turns upon the special facts of that case. On these grounds we confirm the decree of the lower appellate Court and dismiss the appeal and the cross-objections with costs.

Baker, J.—I agree. So far as regards the rayatawa property the widow did divest herself of the whole estate and thus there was an acceleration of the right in favour of her daughter as the next reversioner and, therefore, the transaction is covered by the Privy Council rulings in *Rangasami Gounden* v. *Nachiappa Gounden* (2) and *Bhagwat Koer* v. *Dhanukhdhari Prashad Singh* (16).

As regards the question of watan property a number of cases have been quoted, but in all those cases the widow or the widows asserted their title as full heir to the separate share held by her husband as in the cases of *Satgur Prasad* v. *Raj Kishore Lal* (17) and *Uman Shankar* v. *Mt. Aisha Khatun* (8). In *Kali Charan* v. *Piari* (9) the widow took possession of the property which was in her husband's possession during his lifetime. That case states that the nature of the widow's possession has to be determined by the facts in each case. In the present case the property is a watan property and there is a direct authority of the Privy Council on the point in *Padapa* v. *Swamirao* (13), where it is held that where a widow held the possession as watandar and in no other character she could not make any alienation which would be valid against her own heir whether that heir were the appellant or another. In these circumstances I agree that the decree of the lower appellate Court should be upheld and the appeal and the cross-objections dismissed with costs.

R.K. *Decree upheld.*

(16) A. I. R. 1919 P. C. 75=47 Cal. 466=46 I. A. 259 (P. C.).
(17) A. I. R. 1919 P. C. 60=42 All. 152=46 I. A. 197 (P. C.).

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* A. I. R. 1928 Bombay 336

MADGAVKAR, J.

Emperor

v.

Vithabai Sukha—Accused.

Criminal Case No. 16 of 1928 (First Criminal Sessions 1928), Decided on 16th February 1928.

* (a) *Penal Code, S. 373—S. 373 must be read with S. 372—Object of the possession is the test—Possession for two or three hours by the brothel-keeper in the night is sufficient possession.*

Section 373 must be read in conjunction with the previous S. 372, which is its counterpart. The law does not specify the nature of the possession, nor its duration, nor intensity. It merely specifies the object, namely, prostitution or illicit intercourse. Whether in each case, the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse, is the only test which in law is necessary and sufficient : 16 *Bom.* 737, *Rel. on.* [P 337 C 1]

Where a brothel-keeper allows a girl to visit the brothel for two to three hours in the night and she is allowed to prostitute herself to customers for money, it is sufficient obtaining of possession within the meaning of S. 373. [P 337 C 1]

(b) *Bombay Prevention of Prostitution Act* (1923), *S. 6—Brothel-keeper availing herself of the supply of the procuress is guilty of abetment.*

Section 6 is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. The section is directed against both a brothel-keeper and her procuress ; the brothel-keeper who avails herself of the supply of the procuress is guilty of abetment of the offence under S. 6, Bom. Act 11, 1923. The brothel-keeper facilitates the prostitution and completes it. [P 338 C 1]

Brown—for the Crown.

Daruwalla and *Ambedkar* — for Accused.

Madgavkar, J.—The offence is alleged to have been committed in respect of the girl Hansabai, wife of Laxman. According to the prosecution, accused 1 took Hansabai away from the service of a Parsi, where accused 1 and Hansabai were serving, to the house of accused 1's sister-in-law, accused 2, and after a couple of days accused 2 took her to the brothel of accused 3, left her there for two or three hours for six or seven nights, and brought her back to her own house regularly, the earnings of Hansabai by prostitution being equally divided by accused 2 and 3. Hansabai then ran away from accused 2 and was found by the police.

The first point of law raised on behalf of accused 3 is that possession under S. 373, I. P. C., must be complete and exclusive possession and that possession for two hours or so for four or five nights as is alleged in this case, in the house of the brothel-keeper accused 3, was not possession within the meaning of S. 373, I. P. C. Reliance was placed for this contention on two cases : *Queen* v.

