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apply to those transfers only in respect of which pre-emption can be claimed. As we have already said, the plaintiffs do not assert any particular custom of pre-emption. They only refer to the wajib-ul-arz, which does not set forth any special rule of pre-emption. Consequently, the only rule of pre-emption that can apply is the rule of Muhammadan law, and under that law the claim cannot be sustained, first, because the transaction is a mortgage, and, secondly, because the conditions of the law as to "demands" were not fulfilled. That being so, the claim in regard to the two villages Chak Rukn-ud-din and Chak Latif fails. As, however, it is admitted that the plaintiffs have a right of pre-emption in regard to Ahrauli, it is necessary that we should have a finding from the Court below as to the portion of the mortgage money which is assignable to the share in Ahrauli comprised in the mortgage. We accordingly refer that issue to the Court below under the provisions of section 566 of the Code of Civil Procedure. The Court will take such additional evidence as may be necessary. On receipt of the finding ten days will be allowed for filing objections.

Issue referred.

APPELLATE CRIMINAL.

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June 5.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Sir William Burkitt.

EMPEROR *v.* DENI AND ANOTHER.*

Act No. XLV of 1860 *(Indian Penal Code, sections* 230, 235, *and* 243—*Definition—Queen's coin — Murshidabad rupees — Practice — Duty of subordinate courts to follow decision of superior courts—Maxim—Stare decisis.*

Murshidabad rupees stand on the same footing as Farrukhabad rupees and fall within illustration (*e*) to section 230 of the Indian Penal Code, these rupees having been stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and issued as money under the authority of the Government of India, as were Farrukhabad rupees. They are therefore "Queen's coin" within the meaning of the section. *Emperor* v. *Gopal* (1) followed.

* Criminal Appeal No. 255 of 1905.

(1) Weekly Notes, 1903, p. 115.

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It is the duty of every subordinate court, where it finds a decision of the High Court to which it is subordinate applicable to a case before it, to follow such decision without question.

THE facts of this case are fully stated in the judgment of the Court.

The officiating Government Advocate (Mr. *W. Wallach*), for the Crown (appellant).

Mr. *G. P. Boys*, for the persons acquitted.

STANLEY, C. J., and BURKITT, J.—This is an appeal by the Crown against the acquittal of two sunars called Deni and Amiri, father and son, of charges under sections 235 and 243 of the Indian Penal Code. The case for the Crown is that on receipt of an anonymous letter the Police searched the house of the accused; that during the search Amiri entered a room of the house and on coming out dropped from under his arm a basket containing 11 dies and a small block of iron, and also a large pocket knife, and that in a room of the courtyard, the door of which was chained, in a large brass vessel nearly full of flour was found a child's jacket containing 35 Murshidabadi rupees. The dies are of various sizes and patterns intended for the coining of Murshidabadi asharfis and rupees. The coins are all Murshidabadi rupees of one pattern, but do not correspond with any of the dies which are said to have been found. With one exception they are all blackened and tarnished, indicating that they had not been recently stamped. The assessors all disbelieved the story as to the finding of the dies, and three of them the story as to the finding of the coins, while one was of opinion that both the accused were responsible for the possession of the coins. The learned Sessions Judge, differing from the assessors in regard to the dies and from the majority of them as regards the finding of the coins, held that the dies were found in the manner described by the witnesses for the prosecution and that both the accused were guilty, if an offence was committed. He also held that the coins were found, but that Deni only was responsible for their possession. He held further that under section 235 possession of the dies was criminal, if the possession was for the purpose of using the dies for counterfeiting coins; and that if the impressions on the dies are those of coins it might be presumed that such possession was criminal.

