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section 9, still specific relief could be given by injunction in one of the two modes (*b*) and (*c*) indicated by section 5 of the Act. These two clauses speak of an "obligation" to do, or to refrain from doing, an act; and they, therefore, presuppose a determination of the question of the legal obligation of the party upon whom an order for specific relief is to be made; but I do not think that the Civil Court in a case under section 9 could be called upon to determine (as I think it would be bound to determine if an order under clauses (*b*) or (*c*) has to be made) the question whether the defendant is under an "obligation" to allow the plaintiff to fish or to refrain from obstructing him to fish. The enquiry under section 9 is expressly a summary enquiry: it says "If a person is dispossessed ..... he may recover possession thereof, notwithstanding any other title that may be set up in such suit." So that the section itself precludes the determination of the question of the "obligation" of the defendant. I am inclined to think that clause (*a*) in section 5 is the only clause which provides for the specific relief contemplated by section 9 of the Act, viz., "by taking possession of certain property and delivering it to a claimant."

PETHERAM, C.J.—As the opinion of the majority of the Court is that the suit is not maintainable under the Act, the rule will be discharged. We make no order as to costs.

A. A. C. *Rule discharged.*

CRIMINAL MOTION.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Norris, and Mr. Justice Beverley.

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April 20.

MADAN MOHAN BISWAS (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

Unlawful compulsory labour—Criminal force—Slavery—Wrongful confinement—Penal Code (Act XLV of 1860), ss. 344, 352, 370 and 374.

The accused induced the complainants, who he alleged were indebted to him in various sums of money, to consent to live on his premises and to

* Criminal Rule No. 65 of 1892, against the order passed by A. A. Wace, Esq., Judge of the Assam Valley Districts, dated the 14th of November 1891, modifying the order passed by Major A. Gray, Deputy Commissioner of Nowgong, dated the 28th of September 1891.

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work off their debts. The complainants were to, and did in fact receive no pay, but were fed by the accused as his servants. He insisted on their working for him, and punished them by beating them if they did not do so. The complainants in addition alleged that they were prevented leaving the accused's premises, and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under sections 344, 370 and 374 of the Penal Code. On appeal the convictions under the two former sections were quashed, the evidence as to detention being disbelieved, but that under section 374 was upheld, on the ground, that by magnifying the complainants' debts to him and never settling their accounts, the accused had unlawfully compelled them to go on working for him against their wills.

On a rule to show cause why the conviction should not be quashed,

Held (by PETHERAM, C.J., and BEVERLEY, J.) that the conviction was erroneous and must be set aside.

PETHERAM, C.J.—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of section 374 of the Penal Code, because it is a thing which such person has agreed to do; but if he assault such person for not working to his satisfaction, he commits an offence punishable under section 352.

Held by NORRIS, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their wills, and that the conviction under section 374 was right.

THIS case arose under the following circumstances:—One Mr. Brodrick, who was in charge of the Nowgong police, while out on inspection at Dhurrumtal, received certain information regarding the petitioner, Madan Mohan Biswas, in consequence of which he proceeded to the premises of Madan Mohan the accused. There he inspected the cooly-lines, visited the house in which the complainants Honto Lahang, Hoibori Lahingani and Bagi Musulmani were said to be confined at night, and also saw marks of ill-usage on their persons. Madan Mohan was arrested and eventually placed on his trial before the Deputy Commissioner of Nowgong. He was charged with offences under sections 344, 370 and 374 of the Penal Code for having detained the complainants as slaves, for having wrongfully confined them for a period considerably exceeding ten days, and for having for a considerable period past unlawfully compelled them to labour against their wills.

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The evidence showed that the complainant Honto Lahang had borrowed some money from Madan Mohan on the understanding that he was to work off that amount in labour. He had first lived in his own house, but was subsequently removed to the premises of Madan Mohan to work. The complainants Hoibori and Bagi Musulmani both lived in the premises of Madan Mohan with their husbands and children, and on the death of their husbands, Madan Mohan made them work off the debts alleged to be due to him by their husbands. All the three complainants asserted that Madan Mohan insisted upon their working for him, and punished them by beating them if they did not do so.