Shaik Ali (1) and *Queen* v. *Nourjan* (2). It is argued by the learned counsel for the Crown that there was no such limitation in law.

In my opinion S. 373, I. P. C., must be read in conjunction with the previous S. 372, which is its counterpart. And the questions, whether a person under 18 has been bought and sold, hired and let to hire, disposed of and possession obtained, are all, in each case, questions of fact for the jury and not of law for the Judge. The law does not specify the nature of the possession, nor its duration, nor intensity. It merely specifies the object, namely, prostitution or illicit intercourse. Whether, in each case, the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse—this is the only test which in law is necessary and sufficient. This is the view which has been laid down by this Court in *Queen-Empress* v. *Tippa* (3), where the fact that the father had performed a certain ceremony of dedication of his daughter, a child of four, as a dancing-girl in a temple, was held to be sufficient to constitute disposal under S. 373, I.P.C.

In regard to the two cases relied upon, it is to be observed that the facts in each of these cases were entirely different. In the Madras case the facts found were that the prisoner met a girl under the then statutory age and on a promise of a price was allowed to have sexual intercourse and both were detected in the act. On this state of facts, in the opinion of the learned Judges, there was no selling or buying or letting or hiring or disposal or possession. But it is to be noted that in the section as it then stood, the words "illicit intercourse with any person" did not find place but were subsequently added. The addition of these words, as pointed out by Messrs. Ratanlal and Dhirajlal in their "Law of Crimes," renders this ruling, to all intents and purposes, obsolete. Similarly, in the Bengal case it appears that the brothel-keeper merely allowed her house to be used as a more convenient place for the assignation of illicit lover and his mistress. Moreover, it is a case on which the two Judges differed. Speaking for myself I agree with Glover, J., who thought that the facts constituted the offence rather than with Jackson, J.

On the evidence in the present case, it is the case for the prosecution, and it is not denied by accused 3, that the girl Hansabai came to her brothel and was allowed to prostitute herself to customers. Presumably money passed. It is not alleged that Hansabai kept the money. Therefore, the jury will have to decide whether they accept the evidence of Hansabai that the money was divided equally between accused 2 and accused 3, or the argument for accused 3 that this statement on account of certain discrepancies should be discredited, and that the jury should believe that accused 3 did not retain any money herself but passed it in its entirety on to accused 2, and that accused 3 in fact merely allowed her brothel to be used by Hansabai for no profit of accused 3's own, but so to speak, merely out of kindness. Again, in my opinion, the questions whether the person who brought Hansabai to accused 3's brothel was accused 2 or, according to accused 2's allegation, it was somebody else who brought Hansabai to accused 3's brothel, or whether as between that person and accused 3 there was letting or hiring of Hansabai or disposal or possession of Hansabai—these, in my opinion, are matters for the jury and not matters for me. I hold that in law and on the evidence the possession set up by Hansabai, even though for two or three hours from eight or nine at night, if the jury accepts Hansabai's evidence, is sufficient possession within the meaning of S. 373, I. P. C. I might observe, however, that on the case as now set up the more appropriate charges would have been as against accused 2 under S. 372, as against accused 1 of abetment of the offence under S. 372 and as against accused 3 under S. 373. But for all practical purposes the difference is not very great.

The second contention for accused 3 is that on the alternative charge under S. 6, Bom. Act 11 of 1923 there is no evidence against accused 3 that she procured Hansabai. It is argued that "procures" merely applies to a person who obtains a woman for illicit intercourse or causes a woman to become a prostitute and not to a brothel-keeper who avails herself of the recruit brought by the procuress and that the brothel-keeper is not even guilty of abetment. With this contention I am

(1) [1870] 5 M.H.C.R. 473.
(2) [1870] 6 Beng. L.R. App. 34.
(3) [1892] 16 Bom. 737.

unable to agree. The Act is passed for the prevention of prostitution, and it is clear that S. 6 of the Act is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. It may be that in some cases brothel house keepers may themselves be procuresses. In other cases they may be different and may be connected either intimately or casually. But of their intimate connexion as demand and supply there can be no doubt. The section is directed against both a brothel-keeper and her procuress. In my opinion the brothel-keeper who avails herself of the supply of the procuress is guilty of abetment of the offence under S. 6, Bombay Act 11, 1923. The brothel-keeper facilitates the prostitution and completes it.

