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to lay down any rule as to what constitutes such a disease, we are of opinion that there was such a disease in the present case, which consequently falls under s. 84. The accused must therefore be acquitted. We so find in the present case. The accused must be kept in custody pending the orders of the Local Government, to which the case should be reported by the Sessions Judge under s. 471 of the Code of Criminal Procedure. We are further of opinion that, if the case had been more clearly explained to the jury, and they had been made to understand that they should find, not only that the accused had killed the boy under circumstances which would ordinarily amount to murder, but also whether the act comes within s. 84 of the Penal Code, they would probably have returned a proper verdict so as to have rendered this reference unnecessary.

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CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

KESHWAR LAL SHAHA v. GIRISH CHUNDER DUTT.*
 [4th February, 1902.]

Ganja—Sale of, without license by servant in presence of master—Receipt of money by servant—Servant, liability of—Bengal Excise Act (Bengal Act VII of 1878) s. 53—Penal Code (Act XLV of 1860) ss. 34, 40 and 114.

Where both master and servant were present at the sale of *ganja* in contravention of the terms of his license and the servant received the money paid for the *ganja* :

Held, that, having regard to the provisions of s. 34 of the Penal Code, the servant was guilty of the offence of selling *ganja* without a license, and that under the circumstances of the case s. 114 of the Penal Code had no application.

Queen-Empress v. Harridas San (1) distinguished.

IN this case the 1st petitioner Keshwar Lal Shaha was a licensed vendor of opium at Khagra and of *ganja* at Gorabazar [497] and other places, while the 2nd petitioner Bhagwan Dass was his servant.

On receipt of certain information, the Sub-Inspector in charge of the Sujaganj police-station, accompanied by the Court constable Rameswar, one Bejoy Kishta Dass, and others went towards the shop of Keshwar Lal Shaha. On getting near Rameswar and Bejoy were sent on in advance with some marked pice. On being signalled to, the remaining persons followed up. They saw Keshwar Lal Shaha running away, and they received from Rameswar and Bejoy two packets of *ganja* which had been sold to them by Keshwar Lal. The money for the *ganja* had been paid to and received by the petitioner Bhagwan Dass. The marked pice along with other money were found in Keshwar Lal's money-box. Several packets of *ganja* were found in the shop, and a bag containing a large quantity of it was also found in the inner courtyard.

The petitioner was tried by the District Magistrate of Murshidabad, and was on the 26th June 1901 convicted under s. 53 of the Excise Act of selling *ganja* without a license.

* Criminal Revision No. 1219 of 1901, against the order passed by J. E. Webster, Esq., Officiating District Judge of Murshidabad, dated the 21st of July 1901.

(1) (1890) I. L. R. 17 Cal. 566.

The Sessions Judge of Murshidabad on the 21st July 1901 dismissed the petitioner's appeal, having held that the petitioner aided and abetted the sale, and that being present he was punishable as a principal.

Babu *Dasarathi Sanyal* for the petitioner.

Babu *Srish Chunder Chowdhry* for the Crown.

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PRINSEP AND STEPHEN, JJ. After consideration we think that this Rule should be discharged. The question raised is as to the application to this case of *Queen-Empress v. Harridas San* (1), in which it was held that a servant who handed liquor in the presence of his master which had been sold contrary to his license could not be properly convicted of the sale, which was a sale by his master, and was merely a mechanical act of handing the liquor to the purchaser. In the present case the servant received the money for *ganja* sold by his master in contravention of the terms of his license, master and servant both being present at the sale. The Sessions Judge on appeal has apparently convicted the servant of abetment by the application of s. 114 of the Indian [498] Penal Code, which is, by s. 40 as amended, extended to offences under special laws, such as the Excise Act. But, as has been held in another case, s. 114 would not apply unless the person present abetting the offence would, if absent, have been guilty of abetment. We think, however, that the findings of the Sessions Judge bring the offence committed by the servant within s. 34 of the Indian Penal Code. Such a case was not considered by the learned Judges who decided *Queen-Empress v. Harridas San* (1), and in this view we think that the conviction and sentence were correct. We discharge this Rule.

Rule discharged.

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APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

SHAMSHER MUNDUL v. GANENDRA NARAIN MITTER.*

[11th March, 1902.]

Jurisdiction—Presidency Group—Bench taking up cases of the Presidency Group, whether it has jurisdiction to set aside decrees of the Presidency Small Cause Court—Presidency Small Cause Court Act (XV of 1882 as amended by Act I of 1895) —Rules of the Appellate Side of the High Court, Rule II, Chapter III, Column 1.

The Bench taking cases of the Presidency Group has no jurisdiction over the Court of Small Causes at Calcutta, and it has no power to set aside the decrees of the said Court.

SHAMSHER MUNDUL moved the High Court and obtained this Rule.

On the 14th June 1901, the petitioner, Shamsber Mundul, obtained a decree in the Court of Small Causes at Calcutta against Puddomoni Dasi, and in execution of that decree several tiled huts of the judgment-debtor were attached. One Ganendra Narayan Dutt preferred a claim, alleging that he had purchased the said huts from the judgment-debtor. The Judge of the Small Cause Court, on taking evidence, allowed the claim, and ordered that the claimant might at any time remove the huts.

Babu *Baidya Nath Dutt* for the petitioner.

* Civil Rule No. 2766 of 1901.

(1) (1890) I. L. R. 17 Cal. 566.