

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.  
MUSHTAQ AHMAD AND ANOTHER (DEFENDANTS) v. AMJAD ALI AND  
OTHERS (PLAINTIFFS).\*

1897  
January 20.

*Pre-emption—Wajib-ul-arz—"Stranger."*

Under the terms of a *wajib-ul-arz* successive pre-emptive rights were given, first, to 'own brothers,' secondly, to 'near cousins,' thirdly, to 'share-holders.' Held, the parties being Muhammadans, that in regard to a sale of land to which such *wajib-ul-arz* applied, a nephew (brother's son) of a co-sharer vendee was a 'stranger' and his joinder as a co-vendee would vitiate the sale and let in other persons having a right of pre-emption. *Amjad Ali v. Mushtaq Ahmad* (1) approved.

THIS was an appeal under section 10 of the Letters Patent from the judgment of Burkitt, J. in the case of *Amjad Ali v. Mushtaq Ahmad* (1). The facts of the case sufficiently appear from the judgment under appeal.

Pandit *Sundar Lal* for the appellants.

Mr. D. N. Banerji (for whom Mr. W. K. Porter) for the respondents.

EDGE, C. J. and KNOX, J. :—

In our opinion our brother Burkitt rightly held that the son of a Muhammadan co-sharer in the village was not, merely in virtue of his birth, a co-sharer, within the meaning of the pre-emptive clause of the *wajib-ul-arz*. A Muhammadan son does not take a vested interest in ancestral property on his birth, as a Hindu son does. Consequently the order of remand was right. But the Court below should apply the principles expounded by the Full Bench of this Court in *Ram Nath v. Badri Narain* (2). We dismiss this appeal with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Knox.

1897  
January 30.

QUEEN-EMPRESS v. BALA MISRA AND OTHERS †

Act No. III of 1887 (*Gambling Act*) section 6—Evidence of house being a common gaming house—Instruments of gaming—Cowries.

Held that the mere finding of cowries in a house searched in pursuance of a warrant issued under Act No. III of 1887 would not raise the presumption

\* Appeal No. 11 of 1895, under section 10 of the Letters Patent.

† Criminal Revision No. 15 of 1897.

(1) I. L. R., 17 All., 454.

(2) I. L. R., 19 All., 148.

1897

QUEEN-  
EMPRESS

v.

BALA MISHRA.

that the house was used as a common gaming house; but evidence that cowries were used in that house as instruments whereby to carry on gaming would bring the house within section 6 of the Act. *Queen-Empress v. Bhawani* (1) referred to.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the District Magistrate of Ballia. The house of one of the accused had been searched in pursuance of a warrant issued under section 5 of Act No. III of 1867, and there was found in the room where the accused were a quantity of cowries. A Deputy Magistrate convicted the accused under section 4 of Act No. III of 1867, holding that these cowries were instruments of gaming within the meaning of the Act. One of the accused applied for revision of this order to the Magistrate, who, in view of the ruling of the High Court in *Queen-Empress v. Bhawani*, referred the case to the High Court.

The following order was passed :—

EDGE, C. J. and KNOX, J.—In this particular case there is evidence that gambling was actually being carried on in the house. Our attention has been drawn to the case of *Queen-Empress v. Bhawani* (1) in which it was held, on the authority of some previous cases, that “cowries are not instruments of gaming.” Ordinarily speaking, it would be incorrect to describe cowries as instruments of gaming, but if cowries are used in a particular case as a means of gaming, they are in that particular case instruments of gaming, at least in our opinion, within the meaning of that term as it appears in Act No. III of 1867. To explain ourselves a little further, the mere finding of cowries in a house would not raise the presumption that the house was used as a common gaming house, but evidence that cowries were used in a particular house as a means whereby to carry on gaming would bring the house within section 6 of the Act. It entirely depends upon the use to which the cowries are put. If they are used for the purposes of gaming, as they frequently are in this country, they are, when they are shown to be so used, as much instruments of gaming as dice. We decline to interfere in this case. The record will be returned.

(1) *Weekly Notes*, 1895, p. 139.