

Wazir Singh (2), should be followed. A decision on the conflict of these rulings has been rendered unnecessary by the amendment of R. 38 (2) under Act 1 of 1878, Opium Act, which provides specifically for the matter in question. Under this amended rule the amount which two or more persons may without a license at one time have in their possession collectively is limited to one tola. We hold, therefore, that under this rule the decision of the Magistrate was according to law and dismiss the appeal except in the matter of sentence. Applicant was sentenced to four months' rigorous imprisonment and Rs. 100 fine or in default one month's further rigorous imprisonment. He has undergone two months' imprisonment and has been on bail since 27th September. We do not think it necessary to send him back to jail to complete his sentence and reduce the period of imprisonment to that undergone. We do not interfere with the sentence of fine and imprisonment in default of payment. It is asserted before us that the fine has been paid.

R.M./R.K. *Revision partly accepted.*

2. (1901) 10 P R 1901 Cr.

A. I. R. 1918 Lahore 217 (1)

LESLIE JONES, J.

Hotu Ram and another—Plaintiffs—Appellants.

v.

Sukha Ram and others—Defendants—Respondents.

Second Appeal Nos. 2921 and 2922 of 1916, Decided on 12th July 1917, from decree of Dist. Judge, Mianwali, D/- 27th July 1916.

Custom (Punjab)—Alienation—Widow entitled to alienate property to pay husband's debts and for maintenance—Alienee is not bound to see to application of money.

A widow is justified in alienating property to pay her deceased husband's creditors and to raise money for her maintenance. The alienee is not bound to see to the application of the money. [P 217 C 2]

Sheo Narain—for Appellants.

Govind Das—for Respondents.

Judgment.—This judgment deals with Civil Appeals Nos. 2921 and 2922 of 1916. The District Judge has dismissed suits by the uncles of one Hukam Chand deceased, challenging a sale and a mortgage by his widow for Rs. 200 and Rs. 600 respectively. Hukam Chand died in April 1910 and the plaintiffs seized such

parts of his property as was not mortgaged. It has been found as a fact that the widow, who had three female dependants, had nothing to live upon and that she was not assisted by her husband's reversioners. In the deed of sale of a tumbledown house which was effected on 27th September 1911, the necessity alleged was that of paying certain of Hukam Chand's creditors. The plaintiffs say that they paid some of those debts, but they did not show that they had paid any of them by 27th September 1911, and creditors may well have been pressing the widow. The debts certainly existed. The alienee was not bound to see to the application of his money, and the alienation was nonetheless for necessity if the widow found that she had to apply the sum of Rs. 200 to defray the expenditure on bare livelihood of herself and her dependants. In the mortgage which is dated 10th March 1913, she recited the fact that the sum borrowed, Rs. 600, was required to pay a bill which she had already run up with the alienee and for her expenses of living and was, if she did not require quite the whole sum borrowed, to defray debts already incurred; it is obviously impossible to sell immovable property piecemeal month by month to pay current bills. The bulk of the money must have been already required, and if there was any anticipation it was for immediate wants. I do not think that there is any question of principle involved in these cases, and it appears to me that there is no real ground for second appeal. *Fateh Singh v. Nanak Chand* (1), which is quoted by counsel for the appellants with regard to the sale, is not a parallel case. The appeals are dismissed with costs.

R.M./R.K. *Appeals dismissed.*

1. (1911) 9 I C 927.

A. I. R. 1918 Lahore 217 (2)

CHEVIS, J.

Karim Bakhsh—Convict—Petitioner.

v.

Emperor—Opposite Party.

Criminal Revn. Petn. No. 574 of 1918, Decided on 31st May 1918.

Penal Code (1860), Ss. 494 and 114—Abetment of bigamy—Accused believing that earlier marriage had been declared void by competent Court—Accused held did not commit any offence.

