

appointer, the existence of the former's son would not debar the latter from appointing another heir, and it is clear that the second appointed heir would succeed to the estate of the appointer.

It is to be observed that the customary appointment of an heir resembles in many respects the Kritrima form of adoption of Hindu Law, and as regards the Kritrima son, it has been held that he does not succeed to the property of his adoptive father's father, nor do his sons take the inheritance of his adoptive father. I would therefore hold that, in the absence of a special custom to the contrary, the son of an appointed heir acquires no right of inheritance to the appointer.

HARRISON J.—I agree.

C. H. O.

Reference answered in the negative.

LETTERS PATENT APPEAL

Before Sir Shadi Lal, Chief Justice and Mr. Justice Brasher

SHIV GIR (PLAINTIFF)—AND
BHAGWAN GIR (DEFENDANT)— } *Appellants*

versus

KHAZAN GIR AND OTHERS—DEFENDANTS—

Respondents.

Letters Patent Appeal No. 18 of 1922.

Provincial Small Cause Courts Act, IX of 1887, Second Schedule, articles 13 and 35 (ii)—Jurisdiction—suit by manager of a temple for a share of the offerings and price of a mare presented to the temple—without any allegation of dishonesty.

Held, that a suit by a person as manager of a temple for a share of the offerings and the produce of the temple land, and for the price of a mare presented to the temple, in the absence of any allegation in the plaint that the defendant acted dishonestly, is cognizable by a Court of Small Causes and does not fall under either article 13 or article 35 (ii) of the second schedule to the Provincial Small Cause Courts Act, 1887.

Held also, that article 13 of the Act only relates to claims made against the person who is primarily liable to pay the cesses or dues.

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SHIV GIR
v.
KHAZAN GIR.

Appeal from the decree of Mr. Justice Abdul Raof dated the 12th December 1921.

MUKAND LAL PURI, for Appellants.

FAQIR CHAND, for Respondents.

The judgment of the Court was delivered by—

BRASHER J.—The question in this case is whether the suit as framed was cognizable by a Court of Small Causes and whether consequently no second appeal lay to this Court.

The plaintiff sued as manager of a temple for a share of the offerings and of the produce of the temple land. He alleged that he was entitled to a $\frac{1}{3}$ share and admitted that the defendant Khazan Singh was entitled to $\frac{2}{3}$. He also claimed the price of a mare which he alleged had been sent by a *zaildar* named Bhim Sain for the temple during the period at which the plaintiff was entitled to receive the offerings, and he further alleged that the defendants had taken away a cow and calf which had been the property of a former Mahant. It is said that the suit was not cognizable by a Court of Small Causes because it was one falling either under article 35 (i) or article 13 of the second schedule to the Provincial Small Cause Courts Act. Article 35 (ii) excludes from the jurisdiction of a Small Cause Court a suit for compensation for an act which is, or save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code. It is urged on behalf of the plaintiff appellant that the acts which the defendants are alleged to have committed would constitute offences punishable under section 403, Indian Penal Code. It is, however, an essential element of this offence that the accused person should act dishonestly, and we are unable to find in the plaint any definite allegation that the defendants had the intention requisite for the commission of an offence under this section. It is obvious that in many cases of this type, a defendant might be civilly liable while he would incur no criminal liability at all, and unless all the necessary ingredients of a criminal offence are stated in the plaint the case cannot be excepted under article 35 (ii). Article 13 also appears to be inapplicable. There is ample authority to show

that the article only relates to claims made against the person who is primarily liable to pay the cesses or dues.

We accordingly maintain the order passed by the learned Judge in Chambers and dismiss the appeal with costs.

M. R.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

JAFAR—Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 561 of 1922.

Workmen's Breach of Contract Act, XIII of 1859—Contract by a person to carry stones on his camels—applicability of the Act.

Held, that a contract by a person to carry stones on his camels cannot be described as a contract of an artificer, a workman, or a labourer within the meaning of the Workmen's Breach of Contract Act, 1859.

Devappa Ramappa Naik v. Emperor (1), followed.

Case reported by H. F. Forbes, Esquire, Sessions Judge, Dera Ghazi Khan, with his No. 278-J., dated the 7th April 1922.

The accused on conviction by *Sardar* Gurmukh Singh Mongia exercising the powers of a Magistrate of 1st class in the Dera Ghazi Khan District, was sentenced, by order, dated the 20th January 1922, under section 2 of the Workmen's Breach of Contract Act to one month's rigorous imprisonment.

The facts of this case are as follows :—

Jafar accused is a carrier. He was paid Rs. 53-13-0 to carry stones on his camels.

Gurandita Mal, complainant instituted a complaint on account of this advance of Rs. 53-13-0. On 2nd November 1917 the Magistrate gave Jafar three months within which to work off the advance.

(1) (1918) 50 Indian cases 492.

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