

INDIAN LAW REPORTS [VOL. XXXVII.
CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Doss.

1910
 Sept. 2.

PARMESWAR SINGH

v.

EMPEROR.*

Criminal Trespass—Mischief—Entry by a servant upon land in the possession of the Court of Wards and cutting bamboos thereon under the order of the owner—Penal Code (Act XLV of 1860), ss. 426, 447.

A servant of a proprietor who has voluntarily surrendered his estate to the Court of Wards does not commit criminal trespass or mischief by cutting or removing bamboos etc growing thereon, for the benefit of his master, under the circumstances of this case.

THE petitioner, who was a *peuda* in the service of Rash Behari Lal Mandar, whose estate was voluntarily surrendered by him to the Court of Wards in March 1909, was tried by Babu Anant Lal Chatterjee, Deputy Magistrate of Bhagalpore, on the complaint of a tehsildar of the Court of Wards, under ss. 447 and 426 of the Penal Code, and convicted and sentenced thereunder, on the 28th June 1910, to a fine of Rs. 200. The petitioner entered upon certain lands and cut some bamboos and *kharhi* (grass for matting walls) on 4th May 1910, under the order of Rash Behari, for the purpose, it was said, of obtaining materials for the construction of a lying-in room for Rash Behari's wife.

The defence alleged that the bamboos and *kharhi* were cut from the *jote* lands of one Bandey Lal, which did not form part of the estate taken over by the Court of Wards, but the Magistrate disbelieved the story and found that the lands belonged to Rash Behari and were in the possession of the Court of Wards. An application was made against the order of the Magistrate to the Sessions Judge of Bhagalpore who declined to interfere, whereupon the petitioner moved the High Court and obtained the present Rule.

* Criminal Revision, No. 998 of 1910, against the orders of J. C. Twidale, Sessions Judge of Bhagalpore, dated July 26, 1910

Mr. Ahmad and Babu Manmatha Nath Mookerjee, for the petitioner.

Mr. Buckland, for the Crown.

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HOLMWOOD AND DOSS JJ. This was a Rule calling upon the District Magistrate of Bhagalpore to show cause why the conviction and sentence should not be set aside, or why such other order should not be made as to this Court may seem fit and proper.

The principal ground on which we are asked to interfere in this case is that the matter does not come within the purview of the criminal law. Upon the findings in the Lower Court it appears to us that this contention must prevail. It is perfectly clear that the Deputy Magistrate in the Court below held that these bamboos belonged to the estate of Rash Behari Lal Mandar, and that the accused was a *peada* acting solely in his interest. He has altogether dismissed and disbelieved the case that the bamboos stood on the *jote* land of Bandey Lal. Accepting this finding, it amounts to this: that Rash Behari Lal Mandar removed or damaged his own bamboos which were in the possession of the Court of Wards under the Act. The charge of theft has already been disposed of by the learned Magistrate in the Lower Court. The charge of criminal trespass does not lie, inasmuch as the accused was entering upon property in the possession of his master without intending to commit an offence, or to intimidate, insult or annoy the Court of Wards.

Then if it is not a criminal trespass the question arises if it is mischief. Now it is a well-known rule of law that a man may commit mischief by damaging his own property, provided he does so in order to cause wrongful loss to somebody else, or knowing it to be likely to cause wrongful loss to somebody else. But it can hardly be said that a man who damages his own estate, although he has at present only a qualified interest damages the trustees in possession, whose only object is to preserve the estate for the benefit of the owner. The difficulty appears to have arisen from the amendment of the Court of Wards Act, made some years ago, by which a proprie-

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tor may voluntarily surrender his own estate to the Court of Wards. It is obvious that in such a case the proprietor may, after surrendering his estate, cause trouble to the Court of Wards by contumacious conduct such as is alleged in this case. And it is surprising that there appears to be no procedure by which the Court of Wards can deal with such conduct. But this is a matter with which we are not concerned in the Criminal Court. In this case we have only to decide whether the findings bring the case within the four walls of the Indian Penal Code. Having given our careful consideration to the case we are decidedly of opinion that it does not. The Rule, therefore, must be made absolute. We set aside the conviction of, and the sentence passed upon, the petitioner. The fine, if paid, must be refunded.

E. H. M.

Rule absolute.

CIVIL REFERENCE.

Before Mr. Justice D. Chatterjee and Mr. Justice Richardson.

1910
 Sept. 5.

GUR PERSHAD SINGH

v.

DHANI RAI.*

Succession Certificate—Mitakshara Law—Impartible Estate—Arrears of rent converted to a bond—Debt due to last holder of impartible estate if “effects of the deceased” in the hands of the successor—Succession Certificate Act (VII of 1889), s. 4.

Where in lieu of arrears of rent a bond was given to the holder of an impartible estate:—

Held, that the debt due is not, in the hands of the successor to the estate, a part of the effects of the deceased within the meaning of section 4 of the Succession Certificate Act, but is in its nature, a family debt accruing to him by right of survivorship.

Jagmohandas Kilabhai v. Allu Maria Duskal (1), *Beejraj v. Bhyro-persaud* (2), *Bissen Chand Dudhuria Bahadur v. Chatrapat Sing* (3), *Katama Natchier v. The Rajah of Shivagunga* (4), *Stree Rajah Yanumula Venkayamah v. Stree Rajah Yanumula Boochia Vankondora* (5) referred to.

* Civil Reference, No. 2 of 1910, by J. C. Twidale, District Judge of Bhagalpore, dated March 4, 1910.

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| (1) (1894) I. L. R. 19 Bom. 338. | (4) (1863) 9 Moo. I. A. 539. |
| (2) (1896) I. L. R. 23 Calc. 912. | 2 W. R. P. C. 31. |
| (3) (1895) 1 C. W. N. 32. | (5) (1870) 13 Moo. I. A. 333. |