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other than that of the learned Subordinate Judge, namely, that the fair market value of the property to be pre-empted is Rs. 7,000. Such being the view I take upon the two points raised by Mr. *Conlan* for the appellant, the appeal must be, and it is, dismissed with costs. The objections filed under s. 561 of the Civil Procedure Code are disallowed with costs.

MAHMOOD, J.—I have nothing to add to what has fallen from my learned brother, because I agree in all that he has said.

Appeal dismissed.

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March 15.

CRIMINAL REVISIONAL.

Before Mr. Justice Straight.

QUEEN-EMPRESS v. INDARJIT.

Act XIII of 1859, *preamble and s.* 2—*Wilful breach of contract—Construction of statute—Preamble not to be construed as restricting operation of enacting part—Summary trial—Criminal Procedure Code, s.* 260.

Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code.

The offence made punishable by s. 2 of Act XIII of 1859 is the wilful and without lawful and reasonable excuse neglecting or refusing to perform the contract entered into by persons whom the Act concerns. Notwithstanding the preamble of the Act, it is not necessary to prove that a breach of contract is fraudulent in order to sustain a conviction under s. 2. *Taradoss Bhuttacharjee* v. *Bhaloo Sheikh* (1) dissented from.

Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation, or to cut them down.

THIS was an application for revision of an order of the Sessions Judge of Cawnpore, affirming an order of the Joint-Magistrate convicting and sentencing the petitioner for an offence punishable under s. 2 of Act XIII of 1859 ("an Act to provide for the punishment of breaches of contract of artificers, workmen, and labourers in certain cases"). The petitioner was a carding mistri, who, by an agreement in writing, dated the 22nd March, 1888, bound himself to serve the Elgin Mills Company at Cawnpore for three years excepting leave or "on some emergent occasion" of which he should

(1) 8 W. R. Cr. 69.

give previous notice. The second clause of the instrument was as follows :—

"I further agree that, with the exception of the circumstances mentioned above, if within the period for which I have engaged to serve, I shall absent myself, or refuse to work, or take up service with some other Mills Company or firm or with some private person at Cawnpore or somewhere else, then I shall pay Rs. 99, the settled and fixed consideration, to the Elgin Mills Company aforesaid, and that sum it will realize from me in the coin current in India, or the Company shall take credit for the amount held by them as due to me, by holding me liable for the same, and I shall also be liable for payment of the penalty provided by Act XIII of 1859 on account of making any breach of contract in respect of rendering services entered in this document."

At the time when he signed this instrument, the petitioner received from the managers of the Company an advance of Rs. 3. On the 1st November, 1888, he gave his employers twenty-four hours notice to quit, which was not accepted. He then applied for eight days' leave to bathe in the Ganges. This application was refused, but a promise was made that it should be reconsidered subsequently. He thereupon threw down his keys, went away, and never returned to his service. At that time Rs. 19-10-9 were due to him for wages, and this sum was not paid to him, as he went away without claiming it.

The petitioner's employers lodged a complaint against him under s. 2 of Act XIII of 1859. The defence was that the petitioner had not understood the agreement of the 22nd March, 1888, and that he left his employment because one of the managers abused him. The case was tried summarily by the Joint-Magistrate of Cawnpore, who convicted the accused in the following terms :—

"It is perfectly clear that Indarjit left his employment without reasonable excuse, and inasmuch as he has contracted with the Elgin Mills Company to serve them for three years, and received Rs. 3 as an advance towards such service, he is liable to the provisions of

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ss. 1 and 2 of Act XIII of 1859. I therefore order him under s. 2 to return to his service under the pains and penalties mentioned in that section, and complete his contract. Complainant's actual expenses will be defrayed by accused."

An appeal was preferred from this order to the Sessions Judge of Cawnpore; and it was contended, *inter alia*, that the Joint Magistrate ought not to have tried the case summarily, and that he had no jurisdiction to deal with it at all. With reference to these pleas, the Sessions Judge observed that the prisoner's offence was "punishable with imprisonment for less than six months; therefore under s. 260 of the Criminal Procedure Code it has rightly been tried summarily by an officer empowered to try summary cases. Act XIII of 1859 was extended to Cawnpore by Notification No. 926A of the 22nd December, 1862. The question raised in the first plea is whether the Joint Magistrate, Mr. Ferrard, under s. 5 and the Notification, was legally competent to try the case. The appellant had to show me that the Joint Magistrate had no authority. This he has not attempted to do. I accordingly dismiss the appeal."

The present application was for revision of this order. It was based mainly on the contentions (i) that the Joint Magistrate had no power to try the case summarily, and (ii) that with reference to the preamble of Act XIII of 1839, before a conviction could be legally had under the Act, it must be proved that the breach of contract complained of was fraudulent.

Mr. *C. Dillon* and Mr. *J. Simeon*, for the petitioner.

The *Public Prosecutor* (Mr. *G. E. A. Ross*), for the Crown.

