

the amount or value of the subject matter of the suit does not exceed Rs. 500. Section 42 (1) merely restricts the grounds on which a second appeal can be entertained to those mentioned in section 41.

*Case returned to Division Bench.*

### APPELLATE CRIMINAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice Harrison.*

THE CROWN—Appellant,

*versus*

C. J. ROBINSON—Respondent.

Criminal Appeal No. 187 of 1921.

*Opium Act, I of 1878, sections 3 and 9—“morphia”—whether included in the term “Opium.”*

*Held*, that although “morphia” is not a preparation or admixture of opium, it is an intoxicating drug prepared from the poppy; and therefore it fulfils the requirements of the definition of “opium” contained in section 3 of the Opium Act, I of 1878.

*Sita Ram v. Crown* (1), dissented from.

*Khilinda Ram*, for appellant—The Punjab Excise Manual is a book which has been prepared by experts, and it shows that morphia is prepared from opium. It is, therefore, a preparation of opium. Morphia is also an admixture of opium, as opium is the principal ingredient of morphia. The fact that morphia contains other things besides opium does not remove it from the category of an admixture of opium. Morphia is also an intoxicating drug prepared from the poppy. The Notification, on which Mr. Justice Martineau’s judgment, *Sita Ram v. Crown* (1), was based, has been cancelled.

*Manohar Lal*, for the respondent—Morphia can be extracted from opium, but it can be prepared in other ways also. Morphia is found in other plants beside the “poppy.” It is not, therefore, necessarily an intoxicating drug prepared from the poppy. Watt’s Dictionary of Chemistry, 1906 Edition, Volume 3, pages 436, 437 and 639. Morphia may be a preparation from

opium, but it is neither a preparation nor an admixture of opium. Properties of morphia are entirely different from those of "opium." It is tasteless and is not poisonous. Encyclopedia Britannica, 10th Edition, Volume 20, pages 132 and 134

The judgment of Mr. Justice Martineau in *Sita Ram v. Crown* (1) would not have been any different, had the notification referred to therein been cancelled before that case was heard.

*Khilinda Ram*, replied.

*Appeal from the order of J. M. Dunnnett, Esquire, District Magistrate, Multan, dated the 27th January 1921, acquitting the respondent.*

The order of remand, dated 27th May 1921, by Sir Shadi Lal, C J., and Mr Justice Moti Sagar—

This is an appeal against an order of acquittal, and the sole question for determination is whether morphia comes within the definition of opium as contained in the Opium Act, I of 1878. Now, the 3rd section of the aforesaid Act enacts that opium includes also poppy-heads, preparation or admixtures of opium and intoxicating drugs prepared from the poppy. In *Sita Ram v. Crown* (1) Mr. Justice Martineau held that morphia is not included in that definition, because it is neither a preparation or admixture of opium nor a drug prepared from the poppy. The appellant, however, impeaches the correctness of the rule laid down in that judgment, and invites us to consider the question *de novo* and pronounce an authoritative opinion thereon.

It is clear that the rules framed by Government regulating the possession, sale and transport of morphia proceed upon the assumption that morphia is included in the definition of opium as contained in the Act, and there can be no doubt that the question raised in this appeal is one of public importance.

It appears from Watt's Dictionary of Chemistry, Volume III, page 639, that morphia or morphine is one of the constituents of opium, and that its quantity varies from 3 to 15 *per cent.* The learned Vakil for the appellant contends that morphia is a preparation or admixture of opium, and that the drug can be prepared also from the poppy. This contention is controverted by the learned counsel for the respondent who argues that, though morphia may be prepared *from* opium, it cannot be described as

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a preparation or admixture of opium, nor is it prepared from the poppy. Upon the record there is no evidence to show how morphia is manufactured, nor is there any material to enable us to decide between the rival contentions.

In view of the importance of the issue we consider that it is necessary to order an enquiry into the question whether morphia is a preparation or admixture of opium or whether it is an intoxicating drug prepared from the poppy. We accordingly direct the District Magistrate to record evidence regarding the various methods in which morphia is or can be prepared, and to certify it to this Court. The inquiry should be an exhaustive one, and both the parties should be afforded a reasonable opportunity to produce expert evidence and such other evidence as may be relevant to the decision of the question formulated above.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—The order of remand made on the 27th of May, 1921,\* which sets out the relevant facts of the case, must be read as a part of this judgment. The evidence now recorded by the District Magistrate shows that opium is the inspissated juice obtained from the incised unripe capsules of the poppy, and that morphia is one of the alkaloids found in opium along with other constituents such as meconic acid, fatty matter, resin, gum, caoutchouc and mineral salts. There can be no doubt that morphia is one of the components of opium and cannot, therefore, be called a "preparation or admixture of opium." It is, however, clear that it is a drug prepared by a chemical process from opium which is merely the thickened juice of the poppy, and it can, therefore, be properly described as a drug prepared from the poppy. It is true that in the process of manufacturing morphia from the poppy an intermediate substance, namely, opium or inspissated juice of poppy, is prepared, but that circumstance does not furnish any ground for holding that morphia is not prepared from the poppy.

We must, therefore, hold that morphia is an alkaloid prepared from the poppy, and it is beyond doubt that it is an intoxicating drug. While accepting the

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\**Vide supra.*

view expressed in *Sita Ram v. The Crown* (1) that morphia is not a preparation or admixture of opium, we are unable to concur in the conclusion that it is not a drug prepared from the poppy.

Upon the evidence we are of opinion that morphia is an intoxicating drug prepared from the poppy, and that it fulfils the requirements of the definition of 'opium' contained in section 3 of the Opium Act, I of 1878.

We may point out that the notification No. 954, dated the 16th October 1916, referred to in the aforesaid judgment, has since been cancelled; and we do not think that it can affect the conclusion reached by us on the strength of the expert evidence.

The result is that we accept the appeal, and, setting aside the order of the lower Court, convict the respondent Robinson of an offence under section 9 (c) of the Opium Act. Having regard to the delay in the disposal of the case and to other circumstances, we do not consider it necessary to impose a sentence of imprisonment. We accordingly sentence him to a fine of Rs. 100. In default of payment of the fine he shall undergo rigorous imprisonment for a period of three months.

*Appeal accepted.*

A. R.

### APPELLATE CIVIL.

*Before Mr. Justice Scott-Smith and Mr. Justice Campbell.*

UTTAM CHAND (PLAINTIFF) — *Appellant,*

*versus*

Mst. THAKUR DEVI AND OTHERS (DEFENDANTS) —  
*Respondents.*

Civil Appeal No. 2219 of 1917.

*Civil Procedure Code, Act V of 1908, Order VII, rule 6—Limitation—no ground of exemption claimed in plaint—Whether plaintiff can in appeal set up a ground of exemption by reason of an acknowledgment.*

Plaintiff, a sub-mortgagee, sued defendants, one of whom was the widow of the original mortgagor and the others the representatives of the original mortgagee, to recover his mortgage money by sale of the property mortgaged. There was no prayer

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