the recent Full Bench case of *Lal Bahadur Lal* v. *Kamleshar Nath* (1).

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Having regard to all these circumstances we are of opinion that this appeal must be dismissed. We accordingly dismiss it with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Sulaiman.*

EMPEROR *v.* MAHTAB RAI AND ANOTHER.*

1925 *December*, 9.

*Act No. XLV of 1860 (Indian Penal Code), section 251—Tendering to a bank for exchange coins which had been used as ornaments and from which the solder had been imperfectly removed and coins which had been reduced in weight otherwise than by legitimate wear—Knowledge of tenderers.*

Two persons, who carried on a business as dealers in coins at Delhi, came to Moradabad on the 24th of May, 1925, (on which date, being a Sunday, the Bank was closed) and obtained an introduction to the cashier of the local branch of the Imperial Bank. They had with them a large number of coins, and they offered to the cashier a commission of 3 per cent. if he would change them. On further examination of these coins at the Bank the next day, the Bank officials sent for the police and the two dealers were arrested. The coins which they had brought were sent for examination to the Calcutta Mint. The report of the Mint expert, which was duly proved at the trial, showed that a considerable number of the coins tendered were old and worn coins which had been used at one time as ornaments and from which the solder had only been partially removed in order to keep up their weight, whilst many more were coins of recent date which were not much worn but had been carefully subjected to a process of clipping or filing so as to reduce their weight to the lowest limit of wastage allowable under the law.

* Criminal Revision No. 600 of 1925, from an order of H. Beatty, Sessions Judge of Moradabad.

(1) (1925) I.L.R., 48 All., 183.

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*Held* that the persons who had tried to get these coins changed were rightly convicted under section 251 of the Indian Penal Code.

THIS was an application in revision against an order of the Sessions Judge of Moradabad. The facts of the case are fully stated in the judgement of the Court.

Sir *C. Ross Alston* and Mr. *A. P. Dube*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN, J.—This is a criminal revision from a conviction under section 251 of the Indian Penal Code. It appears that on the 24th of May, 1925, the two accused, Mahtab Rai and Ram Sarup, arrived at Moradabad and through the help of a broker Ram Krishan were introduced to Rang Bihari Lal, the cashier of the Moradabad Branch of the Imperial Bank. They showed him some samples of defaced coins and requested him to cash next day when the Bank would open. Rang Bihari Lal was reluctant to accept those coins and said that he would consult other clerks of the Bank before giving his final opinion. The accused left some coins by way of sample with Rang Bihari Lal and promised to return at about 3 p.m. in the afternoon. Rang Bihari Lal approached another officer of the Bank named Manohar Lal, who came to the conclusion that the coins could not be taken by the Bank. The police were informed and some police officers came and concealed themselves in the house of Rang Bihari Lal and lay in wait for the arrival of the accused. At about the appointed time the accused arrived with bags full of coins about Rs. 2,000 in face value. Rang Bihari

Lal after examining the coins expressed his willingness to accept about 300 one rupee pieces and 100 eight anna pieces and offered to pay only Rs. 250. While the coins were lying before them and were being counted, the police officers came out and arrested the accused and took possession of all the coins. An Inspector was sent to Delhi, the place of residence of the accused, and on a search of their house, a large number of implements, e.g., 10 files, 4 shears, 36 chisels and 3 hammers, and a tin case containing clippings and some filings were found inside an iron safe along with a large quantity of defaced coins.

The accused did not deny their possession of these coins, which were sent to an officer of the Calcutta Mint for an examination and report. Mr. Hart, an officer employed at the Calcutta Mint, was examined as a witness to prove his report. According to his classification the coins were of three main samples. Sample No. 1 were coins where no drastic attempt had been made to remove solder owing to the considerable wearage of the coins. These coins however were such as could have been received by Government at a reduced valuation. Sample No. 2 were coins which had not worn much but on which cutting had been done intentionally, which the expert thought amounted to a fraudulent treatment. Sample No. 3 were coins where the cutting and clipping had been practised to an extreme limit. These coins showed little or no wearage and were of recent dates. The weights of these coins however were remarkably close to the extreme limit of wearage prescribed, from which fact the expert presumed that scales must have been used in achieving this result.

