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these reasons, I am bound to hold that the trustee must pay the costs of the suit. That question is the only one discussed in the suit, for it is not seriously contended that the defendant is not bound to execute the conveyance. The question of costs is divided by Mr. *Bonnerjee* into two heads—ono that the trustee should get his costs, the other, that he should not have to pay them. I think he must pay them. He is entitled to his costs of and attending the conveyance, but as his conduct has been unreasonable, and led to the suit, he must suffer for it by paying the costs of this suit.

*Suit decreed.*

Attorney for plaintiff: Baboo *Netyedoss Dey*.

Attorney for defendant: Baboo *G. C. Chunder*.

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice Ghose.*

1885  
 June 8,

NOBOKRISTA MUKHERJI (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (DEFENDANTS)\*

*Chowkidari chakran lands—Decision of Commission under Bengal Act VI of 1870, final and conclusive—Civil suit—Beng. Act VI of 1870, ss. 58, 60, 61.*

The words "final and conclusive" used in s. 61 of Beng. Act VI of 1870, must be taken to be used in their ordinary and literal sense.

Where, therefore, a Commission has been appointed under s. 58 for the purpose therein mentioned, and such Commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the Commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be.

IN this case the plaintiff sued to recover *his* possession of some 18 bighas of land upon the allegation that it formed a portion of the ordinary *mal* land of his zemindari and *dur-patni* taluk.

\* Appeal from Appellate Decree No. 1038 of 1884, against the decree of Baboo Kadar Nath Muzoomdar, Second Subordinate Judge of Midnapur, dated the 21st of March 1884, modifying the decree of Baboo Nundolal Kundoo, Second Munsiff of Ghattal, dated the 23rd of December 1883.

In his plaint he alleged that the original tenant of the lands in suit had been one Jatadhur Mal, and that after his death his son, Ram Mal, and brother, Bungshi, Mal, had obtained possession as tenants; that he thereupon instituted a suit against them for rent and ejectment, which was dismissed upon Bungshi Mal denying the relationship of landlord and tenant; that after succeeding in that suit Bungshi Mal collusively paid rent to one Ram Kumar Bagdi; and that Ram Kumar Bagdi ejected Bungshi Mal and got possession of the land.

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The plaintiff accordingly instituted this suit against Ram Kumar Bagdi and Bungshi Mal for the relief above stated. Subsequently the Secretary of State and one Protap Mal were added as defendants, as the former alleged that, with the exception of a small plot of  $4\frac{1}{2}$  cottahs, the land in suit was chowkidari chakran land, which had been held by Ram Kumar during the time he held the post of chowkidar, but that upon his death it had passed into the possession of, and was now held by, Protap Mal, who had been appointed chowkidar in the place of Ram Kumar. The only issue in the case material for the purpose of this report was that raised upon the written statement of the Secretary of State, who alleged that under s. 58, Beng. Act VI of 1870, a commission had been appointed by the Lieutenant-Governor to determine the chakran lands of thana Chundurkona and Ghattal, and that the Commissioner so appointed had determined that the disputed lands were chowkidari chakran lands, and that inasmuch as under s. 61 of the Act the Commissioner's decision was final and conclusive, no civil suit would lie, and the suit must necessarily fail. The first Court held that the decision of the Commissioner, appointed under Beng. Act VI of 1870 was no bar to the institution of the suit but dismissed it upon the merits. Upon appeal the lower Appellate Court upheld the cross objection taken by the Secretary of State, and held that the suit was barred by the decision of the Commissioner.

The plaintiff now specially appealed to the High Court.

Baboo *Taruok Nath Sen* for the appellant.

Baboo *Unmoda Proshad Banerjee* (Senior Government Pleader) for the respondent the Secretary of State.

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The judgment of the High Court (TOTTENHAM and GHOSE, JJ.)

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was as follows:—

The only question for us in this appeal, as argued before us, is, whether or not when certain lands have been determined by a Commission appointed by the Lieutenant-Governor of Bengal under s. 58 of Beng. Act VI of 1870, to be chowkidari chakran lands or other lands before the passing of that Act assigned for the maintenance of an officer to keep watch in any village and to report crimes to the police, the matter can be re-opened in a civil suit, or whether the order of the Commission is final and conclusive for all purposes as to the character of the lands so described in it.

The plaintiff-appellant sued to eject the defendants on the ground that the lands were *mal* lands of his *zomindari*, and that in a suit for rent and ejectment brought by him against Bungshi Mal, defendant No. 2 and others, his title as landlord had been repudiated, that of the chowkidar having been set up.

The defence raised was that the lands were chowkidari chakran lands, and it was shown that they had been so described under s. 61 of Beng. Act VI of 1870.

The lower Appellate Court held that consequently the jurisdiction of the Civil Court to try the suit was excluded.

After careful consideration of the Act, we are constrained to come to the opinion that the words "final and conclusive" in s. 61 must be taken in their ordinary and literal sense, and correctly express what was intended by the Legislature.

Section 60 provides that in making an inquiry into the question, the Commission shall exercise, as far as may be necessary, all the powers conferred by Regulation VII of 1822, and the Regulations and Acts amending the same upon a Collector making a settlement of land revenue.

We must assume, therefore, that the proceedings take place with full notice to all parties concerned, and we think that in the face of the provision of s. 61, a party dissatisfied with the order cannot sue to set it aside, except upon the ground of fraud or of non-compliance by the Commission with the provisions of the Act.

The present suit was not ostensibly brought to set aside the

order of Commission. On the contrary no allusion is made to it in the plaint. It was, therefore, not quite correct for the lower Appellate Court to hold that there was no jurisdiction to try the suit, but it would be correct to say that so long as that order stands it affords conclusive evidence in support of the plea raised for the defence that the lands are chowkidari chakran. The result is the same so far as the present appeal is concerned, and it must be dismissed with costs.

We may observe that it is not quite clear whether the lower Court has appreciated the distinction between "chowkidari chakran lands" as defined in s. 1 of the Act, and the "other lands assigned" referred to in ss. 58 and 61. If the lands in question are of the former description the zemindar will apparently, if a Panchayet has been appointed, be entitled to claim possession from the Collector under s. 50. If they belong to the latter description, or if no Panchayet has been appointed, the zemindar has no present right in them. But in any case his present suit fails.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Mitter and Mr. Justice Norris.*

ADU SHIKDAR (APPELLANT) v. QUEEN-EMPRESS (RESPONDENT).<sup>a</sup>

1885  
May 29.

*Confession made to a police officer—Evidence Act—(Act I of 1872, s. 27)—Murder, Charge of, when body is not forthcoming—Theft, Intention to convict.*

No judicial officer dealing with the provisions of s. 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him.

Section 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence.

*Empress of India v. Pancham* (1); *Queen-Empress v. Babu Lal* (2), discussed and commented on.

<sup>a</sup> Criminal Appeal No. 299 of 1885, against the order of J. F. Bradbury, Esq., Officiating Sessions Judge of Backergunge, dated the 14th of March 1885.

(1) I. L. R., 4 All., 198.

(2) I. L. R., 6 All., 509.