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He also held that under section 243 possession of counterfeit coins is only an offence if such possession be fraudulent or for the purpose of fraud. Declining to follow the decision of a Bench of this High Court in the case of the *Emperor* v. *Gopal*, (1), he held that the expression "Government of India" as defined in section 16 of the Code, does not and was not intended to include "Governor General in Council under the East India Company" and that the expression "Government of India" contained in section 230 of the Code was not intended to mean "Government at Fort William under the Company," and that unless it could be shown that Murshidabadi rupees were minted after 1858, he was unable to hold that they are "Queen's coin" within the meaning of "Queen's coin" in section 230. In reference to the decision of the High Court to which we have referred, the learned Sessions judge uses the following language:—"The learned Government pleader has not shown me any provisions of law directing that rulings of a High Court (whether by one or more Honourable Judges or by a Full Bench) have the force of law. A ruling is an interpretation either of the law itself or of its applicability to certain facts or circumstances. Rulings frequently vary in principle, or are overruled by fresh rulings (occasionally by their own authors), while the law has all along remained unaltered: sometimes rulings have caused amendments of the law to be made by detecting ambiguities (more especially in Rent Law). While the uncertainty of rulings is well known, at the same time the opinions expressed therein are entitled to great weight, and in the interests of continuity and to avoid unforeseen results of appeals, it is proper for subordinate Courts to follow these rulings as far as the existing law is consistent therewith; but this does *not* mean that Courts are to follow a ruling *blindly*, even when applicable, if such ruling appears to conflict with existing law or to make new law."

We shall consider the duty of subordinate Courts in regard to the decisions of superior Courts later on, and shall first take up the question of law which has been ably argued by Mr. *Boys* on behalf of the accused.

(1) Weekly Notes, 1903, p. 115.

"Queen's coin" is defined in section 230 of the Indian Penal Code to be "metal stamped and issued by the authority of the Queen or by the authority of the Government of India or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money, and metal which has been so stamped and used shall continue to be the Queen's coin for the purposes of this Chapter notwithstanding that it may have ceased to be used as money." One of the illustrations appended to the section is the following:—"The 'Farrukhabad rupee', which was formerly used as money under the authority of the Government of India is Queen's coin, although it is no longer so used." This illustration was added by the Indian Penal Code Amendment Act of 1896. Mr. *Boys'* argument is that the essential quality to make a coin a Queen's coin is that it should be stamped and used by the authority of the Queen, or by the authority of the Government of India, *et cetera*, and that this is lacking in illustration (*e*) and that consequently what purports to be an illustration is in reality not an illustration but an addition to the law and is only applicable to "Farrukhabad rupees." He further contended that the coins which are said to have been found in the house of the accused are counterfeits of Murshidabad rupees which were minted between the years 1793 and 1818, and that these rupees were not stamped and issued by any authority referred to in section 230.

The following are a few facts in connection with the Indian coinage which are gleaned from Prinsep's Indian Antiquities and also from the historical outline to the catalogue of the coins of the Moghul Emperors in the British Museum by Mr. Stanley Lane Poole. James II by Letters Patent, dated the 12th of April 1686, empowered the East India Company to issue at all their forts copies of the current native coins, and the Bombay factory was directed to use "such stamps, dies and tools as were common in the country." For a length of time, however, all coining by the Company at their own mints was carried on with difficulty. In Bengal the Company were for a long time obliged to send their bullion to be coined at the mints of the Nawab of the Province at Dacca, Patna and Murshidabad,

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but in 1759 the then Nawab gave the Company permission to establish a mint at Calcutta. After the battle of Buxar in 1764, when the Moghul Emperor Shah Alam submitted to the English, the Company assumed the right of coinage, and the mints at Patna, Dacca and Murshidabad were shortly afterwards abolished and all the coins for Bengal were struck at Calcutta. Up to 1793 there appears to be little or no distinction between the Nawab's and the Company's coins, but in that year Act 33 and 34, Geo. III, Cap. LII, was passed, by section 24 whereof the Civil and Military Governments of the Presidency of Fort William in Bengal and all the territorial acquisitions and revenues in the kingdoms or provinces of Bengal, Behar and Orissa were vested in a Governor General and three counsellors, and by section 40 the Governor General in Council at Fort William was empowered to superintend the other Presidencies. Under Regulation XXXV of 1793 passed by the Governor General in Council on the 1st of May 1793, rules were made for the reform of the gold and silver coins in Bengal, Behar and Orissa, and prohibiting the currency of any gold and silver coins in those provinces, except the 19th san sikkah rupee and gold mohur and their respective sub-divisions and for preventing the counterfeiting or defacing of the coin. Amongst the rupees mentioned in these regulations are the Murshidabad and Farrukhabad rupees. A standard currency was thus established, the coinage struck at Murshidabad in the 19th year of Shah Alam's reign being selected as the standard; the result was the coin known as the "19th san" or "sikkah" rupee of Murshidabad. The standard rupee so adopted had oblique milling on the edges. This milling was continued until the year 1818, when the milling was changed and straight milling was adopted, and later on, namely from 1832 to 1835, milling was discarded and a dotted rim on the face of the coin took its place. The upper country in Bengal had been served from other mints, of which Benares and Farrukhabad were the chief. The Company's Farrukhabad mint was founded in 1803, and it issued a rupee in imitation of what was known as the "Lucknow 45 san sikkah" struck at the Fatehgarh mint of the Moghul, the 45th year of Shah Alam. The mint at Farrukhabad

