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the Hindu Widows Re-marriage Act, with this primitive and obsolete form would be historically unsound and socially reactionary. To quote Mayne again, "This form belongs to a time when the notion of marriage involved no notion of permanence or exclusiveness. Its definition implies nothing more than fornication. It is difficult to see how such a connection could be treated at present as constituting a marriage, with the incidents and results of such a union." (P. 100, Eighth edition).

The view taken by the learned Judge is, therefore, in my opinion, correct, and I would dismiss this appeal with costs.

BY THE COURT.—This appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. RAM HARAKH PATHAK.*

Act No. XLV of 1860 (Indian Penal Code), section 30—
"Valuable security"—"Is or purports to be"—Document purporting to create rights in immovable property, but deficient as regards mode of execution.

The use of the words "which is or purports to be" in section 30 of the Indian Penal Code indicates that a document, which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immovable property, although a decree could not be passed upon the document, is contemplated within the purview of that section.

Emperor v. Jawahir Thakur (1), and Ramaswami Ayyar v. The King-Emperor (2), distinguished.

* Criminal Appeal No. 435 of 1925, from an order of Partab Singh, Additional Sessions Judge of Basti, dated the 22nd of May, 1925.

(1) (1916) I.L.R., 38 All., 430 . (2) (1917) I.L.R., 41 Mad., 589.

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THE facts of this case are fully stated in the judgement of the Court.

Dr. N. C. Vaish, for the appellant.

The Government Pleader (Mr. Sankar Saran) for the Crown.

BANERJI, J.—The appellant has been convicted by the Additional Sessions Judge of Basti under section 447, Indian Penal Code, and sentenced to 2½ years' rigorous imprisonment.

The charge against him is that he destroyed a patta which he and Sheo Agyan had executed in favour of Sheobalak, son of Jagai, on the 11th of February, 1925.

It appears that there was a suit filed in the court of the Munsif of Basti by the accused and some others against Jagai for a declaration that certain land was their *khudkasht*. Jagai defended the suit on the ground that the land was his occupancy tenancy. Jagai was referred by the Munsif under the provisions of section 202 of the Tenancy Act to the revenue court to get his status *qua* this land declared. In the meantime a riot took place in the village, and he, the appellant, and several others were prosecuted for offences of rioting and hurt. While that case was pending, a patta (together with a *kabuliat*) was executed on the 1st of October, 1924, in favour of Sheobalak, son of Jagai, relating to the land which was in dispute in the court of the Munsif. This patta along with many others were executed the same day, and this patta was kept with Thakur Ansman Singh, vakil, at whose house they were executed, on condition that the entire litigation, both civil and criminal, was to be compromised after which the patta would be registered, and Thakur Ansman Singh was to hand over the patta to the adversary of the party that did not carry out the terms of

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the compromise. The land comprised in the patta belonged to a family of six, of which Ram Harakh and Sheo Agyan were members, and the patta, although written on behalf of all the members of the family, was only signed by Ram Harakh and Sheo-balak.

After this Jagai confessed judgment in the civil case and a decree was recorded by the Munsif against him. It appears that an attempt was made to compromise the riot case, but the trying magistrate did not allow the case to be compromised. The result was that Ram Harakh and others were convicted and sentenced to substantial fines. Ram Harakh refused to register the patta and thereupon Jagai instituted a suit to set aside the "confession decree" on the ground of fraud. This suit was instituted on the 18th of November, 1924, against all six members of the family whose names appear in the first part of the patta, praying that the patta be registered. On the 4th of January, 1925, a written statement was filed by Ram Harakh and Sheo Agyan in that suit, and the averments of fact with reference to this patta were not traversed by these two persons. Various legal pleas were taken as to the validity of the patta, but, as I have stated, there is no controversy as to what was written in the patta. It appears that on the 11th of February the clerk of Ansmam Singh gave this patta to Jagai, and Ram Harakh and Jagai had a dispute as to the possession of this document, the result of which was that a portion of it was left in possession of Jagai, and another portion in that of the accused Ram Harakh. These are the main facts upon which the charge has been framed against Ram Harakh. Jagai has in court given details which are at variance with those given by him in the first report, but there can be no doubt, whether the account given

by Jagai in the first report is correct or whether the account now given by him is correct, that the patta was torn in a struggle between Jagai and Ram Harakh, and that it is proved beyond all doubt, and that the account given of it by Balramjit, to whom Jagai made a statement immediately after the occurrence, is substantially correct. The points for consideration in this case are:—

- (1) whether the document was or was not a valuable security, and (2) whether Ram Harakh destroyed the document with intent to cause damage or injury to Jagai.

It has been argued by the learned counsel for the appellant that this document was not a valuable security, inasmuch as the document purports to have been executed by six persons, but that two only signed the document, and that therefore it was not a document which could be said to be a valuable security within the meaning of section 30 of the Indian Penal Code. I am, however, of opinion that the document comes within the definition of valuable security in section 30. That document purports to create a legal right in Sheobalak in the land referred to therein. The use of the words "which is or purports to be" in section 30 of the Indian Penal Code to my mind indicates that a document, which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immovable property, although a decree could not be passed upon the document, is contemplated within the purview of that section. Had it not been so, any forged document, if the forgery was admitted, or any document which was not executed or stamped according to law and on which no decree could be passed by a civil court, could not be called a valuable security. In

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this case we have not the written statement in the civil suit of the other four members of the family. If the two persons, namely, Ram Harakh and Sheo Agyan had signed the document as representing the family, there was nothing illegal in that. Reference has been made to the cases of *Emperor v. Jawahir Thakur* (1), and *Ramaswami Ayyar v. The King-Emperor* (2), by the Government Pleader. I do not think that these cases have any bearing on the point before me. They are clearly distinguishable.

With regard to the next point, I am of opinion that the prosecution has not been able to show that the act of Ram Harakh in destroying the patta was done with the intention of causing any damage or injury to Jagai. The facts as set out in the plaint of Jagai in the civil suit are admitted by the accused. It is admitted that the patta only bore the signature of Ram Harakh and Sheo Agyan. There is no controversy on any point regarding the facts, and I do not see how it could be said that Ram Harakh in any way intended to cause damage or injury to Jagai, and, in the absence of any such intention, the charge under section 477 of the Indian Penal Code fails. I am, therefore, of opinion that the act of Ram Harakh was not proved by the prosecution to have been with intent to cause damage or injury. The act of destroying the patta may have been a very foolish act, but I am of opinion that the conviction of Ram Harakh under section 477 of the Indian Penal Code cannot be maintained. I, therefore, set aside the conviction and sentence of Ram Harakh. He need not surrender to his bail.

Conviction set aside.

(1) (1916) I.L.R., 38 All., 430.

(2) (1917) I.L.R., 41 Mad., 589.