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to us quite clear that if the deceased had died leaving a sum of money equal to the debts in his house, or if the widow had been successful in collecting a similar amount after the death of her husband, the reversioners would not be listened to if they came into court asking that the widow's rights as a Hindu widow should be restrained in any way for the benefit and protection of the reversioners, on the mere allegation that she might waste the *corpus*. If this view be correct, it seems to us that there is no reason why the reversioners should get exactly the same relief by compelling the widow to find security as a condition precedent to getting a certificate to collect debts. We do not say that there may not, in some cases, be special circumstances which might justify the court in directing security to be given even in the case of a Hindu widow. We allow the appeal, set aside the order of the court below and direct that the certificate do issue to the appellant. The appellant must have her costs paid by the respondents in all courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. HARAK CHAND MARWARI.*

Act No. XLV of 1860 (Indian Penal Code), section 266—Possession of false measure—Intent—Acquittal—Criminal Procedure Code, section 438—Practice.

It being in evidence that in the village where the accused carried on the business of a cloth-seller the usual standard of measurement was $35\frac{1}{4}$ inches, it was held that a conviction under section 266 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained.

Held also that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal, when the Government has a right of appeal, more particularly when the matter is one, such as a question of correct weights and measures, in which the Government may be considered to be peculiarly interested.

THE facts of this case were as follows :—

One Harak Chand was prosecuted on two charges under section 266 of the Indian Penal Code before a Magistrate in respect to two measures of length which he was using in his shop. The

* Criminal Reference No. 759 of 1917

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one measure was 35 inches, and the other measure was $35\frac{1}{2}$ inches long. The Magistrate who tried the case came to the conclusion that in the village where these persons live and sell their wares the prevailing standard of measurement was a yard of $35\frac{1}{2}$ inches long. In respect to the one measure he therefore convicted Harak Chand and in respect to the other measure he acquitted him on the ground that fraudulent intent was not proved. He appealed against the conviction. The Sessions Judge altered the conviction from one section to another but maintained the sentence.

With regard to the charge on which the accused was acquitted the Sessions Judge referred the case to the High Court with the recommendation that the order of acquittal should be set aside and that the accused should be convicted under section 266 of the Indian Penal Code.

The Crown was not represented.

Mr. *W. Wallach* and *Munshi Iswar Saran*, for the opposite party.

TUDBALL, J.—Criminal Reference Nos. 757, 758 and 759 are all similar and more or less connected with each other. One Harak Chand was prosecuted on two charges under section 266 of the Indian Penal Code before a Magistrate in respect of two measures of length which he was using in the shop. The one measure was 35 inches, and the other measure was $35\frac{1}{2}$ inches long. The Magistrate who tried the case came to the conclusion that in the village where these persons live and sell their wares the prevailing standard of measurement was a yard of $35\frac{1}{2}$ inches long. In respect to the one measure he therefore convicted Harak Chand and in respect to the other measure he acquitted him on the ground that fraudulent intent was not proved. He appealed against the conviction. The Sessions Judge altered the conviction from one section to another but maintained the sentence. In regard to the charge on which the accused has been acquitted, the learned Sessions Judge has sent the record to this Court with the recommendation that the order of acquittal should be set aside and the accused be convicted under section 266 of the Code. I have read the order of reference. There are two points in the case. In the first place the Government has a right of appeal against the order of acquittal. This Court has

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always been loth to take up in revision cases of this description which have not been brought before it on appeal by the Local Government. In the present case it is really a public prosecution by a public official which has taken place. It is a matter in which Government is concerned and it is open to the District Magistrate to lay the matter before the Local Government with a view to an appeal being filed if necessary; the matter being one of more or less public importance. In the second place I have read the learned Sessions Judge's opinion as expressed in his order of reference and I have considerable doubts as to the correctness thereof. A necessary ingredient of an offence under section 266 is fraudulent intent. One knows full well that the measures of weight and measures of length which are in use in this country in villages and towns differ considerably from the standard measures laid down by Government under Act II of 1889. Where both purchaser and seller are well aware of the actual measure being used, there can be no question of fraudulent intent. It is only when the seller purports to sell according to a certain standard and sells below that standard, that he can be said to be guilty of fraud. The case in my opinion is one which this Court ought not to take up in revision but one in which if it is necessary the Local Government may appeal if it deems fit. Let the record be returned.

Record returned.

APPELLATE CIVIL.

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*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir P. Amada
Chasan Baroiji.*

DAMBAR SINGH (DECREE-HOLDER) v. MUNAWAR ALI KHAN
AND ANOTHER (JUDGEMENT-DEBTORS) *

Act No. III of 1907 (Provincial Insolvency Act), section 18—Decree obtained by insolvent before adjudication—Attachment of decree—Effect of subsequent adjudication on right of attaching creditor to execute.

Where a decree has been attached by a creditor of the decree-holder and subsequently the decree-holder is adjudged an insolvent, the right to execute such decree vests in the receiver in insolvency, and is not retained by the attaching creditor. *Raghunath Das v. Sunda Das Khatri* (1) referred to.

* First Appeal No. 153 of 1916, in a decree of Abdul Hasan, Subordinate Judge of Meerut, dated the 8th of May, 1916.

(1) (1914) I. L. R., 42 Calc., 72.