

only be an estate to hold for her lifetime and that vested interest in Sita Ram existed during her life estate. Paragraph 7 of the will prevented either legatee from making a transfer and therefore the life estate without right of transfer of Mst. Janki is quite consistent with an estate of ownership of Sita Ram at the same time and Sita Ram merely had his right of possession postponed until the death of Mst. Janki. The provisions in paragraph 3 are merely intended as supplementary to paragraph 2 which clearly states that both Janki and Sita Ram are to be owners. The ownership of Sita Ram therefore began from the death of the testator. For these reasons we dismiss this second appeal with costs.

1940

MOHAN LAL  
v.  
GOPAL LAL

### REVISIONAL CRIMINAL

*Before Mr. Justice Collister and Mr. Justice Braund*

EMPEROR *v.* GANGA RAM AND ANOTHER\*

1940

*Criminal Procedure Code, section 307—Reference in jury case—* January, 26

*Trial on several charges—Some triable by jury, others with the aid of assessors—Judge should dispose of the latter, and then make a reference in respect of the charges triable by jury—Reference of whole case incorrect.*

The words, "any of the charges on which such accused has been tried", in section 307(2) of the Criminal Procedure Code mean any of the charges on which the accused has been tried by jury; they do not include those charges which were not triable by the jury at all but were triable by the Judge with the aid of the assessors.

A sessions trial involved several charges, some of which were triable by jury and the others were triable with the aid of assessors. The jury, acting as such in respect of the former, returned a verdict of not guilty, and, acting as assessors in respect of the latter, expressed their opinion that the accused were not guilty. The Sessions Judge, disagreeing with the verdict of the jury, and without recording any judgment of acquittal or conviction on the charges which were triable with the aid of assessors, referred the whole case to the High Court under section 307 of the Criminal Procedure Code: *Held*, that the procedure of the Sessions Judge was incorrect; he should have himself recorded judgment of acquittal or of conviction

1940  
 EMPEROR  
 v.  
 GANGA RAM

in respect of the charges which were triable by him with the aid of assessors, and then referred the case in respect of the charges which were triable by jury.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

Mr. *Kedar Nath Sinha*, for the opposite parties.

COLLISTER and BRAUND, JJ.:—This is a criminal reference to us from the Additional Sessions Judge of Cawnpore purporting to be under section 307 of the Criminal Procedure Code. Two men were tried before him, each upon two charges. one under section 435 of the Indian Penal Code, which relates to doing damage by fire, and the other under section 454 of the Indian Penal Code, which relates to lurking house trespass and house-breaking. By the practice in force in these provinces the charge under section 435 was triable in the sessions court with the aid of assessors, while the charge under section 454 was triable by jury. In this case the jury acted in a dual capacity as both assessors and jurors.

As a result of the trial the jury, in its capacity as a jury, acquitted the two accused upon the charge under section 454 and, in their capacity as assessors, expressed the opinion that they were not guilty of the charge under section 435 either. The learned Judge, whose own opinion very evidently differed from that of the jury, thereupon, without recording any judgment of acquittal or conviction on the charge under section 435, launched this reference to us under section 307 in respect of the acquittal by the jury, as a jury, upon the charge under section 454.

Section 307 is part of a fasciculus of sections dealing with trial by jury and by sub-section (1) it sets out that "If in any case the Judge disagrees with the verdict of the jurors . . . and is clearly of opinion that it is necessary for the ends of justice to submit the case . . . to the High Court, he shall submit the case accordingly, recording the grounds of his opinion . . ." By sub-section (2) it is provided that "Whenever the Judge.

submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail."

1940

---

 EMPEROE  
 v.  
 GANGA  
 RAM

Now the present case is somewhat anomalous by reason of the division of function of the jury and the learned Sessions Judge no doubt read that sub-section as meaning that he was not to record a judgment of acquittal or conviction upon *any* charge, whether it was triable by jury or triable by him with the assistance of assessors. And, accordingly, he referred the case to us without first acquitting or convicting the accused persons upon the charge under section 435.

We think that that view of the matter was technically wrong. The section, as we have pointed out, is part of a group of sections dealing with trials by jury, and when sub-section (2) refers to acquittal or conviction on "any of the charges on which such accused has been tried" it means, we think, any of the charges on which the accused has been tried by jury. It does not include those charges which were not triable by the jury at all, but were triable by the Judge with the aid of the assessors. We find that the same view of the construction of sub-section (2) of section 307 was taken by the Madras High Court in the case of *In re Pachaimuthu* (1). An identical view has been expressed in the Bombay High Court in the case of *Emperor v. Chanbasappa* (2), and in the Patna High Court also the learned CHIEF JUSTICE and another Judge expressed the same opinion: See *Emperor v. Lachman Gangota* (3). In this Court, too, two Judges in a very recent case (Criminal Reference No. 1002 of 1938 decided on 30th August, 1939) came to the same conclusion as to the proper construction of the sub-section.

That being, in our judgment, the meaning of the section, we think that the learned Additional Sessions Judge was technically wrong in making this reference to us

(1) (1932) I.L.R. 55 Mad. 715. (2) A.I.R. 1932 Bom. 61.

(3) A.I.R. 1934 Pat. 424.

1940  
 EMPEROR  
 v.  
 GANGA RAM

before he had himself recorded judgment of acquittal or of conviction in respect of the charge under section 435. We think that the proper thing, therefore, for us to do is now to stand over the present reference in this Court and to refer back to the Sessions Judge of Cawnpore the whole of the proceedings in order that a judgment of acquittal or of conviction, as the case may be, may be recorded upon the other charge in accordance with the provisions of section 307 of the Criminal Procedure Code. When that has been done, it will be possible for the proceedings to be returned to this Court and we shall then be in a position to deal with the present reference.

It will be convenient if steps are taken by the Registrar to ask the sessions court of Cawnpore to inform him when the other charges have been dealt with, in order that this reference may be restored to our list as soon as it is ready.

## APPELLATE CIVIL

*Before Justice Sir Edward Bennet and Mr. Justice Verma*

1940  
 January, 24

GAJRAJ SINGH AND ANOTHER (DEFENDANTS) *v.* KALLU  
 (PLAINTIFF)\*

*Agra Tenancy Act (Local Act III of 1926), sections 227, 266—  
 Suit for settlement of accounts and share of profits against a  
 collecting co-sharer—Defendant entitled to retain only his  
 proportionate share of the collections made by him—Extent  
 to which a co-sharer is entitled to collect from tenants.*

In a suit under section 227 of the Agra Tenancy Act, 1926, the defendant is not entitled to retain more than his proportionate share of the rent collected by him from each tenant.

Under section 266 of the Act a co-sharer cannot sue any tenant for the realisation of more than his own proportionate share of the rent due by the tenant, except in the case where there has been an assignment of particular tenants to parti-

\*Second Appeal No. 722 of 1937, from a decree of I. B. Mundle, District Judge of Bareilly, dated the 28th of January, 1937, confirming a decree of Malik Aijaz Wali Khan, Honorary Assistant Collector, First Class of Ily, dated the 10th of August, 1935.