unwilling to continue surety because the manager withheld accounts from us and was otherwise mismanaging the property.

[SARGENT, C.J.:—That was not a sufficient reason for discharging the surety. If the manager mismanages the property, the surety will be held liable.]

If a manager mismanages the property he is liable to be removed, and on his removal the sureties will be absolved from their liability, and that being so, we submit that the surety can be relieved on his own application.

SARGENT, C. J.:—Section 130 of the Contract Act, on which the District Court relies for its decision, is not applicable to a security by way of suretyship required by the Court and undertaken under section 12 of Act XX of 1864 by the surety.

The original applicant asks to be released from his obligation as surety on account of the guardian's mal-administration of the minor's estate; but the very object of requiring such security was to guarantee the minor against such misconduct or mismanagement on the part of the guardian. The case is not like that in *Bhat Harikrasan* v. *Rámchandra* (1), where the Court held that the District Judge could cancel the suretyship in the interest of the minor. In holding this view of the surety's obligation, we do not say that the surety may not apply to the Court to take steps for his protection against the guardian.

We must, therefore, make the rule absolute and discharge the order with costs.

Rule made absolute.

(1) P. J. for 1888, p. 288.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS v. VASTA CHELA AND OTHERS.*

1894. *February* 21.

Penal Code (Act XLV of 1860), *Secs.* 320 *and* 326—*Grievous hurt—Remaining in hospital for twenty days—Presumption.*

The accused were charged with causing grievous hurt. The Joint Sessions Judge, relying apparently on evidence that the injured person remained in a hospital for the space of twenty days, drew from that circumstance alone the inference

* Criminal Appeal, No. 460 of 1893.

1894.

QUEEN-EMPRESS v. VASTA CHELA.

that he was during that period unable to follow his ordinary pursuits, and convicted the accused under section 326 of the Indian Penal Code (Act XLV of 1860).

Held, reversing the convictions, that in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days, such an inference could not legally be drawn.

Before a conviction can be passed for the offence of grievous hurt, one of the injuries defined in section 320 of the Indian Penal Code must be strictly proved, and that the eighth clause is no exception to the general rule that a penal statute must be construed strictly.

Proof of being in a hospital for the space of twenty days cannot be taken as equivalent to proof of grievous hurt.

APPEAL from the convictions and sentences recorded by Dayárám Gidumal, Joint Sessions Judge of Ahmedabad, in the case of *Queen-Empress* v. *Vasta Chala and two others*.

The three accused were convicted by the Joint Sessions Judge of voluntarily causing grievous hurt with a sword (1) to one Shivbhai Chala, and (2) to his son Mathur under section 326 of the Indian Penal Code.

The Joint Sessions Judge gave the following reasons for the conviction :—

"The medical evidence shows that Shivbhai's right thumb had been cut with a sharp weapon. It was hanging merely by the skin, and the hospital assistant separated it. He was under treatment in the hospital from 18th July, 1893, to 22nd August, 1893, and even after August 22nd he was treated as an out-door patient for a week. For over a month Shivbhai was not able to follow his ordinary pursuits.

"Mathur, a lad of fifteen or thereabouts, had (*a*) an incised wound on the head about 4 inches long and ¼ inch deep and ¼ inch broad; (*b*) another incised wound, somewhat superficial, on the upper portions of his forehead, about ½ an inch long and ¼ inch broad, which appeared to have been caused by the end of a sword; and (*c*) a contused wound on his left elbow, about ¾ an inch long, ¾ of an inch broad and ¼ inch deep. *He was under treatment in the hospital from the 18th of July, 1893, to the 28th of August, 1893.*

"There can be thus no doubt that grievous hurt was caused to Shivbhai and Mathur."

Accused Nos. 1 and 3 were sentenced each to five years' rigorous imprisonment for causing grievous hurt to Mathur, and to transportation for life for causing grievous hurt to Shivbhai, the second sentence to commence after the expiry of the first.