The Deputy Commissioner convicted Madan Mohan under each of the above sections, and sentenced him to one year's rigorous imprisonment and a fine of Rs. 500. On appeal the Judge of the Assam Valley Districts acquitted him of keeping the complainants in confinement and slavery, but upheld the conviction and sentence under section 374 of the Indian Penal Code, for having unlawfully compelled them to labour against their wills.

The accused then applied to the High Court (BEVERLEY and HILL, JJ.) for a rule to set aside the above conviction and sentence upon amongst other grounds, that as the learned Judge had disbelieved the evidence adduced in support of the charges under sections 344 and 370 of the Penal Code, he ought for the same reasons to have disbelieved the evidence adduced in support of the remaining charge.

Upon that application a rule was issued which came on for hearing before a Bench consisting of NORRIS and BEVERLEY, JJ., when the following judgment was delivered by—

BEVERLEY, J.—I am of opinion that the rule should be made absolute and the conviction set aside, *first*, on the ground that the proceedings were irregularly conducted, and that the accused was thereby prejudiced on his trial; and *secondly*, because in my opinion the evidence is not sufficient to establish an offence under section 374, Penal Code. I further think that even if the conviction can be sustained, the sentence is excessive. It, moreover, transgresses the provisions of section 65 of the Penal Code.

In the first place the Magistrate, though professing to try the accused in respect of three persons only, has admitted a considerable

quantity of evidence in respect of other persons, and has used that evidence against the accused. He has in fact examined nine of the persons who are said to have been illegally confined, detained as slaves, and unlawfully compelled to work, and has used their statements regarding themselves as corroborating the statements of the others. Beyond the statements of these persons (mostly women), there is no independent evidence of the charges against the accused. The statements themselves are full of gross contradictions and exaggerations, and bear the impress of having been tutored.

But even if the evidence be believed, I do not think it is sufficient to prove the offence. What is alleged is that these people used to work for the accused; that they were fed by him, but received no money wages because advances were said to be due from them; that they were watched while at work by a chaprassi or duffadar to see that they did not idle or run away, and that they were secured at night in a mat hut, the jhamp doors of which opened inside; the accused himself keeping guard over them all night and never going to sleep. The Judge himself has disbelieved a great part of the evidence; but he has upheld the conviction under section 374 apparently on the ground that by magnifying their debts to him and never settling their accounts the accused has unlawfully compelled these people to go on working for him against their wills. I very much doubt whether this amounts to "unlawful compulsion" such as will subject the offender to a criminal penalty under section 374, Penal Code. As my learned colleague, however, differs from me in the view I take of the case, the matter must be referred for the decision of a third Judge.

The rule was accordingly referred to and reargued before another Bench consisting of PETHERAM, C.J., NORRIS and BEVERLEY, JJ.

Baboo *Joy Gobind Shome*, in support of the rule.

Mr. *Kilby* for the Crown.

The following judgments were delivered:—

PETHERAM, C.J.—On the 24th August 1891, Mr. Brodrick, the Assistant Superintendent in charge of the Nowgong police, inspected a police outpost at Dhurrumtal in his district, and whilst

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there received certain information from head-constable Sharafat Ali, and saw some women who made complaints to him, and some of whom showed him marks of ill-usage on their persons. He afterwards on the same day inspected the prisoner's premises which were situated from 550 to 560 paces from the outpost, and he describes what he saw in these words:—"I went through the entrance gateway, passed along the road past the office and granary into an open quadrangle or yard, the cooly-lines being to the north-west of this again. I inspected these cooly-lines. Yes, I saw the doors. They were, as far as I remember, jhamp doors. They opened inwards. Usually such doors are fastened from the inside. These, on the contrary, were made to fasten from the outside by the usual method of a bar across. They also had means of fastening from inside. I do not remember having ever noticed native houses with a similar method of fastening doors from outside. I also examined some cooly-houses on the left as I entered the gateway. Did not notice anything particular about these. Yes, there is a solid masonry wall running along the front of accused's compound. It also runs a little way up the east side. Perhaps from 30 to 60 feet in length. Yes, I believe there is a hedge running along the western side of the compound. To the rear of the cooly-lines up in the north-west corner which I inspected, are the houses in which the complainants were said to be confined at night. There is an opening in this hedge."

