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—  
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been fulfilled by the appellants when they obtained the order are in fact fulfilled. That was the view taken by the learned Judge although he in fact based his decision upon the powers granted to the Court under rules 72. In the broad determination of the case I think the learned Judge was right. The only real question for us to decide is whether in the particular circumstances of this case the undertaking given, or at least the representation made by the appellants in their application for leave to bid, ought to be fulfilled before the Court allows the sale to be confirmed. It seems to me that the Court never would have permitted the appellants by bidding at the sale to discharge their obligation as purchasers by setting off against the purchase money the amount due under their decree, without taking into account at all what was due from them to the attaching-creditor. It is obvious that the attaching-creditor had a first charge upon the properties sold and the order made by the Court was in my opinion an order made upon the assumption that that charge was satisfied out of the sale proceeds and the order was conditional upon that charge being satisfied. The condition was not fulfilled and I think the sale should not be confirmed until it is. In my opinion the appeal should be dismissed with costs.

COUTTS, J.—I agree.

*Appeal dismissed.*

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### APPELLATE CRIMINAL.

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*Before Das and Bucknill JJ.*

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BAZARI HAJAM.

v.

KING-EMPEROR.\*

*Thumb Impression—of accused should not be taken during trial—conviction should not be based on thumb impression alone—Registration Act (Act XVI of 1908), section 82 (c) and (d).*

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\* Criminal Appeal No. 176 of 1921 against the conviction and sentences passed by H. W. Williams, Esq., Sessions Judge, Shahabad, dated the 30th September, 1921.

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Ordinarily a person should not be convicted of a serious crime solely upon evidence of similarity of thumb impressions.

The thumb impression of an accused person should not be taken during his trial.

The facts of the case material to this report are stated in the judgment of Bucknill, J.

*S. P. Varma*, for the appellant.

The Assistant Government advocate, for the Crown.

BUCKNILL, J.—This is an appeal by two persons named Bazari Hajam and Barhmdeo Kahar who were convicted by the officiating Sessions Judge of Shahabad on the 30th of September of this year and sentenced respectively to three years' rigorous imprisonment: the first accused for false impersonation under section 82 (c) of the Indian Registration Act and the second accused under section 82 (d) of the same Act.

The circumstances under which these convictions were recorded are somewhat unusual and the assessors both thought that the evidence was not sufficient to justify the accused being condemned.

In the first place it must be admitted, and is indeed admitted by the officiating Sessions Judge, that with one exception there was no material against either of the accused. The story upon which the prosecution was based was that a certain deed purporting to have been executed by one Ram Prasad Pande at the Koilwar Sub-registry Office at the end of March of this year, was not in fact executed by that individual but was executed by the first accused who represented this Ram Prasad Pande and incidentally placed his thumb impression upon the document. That is all. Now when the accused was brought before the court—both in the Magistrate's Court and in the Sessions Court—an altogether unusual practice, and one which I cannot but too strongly deprecate, was followed of (in some way or other I do not understand how) obtaining a thumb print of the accused, and then after having done so, a gentleman from the finger-print criminal department was called in each court, who thereupon, by means of his codes of finger-prints, declared to the

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Magistrate and to the officiating Sessions Judge that the thumb marks on the deed and on the paper which had been marked by the accused in court were identical. This is the only piece of evidence of any cogency whatever against the accused. I think that, apart from the fact that I should be rather sorry without any other corroborative circumstances to convict a person of a serious crime solely and entirely upon similarity of thumb marks or finger-prints, the very fact of the taking of a thumb impression from an accused person for the purpose of possible manufacture of the evidence by which he could be incriminated is in itself sufficient to warrant one in setting aside the conviction upon the understanding and upon the assumption that such was not really a fair trial.

I know of no law by which an accused person can be either by words or by gestures or by exposing himself to certain physical treatment made to implicate himself in the crime with which he is charged. When he is on trial such an idea is highly repugnant to all thought of the proper administration of justice in this or in any other British country. I think, therefore, that it is impossible that these convictions and sentences should be supported, that they must be set aside and the accused must be enlarged.

DAS, J.—I agree. I ought to add that the balance of the evidence, in my opinion, is entirely in favour of the appellants. It is not denied that Ram Prasad had in fact executed a sale-deed in favour of his step-mother Musammat Anandia and his wife Must. Etwaro Kuer. It is of course suggested that that document was taken from him by undue influence or by force; it does not matter which, but the important fact is that the execution of the document by Ram Prasad is not denied.

The sole question which the learned Sessions Judge had to try was, did Ram Prasad himself present the document for registration before the Registration authority or did the appellant Bazari impersonate Ram Prasad before the Registration authority. The prosecution case is based on two important facts; *first*, that Ram Prasad was a minor and that it is highly improbable

that any Registration Authority would have registered a document presented (as it must have been) by a minor; and, *secondly*, that Ram Prasad was so ill at that time that it was highly improbable that he could have presented the document before the Registration authority. The learned Sessions Judge discussed both these points. On the first point he came to the conclusion that the evidence on behalf of the prosecution was unsatisfactory and that it did not establish that Ram Prasad was in fact a minor on the 29th of March, 1921. On the second point again the learned Sessions Judge has recorded a finding that the prosecution evidence is unconvincing. Therefore, it seems to me that it was dangerous to convict the appellants on the sole testimony of the finger-print expert.

Now the learned Sessions Judge considered the point whether the evidence of the finger-print expert received any corroboration. He conceded that the appellants could not be convicted without such corroboration but he has recorded a finding to the effect that the evidence of the finger-print expert had received corroboration. Now the view of the learned Sessions Judge is this: He says first of all that the accused are residents of the village with which the executants of the document, that is to say, Ram Prasad and Ram Chandra Pande, are connected. The learned Sessions Judge thinks that this evidence corroborates the testimony of the finger-print expert. *Secondly*, the learned Sessions Judge was impressed by the fact that the complainant mentioned the name of the accused very early in the proceedings. He also took that as another corroborating circumstance.

I wholly disagree with the view of the learned Sessions Judge. This evidence, in my opinion, does not at all corroborate the evidence of the finger-print expert. I agree with my learned brother that it was extremely dangerous to take the finger-print impression of an accused person in a court of law. I agree that the convictions are unsustainable and that the convictions and sentences of the accused persons must be set aside.

*Convictions and sentences set aside.*

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