

prosecution, then clearly Jagmohan Dom was the person upon whose information the accusation was made. The mere fact that he utilized the Missionary for the purpose of conveying the information to the District Magistrate cannot protect him. If on the other hand he merely in conversation told the Missionary about the case without any desire for or view to a subsequent prosecution or to the conveyance of the information to the District Magistrate, then he was hardly liable for the intervention of a busy body who took it upon himself to make a complaint to the District Magistrate. In this latter circumstance it would be the Revd. G. Spooner who would be liable to pay compensation. I have examined the letter sent by the Missionary to the District Magistrate, and that letter is sufficient to show that Jagmohan did intend to make a complaint with a view to securing the punishment of the constable. It clearly, therefore, was upon his information that the accusation against the constable was made in court before the trying Magistrate. In these circumstances I do not think that the order passed was illegal. Let the record be returned.

1917

---

 EMPEROR  
 v.  
 BAHAWAL  
 SINGH.

---

## APPELLATE CIVIL.

---

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

NARAIN DEI (APPLICANT) v. PARMESHWARI AND OTHERS (OPPOSITE PARTIES).\*

1917

November, 7.

*Act No. VII of 1889 (Succession Certificate Act), sections 7 and 9—Certificate of succession—Security—Application by widow of separated Hindu.*

Where, under section 9 of the Succession Certificate Act, 1889, the requiring of security is optional, security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband, in the absence of special circumstances rendering the taking of security necessary.

IN this case one Musammat Narain Dei made an application under Act VII of 1889, for a succession certificate to collect certain debts due to her husband. The reversioners of the deceased objected to the granting of the certificate till some security was furnished to safeguard their interest. The lower court allowed

---

\* First Appeal No. 69 of 1917, from an order of Muhammad Ali, District Judge of Moradabad, dated the 3rd of April, 1917.

1917

NARAIN DEVI  
v.  
PARNESH-  
WARI.

the objection and asked the widow to furnish security. The widow expressed her inability to comply with the court's order and thereupon the District Judge rejected her application, holding that, under section 7, sub-section (3), as read with section 9, of the Succession Certificate Act, 1889, it was compulsory for the applicant to furnish security. The applicant appealed.

Pandit *Radha Kant Malaviya*, for applicant:—

This is not a case in which security ought to be demanded. Section 7, clause (3), of Act VII of 1889 refers to rival claimants. The interest of the reversioners was merely contingent and they had no immediate claim to the money. The order of the Judge was evidently under section 7, clause (2), where the security was merely optional. The reversioners cannot stop the widow from realizing any debt due to her husband, they can merely see that the money, when realized, is not wasted. Besides, they could not realize the debts themselves. The result of this obstruction would be that the debts would become time-barred. Some had become time-barred already. They were ruining the widow without personal gain. In *Jai Dei v. Banwari Lal* (1) the lower court directed that the widow should merely get the interest and this Court was of opinion that the order of the lower court was *ultra vires*.

The Hon'ble *Maulvi Raza Ali*, for the opposite party:—

The order demanding security, whether under section 7, clause (3), or clause (2), was a good order. Under clause (2), the court has jurisdiction to demand security "in any other case" and it has evidently exercised its discretion, which should not be interfered with. The reversioners have some interest in the money, at least they have a right to see that it is not wasted. The lady could not waste her immovable property, why should she be put in a better position as regards such a considerable amount; *Gauri Dutt v. Musammatt Muikia* (2). If no security is demanded, how did the court propose to safeguard the interest of the reversioners. The widow had a fixed income. She had no need for such a considerable amount. Security should be demanded under section 9. The appellate court generally does not interfere with the discretion of the lower court. In the case of

(1) (1913) I. L. R., 85 All., 249. (2) (1805) 2 A. L. J., 603.

*Jai Dei v. Banwari Lal* (1) relied on by the other side, the widow was made liable to render accounts to the court. If some such arrangement be made in this case too the objectors will be quite satisfied.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises out of an order of the District Judge rejecting the application of the appellant for a certificate to collect debts under Act VII of 1889. Umrao Singh was the husband of the appellant. He died leaving (1) his widow, (2) the wife of a predeceased son, and (3) certain reversioners him surviving. The application of the widow was opposed by the reversioners and the daughter-in-law. An order was made by Mr. ALLEN granting a certificate conditional upon the widow giving security to the extent of the debts covered by the certificate which was asked for. There appears to have been some allegation by the opposite party that the debts due to the deceased were greater than those mentioned in the application. The lady expressed her inability to give security, and eventually her application was rejected. The learned District Judge who finally rejected her application seems to have been of opinion that the first order made by Mr. ALLEN was under section 7, clause (3), of the Succession Certificate Act and that accordingly the court had no option but to require security to be given. In the present case it is clear that the widow was the person entitled to a succession certificate, and that the order of Mr. ALLEN was not made under section 7, clause (3). Section 9 deals with the powers of the court as to directing security. It provides that the District Judge shall in any case in which he proposes to proceed under section 7, clause (3), or clause (4), require that security must be given by the person to whom the certificate is granted. The court has also discretion in any other case to require security to be given. The real question which we have to decide in the present case is whether or not, when a widow is admittedly entitled to the certificate and all the moneys covered by the succession certificate are assets of her deceased husband, she ought to be called upon to give security. It is not alleged in the present case that there are any exceptional circumstances. There is the mere fact that she is the widow and a *pardah nashin* lady. It seems

1917

NARAIN DEI  
v.  
PARNESH-  
WARI.

1917

NARAIN DEVI  
v.  
PARMESH-  
WARI.

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

1917

December, 8.