

CRIMINAL REFERENCE.

1900
July 13.*Before Mr. Justice Blair.*

IN THE MATTER OF MADHO PERSHAD.*

Act No. XII of 1896 (Excise Act), section 49—License to sell spirits retail—Death of licensee before expiration of period of licence—Right of his heir and partner in business to continue sale—Personal nature of licence.

Held, that a licence for the retail sale of liquor under the Excise Act, No. XII of 1896, granted in the name of one man, does not on his death before the expiration of the period of the licence descend to his heir and partner in business so as to justify the said heir and partner in business in continuing to sell during the unexpired portion of the period named in the licence.

Where an order had been made for the sale of the liquor, part of which was, as above ruled, illegally sold by the accused: *Held*, that if the said liquor had by devolution or otherwise become the property of the accused, there was no reason why it should not be attached and sold.

THE facts of the case sufficiently appear from the judgment of the Court.

No one appeared.

BLAIR, J.—The District Magistrate of Mirzapur refers to this Court this conviction and sentence by a Magistrate, inflicted under section 49 of Act No. XII of 1896. He doubts the soundness of the conviction in point of law, and in the alternative suggests that as the offence is a purely technical one, the conviction and sentence should be set aside. I may add that an order has been made for the sale of the liquor, part of which has been held to be improperly retailed. The facts are that one Hira Lal, the uncle, as I understand, of the person convicted, whose name is Madho Pershad, held a licence for sale by retail of European spirits, which licence would be in force up to some time in September of the present year. Hira Lal died in the month of April, and it was after his death that Madho Pershad having no licence himself, made the illegal sale or sales of which he has been convicted. It is said, I know not with what truth, that Madho Pershad is Hira Lal's heir, and was his partner during his life. I do not think there is any doubt as to the technical soundness of the conviction. A licence is a personal grant, largely made for personal reasons,

* Criminal Reference No. 357 of 1900.

1900

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and it certainly does not, after the death of the licensee, attach itself in any way to his property or devolve upon his heirs. I do not think Madho Pershad or any man of ripe years who had any connection with the traffic, could have sold the liquor without, at all events, grave doubt as to whether such sale was in violation of the law. I do not think that a fine of Rs. 50 inflicted upon a substantial man can be anything but a very small sentence for an offence which is punishable by four months' imprisonment or fine of one thousand rupees, or with both. I set aside the order of the Magistrate for the sale of the confiscated liquor, and instruct him to reconsider that question with a view to his arriving at a conclusion whether the liquor confiscated and ordered to be sold is the property of Madho Pershad. In that case I see no reason why he should not order attachment and sale of such liquor. If, it is not by devolution or otherwise the property of Madho Pershad, it ought not to be confiscated and sold. Let the papers be returned.

APPELLATE CIVIL.

1900

July 13.

Before Mr. Justice Know, Acting Chief Justice, and Mr. Justice Blair.

RAM CHANDER (DEFENDANT) v. KONDO AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, sections 13, 244—Transfer of Property Act (No. IV of 1882) sections 88, 89—Decree not in accordance with judgment—Interpretation of decree.

Where a mortgagee in suing upon his mortgage included in his plaint certain property which was not included in the mortgage deed and this fact was apparently overlooked by the defendant who defended the suit, and where, while the judgment declared "that a decree be given against the hypothecated estate," in the decree the property affected was described as "the property specified in "the plaint."

Held, that the decree must be held to mean the hypothecated property mentioned in the plaint, and that neither section 13 nor section 244 of the Code of Civil Procedure concluded the defendant from subsequently suing to recover the property wrongly included in the plaint.

THE facts of this case sufficiently appear from the judgment of the Court.

Mun-hi Ram Prasad and Pandit Sundar Lal, for the appellants.

* First Appeal from Order No. 112 of 1899 from an order of Babu Prag Dass, Subordinate Judge of Saharanpur, dated the 10th July 1899.