The courts below have examined the coins and agree with the report of the expert that these coins are such as had been dishonestly and fraudulently

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operated upon within the meaning of section 247 and that the accused persons were knowingly in possession of the same and had attempted to induce Rang Bihari Lal to receive the same and were accordingly guilty of the offence under section 251 of the Indian Penal Code.

Three main points have been urged before me.

The first is that as a matter of fact these coins have lost in weight owing to wearage and have not been actually defaced and are not coins which have been fraudulently or dishonestly operated upon.

The second is that the accused were in possession of these coins, which were in the form of ornaments, honestly and in the course of their ordinary business and did not knowingly possess them as dishonestly or fraudulently defaced coins within the meaning of section 251 of the Indian Penal Code.

The third is that no offence under section 251 was committed inasmuch as the coins had been transformed into ornaments and any clipping or cutting that was done was performed on ornaments as such and not on coins.

As regards the question of fact I must in revision accept the findings of the courts below based on expert evidence that a large number of the coins found in the possession of the accused had been defaced and had lost in weight not due to wearage but because of cutting and clipping.

In order further to satisfy myself I have examined a large number of these coins and there is no doubt in my mind also that a number of these coins have been clipped and cut even at places where there was no soldering. Many of these coins show edges where portions have been cut away in straight lines as if they have been filed away. The circumstance

that the weights of all the coins in sample No. 3 are remarkably close to the extreme limit of wearage prescribed, does show that their weights were reduced deliberately to that extent after careful weighing.

As to whether the accused were in possession of these coins knowing that they were so defaced, the view of the courts below is supported by all the circumstances of the case. The conduct of the accused themselves fully bears out the conclusion. In the first place they admit that they carry on the business of collecting such coins and ultimately change them at the various offices of the Imperial Bank. Under these circumstances it is only natural to suppose that they would take care to examine the coins which they receive and would make sure that they are such as can be exchanged at the Bank. Then again there is the fact that they suddenly arrived at Moradabad on a holiday and the first thing they did was to obtain an introduction to the cashier and to offer him a commission of 3 per cent. in case he accepted the coins. If they were carrying on their business in a straightforward and honest way, one would have expected them to visit Moradabad on a day when the Bank was open and to go straight to the Bank and tender the coins. The tortuous way adopted by them provided ample material for the courts below to infer that they were not dealing in this matter honestly. Furthermore, the very appearance of the coins is such as would make any one who was in possession of them know that they had been cut, clipped or filed intentionally.

The third point is that no offence is committed when a coin, which has ceased to be used as money and which has been transformed into an ornament, has been defaced. It is not disputed that the word

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"deface," as defined in section 2(*a*) of Act III of 1906, includes clipping, filing, stamping or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear. As to fraud or dishonesty, the contention is that the intention of the legislature, in making the possession of such a coin or the intention to deliver it an offence, is to punish persons who have defaced coins which are capable of being used as money. The argument is that if a coin has been transformed into an ornament, then no offence is committed if that ornament is further cut away or clipped. This argument is sought to be supported by rules Nos. 65 to 69 of the Resource Manual, under which provision has been made for accepting defaced coins, provided that they have not lost in weight below a certain prescribed minimum. Great stress is laid on rule 69 which provides that when a silver coin which has been fraudulently defaced is tendered to any person mentioned in article 57, such person shall cut or break the coin and return the cut coin to the tenderer, who shall bear the loss caused by such cutting or breaking. It is, therefore, argued that the only penalty to which a person is subject is that he has to bear the loss caused by a fraudulent defacing of a coin. But any rule prescribed by Government under which Bank officers are directed to accept or return defaced coins can in no way take away the effect of the provisions of sections in the Indian Penal Code. It is impossible to construe a section of the Indian Penal Code in the light of the provisions of the rules in the Resource Manual. These rules do not deal with any criminal liability which is provided for in the Indian Penal Code. They contain provisions under which, if the conditions required by the rules are fulfilled, coins can be exchanged.

