

Sub-Registrar that the ground on which he refused registration was not denial of execution. The grounds were those set out in his order. It is next contended that the order of the District Registrar was not an order refusing registration. The order of the 9th October, 1909, is not before us. We gather it was merely a direction to the Sub-Registrar as to what he should do under the circumstances. It could not have been a refusal to register the document, because at that stage of the proceedings the document was not before the Registrar. In our opinion an appeal did lie against the order of the Sub-Registrar, dated the 12th of October, 1909, refusing to register the document. The order of the District Registrar, dated the 25th of November, 1909, was in effect a dismissal of the appeal. An appeal did lie to him and he refused to entertain it. The plaintiff is, therefore, entitled to come into the Civil Court under the provisions of section 77 and claim to have his document registered. We allow the appeal of the plaintiff, set aside the order of dismissal and direct that the suit go back for retrial under order XLI, rule 23, of the Code of Civil Procedure. Costs of this appeal will be costs in the cause.

Appeal allowed—Cause remanded.

REVISIONAL CRIMINAL.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

EMPEROR v. BABU LAL.*

Act No. I of 1878 (Opium Act), sections 5, 9—Master and servant—Liability of master for act of servant.

Where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years, it was held that the licensed vendor also was liable under section 9 of the Opium Act even though he might not have been aware of the sale. *Queen-Empress v. Tyab Ali* (1) followed.

The facts of this case were briefly as follows:—

One Babu Lal was a licensed vendor of opium. One of the conditions of his licence was that sales should not be made to children under the age of fourteen years. In the absence of Babu Lal his sales-man sold opium to a person under fourteen. Both the licensed vendor and the sales-man were convicted under section 9 of the Opium Act, 1878. Babu Lal applied in revision to the

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* Criminal Reference No. 706 of 1911.

(1) (1900) 11 L.R., 24 Bom., 423.

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Sessions Judge, who, being doubtful whether his conviction was proper, referred the case to the High Court.

The Assistant Government Advocate (Mr. R. Malcomson) for the Crown.

The applicant was not represented.

KARAMAT HUSAIN and TUDBALL, JJ.:—This is a reference by the learned Sessions Judge of Agra. The facts of the case are briefly as follows :—One Babu Lal was a licensed vendor of opium. One of the general conditions under which he was licensed to sell was that sales should not be made to children below the age of fourteen years. In his absence his sales-man sold opium to a person under the age of 14. Both the sales-man and the licensed vendor have been convicted. The learned Sessions Judge is of opinion that the licensed vendor, Babu Lal, is not liable under the circumstances of the present case for the act of his servant. He has been convicted under section 9 of the Opium Act in that he has sold opium in contravention of the rules made and notified under section 5. Rules made and notified under this section set out the general condition which we have mentioned above. The question is whether the master in the circumstances of the present case is liable for the act of his servant committed by the latter in the course of his employment but without the master's knowledge. In Criminal Reference No. 69 of 1890 a Judge of this Court held in similar circumstances in a case under the Excise Act of 1881 that the licensee was responsible for breaches of the conditions of his licence though not committed with his knowledge and permission. In the case of *Queen-Empress v. Tyab Ali* (1) a similar class of offence was also under consideration. That was an offence under section 22 of the Indian Arms Act No. XI of 1878. A licensed vendor of arms and ammunition had employed a manager to conduct his business. In the absence of the licensed vendor and without his knowledge the manager delivered certain military stores to a person without previously ascertaining that such person was legally authorized to possess the same. It was held in that case that the master was liable. The Court ruled as follows :—“ We fail to see how it can be contended that under these circumstances a delivery of goods by the man in charge would not be a delivery by the owner of the shop. It is not a question of intention, of *mens rea* or of knowledge. It is the delivery which the Act makes penal,

(1) (1900) I. L. R., 24 Bom., 423.

and the delivery by the manager is clearly in this case a delivery by the licensee. The authorities are concurrent upon this point. In *The Attorney-General v. Siddon* (1), the rule is thus stated:—“Whatever a servant does in the course of his employment with which he is entrusted and as a part of it is the master’s act.” This rule which is of general application so far as civil liability goes is applicable to certain criminal proceedings also.” The court then noted the instances of *Mullins v. Collins* (2), *Coppen v. Moore* (3), the former of which was a case in which a sales-man of a licensed victualler supplied liquor to a constable on duty and without the authority of his superior officer, and in which it was held that the licensed victualler himself was liable to be convicted. In our opinion the offence in the present case is similar to the offences considered in the above-mentioned cases. It is not a question of intention, *mens rea* or of knowledge. The licensee holds his shop on certain conditions. One of those conditions has been broken by his servant; and the mere act of selling opium in contravention of the conditions of his licence constitutes the offence. It is one of those cases in which the act of a servant is the act of the master. In our opinion the conviction of the master is legal. We therefore direct that the record be returned.*

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APPELLATE CIVIL.

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 February, 7.]

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

GOBARDHAN SAHAI (JUDGEMENT-DEBTOR) v. MAHABIR SINGH AND OTHERS
 (DECREE-HOLDERS).†

Execution of decree—Decree passed in favour of several persons one of whom was a minor and not properly represented.

Held that the mere fact that at the time when the final decree in a suit was passed, one of the decree-holders was a minor whose guardian *ad litem* had died and had not been replaced, was not sufficient to invalidate the decree.

THE facts of this case were as follows:—

Mahabir Singh and others obtained a decree in the court of the Munsif of Deoria, which was confirmed on appeal by the Subordinate

* [But see *In the matter of Bhoojan Chunder Shaw and another*, 11 C. L. R. 464.—*ED.*]

† Second Appeal No. 648 of 1911, from a decree of F. D. Simpson, Additional Judge of Gorakhpur, dated the 3rd of May, 1911, confirming a decree of Bans Gopal, Munsif of Deoria, dated the 23rd of December, 1910.

(1) (1830) 1 Cr. and J., 220. (2) (1874) L. R., 9 Q. B., 292.
 (3) [1898] 2 Q. B., 308.