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institute a suit to establish the right which he claims to the possession of the property. That, however, does not touch the question as to the period of limitation within which such a suit must be brought. In our opinion that is settled by article 11A of the present Limitation Act. In this view the appeal fails and is dismissed with costs.

*Appeal dismissed.*

*Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

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May, 3.

CHATARPAL SHARMA (PLAINTIFF) v. JAGANNATH DAS (DEFENDANT).\*

*Act No. 1 of 1877 (Specific Relief Act), section 54—Injunction—Patent medicine—Sale by defendant of a medicine got up in such a manner as to lead customers to believe that they were buying a different medicine previously put on the market by the plaintiff.*

Plaintiff had, for a number of years, been doing a large business in a medicine which he called "Sudha Sindhu," said to be a specific for cholera, asthma, cough and diarrhoea. This was sold in a bottle wrapped in two labels, an inner and an outer, the designs for which had been registered by the plaintiff. Defendant, apparently with the object of cutting into plaintiff's trade, produced a medicine which he called "Piyus Sindhu," also said to be a specific for the same diseases, and packed his medicine in bottles of the same size as the plaintiff's bottles, with an outer and an inner label, the labels being of such a design that, although when placed side by side with the plaintiff's labels certain differences were readily discernible, illiterate persons, such as formed the bulk of the plaintiff's customers, would most probably be led to believe that they were buying the plaintiff's medicine, which they knew, and which they intended to buy.

*Held* on suit by the proprietor of the "Sudha Sindhu" for an injunction, that, though there could be no injunction granted in respect of the name "Piyus Sindhu" or the use of a bottle of the particular size, the plaintiff was entitled to an injunction restraining him from selling or offering for sale his medicine "Piyus Sindhu" in any outside wrapper or inside label or with any instructions for use or advertisements in any form, calculated or intended to pass off or enable others to pass off such medicine as and for the medicine of the plaintiff.

*Held* also that the plaintiff was nonetheless entitled to an injunction because his medicine was, in the estimation of allopathic doctors, of no very great curative value, or because, though an allopathic medicine, it was described by a Sanskrit name.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. B. E. O'Connor and Munshi Navain Prasad Ashthana, for the appellant.

Dr. Surendra Nath Sen and Dr. Kailas Nath Katju, for the respondent.

MEARS, C. J., and BANERJI, J.—On the 19th of February, 1918, the plaintiff Chatarpal Sharma, a tradesman in Muttra, brought a suit against Lala Jagannath Das, also a tradesman, and also in Muttra. The plaintiff set out that

\* First Appeal No. 38 of 1920, from a decree of Piari Lal Katara, Subordinate Judge of Muttra, dated the 7th of January, 1920.

for more than twenty years he had been selling medicine under the name of Sukh Sancharak Co., and that he had put upon the market a medicine by the name of "Sudha Sindhu," that the medicine had borne that name for more than twenty years, and that for more than eight years the medicine had been sold in an uniform get-up, that is to say, the bottle had always been the same size, there had been the same inner label on the phial, there had been the same external label, being the outer wrapper on the packet. Enclosed in the packet were directions and 'puff' advertisements and description of diseases. He also said that in the year 1908 he had registered the labels as his trade mark. He further said in his plaint that he had what he described as "Agents" in the villages in India, Burma, Ceylon and elsewhere, to the number of 15,000. He gave evidence in support of all these matters, and he showed that for some years, at all events, about 100,000 bottles of this medicine had been distributed throughout this country every year. He complains of the conduct of the defendant who, he said, had imitated his labels and get-up of his medicine with a view, no doubt, to cut into and enjoy some part of this very prosperous trade of the plaintiff, which a year or two ago had brought him in some Rs. 14,000 profit annually. The plaintiff alleged that by reason of the similarity of the labels, of the wording on the labels, of the colouring, of the spacing, in fact which in general is called "the get-up," the defendant had put upon the market an article so like that which the plaintiff was selling and which had become associated with his name that it was calculated to mislead, and could be passed off as and for the goods of the plaintiff. He alleged that that conduct constituted an actionable wrong and entitled him to an injunction.

Taking the article as it is handed over from the seller to the buyer, one finds that in both instances the packet is cylindrical and approximately, indeed almost identically, of the same size. In each case the foundation of the paper of the outer cover is white. The registered label of the plaintiff has a peacock-blue background. The label of the defendant is green and there is thus a distinct and most appreciable difference in the general background colours. At the end of each packet and acting as seals for the fastening, the plaintiff has at one end the name of the medicine "Sudha

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Sindhu" in English. The defendant also has a label similar in appearance but with a green background and with the name of his medicine "Piyus Sindhu". Both have at the other end the name of the medicine in Hindi. Samples of other medicines sold by the defendant have been produced and at the bottom of such packets there is not the name of the medicine but the representation of a rising sun which is said to be the trade mark of the defendant.