After this inspection Mr. Brodrick caused the prisoner to be arrested, but he was released on bail the next morning.

On the 25th of August 1891, Mr. Brodrick sent a number of persons who had complained to him to the sudder station at Nowgong, and they remained there in the police compound, supported by the police authorities, until the trial of the prisoner before Major Gray had been concluded.

On the 2nd of September 1891 the prisoner was brought before Major Gray, the Deputy Commissioner at Nowgong, and from that day until the 19th various witnesses produced by the police were examined before him. On the 19th he framed three charges against the prisoner in respect of three persons—Honto Lahang, Hoibori Lahingani, and Bagi Musulmani—as follows:—*First*, that

you, at Dhurrumtal, Nowgong district, have detained on your premises as slaves the following persons, viz., Honto Lahang, Hoibori Lahingani, and Bagi Musulmani, and thereby committed an offence punishable under section 370 of the Indian Penal Code, and within my cognizance. *Secondly*, that you at Dhurrumtal, Nowgong district, have wrongfully confined for periods considerably exceeding ten days the said Honto Lahang, Hoibori Lahingani, and Bagi Musulmani, and thereby committed an offence punishable under section 344 of the Indian Penal Code, and within my cognizance. *Thirdly*, that you at Dhurrumtal, Nowgong district, have for a considerable period past unlawfully compelled Honto Lahang, Hoibori Lahingani, and Bagi Musulmani to labour for you against their wills, and thereby committed an offence punishable under section 374 of the Indian Penal Code, and within my cognizance.

Between that day and the 28th the witnesses for the prosecution were cross-examined; no evidence was given for the defence, and on the 28th Major Gray delivered judgment, convicting the prisoner on each of the three charges, and sentenced him to one years' rigorous imprisonment and a fine of Rs. 500. The prisoner appealed to the District Judge, and on the 14th of November the District Judge delivered judgment in the appeal, by which he reversed the judgment of the Deputy Commissioner on the first two charges, but upheld it on the third charge, *i.e.*, that of unlawfully compelling these three persons to labour, and confirmed the sentence which had been passed by the Deputy Commissioner.

On the 8th February 1892, a rule was obtained from this Court on behalf of the prisoner to set aside the conviction. This rule was argued before Mr. Justice Norris and Mr. Justice Beverley, and as those two learned Judges were unable to agree, it has been again argued before them and myself. The question to be considered is, whether having regard to the fact that the prisoner has been acquitted of keeping the complainants in confinement against their wills, he can, under the circumstances of the case, be convicted of having unlawfully compelled them to labour for him against their wills under section 374 of the Penal Code. The first person for whom the prisoner has been convicted of unlawfully compelling to labour is Honto Lahang. He is a man of about 38 years of age, and he

