a decree of E. E. P. Rose, Additional Judge of Gorakhpur, dated the 11th of February, 1915.

(1) (1859) 8 Moo., I. A., 66.

(2) (1880) I. L. R., 5 Calc., 438.

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