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PADAM KUMARI v. SURAJ KUMARI.

property amongst his sons. In an application for partition presented by Bhikhraj in 1895 (No. 283 of the Record) it is stated that Indobar divided the whole of his property under a will. In the will there is no allusion to any property in Nepal.

The evidence adduced by the respondents shows that Bhikhraj, a Brahman by caste and a domiciled British subject, went through a form of marriage in Nepal with the defendant, Suraj Kumari. The evidence also shows that such mixed marriages are not uncommon in Nepal and that the issue of such marriages succeed to the father's estate. But whatever may be the case in Nepal, I do not think this evidence helps the respondents. Such a marriage is not recognised as a legal union in this part of British India. In my opinion there is nothing to take this case out of the general rule that all rights to immovable property are governed by the law of the country where the property is situated.

For the above reasons I am of opinion that this appeal must succeed.

Appeal decreed.

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February 24.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

EMPEROR *v.* ABDUS SATTAR.*

Act No. XLV of 1860 *(Indian Penal Code), sections* 286 *and* 337—*Definition—Causing hurt by means of a gun—Evidence of negligence.*

Held that the causing of hurt by negligence in the use of a gun would fall within the purview of section 337 rather than of section 286 of the Indian Penal Code. But where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun struck a man who was sitting in a field, it was *held* that this was not sufficient evidence of rashness or negligence to support a conviction under section 337 of the Code.

THE facts of the case, so far as they are necessary for the purpose of this report, appear from the judgment of the Court.

Sir *W. M. Colvin*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

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* Criminal Revision No. 53 of 1906.

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EMPEROR v. ABDUS SATTAR.

AIKMAN, J.—This is an application for the revision of an order of a Magistrate of the first class convicting the applicant, Abdus Sattar, of an offence punishable under section 286 of the Indian Penal Code and sentencing him to pay a fine of Rs. 25. That section provides for the punishment of any person who does any act with an explosive substance so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any person, or who knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against probable danger to human life from that substance.

It appears that the applicant was out shooting with some friends, and that a pellet from his gun lodged in the thigh of one Birkhi, who was at work in the corner of his field. According to the evidence for the prosecution the accused at once went up and gave his name and address. In my opinion section 286 was never intended to apply to a case like this. The learned Assistant Government Advocate contends that the case falls within the purview of section 337, which provides punishment for any person who causes hurt by doing any act so negligently or so rashly as to endanger human life or the personal safety of others, and suggests that the finding should be altered to one under that section. I think that if any section in the Indian Penal Code were applicable to the facts of the present case it would be section 337. But in my judgment to sustain a conviction under that section it is necessary for the prosecution to prove affirmatively that the accused has been guilty of culpable rashness or negligence. I can find nothing on the record to show that the prosecution established that there was on the part of the accused any such rashness or negligence. The learned Magistrate appears to consider that his finding that the accused fired the gun and that the complainant, Birkhi, was injured thereby, coupled with the fact that in the month of July people are out working in their fields, was sufficient to establish the accused's guilt. He says that the case is not one of a serious nature. There is nothing on the record to show at what distance the accused was from the complainant when he fired or even that the complainant was in the direct line of fire. For aught we know

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the complainant may have been injured by a stray pellet accidently deflected from its course. I allow the application. I quash the conviction under section 286 of the Indian Penal Code and the sentence passed thereon, and direct that the fine if paid be refunded.

1906
March 3.

APPELLATE CIVIL

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Sir William Burkitt.

JAMNA DAS (PLAINTIFF) *v.* NAJM-UN-NISSA BIBI AND OTHERS (DEFENDANTS).*

Act No. IX of 1872 *(Indian Contract Act), section* 65—*Act No. XV of* 1877 *(Indian Limitation Act), schedule II, article* 97—*Contract—Failure of consideration—Suit to recover money paid—Limitation.*

One Farzand Ali negotiated on behalf of his wife, Najm-un-nissa, a mortgage for Rs. 26,000 in favour of Jamna Das. This mortgage included two items, one of Rs. 3,403-11-6 and the other of Rs. 679-10-6. The former was a debt due by Farzand Ali to Jamna Das, for which Farzand Ali represented his wife was willing to become security; the latter was a sum taken by Farzand Ali in cash on the representation that it would be paid by him to the mortgagor. On suit by the mortgagee for recovery of the mortgage-money the first Court decreed the plaintiff's claim in full; but on appeal the High Court exonerated the mortgagor from payment of the two sums mentioned above. After the death of Farzand Ali the mortgagee sued the representatives of Farzand Ali for recovery of these two items. *Held* that the mortgagee had a good cause of action in respect of which limitation only began to run from the date of the decree of the High Court, which decided that the sum claimed could not be recovered from Najm-un-nissa as part of the mortgage debt. *Bassu Kuar* v. *Dhum Singh* (1) followed.

IN this case one Farzand Ali now dead, had negotiated a mortgage for his wife, Najm-un-nissa Bibi, one of the present defendant-respondents, in favour of the present plaintiff-appellant.

In a suit previous to the present one brought by the present plaintiff against the wife on his mortgage the High Court eventually disallowed two items of the alleged consideration, *viz.* one for Rs. 3,403-11-6, on the ground that it was a debt of

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* First Appeal No. 78 of 1904, from a decree of Rai Shankar Lal, Subordinate Judge, Mirzapur, dated the 23rd December, 1903.

(1) (1888) I. L. R., 11 All., 47.