

record, was filed by himself and Lala Panna Lal in the Court of the District Judge at Ambala in connexion with the liquidation proceedings, and upon this exhibit there is a "note" that interest at eight and a quarter per cent, is to be included from 1st January 1912 on the balance of Rs. 26,000-9-4 due to the bank. This again shows that defendant 2 at all events was well aware that enhanced interest was being charged, and in addition to this we have the significant fact that neither defendant 1 nor defendant 2 went into the witness-box to swear that they had no knowledge of the agreement between the company and the bank.

In the sixth place it is contended that the bank were negligent in realizing an amount of Rs. 9,585-0-0 due on certain hundis which had been sent to them by the Laxmi company as security for the money due to the bank and that consequently the said amount must be deducted from any sum found to be due to the bank. It is not specified in the pleadings what particular hundis are referred to in this connexion, but apparently they are the five set forth in Ex. D-15 at p. 80 of the paper-book. The District Judge has found that the bank made every reasonable effort to realise the hundis in their possession and that on their failure to do so, they brought the matter to the notice of the company and were told on more than one occasion to hold up the hundis for the time being. This finding is supported by various documents on the record (see Ex. P-32, 33, 35, 36, 37, 38, 40, 41 and 44). In face of this evidence we cannot agree that the bank showed negligence in the matter of realizing the hundis and that they are therefore liable to make good to the company any loss that may have been sustained by reason of the hundis being now time-barred.

We know of no authority in support of the argument that the plaintiff bank was bound to accept the hypothecation of certain supplementary securities which the company offered the bank in December 1910 (see Ex. P. W. 1 at p. 67); or that their refusal to accept such hypothecation debars them from claiming relief against the sureties. Finally there is the question of the interest to be allowed from date of suit to date of

realization. The District Judge has granted this at the contract rate of eight and a quarter per cent, per annum and we are unable to hold that he acted unreasonably in so doing. The rate is not unduly high and it must be remembered that the bank has been deprived of its money for some considerable time. Before concluding we would advert briefly to Mr. Potman's request that we should remand the case in order to enable defendants to call evidence to prove that Ex. P-54 has a well understood meaning in banking circles and that the form in which the contract of 28th December 1908 was embodied was one employed by the customer of a bank who wishes to be allowed to overdraw his account from time to time. We find it unnecessary to accede to this prayer as it is, in our opinion, the duty of the Court to construe a written contract of this kind for itself, and we are unable to see how the evidence of the bankers and bankers' clerks could be relevant to, or indeed of any material assistance in the interpretation of an agreement in writing which is clear enough so far as its language is concerned. The result is that we dismiss both the appeals with costs.

R.M./R.K. *Appeals dismissed.*

A. I. R. 1919 Lahore 458

SHADI LAL, J.

Ahmad and others—Convicts—Petitioners.

v.

Emperor—Opposite Party.

Criminal Petn. No. 1031 of 1919, Decided on 31st October 1919, against order of Sess. Judge, Lyallpur, D/- 26th June 1919.

Penal Code (1860), Ss. 97, 149 and 325—Right of private defence of property—Right exceeded—No unlawful assembly held formed—Person actually causing grievous hurt could only be convicted.

Accused, six in number, caused grievous hurt to a person while acting in the exercise of the right of private defence of property. It was found that they had exceeded that right:

Held: (1) that it could not be held that all the accused constituted an unlawful assembly; (2) that the only person who could be convicted was the one who actually caused the grievous hurt. [P 459 C 1]

*Muhammad Iqbal—*for Petitioners.

*D. C. Ralli—*for the Crown.

Judgment.—The learned Sessions Judge finds that the complainant's party had no right to seize the cattle of the accused after the cattle had left the field,

and that the accused were consequently entitled to the right of private defence of property. But the learned Judge holds that the accused exceeded their right of private defence. Now on these findings it cannot be held that all the accused constituted an unlawful assembly and the only person who can be convicted is the one who actually inflicted the mortal wound on Mian Khan and thus exceeded his right of private defence: vide *Mihan Singh v. Emperor* (1). The evidence shows that that person was Ahmi. In view of the findings of the lower appellate Court referred to above, I am constrained to hold that no person other than Ahmi can be held to be guilty. I accordingly accept the application for revision and acquit all the petitioners, except Ahmi, whose conviction is altered to one under S. 325, I. P. C. The sentence imposed upon him by the Courts below is upheld.

