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The facts set out above appear to us to require that the accused should be convicted under s. 304.

In judging of knowledge had by the accused, we must consider the circumstances: the blow that to one person, or under ordinary circumstances, may not, in the ordinary course of nature, be likely to cause death, may yet be imminently dangerous to another, or under special circumstances.

To kick a girl of tender age with such force as to produce rupture of the abdomen in a healthy subject, appears to us to be an act of such a character that no reasonable man could be ignorant of the likelihood of its causing death.

We, therefore, convict the prisoner Ketabdi under the latter part of s. 304, Indian Penal Code, and sentence him to five years' rigorous imprisonment, to run from the date of his original sentence.

Conviction modified and sentence enhanced.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice McDonell.

JUGGOBUNDHOO SHAHA (DEFENDANT) *v.* PROMOTHONATH ROY (PLAINTIFF).*

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Jalkar—Fishery—Occupation, Rights of.

The right of occupancy which accrues to tenants who have occupied or cultivated land for twelve years or upwards, does not arise in respect of the right called jalkar or fishery. That is a right which may be let out by ijaradars under the landlord, and may be enjoyed under them so long as their ijara continues, but is liable to be determined at the expiration of the ijara.

THE plaintiff in this suit sought to recover from the defendant khas possession of the jalkar or right of fishery over 44 bigas and 3 cottas of land covered with water. Of these 44 bigas

* Appeal from Appellate Decree, No. 285 of 1878, against the decree of Baboo Kishen Chunder Chatterjee, Officiating Subordinate Judge of Nuddea, dated the 18th of December 1877, reversing the decree of Baboo Krishna Behary Mookerjee, Munsif of Kooshtea, dated the 13th of September 1876.

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and 3 cottas, he stated that 7 bigas and 6 cottas were the site of an ancient *katadara* or canal that had been excavated for the purpose of increasing the productive powers of the adjacent lands of which he was the proprietor, and the remaining 36 bigas and 17 cottas were the site of a *daha* or deep water-pool formed in the year 1278 (1871) by the water in the *katadara* having, during the heavy rains, overflowed and submerged that quantity of the surrounding land. He stated further that he had been in the habit of letting the jalkar of the *katadara* to ijaradars, and that, in 1279 (1872), when, on the expiration of the ijara, he resumed khas possession, he had been dispossessed by the defendant, who claimed a right to fish in both the *katadara* and the *daha* without his permission. The defendant did not deny the proprietary right of the plaintiff, but insisted that the jalkar in the *katadara* was an ancient maurasi tenure to which the jalkar in the *daha* was an accretion; that in 1276 (1869) he had purchased the jalkar from his predecessor, who held under the then ijaradar, and had ever since been in possession on payment of the same rent as his predecessors, and was not liable, therefore, to be ejected in this suit. No proof was given of the creation of the jamai or maurasi tenure pleaded by the defendant, but it was proved that the defendant and his predecessors had held actual possession of the jalkar *katadara* for more than fifty years, and that the *daha* was an accretion to such *katadara*. The Court of first instance, upon these facts, dismissed the plaintiff's suit, on the ground that, as to jalkar *katadara*, the possession of the defendant under a jamai having continued for more than twenty years, such possession was sufficient to prove the maurasi jamai title set up by him, and, therefore, the plaintiff could claim rent from him at the same rate as what had previously been paid, but could not claim khas possession. As to the *daha*, he held that as it was an accretion to the *katadara*, the plaintiff might be entitled to enhance the rents, but not to oust the defendant from the increased portion of the jalkar.

The lower Court of appeal, without questioning the facts found by the Court of first instance, held, that the tenant of a jalkar could not, by long possession, acquire any right of occupancy; and that as there was no proof of the creation or grant

of the jalkar right by any former proprietor, or by any ijaradar expressly authorized by the proprietor to create or grant it, it must be presumed to have been created by an ordinary ijaradar who could not create or grant maurasi rights. The decision of the Court of first instance was, therefore, reversed, and possession of the jalkars decreed to the plaintiff.

From this decree the defendant appealed to the High Court.

Mr. *Strong* and Baboo *Shoshee Bhoosun Dutt* for the appellant.

Baboo *Sree Nath Doss* for the respondent.

The judgment of the Court was delivered by

JACKSON, J.—The point submitted to us in special appeal is very short. It is whether the defendant, by reason of having enjoyed for a number of years, on payment of rent to successive ijaradars, the right of fishery over a certain jalkar, of which the plaintiff is the ground landlord, is entitled to retain and enjoy that right of fishery on payment of rent to the plaintiff against his will. That is not, as appears to me, precisely the case submitted by the defendant to the Court below, for he set up in fact an independent title. He says in para. 7 of the written statement that the *daha*, over which the fishery right had been exercised, was not formed in the mode alleged by the plaintiff; and he says:—"Even if for argument's sake it be admitted that the channel of the *katadara* was excavated afterwards, still, as according to the map produced by the plaintiff, the *katadara* appears to lie contiguous to my jalkar property, I am legally entitled to the right thereof, and the plaintiff is not entitled to get khas possession of the same." Again in para. 9 he says:—"Since the creation of the jalkar *katadara* as *shamilat*, or appurtenant to the jalkar Mehal Bil Boalia, the rent was collected by the ijaradar of Bil Boalia, and remitted to the plaintiff's treasury. Since I purchased the jalkar in the year 1276, I have been in possession of it on payment of rent in accordance with the former practice, through the ijaradars of the aforesaid Bil Boalia. Under these circumstances the plaintiff is not

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entitled to get khas possession." However, taking the point as stated by the learned counsel for the special appellant, it has been decided by the Subordinate Judge on this principle, that the right of occupancy which accrues to tenants, who have occupied or cultivated land for twelve years or upwards, does not arise in respect of the right called jalkar or fishery. The Subordinate Judge states, and we think correctly, that that is a right which may be let out by the ijaradar under the landlord, and may be enjoyed under him so long as his ijara continues, but is liable to be determined at the expiration of the ijara. If the defendant has been unable to come to terms with the plaintiff, who has re-entered on possession of the land, we think he is not entitled to retain the fishery against the plaintiff's will. The ground title which he set up appears to have failed in the judgment of the lower Appellate Court, and the plaintiff necessarily had judgment. The appeal must be dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice White.

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IN THE GOODS OF HEWSON.

Letters of Administration to Administrator-General—Form and Extent of Grant—Succession Act (X of 1865), ss. 187, 190, 242—Administrator-General's Act (II of 1874), ss. 3, 14, 16, 66—Act to amend Succession Act (XIII of 1875), s. 2—Rules of High Court, 21st June 1875.

Grants of letters of administration to the Administrator-General are made to him by virtue of Act II of 1874 (the Administrator-General's Act), and are not in any way affected by the provisions of Act XIII of 1875 (the Act to amend the Succession Act). The form of grant should be general and unlimited.

IN this case, at the instance of the Administrator-General, an order was applied for before Mr. Justice Pontifex, for a limited grant of administration to the effects of Lieutenant