1905
November 16.

Before Mr. Justice Banerji and Mr. Justice Richards.

MUMTAZ-UN-NISSA AND ANOTHER (DEFENDANTS) *v.* TUFAIL AHMAD AND ANOTHER (PLAINTIFFS).*

Muhammadan law—Gift—Ariat.

A Muhammadan caused mutation of names in respect of certain property to be effected in favour of his wife, and at the same time presented a petition to the Revenue Court stating that he had transferred his rights and interests to his wife, Habib-un-nissa, and made her his *locum tenens*, but that she had no power to transfer the property in any way, and that she would continue to hold and possess the share for her life; but he executed no formal transfer of the property to his wife. *Held* this was not a gift, but merely an "*ariat*," and invalid according to the Muhammadan law.

THIS was a suit brought by the surviving sons of one Niaz Ali to recover possession of certain property which had been in possession of Niaz Ali in his life-time. The defendants claimed title under Musammat Habib-un-nissa, one of the wives of Niaz Ali, and asserted that under a gift made by Niaz Ali in favour of Habib-un-nissa in 1865, the property in suit was acquired absolutely by Habib-un-nissa, and the plaintiffs had no right to it. The Court of first instance (Munsif of Sahaswan) upheld this contention, and consequently dismissed the plaintiffs' suit. On appeal, however, the lower appellate Court (Subordinate Judge of Shahjahanpur) came to a different conclusion, and remanded the case to the first Court for trial of the other issues raised in the suit. Against this order of remand the defendants appealed to the High Court.

Maulvi *Ghulam Mujtaba*, for the appellants.

Mr. *B. E. O'Conor* and Mr. *Muhammad Raoof* for the respondents.

BANERJI and RICHARDS, JJ.—This is an appeal from an order of remand made by the lower appellate Court under the following circumstances. The plaintiffs, who are the surviving sons of one Niaz Ali, brought the suit to recover possession of certain property left by Niaz Ali. The defendants claimed under Musammat Habib-un-nissa, one of the wives of Niaz Ali, and asserted that under a gift made by Niaz Ali in favour of Habib-un-nissa in 1865, the property was acquired absolutely by the lady, and that the plaintiffs had no right to it. This contention

* First Appeal No. 80 of 1905, from an order of Babu Madho Das, Subordinate Judge of Shahjahanpur, dated the 28th of April 1905.

found favour with the Court of first instance, which dismissed the suit on the ground that the plaintiffs had no title. The lower appellate Court came to a different conclusion, and accordingly remanded the case to the Court of first instance for trial of the other issues raised in the suit. It is not disputed that in 1865 Niaz Ali made a transfer in favour of his wife, Habib-un-nissa. This transfer was not made under a written document, but after the transfer an application was made by him to the revenue authorities for mutation of names and for the entry of the name of the lady in substitution for his own. It is contended on behalf of the appellants that this transfer was a gift by which an absolute estate was conferred upon Habib-un-nissa, and that any condition which the donor might have attached to the gift was void under the Muhammadan law. No doubt, under the Muhammadan law, the rule is that if it is clear that the intention of the donor was to give to the donee the entire subject-matter of the gift, any subsequent condition derogating from or limiting the extent of the rights of the donee would be null and void (Ameer Ali's Muhammadan Law, Vol. I, 3rd edn., p. 77). As we have already said, there is no deed of gift in the present case. If there had been such a deed, we should have to consider the nature of the transfer made under it, and whether the transferor attached any condition to it which would be void under the Muhammadan law. In the petition which Niaz Ali presented to the Revenue Court he stated that he had transferred his rights and interests to his wife, Musammat Habib-un-nissa, and made her his *locum tenens*, but that she had no power to transfer the property in any way, and that she would continue to hold and possess the share for her life. If this had been the deed of gift itself, having regard to its terms and the rule of Muhammadan law on the subject, we might have had some difficulty in holding that the lady did not take an absolute estate. But it is a mere petition which was presented to the Court intimating the fact of transfer which had been made. Reading that application with the contemporaneous application presented by the lady herself, and having regard to the subsequent conduct of the parties and all the surrounding circumstances, it is manifest that the intention was to transfer to the lady the right to enjoy the usufruct of the

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property for her life. This under the Muhammadan law would be what is known as an *ariat*, and therefore invalid. We think that the learned Subordinate Judge came to a right conclusion as to the nature of the transfer. We accordingly dismiss the appeal with costs.

Appeal dismissed.

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November 21.

REVISIONAL CRIMINAL.

Before Mr. Justice Richards.

CHAURASI *v.* RAMA SHANKAR AND ANOTHER.*

Criminal Procedure Code, section 145—*Definition*—"*Crops or other produce of land*"—*Crops severed from the land not within the definition*—*Jurisdiction.*

Held that the words "crops or other produce of land" as used in section 145(2) of the Code of Criminal Procedure do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under section 146 of the Code a crop of *mahua* no longer growing on the trees. *Ramzan Ali* v. *Janardhan Singh* (1) followed.

A MAGISTRATE of the 1st class having received information that a dispute likely to lead to a breach of the peace existed between one Musammat Chaurasi on the one hand and Rama Shankar and Udit Narain on the other, concerning their respective rights to a certain crop of *mahua* in mauza Chetra, instituted proceedings under section 145 of the Code of Criminal Procedure. Pending these proceedings the Magistrate attached the crop, which had apparently been severed from the trees, and placed it in the custody of the police. As the result of his inquiry the Magistrate came to the conclusion that the trees upon which the *mahua* grew were in the joint possession of Ram Shankar and Udit Narain, each owning an 8-anna share. He accordingly passed the following order:—"Musammat Chaurasi is hereby prohibited from disturbing their possession until they are legally evicted therefrom by order of a competent Court in due course of law. The *mahua* kept in deposit will be equally distributed between Rama Shankar on the one hand and Udit Narain on the other hand." Against this order Musammat Chaurasi applied in revision to the High Court.

* Criminal Revision No. 572 of 1905.

(1) (1902) I. L. R., 30 Calc., 110.