R.M./R.K. Petition partly accepted.

(1) A. I. R. 1914 Lah. 557=26 R. R. 1914 Cr. =26 I. C. 652.

A. I. R. 1919 Lahore 459

SHADI LAL AND MARTINEAU, JJ.

Balwant Singh and another—Convicts—Appellants.

v.

Emperor—Opposite Party.

Criminal Appeal No. 142 of 1918, Decided on 3rd July 1918, from order of Sess. Judge, Ferozepore, D/- 24th January 1918.

(a) Criminal P. C. (5 of 1898), S. 82—Territorial jurisdiction of British Courts—Subject of Native State cannot be tried for abetting within State for offence committed within British India—Arrest by British police of subject of Patiala State on Railway lines within Patiala Territory is valid—Penal Code, S. 4.

Where a subject of a Native State is charged with abetting an offence committed in British India and the alleged abetment consists entirely of what the accused did or said at a place within the State territory, he cannot be tried in a Court in British India for such abetment. *Reg v. Pirtai*. 10 B. H. C. R. 356 Foll; 36 Bom. 524, Dist. [F 464 C 1]

The accused, a subject of the Patiala State, was arrested in a Railway carriage at Bhatinda by the British Police.

Held: that the arrest was lawful as full and exclusive power and jurisdiction of every kind over the Railway lines and over all persons within those lines had been ceded by the Patiala State to the British Government. 25 Cal. 20 (P. C.), Dist. [P 464 C 1]

(b) Evidence Act (1 of 1872), Ss. 144 Illus. (b), and 133—Value of approver's evidence—Corroboration is necessary.

An approver giving his evidence under a promise of pardon cannot be believed unless he is corroborated by independent evidence.

[P 461 C 1]

Beechey and Gulam Rasul for Kehr Singh—for Appellants.

Mul Chand—for the Crown.

Judgment.—Gajjan Singh, Arjan Singh and Mahla Singh have been convicted under Ss. 302/149, I. P. C., of having murdered Santa Singh and Nathal, residents of Dina in the Ferozepore District, and under S. 395, I. P. C., of having committed dacoities at the houses of Santa Singh, Banta Singh and Kala Singh, and Balwant Singh and Jot Ram have been convicted of abetting those offences. All the convicts have been sentenced to death. They have appealed, and the case is also before us under S. 374, Criminal P. C., for confirmation of the sentences. The offences were committed at Dina at about midday on 18th September 1916, Gajjan Singh, Arjan Singh and Mahla Singh are residents of Khota, a village about 5 kos from Dina, and are said to have joined with Bhanga Singh and his brother Ganda Singh, residents of Dina, in committing the offences. The deceased Santa Singh and Nathal were descendants of Baja, a great uncle of Bhanga Singh and Ganda Singh, and there was, as the learned Sessions Judge has shown bitter enmity between Bhanga Singh and Ganda Singh on the one hand and Santa Singh and his brother Banta Singh on the other. There is also evidence that Gajjan Singh, Arjan Singh and Mahla Singh were associates of Bhanga Singh and Ganda Singh, and that Gajjan Singh and Arjan Singh used often to go to Dina.

On the morning of 18th September 1916 Sucha Singh P. W. 34, lambardar of Khota, saw Gajjan Singh, Arjan Singh and Mahla Singh leaving the village and going towards Pattoke, which is in the direction of Dina. Gajjan Singh had a gun and the other two had chhavis. Mahla Singh, who was under orders of internment in his village, called out to Sucha Singh to report to Kirpal Singh lambardar that he was going away and would not return. The witness informed Kirpal Singh P. W. 35 who on the same morning made a report P. D. at the thana. Thakur Singh, P. W. 27, says he