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says that prior to the month of December 1890, he was living in a house of his own, and that he owed the prisoner Rs. 7 which he had borrowed of him on the understanding that he was to work off that amount in labour at the rate of 3 annas a day; that in December 1890 the prisoner, with his duffadar and his gomástha, went to his house; that the prisoner stated that he owed him Rs. 200 or Rs. 300, and that they broke down his house and took away the materials with them to the prisoner's premises, taking at the same time Honto Lahang himself, his wife Mil, and their three children against their wills, and that from that time to the time when Mr. Brodrick went to the place they were kept there locked up at night in the houses in the prisoner's compound, and made to work in the daytime under a duffadar, notwithstanding that the debt had been long ago worked off. He says that he has never received any pay at all, but that they have been fed, though insufficiently, by the prisoner. This man's wife, Mil, is called. She says that in December 1890 the prisoner came to the place where they were living, and declared that her husband owed him Rs. 400 or Rs. 500; that he caught hold of her daughter Nowa, and told her that, as her parents owed him money, she must go with him; that upon this she, Mil, said that if her daughter was taken, she would go too. That upon that she, her husband, Nowa, and her infant son and daughter were all taken away, together with the materials of their dismantled house, and that they have been kept there since, in the cooly-lines in his compound, and made to work against their wills, receiving no pay but a certain amount of food, which she says was not sufficient to satisfy their stomachs. She says that they did not run away because they were afraid of being caught and beaten, and that she met the sahib by the river side, and complained to him. Nowa, the daughter of Honto Lahang and Mil, was called. She said that they had a house of their own until December 1890, when the prisoner dismantled it and took it away to his own place, taking herself, her father, mother, and two other children at the same time under a false pretext that the father owed him money; that they have been kept and fed there since; kept at work under the supervision of the prisoner and his duffadars, and beaten when they have not performed the full amount of work.

This is the only evidence on the charge under which the prisoner has been convicted, as far as Honto Lahang is concerned. It is true that his name is mentioned by some of the other witnesses, but it is principally with reference to his being one of the persons kept in confinement. The general statements made by all the witnesses that they were all made to work against their wills, do not, in my opinion, carry the case further than it is carried by the statement of the man himself.

The next person in respect of whom the prisoner is charged is Bagi Musulmani. Her story is that her husband was an unpaid servant of the accused for many years, and that she lived in his premises for seven years with her husband, during which time she had two children, one of whom is living, the other dead; that when her husband died the prisoner turned her out, and she went as a cooly to the Nelli tea-garden; that after a time the prisoner went to the garden, and compelled her to return to his premises, saying that her husband's debt was not worked off, and that he has since that time kept her locked up with others and compelled her to work for him, giving her food but no pay, and beating her when her work was not done to his satisfaction.

The third person in respect of whom the prisoner is accused is Hoibori. She describes herself as a slave in the prisoner's premises. She says that her husband died about six years ago, and that upon his death the prisoner took her and her children by force from her home to his premises, saying that her husband owed him money, and that he has since kept her there in confinement, and has compelled her to work for him; that she has been beaten and her hands have been tied. She says that the prisoner gave them food but no pay.

This is really the only evidence against the prisoner on the charge of which he has been convicted by the Judge. Other witnesses were called who said that they themselves and the three persons in respect of whom the charges are made had been kept in confinement and compelled to work, but the evidence of the compelling to work is very general, and the evidence of the other witnesses does not carry the case further than that of the three complainants themselves.

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As I have before said, the Deputy Commissioner convicted the prisoner under each of the three charges, as he believed that the three persons in respect of whom the charges were made were kept in slavery by him.

The District Judge has acquitted the prisoner of keeping the complainants in confinement or in slavery. After saying that he cannot believe that the complainants could not have communicated with the police had they chosen to do so, he describes what he thinks was the actual state of things as follows:—"There is ample evidence on the record to show that Madan Mohan Biswas has been in the habit of getting people into his meshes by loans, working on their ignorance and trading on the traditions of serfdom, which still exist among the lowest classes of the province, and getting them into his power '*adscripti glebæ*' as it were. The process with such people as those called for the prosecution is easy enough, a magnified debt, an offer to waive this for service, the supply of the little daily wants of a lazy people in rice, oil and opium, the non-payment of wages, which works a terrible bondage; for when a man has been serving long without wages, he is afraid to do anything which might result in forfeiture of past service, and dismissal without payment of any arrears, and he hangs on such with hope deferred."