Turning now to the text and the general conformation of the outer labels, we find in both cases they are the same size and have ornamental tracery running all round the outside along the outer edge. Both labels give prominence to the name of the medicine. Both names are printed in red ink with an outline of white, and on the right-hand side the medicine of the plaintiff is described as "a good remedy for cholera, asthma, cough and diarrhoea." On the left-hand side of the defendant's label the description is "an invaluable remedy for cough, cholera, diarrhoea and asthma". In the centre of each label there appears what are said to be photographs of the plaintiff and the defendant, respectively. The background of the plaintiff's (in the copy furnished to us) is very dark. The background of the defendant's is white. Transversely across the chest, in each case, is the signature of the plaintiff and the defendant. In tablets below there is white printing on a red ground in each, and underneath it white printing on a dark blue ground and the dark blue is precisely the same colour in each case. Inside the red tablet with the blue printing of the word "Sudha Sindhu" there appears an unnecessary white dot, probably a printer's error. It is clearly marked and clearly defined. In the big label of the defendant that dot is not reproduced, but when we come to examine the similar inside labels we find that that dot in the "Sudha Sindhu" label has by some extraordinary coincidence been incorporated into the defendant's label. Wrapped round each bottle is a smaller but similar label. At the top of the plaintiff's label are the words "this whole label is our trade mark, registered No. 13". At the top of the defendant's is "this whole design is our registered trade mark No. 16."

We have already pointed out the singular circumstance that the misprint which occurs in the "Sudha Sindhu" is reproduced in the "Piyus Sindhu". "Sudha Sindhu" is

described as "good remedy for cholera, asthma, cough and diarrhoea", "Piyus Sindhu" is described as "good remedy for cough, cholera, colic, asthma and diarrhoea". We attach importance to the fact that the defendant a year or two before the action used the very words "good remedy for" which had been on many thousands of the plaintiff's bottles for many years past. Immediately under those words in the plaintiff's label is the name of the firm "Suki Sancharak Co., Muttra," and in the same place are to be found in the defendant's labels the name of the defendant's firm. In each case are words in Hindi, again showing the same characteristics of colouring, red, white and blue as are in the plaintiff's label. No one comparing these two sets of labels can have any reasonable doubt that the person, who a year before the commencement of this action brought the defendant's labels into existence, had the plaintiff's labels before him and copied them as accurately as he dared to do.

The question is whether these labels, connected as they are with certain literature, to which we shall refer in a moment, constitute so close an imitation of the well-known get-up of the plaintiff's as to be calculated to deceive purchasers into the belief that the defendant's goods are those of the plaintiff's. Inside the outer covering of each of these medicines, there are directions and advertisements. They are of the usual florid character which are used in patent medicines. But the point of importance is this, that when the defendant is describing all the virtues which his medicine possesses, we find that he is taking in many cases word for word the advertisements which the plaintiff had previously drafted years before. The actual text of the two has been transcribed for our use into the Roman character and has been read to us. Two persons sitting down independently to describe coughs, asthma, diarrhoea, etc., would no doubt give a generally similar description, but a comparison of the text shows beyond doubt that the defendant copied the text of the plaintiff, being careful, however, to make occasional transpositions. Now what, in our view, would be the effect of all these similarities amongst the purchasers to whom the plaintiff's medicine is usually sold? The bulk are illiterate. Indeed, it is said that certainly not one person in twenty who is a customer of the plaintiff's would be able to read that which is upon the labels. Therefore he must necessarily go

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by the general comparison of the labels, of the contents and of the size of the bottle. As regards the size of the bottle, it is of a usual size and one in which neither the plaintiff nor the defendant can claim any special property. Many of these kinds of medicines are sold in bottles of this size and Mr. O'Connor does not contend that he can require the defendant to alter the size of his bottle.

We are of opinion that this medicine of the defendant, encased as it is in the way we have described, could be readily passed off so as to deceive the ordinary village customer into the belief that he was purchasing the medicine of the plaintiff. We have no doubt that it was with that very object that the defendant arranged for the get-up of his goods and came into the market as against the plaintiff. The defendant did not go into the witness box. He preferred to take his chance that the plaintiff would not give sufficient evidence to bring this matter within the recognized standards by which these cases have to be decided. Singularly enough he succeeded before the Subordinate Judge who did not give to this case that degree of thought and care which he should have done. The learned Judge looked at the matter from the wrong point of view—he focussed attention on the points of difference. He did not consider the number of similarities, nor did he consider that in passing off you must be guided very greatly by first impressions as to general similarity. The Judge enumerated the points of difference and then said the points of resemblance were quite immaterial. We think, on the contrary, that the points of resemblance are the principal matters, and had they been carefully considered in relation to the facts as to the trading of the plaintiff and defendant, no one could have come to any other conclusion than that the defendant deliberately copied the labels of the plaintiff and the get-up of his goods. We think that the copyist was so successful in his attempt as to bring the defendant's goods within that class of cases in which the proper remedy of the plaintiff is an injunction.