I have, therefore, to consider whether the intention of the legislature is that possession of only such coins as have not been already altered or transformed is prohibited under section 251. Section 230 defines a Queen's coin and expressly states that the metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of that Chapter, notwithstanding that *it may have ceased to be used as money*. Now a coin may have ceased to be used as money in various ways. It may, for instance, be a coin which has been superseded, or it may pass into territories of some independent chief where it is not accepted as legal tender, or it may be that it has been defaced so badly that no one would accept it as a current coin. But it may still, within the meaning of section 230, be deemed to be a Queen's coin even though it has ceased to be used as money. Furthermore, the mere fact that a coin is being used as an ornament by soldering a ring to it does not transform it absolutely into a new article. By removal of that ring the coin in a defaced form will re-appear and may be capable of being accepted by ignorant villagers. The rules in the Resource Manual themselves require that a person who wants to have these defaced coins exchanged must at his own cost remove the solder and then tender the coins. The rules speak of a silver coin which has been defaced. It is obvious, therefore, that when these coins are tendered to a Bank they are not tendered as ornaments or other articles into which coins have been transformed, but are tendered as coins which have been defaced. If therefore an accused person clips and cuts away a coin and makes up the deficient weight by solder, with the intention of subsequently delivering it to a Bank, he would certainly be guilty of fraudulently defacing a coin even though on previous occasion the coin had

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been used as a wearing ornament. It is contended on behalf of the accused that there was really no fraud in their mind and that they did not intend to commit any fraud on the Bank. It is said that the amount of money to be paid to them would be according to the reduced weight of the coins and that if they cut away a greater portion they would receive a smaller amount, and in case they reduced the weight beyond the limit prescribed they would themselves have to bear the loss. This argument loses sight of the fact that coins which have been used as ornaments are purchased cheap in the market and then the person who cuts away a portion of them retains in his possession a part of the silver so cut away and yet gets price for the remainder from the Bank by adding solder to bring the weight up to the required figure. The whole transaction therefore is a very profitable one, because they were able to procure these coins at a very cheap price and have also substituted solder for silver. The word "dishonestly" which occurs in section 247 has been defined in section 24 as follows:—"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly." Now the Banks are not authorized to accept coins which have been fraudulently defaced. If, therefore, a person intentionally defaces a coin and conceals this fact from the Bank in order to persuade the Bank to accept the coin, he has the intention of causing wrongful gain to himself, even though the Bank may not be put to a wrongful loss inasmuch as it has to pay price according to the present weight of the coin. But there would be a wrongful loss to the Bank if some silver has been taken away by cutting, clipping or filing and the weight is brought up to the required minimum

by soldering. In my opinion, therefore, it is impossible to hold that the conviction of the accused persons under section 251 of the Indian Penal Code was in any way illegal or improper.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Lindsay.*

1926 March, 30.

GOKUL KALWAR (DEFENDANT) *v.* CHANDAR SEKHAR AND OTHERS (PLAINTIFFS) AND MAHADEO KALWAR (DEFENDANT).*

*Act No. IV of* 1882 (*Transfer of Property Act*), *section* 83—*Invalid deposit—Deposit made when one of the mortgagees is a minor and not represented by a guardian* ad litem—*Mesne profits—Mortgage redeemable only in fallow season—Preliminary and final decrees—Appeal.*

*Held* that a deposit of mortgage money purporting to be made under section 83 of the Transfer of Property Act, 1882, is not a valid deposit if at the time it is made one of the mortgagees, being a minor, is not represented by a properly constituted guardian *ad litem*. *Kannu Mal* v. *Indarpal Singh* (1), followed.

*Held* also that in the case of a usufructuary mortgage redeemable during the fallow season it is for the mortgagor to do everything that is necessary to enable the mortgagee to vacate possession during that particular season. If this is not done, the mortgagee is entitled to remain in possession until the next fallow season, and, being thus lawfully in possession, is not liable for mesne profits.

*Held* further that where, pending an appeal from the preliminary decree in a mortgage suit, a final decree is passed and an appeal from that decree is dismissed for want of prosecution, it is still open to the Court to proceed with the appeal against the preliminary decree. *Kanhaiya Lal* v. *Tirbeni Sahai* (2), followed.

* First Appeal No. 450 of 1922, from a decree of Charu Deb Banerji, Subordinate Judge of Gorakhpur, dated the 5th of October, 1922.

(1) (1922) I.L.R., 45 All., 273. (2) (1914) I.L.R., 36 All., 532.