

vants or persons lawfully engaged upon his business or going to his premises. We think the judgment of the Court below should be accordingly modified, and a decree drawn in the terms stated above. The plaintiff will be entitled to his costs of this appeal.

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Decree modified.

APPELLATE CRIMINAL.

Before Mr. Justice Markby and Mr. Justice Prinsep.

THE EMPRESS *v.* ACHIRAJ LALL AND ANOTHER (PETITIONERS).*

Information to Police—Agent of Owner of Land—Criminal Procedure Code
 (Act X of 1872), s. 90.

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Per MARKBY, J.—A khazanchi is not an “agent” within the meaning of s. 90 of the Criminal Procedure Code. A dewan may be an “agent” if his master is absent, but the provisions of s. 90 do not apply to a dewan who is acting only under the orders of his resident master.

Per PRINSEP, J.—*Quære.*—Whether, according to s. 90, an agent is only responsible for giving information of the occurrence of any sudden or unnatural death?

Mr. Branson and Mr. Evans (with them Baboo Doorga Pershad Dass) for the petitioners.

The Assistant Legal Remembrancer (Mr. Kilby) for the Crown.

IN this case the khazanchi and dewan of the zemindar of a certain village had been tried and convicted under s. 90 of the Criminal Procedure Code for not giving information to the police of a theft committed in the village.

The prisoners appealed to the High Court.

MARKBY, J. (after noticing certain irregularities in the Magistrate’s procedure, continued as follows):—But I also think that neither of these two persons would come within s. 90 of the Code of Criminal Procedure. With regard to the person who

* Criminal Motion, No. 129 of 1878, against the order of J. B. Worgan, Esq., Sessions Judge of Gya, dated the 28th of June 1878.

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appears to be really a *khazanchi*, although possibly he performs some other duties, I do not think that he would be an agent within the meaning of that section under any circumstance, unless we extend this section to all servants of zemindars, which I certainly should not feel disposed to do. With regard to the *dewan*, he might be an agent within the meaning of the Act if his master was absent. But it would be unreasonable to extend the operation of the Act to a *dewan* who was acting only under the orders of his resident master. The section is exceedingly vague in its language, and, unless strictly construed, might be made the instrument of great oppression.

The conviction and sentence must be set aside, and the petitioners released.

PRINSEP, J. (after noticing the irregularities referred to by Markby, J., proceeded as follows):—As regards s. 90, I think there is considerable force in the argument of Mr. Branson, that although the commencement of that section refers to an agent of an owner or occupier of land responsible for giving information to a Magistrate, when it comes to declare the nature of that information, the terms of the first three clauses seem to exclude that class, referring only to the other classes. It would seem either that this was an accidental omission on the part of the legislature, or that the legislature expressly intended that an agent is responsible only for giving information regarding the last clause,—that is, of the occurrence of any sudden or unnatural death. It is not on this ground, however, that I would set aside the conviction and sentence in this case, but I think it necessary to draw attention to the state of the law, so that, if there is any accidental omission, it may be rectified when the Code comes under amendment.

Conviction set aside.