was closed in 1824. These rupees were also struck at Benares, which was under native control, and this mint coined the Company's coin up to 1830. After 1830 the native mint at Sagar and the Company's mint at Calcutta issued Farrukhabad coins up to the year 1835. In September 1835 the Company established English coinage with the head of King William IV in place of the name of the Moghul Emperor and the older issues were ordered to be suppressed. From the foregoing we gather that the Farrukhabad and Murshidabad rupees stand exactly on the same footing and were stamped and used under the same authority, also that the lower part of Bengal circulated the Murshidabad rupees whilst the upper country was served by the Farrukhabad mint. Whether these rupees had oblique or straight or no milling at all, they were all known as and came under the description of Murshidabad or Farrukhabad rupees. It is unnecessary to follow Mr. *Boys* in his subtle and able argument, directed to show that the British Crown did not enjoy territorial sovereignty in India at the period when the Murshidabad rupees with oblique milling were minted. We are not prepared to admit that there is any force in his argument, but in the view which we take of the question before us it is unnecessary to discuss this matter. The point for our decision is whether or not Murshidabad rupees are Queen's coin within the meaning of section 230 of the Indian Penal Code. Mr. *Boys* argued that the illustration to the section which was added by the Indian Penal Code Amendment Act, 1896, was not in reality an illustration at all, but amounted to a substantive enactment that the Farrukhabad rupee was Queen's coin. His contention is that the essential quality to make a coin a Queen's coin, that it should be stamped and issued by the authority of the Queen or by the authority of the Government of India *et cetera*, is lacking in the illustration, and that therefore the illustration is not an illustration properly so called, but amounts to a substantive enactment that the Farrukhabad rupee is Queen's coin, and does not go further so as to embrace coins standing on the same footing as Farrukhabad rupees, such as Murshidabad rupees. We cannot accede to this argument. We must treat what is expressed in the Code to be an illustration as an illustration

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and deal with it accordingly. Accepting the addition to the Act as an illustration and having in view Act 33 and 34, Geo. III, Cap. LII, and Regulation XXXV of 1793 and other legislation, we have no hesitation in coming to the conclusion that Murshidabad rupees stand on the same footing as Farrukhabad rupees and fall within the illustration, and that these rupees were stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and were issued as money under the authority of the Government of India, as were Farrukhabad rupees. We therefore hold that section 230 was intended to and does apply to Murshidabad rupees, and that the view of our learned brothers Knox and Aikman, JJ., in the case of *Emperor* v. *Gopal* (1) was correct.

We now come to the facts. If the finding of fact of the Court below be correct, Deni and Amiri, it is said on behalf of the Crown, ought to have been convicted under section 235, whilst Deni ought to have been convicted under section 243. We have carefully examined the evidence and have come to the conclusion that a conviction could not safely be based upon it. Matters are disclosed in the evidence which raise very great suspicion in our minds as to the trustworthiness of the evidence for the prosecution. The search of the house of the accused was due to the receipt by the Police of an anonymous letter. This letter was received in evidence. It is addressed to the Collector of the Ballia district and in it the anonymous writer states that Deni and Amiri have settled themselves in Paltan Chapra through fear of plague, and that they along with a relation of Haldi, are counterfeiting new Kaladar coins and mohurs. The writer further says:—"Through fear of Government Haldiwala does not counterfeit coins, but Deni and Amiri, sunars, are at this time counterfeiting." It is to be observed that in this letter Deni and Amiri were stated to be at the time counterfeiting coins. It is alleged, and it is not denied, that Deni had disputes about land with some of his neighbours, and it is suggested on behalf of the accused that the charge against them is due to the work of an enemy or enemies. It is clear that the writer of the anonymous letter was not well disposed towards them. The

(1) Weekly Notes, 1903 p. 115.