STRAIGHT, J.—This is an application for revision of an order of the District Judge of Cawnpore, dated the 4th December, 1888, confirming an order of the Assistant Magistrate of the same place, dated the 21st November. Such last-mentioned order was passed under s. 2 of Act XIII of 1859, and by it the petitioner was ordered to return to his service under the pains and penalties mentioned in that section, and to complete his contract and to pay the complainant's costs. The facts found by the Magistrate were as follows :—On the

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22nd March, 1889, Indarjit, the petitioner, entered into a contract with the manager of the Elgin Mills Company, Cawnpore, to serve them as a carding mistri for a period of three years, and upon signing that contract an advance of Rs. 3 was paid to him. On the 1st November, 1888, he tendered twenty-four hours' notice of his intention to quit the service. Such notice was not accepted by his employers; and thereupon having applied for eight days' leave "to bathe in the Ganges," which was refused him, though his application was promised to receive subsequent consideration, he threw down his keys and left his service and did not return. It is admitted by the managers of the Elgin Mills, who are complainants in this case, that at the date of his departure from service a sum of Rs. 19 odd was due to him. Upon these facts the prosecution was instituted, as I have already mentioned, under s. 2 of Act XIII of 1859. Upon a consideration of all these circumstances the Magistrate came to the conclusion that the requirements of the statute were satisfied, and that the petitioner had rendered himself liable to its provisions. That order of the Magistrate was upheld by the Judge, and I am invited by this application for revision to say that both orders are bad in law upon two grounds; first, that the Magistrate had no jurisdiction to try this complaint by a summary trial; secondly, that even if he had jurisdiction, the facts found did not bring the case within the provisions of Act XIII of 1859. With regard to the first of these points, I have no doubt that the Magistrate had jurisdiction to try the case summarily, and that under the Criminal Procedure Code full power was given him to do so. The second point is not without difficulty. The argument that has been addressed to me in support of it by Mr. *Dillon* on behalf of the petitioner is to the following effect:—He says, looking to the preamble of Act XIII of 1859, an essential ingredient required to be proved in order to sustain a conviction under s. 2 of that Act is the ingredient of fraud, for in the preamble it is said that the mischief aimed at is "fraudulent breach of contract" on the part of artificers, workmen, and labourers, and the object of the Act, the punishment of such "fraudulent breaches of contract." In support of this view he has no doubt direct authority in the case of *Turaboss*

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Bhattacharjee v. *Bhaloo Sheikh* (1) and if I could follow that judgment without hesitation, there need be no difficulty in disposing of this case. But with the greatest respect for the learned Judges who decided that case, it seems to me that they have interpreted this Act mainly, if not entirely, with reference to the language of the preamble, and not in reference to the enacting clauses contained therein, which declare what shall be an offence and what shall be its punishment. There can be no doubt, whether it be the fault of insufficient or ineffective drafting, that the preambles to statutes do not always cover in the wide and general terms in which they are necessarily couched, all the specific offences which are to be found provided for within the enacting portions of the statute itself. I understand it to be an undoubted rule of construction that where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation, or to cut them down. The purpose for which a preamble is framed to a statute is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portions of the Act itself are found to be provided for. For example, a striking illustration is referred to by Sir Peter Maxwell in his work on the Interpretation of Statutes, in which he refers to the statutes 4 and 5 Ph. and M. c. 8 in which the preamble spoke only of the Act being directed to the abduction of heiresses and other girls with fortunes, yet the body of the Act was applicable to and made penal the abduction of all girls under sixteen years of age. Many other illustrations are given by Sir Peter Maxwell in his book at page 58 *et seq.*, which go to support the principle I have stated. It is true that in this Act XIII of 1859 the preamble does speak of fraudulent breaches of contract and punishment therefor; but when I come to look into the section which invests a Magistrate with powers under the Act to deal with the persons brought before him, I find that the element he is to look for as going to constitute the offence under s. 2, is the wilful and

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without lawful and reasonable excuse, neglecting or refusing to perform the contract entered into by the persons whom the Act concerns. There is no mention in that section of the word "fraudulent," and in my opinion it is legislating and not interpreting an Act of the Legislature to read that word into the section. Consequently, I am of opinion that this conviction was a right one, because upon the facts found there was most undoubtedly a wilful, and without lawful and reasonable excuse, neglect and refusal to perform the contract of service which the petitioner had entered into. I need not point out the importance of statutory provisions of this kind, and their being enforced in large commercial centres like Cawnpore, where, by combined action on the part of persons employed in large commercial establishments there, the proprietors of those establishments might be placed not only at very grave and sudden inconvenience, but very serious pecuniary loss. This application is refused.

Application rejected.

FULL BENCH.

1888
August 11.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Mahmood.

MUHAMMAD SULAIMAN KHAN AND OTHERS (PETITIONERS) *v.* MUHAMMAD YAR KHAN AND ANOTHER (RESPONDENTS).

Practice—Amendment of decree—Decree affirmed on appeal—Jurisdiction—Civil Procedure Code, ss. 206, 579, 623, 624—*Limitation—Review of judgment—Res judicata.*

The effect of s. 579 of the Civil Procedure Code is to cause the decree of the appellate Court to supersede the decree of the first Court even where the appellate decree merely affirms the original decree and does not reverse or modify it.

Where a decree has been affirmed on appeal, the only decree which can be amended under s. 206 of the Code is the decree to be executed, and the decree to be executed is that of the appellate Court and not the superseded decree of the first Court, though the latter may, if necessary, be referred to for the purpose of executing the appellate decree.

The only Court which has jurisdiction to amend the appellate decree is the Court of appeal.