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alone has exclusive jurisdiction, cannot be barred merely on account of the fact that in the mutation proceedings the court refused to recognize his position as a thekadar in possession.

Section 212 of the Agra Tenancy Act gives a thekadar who has been wrongfully ejected, or wrongfully prevented from exercising any of his rights as a thekadar, the right to sue for recovery of possession. We are unable to hold that such a suit is barred.

The effect of the view of the first court that the suit is barred and that the plaintiff's remedy is only by way of some sort of a declaratory suit in a civil court amounted to a refusal to exercise jurisdiction. We accordingly allow this application and setting aside the order of the Assistant Collector send the case back to that court with directions to dispose of the same on the merits. The plaintiff applicant shall have the costs of this revision from the defendant respondent. Costs in the revenue court will abide the event.

MISCELLANEOUS CRIMINAL

Before Sir Shah Muhammad Sulaiman, Chief Justice

EMPEROR v. PRAGMADHO SINGH AND OTHERS

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 October, 20

Criminal Procedure Code, sections 366, 367, 424, 425—Criminal appeals decided by High Court—Judgments delivered in open court but not signed by Judge—Death of Judge before signing judgments and certifying them to the court below.

Section 424 of the Criminal Procedure Code makes the rules contained in Chapter XXVI of the Code as to the judgments of criminal courts of original jurisdiction applicable to the judgments of any appellate court other than a High Court. It is therefore clear that section 367, which provides that the written judgment should be dated and signed by the presiding officer in open court, does not apply to a High Court. There is, therefore, no provision which requires that the High Court, after pronouncing a judgment in open court, should date and sign the same. All that section 425 requires is that the judgment should be certified to the court below.

So, where certain criminal appeals were disposed of by a Judge of the High Court by the delivery of judgments in open Court, which were taken down by his judgment-writer, and in some of the cases the release warrants were signed by the Judge, but the judgments, after being fairied out, remained unsigned by the Judge owing to his death, it was *held* that the omission to sign the fair copies of the judgments was in no way a serious defect, and the appeals must be deemed to have been finally disposed of, and the judgments should be certified to the court below.

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SULAIMAN, C. J. :—The office has brought it to my notice that there are certain judgments in criminal cases delivered by the late Mr. Justice BANERJI in open court and taken down by his judgment-writer and which, owing to his death, remained unsigned after having been fairied out. Notes were made by the Bench reader of the disposal of the cases, and in some of these the learned Judge actually signed the release warrants. It is quite clear that section 366 of the Criminal Procedure Code which requires that the judgment of every trial in any criminal court of original jurisdiction shall be pronounced in open court and section 367 which provides that the written judgment should be dated and signed by the presiding officer in open court, do not apply to a High Court. Chapter 26 applies to judgments delivered by criminal courts of original jurisdiction. Section 424 of the Act makes the rules contained in Chapter 26 as to the judgments of criminal courts of original jurisdiction applicable to judgments of any appellate court "other than a High Court." There is therefore no provision which requires that the High Court, after pronouncing a judgment in open court, should date and sign the same. As a matter of fact all that section 425 requires is that the judgment should be certified to the court below.

The criminal appeals which were disposed of by the late Mr. Justice BANERJI by the delivery of judgments in open court and which were taken down by his judgment-writer must be deemed to have been finally disposed of by

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him; the omission to initial the fair copy of the judgments is in no way a serious defect.

For the purpose of certifying the judgments to the courts below it will be convenient for them to be put up before the CHIEF JUSTICE for initialling them so that they may be certified.

MATRIMONIAL JURISDICTION

Before Mr. Justice Young

1932
October, 21

EDNA MAY HARDLESS (PETITIONER) v. HAROLD
RICHARD HARDLESS (RESPONDENT)*

Divorce—Adultery and cruelty—Evidence—Communication of venereal disease by husband—Doctors' evidence—Privilege.

The fact that a husband has communicated venereal disease to his wife is in law sufficient evidence of adultery. It also amounts to legal cruelty.

There is no protection afforded by the Evidence Act to a doctor as such. When a doctor is called to give evidence he is in the same position as any other person not exempted by the Act. It is his duty to assist the court in every way possible and to disclose to the court all the information in his possession relevant to the matter in issue. He cannot claim privilege, on the allegation that the relationship of doctor and patient is confidential.

Messrs. K. O. Carleton and O. M. Chiene, for the petitioner.

Messrs. Saila Nath Mukerji and N. C. Ganguli, for the respondent.

YOUNG, J. :—This is the petition of Edna May Olivia Hardless against her husband, Harold Richard Hardless, of the "Sanctuary", Chunar. The petitioner by her petition claims a dissolution of the marriage on account of the cruelty and adultery of her husband. Both the parties are Anglo-Indians domiciled in India and resident within the jurisdiction of this Court. She also claims custody of the children. The parties were married in the