A certain girl was married by her grandfather to one B. On attaining puberty she brought a

suit to have the marriage declared void, as she wished to repudiate it, and obtained an ex parte decree which was however set aside and later on the suit was withdrawn. Some time after she went through the form of marriage with K. who was charged with having committed an offence under S. 494 and 114, I. P. C. It was found that at the time of the marriage K. did not know that the ex parte decree had been set aside and believed that it held good:

Held: that inasmuch as by reason of a mistake of fact K. thought that the previous marriage had been declared void by a Court of competent jurisdiction, he had not committed any offence. [P 218 C 2]

Muhammad Iqbal—for Petitioner.

Judgment. — Mt. Bismillah was married by her grandfather during her minority to Bashir. Her father was dead, her grandfather was her legal guardian, and so according to Mahomedan law she could not repudiate the marriage on attaining puberty. But in 1916 she brought a suit to have the marriage declared void, claiming that she had attained puberty and wished to repudiate it. There was an ex parte decree which was however set aside, and later on this suit was withdrawn, so she is still the wife of Bashir. On 5th June 1917 Mt. Bismillah went through a form of marriage with Karim Bakhsh, who has been convicted and sentenced under Ss. 494 and 114. His appeal having been rejected by the learned Sessions Judge, he applies to this Court for revision. At the marriage to petitioner one Nathan came forward with an objection that the woman was already married but one Miran Bakhsh then produced a copy of the ex parte decree of the Munsif. Miran Bakhsh and the woman may have known that this decree had been set aside but the Magistrate's finding is that Karim Bakhsh did not know it and believed that the decree held good.

This finding is not reversed by the Sessions Judge, and I see no good reason for not accepting it. Thus it seems to me that by reason of a mistake of fact, Karim Bakhsh thought that the previous marriage had been declared void by a Court of competent jurisdiction: Cf. S. 494, exception, and S. 29, I. P. C. Also see *Reg v. Tolson* (1), in which it is held that a woman who re-marries within seven years of desertion by her husband, believing in good faith and on reasonable grounds that her husband is dead, is not guilty of bigamy. Here too there was the decree. Karim Bakhsh no doubt would have done well to pause and inquire whe-

1. (1889) 28 Q B D 168.

ther the ex parte decree still hold good or not, but assuming that he really believed that the decree was in force, I do not think it can be held that he committed any offence. The woman, if she knew that the decree had been set aside, was no doubt guilty of bigamy, but unless Karim Bakhsh knew that the decree had been set aside I do not consider that he abetted the bigamy. I accept this application and reversing conviction and sentence, I acquit the petitioner and discharge him from his bail.

R.M./R.K.

Revision allowed.

A. I. R. 1918 Lahore 218

SHADI LAL AND LEROSSIGNOL, J.J.

Ram Chand—Defendant — Appellant.

v.

Imperial Oil, Soap and General Mills Co., Ltd., Delhi — Plaintiffs — Respondents.

First Appeal No. 3356 of 1916, Decided on 23rd April 1917, from decree of Senior Sub-Judge, Delhi, D/- 20th October 1916.

Companies—Audit of accounts does not prevent company from calling on its agent to render accounts—Contract Act (1872), S. 213.

The auditing of a Company's accounts does, in the absence of proof of fraud or mistake in connection with the audit, close the accounts as between the share-holders and the directorate, but it does not preclude the Company from calling upon its agent for rendition. [P 219 C 1]

Moti Sagar and Mul Chand—for Appellant.

Dalip Singh—for Respondents.

Judgment.—In this suit the plaintiff, Imperial Oil and Soap Mills, sues its ex-agent, a member of the firm of Ram Chand and Co., for rendition of accounts of certain transactions which occurred when he was in sole charge as Managing Agent of the Mills. The lower Court has passed a preliminary decree requiring Ram Chand to render accounts of cash taken by him from the Company, of goods manufactured for him and for other persons under his orders on the premises of the Company and of sums received by him which should have been paid into the Company's exchequer. The grounds urged by appellant are that the defendant alone was not the Managing Agent but that the firm of Ram Chand and Co. were the Managing Agents; that as sub-agent appellant is not liable to be called upon for an account as no fraud is alleged; that the Mills' accounts have been audited and