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with interest, due on the promissory notes of 1920 and 1921 is concerned, and that it can be attached and sold in satisfaction of the decree for the remaining amount. We direct that the parties should receive and pay costs in proportion to their success and failure.

Appeal allowed in part.

Before Mr. Justice Lindsay and Mr. Justice Banerji.

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PARAS RAM AND OTHERS (DEFENDANTS) v. NEKSAI (PLAIN-
TIF) AND JUGAL KISHORE AND OTHERS (DEFEN-
DANTS).*

Act (Local) No. XI of 1922 (Agra Pre-emption Act), section 4(10)—Pre-emption—"Sale"—Transfer under a compromise decree.

No suit for pre-emption will lie where a transfer of property is brought about by a decree, although that decree may be based on a compromise. *Intizar Husain v. Jamna Prasad* (1), and *Abdur Razzaq v. Mumtaz Husain* (2), referred to.

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

Munshi *Sarkar Bahadur Johari*, for the appellants.

Munshi *Gadadhar Prasad*, for the respondents.

LINDSAY and BANERJI, JJ. :—We think the judgements of both the courts below in this case are wrong. The suit was a suit for pre-emption and the transfer in respect of which the right of pre-emption was claimed was described as being a transfer by way of sale. Both the courts below were of opinion that this transfer was "tantamount to a sale" and, therefore, pre-emption was allowed.

The facts may be stated very shortly as follows :—
By arrangement which was made under a compromise decree one Jagarnath became liable to transfer a 1 pie

*Second Appeal No. 2089 of 1925, from a decree of B. J. Norton, District Judge of Jhansi, dated the 1st of June, 1925, confirming a decree of Shri Nath, Munsif of Orai, dated the 7th of March, 1925.

(1) (1904) 1 A.L.J., 247.

(2) (1903) I.L.R., 25 All., 334.

share of property which was coming to him to one Puran, to whom the other party to the decree in that compromise suit owed a sum of Rs. 545.

Jagarnath, having got the property and being in a position to transfer this 1 pie share to Puran, as he was bound to do under the terms of the compromise decree just referred to, failed to convey it to Puran. Puran then resorted for help to three men, Paras Ram, Achhru and Phundi Lal and it was arranged between them that a suit should be brought against Jagarnath's representatives (Jagarnath having died in the meantime) in order to make them hand over the 1 pie share which Jagarnath had been under an obligation to convey. And so there was a suit between Puran and his three associates on the one side ranged as plaintiffs and Jugal Kishore and Har Das, the representatives of Jagarnath, who were arrayed as defendants. The result of this case was a compromise upon which a decree was passed and the effect of the decree was that the two defendants, the representatives of Jagarnath, were under the duty of handing over a 12 *kants* share to Puran and the other three plaintiffs.

The decree passed on this compromise bears date the 29th of October, 1923, and the plaintiff Nekesai comes into court and says that he is entitled to pre-empt the transfer which has been sanctioned by this compromise. As we have said, the court of first instance said that this transfer under the compromise decree was "tantamount to a sale" and that Nekesai was, therefore, entitled to pre-empt. This view has also been accepted by the lower appellate court. We do not agree. In the first place, it is clear that under the Agra Pre-emption Act which governs the present case, a right of pre-emption can only be claimed in respect of sale or foreclosure. This is made clear by a reference to section 10 which defines when a right to bring a suit for pre-emption arises.

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The transfers which are pre-emptible being confined to sales and foreclosures, we have to consider what the meaning of the term "sale" is in this Act (Act No. XI of 1922). There is a definition of sale in section 4 (10) of the Act and it says that "sale" means a sale as defined in the Transfer of Property Act, 1882. The definition of "sale" in this latter Act is contained in section 54, and bearing in mind that any transfer under the Transfer of Property Act must be an act such as is described in section 5 of that Act, "transfer" means an act by which a living person conveys property, in present or in future, to one or more living persons, or to himself or one or more other living persons, and "to transfer property" is to perform such act. It seems to us to be impossible to apply this definition of "transfer" and of "sale" in the Transfer of Property Act to a decree of a court and we cannot, therefore, allow the contention that a transfer which is effected under the sanction of a decree of court can be treated as a sale and can be pre-empted under the Agra Pre-emption Act. There are two Bench rulings of this Court which are referred to in the judgement of the lower appellate court. One is *Intizar Husain v. Jamina Prasad* (1). In that case it was distinctly held by a Bench of this Court that a right of pre-emption does not arise upon a transfer effected by virtue of a decree though the decree is passed upon compromise. In this judgement the learned Judges followed another judgement of theirs reported in *Abdur Razzaq v. Mumtaz Husain* (2). The learned Judge of the lower appellate court has attempted to distinguish these rulings from the present case, but no valid distinction can be drawn. It is perfectly true that these judgements were delivered before the coming into force of the Agra Pre-emption Act but that fact cannot make any difference. We are definitely of opinion that a sale which is pre-emptible in this

(1) (1904) I.A.L.J., 247.

(2) (1903) I.L.R., 25 All., 334.

Act must be strictly a sale as defined in the Transfer of Property Act, 1882, and that a transfer of property which is brought about by a decree of court cannot for purposes of pre-emption be treated as a sale in the Act.

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The result, therefore, is that the plaintiff had no suit. We allow this appeal, set aside the decrees of the courts below and direct that the plaintiff's suit do stand dismissed with costs to the contesting defendants in all three courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Justice Sir Cecil Walsh and Mr. Justice Iqbal Ahmad.

EMPEROR v. SUKHAI AHIR AND OTHERS.*

Criminal Procedure Code, section 537—Irregularity—Riot—Cross cases—Use of evidence given in one case as evidence in the other—Inferences from consent of counsel to irregular procedure.

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There were two cases of riot being tried by the same Magistrate, which, though technically distinct, were both parts of the same controversy. The Magistrate, having tried one of the cases, when he came to the second, treated some of the evidence in the first case, by agreement of counsel in either case, as evidence in the second case—as though it had been solemnly repeated all over again by the witnesses or had been read over to them and acknowledged to be correct, although it was not formally transferred to the record of the second case.

Held, that, inasmuch as the accused could not point to any way in which they might have been prejudiced, the procedure, though irregular, did not vitiate the trial. *Queen-Empress v. Chandra Bhuiya* (1), followed.

While no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the

*Criminal Reference No. 565 of 1927.

(1) (1892) I.L.R., 20 Cal., 537.