

dered in awarding the punishment. When a man, being one of an armed band, and being himself armed with a deadly weapon, as there is evidence to shew that Khoaz, who was on this occasion killed, was armed, takes part in a fight, and uses that deadly weapon against his opponents, I think it is reasonable to say that he was, within the 4th clause of s. 300, committing an act which he knew to be so imminently dangerous, that it must, in all probability, cause death or such bodily injury as is likely to cause death; and I think further that he committed such act without any excuse for incurring the risk of causing death or such injury as has just been mentioned. When he and his party are opposed by a number of persons similarly armed, and using their arms in a similar way, I think it is reasonable to say that such person, within the meaning of exception 5, takes the risk of death with his own consent.

1880
 SANSIHERE
 KHAN
 v.
 THE
 EMPRESS.

Order as to conviction and sentences varied.

APPELLATE CIVIL.

Before Mr. Justice White and Mr. Justice Field.

IN THE MATTER OF THE PETITION OF SHRISH CHUNDER MOOKHOPADHYA AND ANOTHER.*

1880
 Aug. 25.

Order of Civil Court authorising Lease of Minor's Property—Act XL of 1858, s. 18.

On an application under s. 18 of Act XL of 1858 for leave to deal with the property of an infant, the Civil Court is bound to determine the question, whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant: and the petition should contain all the materials reasonably required to enable the Court to decide that question.

The decision of Garth, C. J., in *Sikher Chund v. Dulputty Singh* (1) followed.

THIS was an application by Nitumbini Debi, the mother and guardian of her two minor sons, for leave, under s. 18 of Act XL of 1858, to lease out certain lands, the property of the infants. The Civil Court, on such application, made the following

* Appeal from Order, No. 156 of 1880, against the order of J. F. Browne, Esq., Officiating Judge of the 24-Pargannas, dated the 27th April 1880.

(1) I. L. R., 5 Calc., 363.

1880
 IN THE
 MATTER OF
 THE
 PETITION OF
 SHRISH
 CHUNDER
 MOOKHOPA-
 DHYA.

order:—"I decline to sanction the proposed lease; the guardian must act on her own responsibility." The applicant, thereupon, appealed to the High Court.

Baboo *Hem Chunder Banerjee*, Baboo *Aubinash Chunder Banerjee*, and Baboo *Omahally Mookerjee* for the appellant.

The judgment of the Court (WHITE and FIELD, JJ.) was delivered by—

WHITE, J.—This is an appeal against the order of the Judge of the 24-Pargannas, declining to sanction a lease, which sanction was applied for by Nitumbini Debi, as guardian of her two infant sons, under s. 18 of Act XL of 1858.

The case was opened to us as one in which the Court had refused to go into the question of whether the proposed lease was for the advantage of the infants or not; but the order, when read, shows that the Judge merely declined to sanction the lease, and having regard to the materials that were put before him in the petition, we cannot say that he was wrong.

In applications under s. 18 the Court is bound to go into the question, whether or not the proposed sale is one which it is for the benefit of the infant that the guardian should be empowered to execute. On this point we may adopt the language used by the present Chief Justice in *Sikher Chund v. Dulputty Singh* (1), where he says:—"The Civil Court has now not only the power, but it is bound, as I consider, under that section to enquire into the circumstances of each case, and to determine whether, as a matter of law and precedence, it is right that any proposed sale or mortgage of the minor's property should take place."

The petition in the present case contains a statement of the proposed lease on behalf of the infants, and that its execution is necessary in order to avert the disposal of the property by the creditors of the infants' father; but it is defective in not stating the amount of premium that is to be taken from the intended lessee, the amount of rent that is reserved by the patni lease, and the annual rent or profits which are at present derived from the property proposed to be leased.

(1) I. L. R., 5 Calc., 363, at p. 381.

The petitioner, therefore, did not furnish the District Judge with all the materials which he reasonably required in order to enable him to form a correct opinion as to whether the lease was for the benefit of the infants or not.

We must dismiss the appeal, but at the same time we think it right to intimate that this dismissal will not prevent a second application from being made to the District Judge under s. 18, based upon further and better materials; and that if these materials shew that the granting of the proposed patni lease is for the benefit of the infants, the Court should give the necessary power to the guardian to make or join in the grant. In dealing with these materials, the Court will consider the allegation of the guardian that the granting of the patni lease is necessary to avert the disposal of the property by the creditors of the infants' father.

1880
 IN THE
 MATTER OF
 THE
 PETITION OF
 SHRISH
 CHUNDER
 MOOKHOPA-
 DHYA.

CRIMINAL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Maclean.

THE EMPRESS v. NISTAR RAUR.*

1880
 June 28.

Contagious Diseases Act (XIV of 1868), ss. 11, 21—Rules 13 and 27 passed under the Act—Magistrate, Competency of—Jurisdiction.

Any woman desirous of ceasing to carry on the business of a common prostitute is, under the provisions of the Indian Contagious Diseases Act, 1868, absolutely entitled to have her name removed from the register; and any rule, or portion of a rule, purporting to have been framed under the provisions of that Act which places any obstacle on the way of her doing so, is *ultra vires*, and therefore void.

Where a woman is prosecuted before a Magistrate under s. 11 of Act XIV of 1868, she is not precluded from pleading that she has ceased to be a common prostitute, and that she has taken steps, under s. 21 and the rules framed thereunder, for the removal of her name from the register; and the Magistrate is competent to entertain such a defence.

In the matter of Lakhimani Raur (1) approved.

* Criminal Reference, No. 106 of 1880, from B. L. Gupta, Esq., C. S., Presidency Magistrate of Calcutta, Northern Division, dated the 29th May 1880.

(1) 3. B. L. R., A. Cr., 70.