

1916.

NUSSER-  
WANJI & Co.  
v.  
S. S. WAR-  
TENFELS.

decision in *The Lord Advocate v. Stewart, No. 2*,<sup>(1)</sup> cited with approval by Lord Halsbury, Vol. XXVI, p. 804, that a losing party must pay the fees of counsel for the Crown even though he be paid a fixed salary.

In my opinion, therefore, the decision of the Taxing Master was right and the application for a review must be dismissed.

Attorneys for the plaintiffs: Messrs. *Ardeshir, Hormusji & Co.*

Attorney for the defendant: Mr. *E. F. Nicholson.*

*Application dismissed.*

G. G. N.

<sup>(1)</sup> (1899) 63 J. P. 473.

### CRIMINAL REFERENCE.

1916.

March 31.

*Before Mr. Justice Batchelor and Mr. Justice Shah.*

EMPEROR v. A DEAF AND DUMB ACCUSED.\*

*Criminal Procedure Code (Act V of 1898), section 341—Deaf and dumb accused—Procedure and Practice.*

Though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment.

THIS was a reference made by A. K. Kulkarni, First Class Magistrate at Bhusawal. It was in the following terms:

"I beg to submit herewith the proceedings in case No. 1 of 1916 in which the Police Sub-Inspector of Bhusawal charged a deaf and dumb man for having stolen two sadis worth Rs. 6 belonging to the complainant Halimabi mard Sultanalli from her dwelling house at Bhusawal. The prosecution witnesses were examined and their depositions recorded. The accused, however, could not be made to understand the proceedings though every

\*Criminal Reference No. 5 of 1916.

possible effort was made to make him understand by means of signs. His statement also could not be recorded for the very reason. The police made every effort to ascertain his name and place of residence but to no purpose. It could only be ascertained that he was seen in Bhusaval since some time past. No relations of his could be traced or ascertained. In Court during his trial no one appeared for him. Under these circumstances the trial had to be finished one sided only. *From the evidence before the Court it appears that he committed an offence of theft punishable under section 380, Indian Penal Code. I accordingly framed a charge against him which he could neither understand nor could he enter on his defence. On this material I have recorded my judgment of conviction under section 380, Indian Penal Code, and have submitted the papers for being placed before their Lordships, the Judges of the High Court, under section 341 of the Criminal Procedure Code.*"

The reference was heard.

S. S. Patkar, Government Pleader, for the Crown.

No appearance for the accused.

BATCHELOR, J. :—In this case the accused, a deaf and dumb man, has been convicted of theft under section 380 of the Indian Penal Code, and the proceedings have been submitted to this Court, under section 341 of the Criminal Procedure Code.

Section 341 provides that in such a case as this the High Court should pass such orders as it thinks fit. The law in England appears to be that though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment: see Russell on Crimes, Vol. I, p. 62, Archbold's Criminal Practice, p. 11 and *The King v. Elizabeth Steel*.<sup>(1)</sup> *Queen v. Bowka Hari*<sup>(2)</sup> and *The Queen-Empress v. Reubin Samuel*<sup>(3)</sup> are authorities to show that the same is the law and practice in India. In this case we are satisfied from the learned Magistrate's judgment that he was right

<sup>(1)</sup> (1787) 1 Leach 451.

<sup>(2)</sup> (1874) 22 W. R. 35 at p. 72.

<sup>(3)</sup> (1894) Ratanlal's Cri. Cas. 696.

1916.

EMPEROR  
v.  
A DEAF AND  
DUMB  
ACCUSED

1916.

EMPEROR  
v.  
A DEAF AND  
DUMB  
ACCUSED.

in finding that the accused understood the nature of the act which he was committing when he committed this theft.

We, therefore, confirm the conviction and sentence the accused to one month's rigorous imprisonment.

*Conviction and sentence confirmed.*

R. R.

---

APPELLATE CIVIL.

---

1916.

April 14.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.*

ACHRATLAL JEKISANDAS (ORIGINAL OPPONENT), APPELLANT v. CHIMANLAL PARBHUDAS (ORIGINAL PETITIONER), RESPONDENT.\*

*Guardians and Wards Act (VIII of 1890), sections 12, 13, 17, 19, 24 and 25—Minor never in the custody of his father—Application by father for custody of his son under Guardians and Wards Act—Refusal of the District Court to make an order on the application—Remedy by way of suit—Jurisdiction of District Court.*

One C, the maternal uncle of B, a minor, applied to the District Court at Ahmedabad for the appointment of himself as guardian of the person and property of the minor in preference to A, the father of the minor. The Court made no order as to the guardianship of the minor's person by reason of section 19 of the Guardians and Wards Act, 1890, but appointed the Deputy Nazir as the guardian of the minor's property. Subsequently the father who never had the custody of his minor son applied under the Guardians and Wards Act, 1890, for the custody of the boy. The Joint Judge refused to make an order on the application and referred the father to a regular suit. On appeal to the High Court,

*Held*, that the only remedy of the father was to file a suit for the custody of his son.

*Sharifa v. Munekhan*,<sup>(1)</sup> followed.

*Held* further, that the jurisdiction of the District Court was defined by the Guardians and Wards Act and that it had no inherent powers to make orders with reference to minors which were not expressly conferred upon it by that Act.

\* First Appeal No. 63 of 1916.