1920

EMPEROR v. MADAN MOHAN NATH RAINA.

the local police station within twenty-four hours. The wording of the present section seems to me to make it clear that the option has been removed and that a driver must produce his licence immediately. The words "upon demand" are clear and can have only one meaning, namely, at once, directly the demand is made.

It is urged that it would be very hard lines upon many persons who accidently leave their licences behind and are only a short distance from home. It cannot be called hard lines on any body. The law is known and it is easily carried out. The object of the words "upon demand" is also to enable the police officers to prevent unlicensed persons from driving cars and that can only be done by giving the police officers power to demand immediate production of the document when they call for it. When this Act was passed, presumably the Legislature had before it the English Act and the reasons which caused the English Legislature to make it compulsory upon a driver to produce his licence immediately a constable demands it. Those reasons operate equally well in India as in England. The words in the English Act "when demanded" have exactly the same meaning as the words in the Indian Act "upon demand." In my opinion the interpretation of the law which the lower court has adopted is correct and technically the applicant was guilty of the offence of failure to produce. The application is therefore dismissed.

Application dismissed.

APPELLATE CRIMINAL.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Ryves.

EMPEROR *v.* JAISUKH.*

1920
July, 9.

Criminal Procedure Code, sections 288 and 537—Trial by Sessions Judge with the aid of assessors—Evidence recorded by the Judge alone after the assessors had been discharged—Illegality.

Where a Sessions Judge is trying a case with the aid of assessors, it is the Judge plus the assessors who constitute the Court, not the Judge alone. Where, therefore, a Sessions Judge recorded evidence after the assessors had been

* Criminal Appeal No. 603 of 1920, from an order of H. J. Collister, Sessions Judge of Saharanpur, dated the 17th of June, 1920.

1920

EMPEROR v. JAISUKH.

discharged it was *held* that this was a material irregularity which vitiated the trial. *Queen-Empress* v. *Ram Lal* (1) followed.

THE facts of the case are briefly these :—

The accused was charged under section 302 of the Indian Penal Code. During the trial a number of witnesses were examined, and the assessors gave their opinion and were discharged. After this had been done the learned Sessions Judge recalled certain witnesses and examined them in the absence of the assessors and pronounced his judgment.

Pandit *Braj Mohan Vyas*, for the appellant :—

Section 268 of the Code of Criminal Procedure provides that all trials before a Court of Sessions shall be either by jury or with the aid of assessors. In the present case, the evidence of certain witnesses was recorded by a tribunal which had no authority to record it. As soon as the assessors were discharged the Court which recorded all the previous evidence ceased to be a Court. In such cases a Court means the Sessions Judge plus the assessors. It is a material irregularity which vitiates the trial, as in fact the further evidence was recorded *coram non judice*. I rely on *Queen-Empress* v. *Ram Lal* (1).

The Government Advocate (Mr. *W. Wallach*), for the Crown :—

The learned Sessions Judge acted on a decision of this Court in the case of *King-Emperor* v. *Birbal* (Criminal Appeal No. 580 of 1916, decided on the 22nd of September, 1916). At any rate it is not such an irregularity as would vitiate the trial. The assessors had already given the verdict of not guilty and the accused could be in no better position if the assessors had heard the further evidence. The Court should at the utmost ignore such evidence as was taken in the absence of the assessors.

MEARS, C. J.—Jaisukh accused was charged before the Sessions Judge of Saharanpur with having brought about the death of one Udmi by administering arsenic. A great deal of evidence was taken, the assessors gave their opinion and the assessors were discharged, and then it occurred to the learned Sessions Judge when he was about to write his judgment that he would like to put one or two questions to another man by name Jaisukh, son of Sahibu, who had originally been challaned

(1) (1893) I. L. R., 15 All., 136.

1920

EMPEROR v. JAISUKH.

with the accused, but had been discharged by the Magistrate. The learned Sessions Judge thought he would like to put further questions to another witness who had already given evidence. This he in fact did, and did so in the absence of the assessors, and he justifies having done that by placing reliance upon a decision of Mr. Justice WALSH, who, in the case of *King-Emperor* v. *Birbal and others* (1), decided on the 22nd of September, 1916, decided that a Judge after having discharged the assessors could nevertheless take further evidence. Now, Mr. Justice WALSH could have arrived at that decision only by the fact that the case of *Queen-Empress* v. *Ram Lal* (2) was not brought to his notice, because that case is a distinct authority for the very salutary proposition that evidence must not be taken by a Sessions Judge unless that Sessions Judge has the two assessors sitting with him; otherwise, if the Sessions Judge is sitting alone, he does not appear to be a Court, the Court being the Judge plus the assessors. We, therefore, think that the learned Sessions Judge was wrong in taking the evidence of Jaisukh, son of Sahibu, and the further evidence of Nanu Gara, and therefore we are obliged to set aside the conviction and sentence and we direct that the accused be tried *de novo* by the Sessions Judge of Saharanpur as soon as possible.

Conviction set aside re-trial ordered.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

ABDULLA (PLAINTIFF) v. SHAMS-UL-HAQ AND OTHERS (DEFENDANTS).*

1920
July, 10.

Muhammadan law—Muhammadan widow in possession of husband's property in lieu of dower Rights of widow—Transfer by widow—What acquired by transferee—Limitation—Act No. IX of 1908 *(Indian Limitation Act), schedule I, article* 134.

Where a Muhammadan widow is in possession of property belonging to her deceased husband "in lieu of dower," it is competent to her to sell it without necessarily selling her right to receive her dower. Such a transfer conveys

* Second Appeal No. 1074 of 1917, from a decree of I. B. Mundle, District Judge of Azamgarh, dated the 26th of May, 1916, confirming a decree of Rameshwar Dayal Sharma, First Additional Munsif of Azamgarh, dated the 10th of February, 1916.

(1) (1916) Cr. A. No. 580 of 1916. (2) (1893) I. L. R., 15 All., 136.