Dr. Katju has referred us to the 20th paragraph of the written statement in which the point is taken that inasmuch as this medicine does not do all that is claimed for it and is of an ordinary allopathic nature, passed off under a Sanskrit name, that the plaintiff is entitled to no protection. Now

there is no doubt that the court must not assist in the perpetration of a fraud. There is equally no doubt that if any particular business could be shown to be a fraudulent business or one forbidden by law, or one which the public policy of the law was to prevent, then in those cases the proprietor could not claim the protection of the court. All patent medicine vendors puff their goods extravagantly. No one believes that these advertisements and claims are literally true; but at all events there is proof that this medicine of the plaintiff has been in the market for twenty years and is used by many thousands of people. The defendant went to the expense of calling an eminent Civil Surgeon who spoke about the properties and proportions of the various compounds which this medicine is said to contain, and although he thought that the strength of a particular dose was such as to be of very little medicinal value, there certainly is no condemnation of the preparation such as would justify one in thinking that the preparation was harmful. In these circumstances, we are of opinion that the business carried on by the plaintiff which he seeks to have protected cannot come within that passage from the Laws of England which Dr. *Katju* has read to us.

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The question is, in what form the injunction is to go. Mr. *O'Connor* has said that, assuming the labels were entirely distinct from that of the plaintiff's, as, for instance, black printing on a white ground, he could not object nor could he lay claim to restraining the defendant from the use of the words "*Piyus Sindhu*", and if the defendant honestly wishes to put this preparation on the market and at the same time to be free from the suspicion of wishing to capture the plaintiff's trade by unfair means, that is the easiest way out of the matter, but at all events he must be restrained by an injunction and he must understand that if he disobeys the injunction, he must be committed to prison for contempt of court. It is, therefore, ordered that the defendant be restrained from selling or offering for sale his medicine "*Piyus Sindhu*" in any outside wrapper or inside label or with any instructions for use or advertisements in any form, calculated or intended to pass off or enable others to pass off such medicine as and for the medicine of the plaintiff.

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This appeal, therefore, must be allowed with costs, and an injunction must issue to the defendant in the above terms. We make no order for an account.

*Appeal allowed*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Lindsay.*

NIZAM-UD-DIN KHAN v. MUHAMMAD ZIA-UL-NABI KHAN.\*  
*Criminal Procedure Code, section 125—Security for keeping the peace—  
Grounds for cancellation of bond.*

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The only ground on which a District Magistrate can cancel a bond for keeping the peace or to be of good behaviour under section 125 of the Code of Criminal Procedure is that something has supervened since the date of the first court's order which satisfies the District Magistrate that in view of the facts since come to light there is no longer any necessity for keeping the accused person under bond. A District Magistrate cannot use the section as if he were sitting as a court of appeal nor is he justified in passing an order under the section merely because he takes a different view of the evidence which has been submitted to the court of first instance.

*Banarsi Das v. Partab Singh (1) and Emperor v. Shankar Lal (2)* followed.

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

Mr. J. M. Banerji, for the applicant.

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

LINDSAY, J.—These two applications in revision arise out of certain proceedings which were taken in the court of an Assistant Magistrate of the Agra district under section 107 of the Code of Criminal Procedure. It was apparently reported to the Magistrate that two persons, namely, Nizam-ud-din Khan and Muhammad Zia-ul-Nabi Khan were on very bad terms and were likely to commit a breach of the peace. The report was made to the Magistrate with a view to both parties being bound over to keep the peace. The parties, it appears, are relations.

Separate proceedings were instituted against each of the parties, and in the result the Assistant Magistrate bound over both parties for a period of one year.

Zia-ul-Nabi Khan made an application to the Officiating District Magistrate of Agra under section 125 of the Criminal Procedure Code and that officer passed an order cancelling the order of the Assistant Magistrate by which Zia-ul-Nabi Khan was bound over to keep the peace.

\* Criminal Revision No. 93 of 1922, from an order of Ainuddin, Officiating District Magistrate of Agra, dated the 24th of October, 1921.

(1) (1912) I. L. R., 35 All., 108.

(2) (1919) I. L. R., 41 All., 561.