Accused No. 2 was sentenced to two years' rigorous imprisonment for each offence, and ordered to execute after the expiry of

his sentences a security bond for Rs. 250, with two sureties for keeping the peace for three years under section 106 of the Code of Criminal Procedure.

Against these convictions and sentences the accused appealed to the High Court.

Jardine (with him *Govardhanrám M. Tripáthi*) for appellants.

Ráo Sáheb *Vásudev Jagannáth Kirtikar*, Government Pleader, for the Crown.

JARDINE, J.:—We confirm all the three convictions for the grievous hurt done to Shivbhai, but alter the two sentences of transportation for life passed on the prisoners Vasta and Vaja (Nos. 1 and 3) for the same to sentences of five years' rigorous imprisonment. We reduce the sentence of two years' rigorous imprisonment passed on the youthful prisoner Chuntha to one year for that offence.

We alter the three convictions for the injury done to Mathur. The Joint Sessions Judge has found this to be grievous hurt, relying apparently on the evidence that Mathur remained in a hospital for the space of twenty days. The inference which he apparently draws is that Mathur was during that period unable to follow his ordinary pursuits. In the absence of any evidence to that effect, we are of opinion that such an inference cannot legally be drawn. An injured man may be quite capable of following his ordinary pursuits long before twenty days are over, and yet for the sake of permanent recovery or greater ease or comfort be willing to remain as a convalescent in a hospital, especially if he is fed at the public expense. As we have observed that in several Courts under our superintendence, proof of mere residence in a hospital has been taken as equivalent to proof of grievous hurt, we think it important to point out that before a conviction can be passed for that very serious offence, one of the injuries defined in section 320 must be strictly proved; and that the eighth clause is no exception to the general rule of the law that a penal statute must be construed strictly.

In the present case we see no reason to suppose that the wounds given to Mathur were so severe as to come within the definition of grievous hurt. We, therefore, alter the three convic-

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tions from section 326 to convictions for hurt under section 324; and instead of the sentences of five years' rigorous imprisonment passed on Vasta and Vaja, we sentence them to two years' rigorous imprisonment; and instead of that of two years' rigorous imprisonment passed on Chuntha, we sentence him to one year. These sentences to commence at the expiry of the other sentences.

We uphold the order about security to be given by Chuntha, but reduce the amount to Rs. 100, with two securities each for that sum.

Convictions and sentences altered.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1894. *February* 28.

DHARAMDA'S SAMBHUDA'S (ORIGINAL PLAINTIFF), APPELLANT, *v.* HAFASJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hereditary Offices Act (Bombay Act III of 1874), Sec. 13—Hereditary service vatan—Kázi—Kázi's office—Rozinâ allowance—Its liability to attachment and sale in execution of a decree—Pensions Act (XXIII of 1871), Sec. 4.

The office of *kázi* is not a hereditary service vatan under Bombay Act III of 1874.

Plaintiff obtained a money decree against Hafasji and in execution sought to attach and sell a decree obtained by Hafasji against Mohiyodin which entitled Hafasji to receive annually a certain portion of the *rozinâ* allowance paid by Government to Mohiyodin as *kázi*. Hafasji contended that the *rozinâ* allowance was paid to Mohiyodin and his family for service as *kázi*, and that, therefore, it was not liable to the process of a civil Court under section 13 of Bombay Act III of 1874. This contention was upheld by both the lower Courts.

Held, that as the *kázi's* office was not a hereditary service vatan, plaintiff's right to attach the decree obtained by Hafasji against Mohiyodin was not barred by section 13 of Bombay Act III of 1874.

Held, also, that as Hafasji was not liable to serve as *kázi*, it was not open to him to urge that the allowance in question was appropriated as service remuneration, and was not, therefore, transferable.

Held, also, that as the decree sought to be attached was passed before the Pensions Act (XXIII of 1871) came into force, plaintiff's *darkhást* was not barred for want of a certificate under section 4 of the Act.

* Second Appeal, No. 626 of 1893.