

descent will not be enforced [*Sarupi v. Mukh Ram* (1)] will not apply here. No violence is offered to the Hindu law if a widow recorded and in possession of her deceased husband's separate share claims partition. The decision, therefore, on which the lower appellate Court relies and cites does not support its judgment. The right to partition is allowed by law, and the condition of the administration-paper that sharers are entitled to partition is in accordance with the law. It appears further that appellant in 1879 obtained a decree for her share of the profits. All the facts of the case are such that it is quite unnecessary to remand the case for any further inquiry. We must reverse the decree of the lower appellate Court, including that of the Court of first instance, with costs, declaring in favour of the appellant that she is a co-sharer in the mahál to the extent of one-third, and that she is entitled, under the provisions of s. 108 of Act XIX of 1873, to obtain the perfect partition of her share.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

BALMAKUND v. JANKI AND ANOTHER.*

Custody of Minor—Minor Wife—Act IX of 1861.

Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX of 1861 does not apply. Such person should establish his claim by a suit in the Civil Court.

ONE Balmakund applied to the District Court of Benares, under Act IX of 1861, for the custody of a minor girl on the ground that she was his wife. This application was opposed by the minor's mother, Janki, and by one Jangli, on the ground that the minor was not the wife of the applicant, but, on the contrary, was the wife of Jangli. The District Court, holding that there was no proof that the minor was the wife of the applicant, while there was proof that she was living with Jangli as his wife, rejected the application.

*First Appeal, No. 134 of 1880, from an order of M. Brodhurst, Esq., Judge of Benares, dated the 18th August, 1880.

(1) N.-W. P. H. C. Rep., 1870, p. 227.

1881

JHUNNA
KUAR
v.
CHAM SUR

1881

January 2.

1881

BALMAKUND
v.
ANXI AND
ANOTHER.

Balmakund appealed to the High Court from the District Court's order, contending that it was proved that the minor was his wife.

Lala *Jokhu Lal*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

The Court (OLDFIELD, J., and STRAIGHT, J.,) delivered the following judgment:—

OLDFIELD, J.—Act IX of 1861 does not apply to a case of this kind, where the appellant asserts his right to the custody of the respondent on the ground that she is his wife, and the latter denies that she is so. The applicant's course is to establish his claim in a Civil Court by regular suit. We dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

EMPRESS OF INDIA v. HAIT RAM.

EMPRESS OF INDIA v. CHEDA KHAN.

Illicit possession of liquor—Guilty knowledge—Presumption—Act XI of 1870, s. 2—Act X of 1871 (Excise Act), ss. 19, 63—“Ser.”

Held, in a prosecution under ss. 19 and 63 of Act X. of 1871, that the definition of “ser” given in s. 2 of Act XI. of 1870 was not so intelligible and clear as to be capable of general application and that it did not supersede the local customary weight of a ser. *Held*, therefore, the local customary weight of a ser being ninety-five tolahs (the Government ser weighing eighty tolahs), and the accused having been found in possession of ninety-six tolahs only, that the excess of one tolah over the local weight was not such as to warrant the presumption of the guilt of the accused (1).

THESE were appeals by the Local Government from judgments of acquittal passed by Mr. W. Tyrrell, Sessions Judge of Bareilly, dated the 10th and the 27th September, 1879, respectively. One Hait Ram and Cheda Khan his servant were convicted by Mr. R. G. Hardy, exercising the powers of a Magistrate of the

(1.) Reported under the orders of the Hon'ble the Chief Justice. Since this decision was given a Bill (Excise Act, 1881) has been introduced into the Legislative Council by which it is

proposed to alter the excise law, and, among other things, to define more clearly the weight of the “ser” as meaning eighty tolahs.

1880
April 19.