R.D. *Order accordingly.*

A. I. R. 1928 Bombay 338

FAWCETT AND MIRZA, JJ.

Government Pleader—Applicant.

v.

L. B. Bhopatkar—Opposite Party.

Civil Appln. No. 864 of 1927, Decided on 16th March 1928.

(a) *Civil P. C., S. 80—Notice by a pleader on behalf of his client to the judicial officer is not mere private letter.*

Notice by a pleader on behalf of his client under S. 80, Civil P. C., is not a mere private letter, as it is one which S. 80 requires in the case of an intended suit against a public officer in respect of any act purporting to be done by that public officer in his official capacity. [P 339 C 1]

(b) *Bombay Pleaders Act* (17 *of* 1920), *S.* 25—*Extent of pleader's authority in writing a notice to a judicial officer under S.* 80 *discussed—Legal practitioner.*

It is the duty of counsel towards their clients to use their own judgment and experience and discretion and as a result, whatever be their instructions, to exclude all topics and observations of which the case does not properly admit. They should be careful to express anything in a form which will not be unduly insulting or opprobrious to the officer, who has to receive the notice. [P 340 C 1]

Where a notice by a pleader contained the following extracts: "You should not have asked my client to attend the Court at 11 a. m., when he was not going to be examined at that time. He was not bound in law to wait indefinitely till you chose to call him for examination. A witness's time is as much valuable, if not more, than the time of the Court. . . Obviously enough, your order was not only arbitrary and high-handed, but also spiteful and malicious . . . From what is stated above, you will clearly see the enormity of your own acts."

Held: that there was a clear excess of the privilege of the Bar, amounting to improper conduct. [P 341 C 2]

Mulla & P.B. Shingne—for Applicant.

H. C. Coyajee and *A. G. Sathaye*—for Opposite Party.

Fawcett, J.—The facts out of which this application arises are briefly as follows:

One Mr. Davare was summoned as a witness in the Court of the City Magistrate, Poona. The summons required him to attend at 11 a. m. on 27th May 1927, in order to give evidence in a criminal case. According to Mr. Davare's affidavit in these papers, he attended in obedience to the summons at about five minutes to 11, and ascended the staircase leading to the City Magistrate's Court and was stepping into it, when a policeman, who was doing duty at the head of the staircase—apparently acting under the Magistrate's order—rudely prevented him from entering the Court. He says that he waited for about half an hour and then left, as he had business to attend to in the District Court; and that, as soon as that was over, he returned to the City Magistrate's Court at about 2-30 p. m. He then learnt that he had been called at about 12-30 p. m. by the Magistrate, who, finding him absent, had issued a warrant against him. He saw the Magistrate, who had him bound over to appear next day. He appeared accordingly and gave evidence in the case, but on the same day, the Magistrate made a complaint against him under S. 174, I. P. C., for having disobeyed the summons by not attending the Court in obedience to it. He was tried for this offence by a Bench of two Magistrates, but was acquitted; and an appeal from that decision was summarily dismissed by this Court. The ground of that decision was that as Mr. Davare had, in fact, attended the Court and tried to see the Magistrate in order to be excused from waiting and also had returned to the Court, there was no intentional disobedience. The acquittal was on 4th July, and on 20th July, the opponent, Mr. Bhopatkar, sent a notice to the City Magistrate, who is Mr. Fleming, under S. 80, Civil P. C., intimating that unless he paid his client, Mr. Davare, Rs. 1,000 as compensation, his client