

commitment, as in our opinion the decisions in *Queen-Empress v. James Ingte* (1) and *Queen-Empress v. Abbi Reddi* (2) are correct; but, following the procedure adopted by the High Court at Bombay in *Queen-Empress v. Thaku* (3) we transfer the trial of the persons accused in this case to the Court of Session of Moradabad.

1896

 QUEEN-EM-
 PRESS
 v.
 RAM DEI.

 1896
 May 5.

Before Mr. Justice Banerji.

MEGHAI v. SHEOBHIK AND OTHERS.

Criminal Procedure Code, section 560—Fivolous and vexatious complaint—Act No. IX of 1871 (Cattle Trespass Act), section 20—Complaint of wrongful seizure of cattle—"Offence."

A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently on the dismissal of such a complaint it is not competent to a Court to act under section 560 of the Code and award compensation to the persons against whom the complaint is made. *Pitche v. Ankappa* (4), *Kottalanada v. Muthaya* (5), *Kala Chand v. Gududhur Biswas* (6) and *Nedaram Thakur v. Joonab* (7) referred to.

THE facts of this case sufficiently appear from the judgment of Banerji, J.

BANERJI, J.—This is a reference by the District Magistrate of Allahabad under section 438 of the Code of Criminal Procedure. A complaint was brought against three persons by one Meghai of the wrongful seizure of cattle under section 20 of Act No. I of 1871. The complaint was dismissed as frivolous and vexatious, and the Magistrate who tried the case awarded compensation to each of the accused persons from the complainant under section 560 of the Code of Criminal Procedure. That section authorises a Magistrate to award compensation to a person accused of an offence. A wrongful seizure of cattle is not made punishable under any law, and is not therefore an offence within the meaning of the Code of Criminal Procedure. That being so, a complaint of the illegal seizure of cattle was not a complaint of an offence, and section 560 was not applicable. The award of compensation by the Deputy Magistrate was consequently illegal. This view is supported by the rulings of

(1) I. L. R. 16 Bom., 200.

(4) I. L. R., 9 Mad. 102.

(2) I. L. R. 17 Mad., 402.

(5) I. L. R., 13 Calc. 304.

(3) I. L. R., 8 Bom., 312.

(6) I. L. R., 9 Mad. 374.

(7) I. L. R., 23 Calc. 248.

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the Madras High Court in *Pitchi v. Ankappa* (1) *Kottalanada v. Muthayya* (2) and of the Calcutta High Court in *Kála Chand v. Gudadhur Biswas* (3) and *Nedaram Thakur v. Joonab* (4).

I set aside the order of the Magistrate, and direct the compensation awarded to be refunded.

1896
May 2.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.
BADRI PRASAD (DEFENDANT) v. SHEODHIAN AND ANOTHER (PLAINTIFFS)*

Landlord and tenant—Occupancy tenant—Lease of occupancy holding—Relinquishment of holding pending terms of lease—Act No. XII of 1881, Section 31.

Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years he cannot during the subsistence of such term relinquish his holding to the zamindar so as to put an end to his lessee's rights under the lease. *Khiali Ram v. Nathu Lal* (5), *Hoolassee Ram v. Pursotum Lal* (6), *Heeramonee v. Ganganarain Roy* (7), and *Nehaloonnissa v. Dhunoo Lall Chowdry* (8), referred to; *Sekru v. Tafazzul Husain Khan* (9), distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Madan Mohan Malaviya* for the appellant.

Mr. *J. Simeon* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—This is a suit for ejectment. One Jodha Singh was a zamindar of mahals in the village which were known as the western, eastern and intermediate mahals. On the 20th of August 1891, the plaintiffs to this suit purchased at a sale under a decree against Jodha Singh his interest in the western and intermediate mahals. On the 11th of June 1892, Jodha Singh, sub-let to the defendant in this suit his ex-proprietary holdings in the western and intermediate mahals and let to the

* Second Appeal No. 162 of 1894 from a decree of Pandit Raj Nath Sahib, Subordinate Judge of Moradabad, dated the 4th December 1893, reversing a decree of Babu Ramdhan Mukerji, Munsif of Chandausi, dated the 14th September 1893.

(1) I. L. R., 9 Mad. 102.

(5) I. L. R., 15 All., 219.

(2) I. L. R., 9. Mad. 374.

(6) N.-W. P., H. C., Rep., 1871, p. 63.

(3) I. L. R., 13 Calc. 304.

(7) 10 W. R., 384.

(4) I. L. R., 23 Calc. 248.

(8) 13 W. R., 231.

(9) I. L. R., 16 All., 398.