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vendor. It has been found by the lower appellate Court, and the finding has not been challenged, that there are no preferential male heirs.

The other point as to the construction of the deed is not free from difficulty. On the whole, however, we are of opinion that the contract between the original vendor and vendee was that the price to be paid on a re-sale was the original price mentioned in the deed of sale. We therefore dismiss this appeal and affirm the decree of the lower appellate Court as far as the female plaintiff is concerned.

The added plaintiff, the son of the female plaintiff, has no title during his mother's lifetime, and is not entitled to a decree jointly with her. His suit must be dismissed, but, under the circumstances, without costs. Musammat Ganeshi is entitled to her costs in this Court.

Decree modified.

1900
May 14.

REVISIONAL CRIMINAL.

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

QUEEN-EMPRESS *v.* NARAIN SINGH.*

Criminal Procedure Code, section 556—*Act No. V of* 1881 (*Police Act*), *section* 29—*Trial by District Magistrate for breach of orders of a Reserve Inspector of Police*—*Magistrate not "personally interested."*

Held, that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred by reason of section 556 of the Code of Criminal Procedure from trying a person accused under section 29 of the Police Act, 1861, of a breach of the orders of a Reserve Inspector of Police.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Jhánsi in respect of an order passed by the District Magistrate of Jhánsi, whereby the Magistrate had convicted one Narain Singh of a breach of an order issued by a Reserve Inspector and had sentenced him to two months' rigorous imprisonment under section 29 of Act V of 1861. The Sessions Judge was of opinion (1) that it was not proved that the accused knew of the order in question and wilfully disobeyed it, and (2) that the Magistrate as head of

* Criminal Revision No. 215 of 1900.

the police in the district was debarred by section 556 of the Code of Criminal Procedure from trying the case. The Sessions Judge was of opinion that "the Full Bench ruling of the Allahabad High Court in the matter of the petition of *Ganeshi* (1) has been practically overruled by the addition of the illustration to section 556, Criminal Procedure Code, by Act V of 1898."

The facts of the case are more fully stated in the order of the Court.

KNOX, ACTING C. J., and BLAIR, J.—Narain Singh, a constable, was convicted by the District Magistrate of Jhansi of an offence under section 29 of Act V of 1861, and sentenced to two months' rigorous imprisonment. Narain Singh was a recruit, and, as such, under the orders of the Reserve Inspector. There is evidence on the record that all policemen at every parade from the 11th were informed by orders of the Reserve Inspector that no recruit was to be absent from the lines without a pass. Upon the evidence the District Magistrate rightly found, if he believed the evidence, which he did, that Narain Singh was absent from the roll-calls at which he was bound to be present at 7 P. M. and 9-30 P. M. on the 22nd February. The defence of the accused was that he was unable to be present at the first of the two roll-calls because he had been in the Court Inspector's office till 6-30 P. M. of that evening, and when he went home to get his food, was delayed because the food was not ready. As regards the second roll-call, he says he was asleep. He does not anywhere set up the defence that he was ignorant of the rule about the roll-call. The defence, moreover, is disbelieved, and we shall certainly not disturb the Magistrate's finding on these matters of fact. The finding proceeds upon evidence, with which he was more competent to deal, in that it was given in his presence, and he had better opportunities of appraising its worth. There is also much force in what the District Magistrate says, that he tried the offence summarily, and all that a Magistrate trying the case summarily is required by law to enter is the finding, and in case of a conviction, a brief statement of the reasons therefor. We do not expect to find the evidence in full, nor can we lay down,

(1) (1893) I. L. R., 15 All., 192.

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for that would be legislation, that in a case of this kind the Magistrate is bound to do more than record a judgment embodying the substance of the evidence.

But it is contended that the Magistrate had no jurisdiction to try this case, and the contention is based upon the words contained in section 556 of the Code of Criminal Procedure. The argument is that the accused should not have been tried by the District Magistrate in one capacity for breach of an order issued by, or approved of by himself in another capacity as accused's superior officer. We have in this Court in Full Bench decided what meaning is to be put on the words "a party or personally interested," and that judgment is in no way affected by the explanation which has been added by Act No. V of 1898, certainly so far as the circumstances of this case are concerned. The accused could have at a proper stage raised this point; he did not do so, nor do we think he could have done so successfully, for we see in the case no substantial interest giving rise to real bias in the mind of the District Magistrate. We do not agree with the learned Judge that the fact that the District Magistrate was much concerned on account of riots between the police and the Madras Infantry Regiment, and that he was taking energetic steps to prevent disturbance of the public peace, is any evidence of any bias on the part of the District Magistrate. Any such conclusion as this we most emphatically decline to draw. A Magistrate may be very properly interested in securing the proper peace of his district, and be at the same time rigidly impartial in trying persons charged with a breach of that peace. The Code of Criminal Procedure recognises this when it gives the District Magistrate special powers of dealing in appeal with proceedings taken to insure security against any breach of the peace. The order therefore which we are now passing is in no way concerned with any such reasoning as that given above. We take into consideration that the accused was a recruit, that nothing was shown against his previous character. Three months is the maximum punishment provided by law, and we think that, on the whole, a sentence of one month's rigorous imprisonment would have sufficed. We accordingly reduce the sentence to one of rigorous imprisonment for one month with effect from the 28th February, 1900.

Any imprisonment which the accused has suffered since that date will be deemed part of this sentence. Any balance of imprisonment not suffered will run from the date on which he is arrested or submits himself for arrest.

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APPELLATE CIVIL.

1900
May 14.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

NAJM-UN-NISSA (PLAINTIFF) *v.* AJAIB ALI KHAN (DEFENDANT).*

Muhammadan law—Pre-emption—Invalid sale—Time when right of pre-emption arises.

No right of pre-emption arises upon a sale which, according to Muhammadan law, is invalid, as, for instance, by reason of uncertainty in the price or the time for delivery of the thing sold; but if such sale become complete, as by the purchaser getting possession of the thing sold, then the ownership of the purchaser becomes complete, and a right of pre-emption arises, but neither ownership nor the pre-emptive right relates back to the date of the contract of sale. *Begam* v. *Muhammad Yaqub* (1) referred to.

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

Mr. *Abdul Raoof* and Pandit *Moti Lal* for the appellant.

Mr. *Karamat Husain* for the respondent.

HENDERSON J. (BURKITT, J., concurring)—These second appeals, No. 631 of 1897 and No. 687 of 1897, have been heard together.

The facts are very simple. One Amirullah, who was the owner of one of four adjacent houses, on the 17th May 1895, by a registered contract of sale, sold that house to Ajaib Ali, the respondent in this appeal, for Rs. 84 for the site, and a further sum for the buildings, to be ascertained by carpenters or masons to be appointed by the vendor and vendee, it being stipulated that upon the additional sum being ascertained and paid, possession of the house should be made over within ten days.

On the 14th July 1896, Abrar Husain, the owner of the remaining three houses, sold them to his wife, Najm-un-nissa, the

* Second Appeal, No. 631 of 1897, from a decree of D. F. Addis, Esq., C. S., District Judge of Shahjahanpur, dated the 2nd August 1897, reversing a decree of Babu Baij Nath, Subordinate Judge of Shahjahanpur, dated the 3rd June 1897.

(1) (1894) I. L. R. 16 All., 344.