The Crown has not appealed against the acquittal of the prisoner on these charges, and it seems to me that the Judge's finding and the reasons given by the District Judge for it, amount to a finding that the complainants have for some consideration or other consented to remain in the prisoner's employ, being housed and fed by him, and that as far as actual physical restraint went they might have gone away at any time, and I think I ought to add that upon the evidence, as it appears on this record, the conclusion at which the District Judge has arrived appears to me to be the correct one.

The question, then, is whether a person who has induced other persons to consent to live in his premises, and to be fed by him as his servants, commits an offence under section 374 of the Penal Code if he insists upon their working, and punishes them by beating them if they do not do so.

There is, I fear, no doubt that assaults on servants and labourers in this country are by no means uncommon, and there is equally no doubt that such assaults are offences for which the persons guilty of them are liable to punishment under the criminal law, and this cannot be too widely known; but I do not think that a person who insists that another who has consented to serve him shall perform his work, unlawfully compels such person to labour, because it is the thing which he or she has agreed to do, and although if the employer assault the servant for not working to his satisfaction, he undoubtedly renders himself liable to rigorous imprisonment under section 352 of the Penal Code, I do not think he thereby commits an offence under section 374.

For these reasons I am of opinion that the rule to set aside this conviction must be made absolute. The prisoner must be released and the fine, if paid, refunded.

NORRIS, J.—This was a rule granted by Mr. Justice Beverley and Mr. Justice Hill to show cause why the conviction of one Madan Mohan Biswas under section 374, Indian Penal Code, should not be set aside.

The accused was convicted on the 28th September 1891 by Major Gray, the Deputy Commissioner of Nowgong, upon the following charges:—(i) with having detained in his premises at Dhurrumtal in the district of Nowgong as slaves Honto Lahang, Hoibori Lahingani, and Bagi Musulmani, and thereby committed an offence under section 370, Indian Penal Code; (ii) with having wrongfully confined the same three persons for a period exceeding ten days, and thereby committed an offence under section 344, Indian Penal Code; (iii) with having unlawfully compelled the same three persons to labour for him against their wills, and thereby committed an offence under section 374, Indian Penal Code.

The Deputy Commissioner's judgment is an eminently unjudicial production into which has been introduced a considerable quantity of utterly irrelevant matter. On appeal the District Judge quashed the conviction under sections 344 and 370, but affirmed the conviction under section 374, Indian Penal Code, and maintained the full sentence passed by the Deputy Commissioner, viz., 12 months' rigorous imprisonment and a fine of

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Rs. 500, and on default further rigorous imprisonment for six months.

I very much regret that I am unable to concur in the judgment which has just been pronounced by the Chief Justice. I have read very carefully the whole of the evidence on the record, and that evidence, if true, seems to me to warrant the conviction under section 374. Two Courts have believed that evidence. It stands uncontradicted, and I see no reason for discrediting it. On the evidence on the record, I have come to the conclusion that these three persons never did give their full and free consent to work and labour for the accused. In my opinion, therefore, the conviction in this case was right, and this rule ought to be discharged.

BEVERLEY, J.—I have nothing to add to my former judgment.

A. F. M. A. R. *Conviction set aside.*

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

1892
June 17.

IN THE GOODS OF SHOSHEE BHUSAN BANNERJEE, DECEASED.

Practice—Hindu Will—Universal Legatee not entitled to probate—Letters of Administration with the will annexed, Grant of to universal legatee—Probate and Administration Act (V of 1881), *s.* 19.

A universal legatee is not entitled to probate, but only to letters of administration with the will annexed.

In the goods of Radhika Mohan Sett (1) not followed.

THIS was an application in Chambers for probate of the will of one Shoshee Bhusan Bannerjee made on the 16th June by an attorney on behalf of Srimati Kamini Dabi, the widow of the deceased and the universal legatee under the will.

No executor was appointed by the will, the material portion of which was as follows:—

"Accordingly I make regular provision in respect of whatever properties, immoveable, moveable, and buildings, &c., I am possessed of. I give the same to my wife, Srimati Kamini Dabi,

Application in Chambers.

(1) 7 B. L. R., 563.