

1920

And on page 445 he remarked :—

BIHARI LAL
v.
MOHAN
SINGH.

“ There is therefore nothing which compels us to look exclusively to the date of the institution of the suit, to disregard all that has since happened, and to confirm the decree for pre-emption, although at the date of the decree the plaintiff was not entitled to pre-emption according to the terms of the wajib-ul-az upon which the suit was based.”

It is quite true that in that suit it was a case of a plaintiff pre-emptor losing his right to pre-empt by reason of his property having been removed and placed in a different mahal, that is, by his having become a stranger to the mahal in which was the property sought to be pre-empted, whereas in the case before us the plaintiff's position has not changed so far as the mahal is concerned, or his own property, but the position of the vendee has changed. It seems to us immaterial, however, whether it is the plaintiff's position that has been changed or that of the vendee. The result in either case is that on the date of the decree the plaintiff was no longer in a position to say to the court, I am a person who is entitled to pre-empt as against the vendee. Our attention has been called to certain decisions of the Punjab Chief Court in which the opposite has been held by a majority of Judges. An examination of the decisions, however, shows that the court was divided in its opinion, and we think that the opinion expressed by the late CHIEF JUSTICE of the Punjab Chief Court is one which carries more weight with us. In principle we are unable to distinguish the present case from the case of *Ra n Gopal v. Piari Lal* (1); and we think that the courts below were correct in dismissing the plaintiff's suit. The appeal therefore fails and is dismissed. We make no order as to costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. P. U. DMSOUZA.*

Act No. XLV of 1860 (Indian Penal Code), section 304 A—Criminal negligence—Carelessness of compounder in dealing with poisonous drug.

An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of

* Criminal Revision No. 781 of 1919, from an order of Gopal Das Mukerji, Sessions Judge of Agra, dated the 11th of November, 1919.

(1) (1899) I. L. R., 21 All., 441.

1920
January, 13.

fever. He went to a cupboard where non-poisonous medicines were supposed to be kept and took therefrom a bottle with an outside wrapper marked "poison." This wrapper he tore off and threw away. The bottle itself was labelled "strychnine hydrochloride"; but, without regarding this, and apparently because there was a resemblance between this bottle and another in which *quinine* hydrochloride was kept, he made up the entire contents of the bottle as if it had been quinine. The result was that seven patients died.

Held that the compounder was rightly convicted under section 304A of the Indian Penal Code.

THIS was an application in revision against an order of the Sessions Judge of Agra convicting the applicant of an offence under section 304A of the Indian Penal Code, and sentencing him to 3 months' simple imprisonment. The facts of the case sufficiently appear from the judgment of the Court.

Mr. C. Ross Alston, for the applicant.

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

TUDBALL, J. :—The applicant in this case has been convicted of causing death by a rash and negligent act under section 304A of the Indian Penal Code and has been sentenced to three months' simple imprisonment and to pay a fine of Rs. 150. There are three counts, and the sentences were ordered to run concurrently. The plea taken on revision is that the act done by the applicant, though it may have been negligent, was not so grossly negligent as to fall within the Criminal Law. The facts may be briefly stated :—

Messrs. A. John and Co., at Agra, employed the appellant as a doctor in the dispensary in connection with their Mills for the purposes of their employes. The appellant is not a qualified man. He apparently has served for a large number of years in the drug department of Messrs. Treacher & Co., in Bombay and for eight years has been employed in Agra in charge of the dispensary in question. The courts below have both held that the dispensary at the Mills of Messrs. A. John & Co., was very carelessly and badly managed. When visited by the Joint Magistrate, poisonous medicines were found here and there mixed up with non-poisonous medicines, and though a poison cupboard was supplied it was kept unlocked. On the date on which the present occurrence took place the

1920

 EMPEROR
 v.
 DE SOUZA.

1920

EMPEROR
v.
DE SOUZA.

applicant had to prepare a large amount of quinine mixture to be given to certain patients who were suffering from fever. To assist him he had a compounder who like himself was also without any qualifications. The compounder apparently was absent on this day. The accused in order to prepare 24 ounces of quinine mixture had to put in a certain amount of quinine hydrochloride. He went to the cupboard in which non-poisonous medicines were usually kept, and took from it a bottle still inside its original wrapper as it came from the manufacturer. On the outside of that wrapper was printed the word "poison." Apparently he did not look at that. He tore open the wrapper and threw it on the floor. The bottle was similar in shape and colour to that in which quinine hydrochloride was supplied. The label was of the same size. There was no distinctive poison label on the bottle itself, but on the label was printed strychnine hydrochloride. Apparently the appellant's eye did not catch this, for he mixed the whole bottle-ful into a mixture, gave it to eight persons to take, all of whom took it; seven died within a very short time; one fortunately vomited and ejected it. It is unnecessary to set out the accused's subsequent conduct. The question for decision is whether, in acting as he did, the applicant was guilty of such gross negligence as to bring him within the purview of section 304A. Both the courts below have held that he was, and after a long and patient hearing and considerable consideration, I am of the same opinion. Apparently the dispensary which was in the charge of the accused was very carelessly managed. It must have been within his knowledge that the medicines were not properly arranged. This would throw upon him a still greater burden, and it was his duty to be very careful indeed to see that the medicines that he was administering were proper ones. It is true that in a well-kept dispensary a compounder would not expect to find poisonous medicines in a cupboard which ordinarily contained non-poisonous medicines; but in the present case there was good reason for the present applicant to take extra care. Instead of that he took a bottle which on the outside wrapper bore the word "poison" in distinctive letters; without glancing at it, and without even reading the label on the bottle, he

administered poison, which resulted in the death of seven persons. In my opinion this is gross and criminal negligence and the conviction was a proper one. There remains the question of sentence. Keeping in view the result of the applicant's carelessness it is impossible to say that the sentence of three months' simple imprisonment is too heavy. The result is that I disallow the application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

FARHAT-UN-NISSA BIBI AND OTHERS (PLAINTIFFS) v. SUNDARI PRASAD AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), section 70—Execution of decree—Ancestral property—Sale held by collector and confirmed by commissioner—Suit in Civil Court to set aside sale—Rules framed by Local Government.

Where a sale of ancestral property held by a collector in accordance with rules framed by the Local Government under section 70 of the Code of Civil Procedure, 1908, has been duly confirmed, no suit will lie in a Civil Court for the purpose of setting aside such sale.

THIS was a suit brought in a Civil Court to set aside a sale of ancestral property which had been held by the collector in accordance with rules framed by the Local Government under section 70 of the Code of Civil Procedure and had been duly confirmed by the Commissioner. The facts of the case sufficiently appear from the judgment of the Court.

Maulvi Iqbal Ahmad, for the appellants.

Munshi Gokul Prasad and Munshi Rudha Mohan, for the respondents.

TUDBALL, J.:—This is a plaintiffs' first appeal. A decree for sale of ancestral property belonging to the plaintiffs was passed by the Civil Court and the execution of that decree was transferred to the court of the Collector under the rules made by the Local Government under section 70 of the Code of Civil Procedure. The property was sold by auction and the sale was set aside by the Collector, but on appeal by the opposite party to

* First Appeal No. 172 of 1917, from a decree of G. O. Allen, Subordinate Judge of Jaunpur, dated the 2nd of April, 1917.

1920

EMPEROR
v.
DR SOUZA.

1920
January, 13