prosecution case is supported by the evidence of three witnesses. Bhup Narain, Sub-Inspector at Ballia, deposed that he, accompanied by Babu Lal, a constable, went to the shop of the accused with a patwari called Ramgobind Lal, and one Meghbaran Lal as search witnesses, that the house has two inner courtyards, and that as they entered the first courtyard a woman hastened into the second, whom they followed. She went, he says, to a verandah at the west end of the yard and began tearing up a block of wood, and whilst she was doing this Amiri entered the south room in that verandah, came out, and tried to slip away with something under his arm, that the constable Babu Lal stopped him, and the witness found he had a small basket containing 11 dies, one small block of iron and an old knife. Then he says he returned to the first yard, and in the north room at the west end of the yard in a *batlohi* were found 35 Murshidabad rupees wrapped in the child's jacket. In cross-examination the witness admitted that the *batlohi* in which the coins were found had a name in Hindi, but that he could not read the name. As a matter of fact this *batlohi* has on it the name of Babu Lal. This Babu Lal is said to be a relation of the accused and is not the constable of that name. Strange to say the constable Babu Lal was not examined, but the two search witnesses were. These search witnesses, we may point out, were not specially summoned by the Court, and ought not therefore to have been required to attend the Court as witnesses of the search (see section 103, paragraph 2, Code of Criminal Procedure). This was a direct violation of the law to which we think that the attention of the Police authorities should be directed, as we understand that the section is frequently violated. Ramgobind Lal corroborates the evidence of the Sub-Inspector. He says, however, that he read in the Darogah's presence the name of Babu Lal on the *batlohi* and the Darogah also read it. Bhup Narain positively stated that he could not read, and it was only in the District Magistrate's Court that he first heard that the name on the *batlohi* was Babu Lal, but we are not disposed to believe him in this. In cross-examination Ramgobind admitted that Deni and his son had left Nagwa on account of plague and that they only returned 8 or 10 days before the search.

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The other search witness, Meghbaran Lal, tells the same story as did the other witnesses in regard to the woman who ran into the north yard and began tearing up a block of wood in the verandah. His account of the search does not agree with that of the other witnesses. He says that nothing was found in the north portion of the house, but that on turning to the yard on the south the *batlohi* was found with the Murshidabad rupees. After this, he says, Amiri came out from the room at the east end of this south yard with something under his arm and made for the outer door, that Babu Lal snatched off his chaddar and a basket fell and the Darogah took it up. Now Bhup Narain's evidence was that Babu Lal stopped Amiri, and that he (Bhup Narain) found that he had with him this small basket containing dies. This is the entire of the evidence which was adduced by the Crown in proof of the search and finding of the coins and dies. Why the constable Babu Lal was not examined it is difficult to understand. The defence is that the dies and coins did not belong to the accused at all. The suggestion is, as we have said, that in their absence from their home some evil disposed person or persons put the dies and coins in the house and then wrote the anonymous letter to which we have referred. The suggestion of the prosecution in regard to the action of the woman who ran off to the verandah and began to tear up a block of wood, is that she did so in order to put the Police off the scent and give the accused an opportunity of removing incriminating articles. This appears to us far fetched. It is unlikely that such an idea would have entered the head of the woman, and less likely that the Police would under the circumstances have been so distracted by the action of the woman as to let one of the accused out of their sight, much less go into a room unattended and surreptitiously bring out a basket of dies concealed under his chaddar. As to who eventually pulled up the block of wood the witnesses are not in accord. Meghbaran Lal says that Babu Lal pulled it up, whilst Bhup Narain says that it was he who pulled it out of the ground. It is admitted that the coins were not newly stamped coins, but coins from two to four years old; and it is also worthy of consideration that none of the dies which were found were capable of turning out the rupees which are said to have been

found in the *batlohi*. If the accused had been, as alleged in the anonymous letter, engaged in counterfeiting coins, one would expect that coins fitting the dies would have been found with them as also newly stamped coins. Such was not the case. The assessors disbelieved the story of the finding of the dies, and three of them discredited the finding of the coins, whilst one held that both the accused were responsible for the possession of the coins. In view of the discrepancies in the evidence given for the prosecution and the improbabilities of the story told by the witnesses for the prosecution we think that it would be wholly unsafe to convict the accused. It is highly probable, we think, that advantage was taken of the absence of the accused from their home by some person who is ill-disposed towards them to place the dies and coins in their house, if indeed they were found there at all.

We cannot conclude our judgment without expressing our surprise that the learned Sessions Judge refused to follow the ruling of a Bench of the High Court. He says that the learned Government pleader has not shown him "any provision of law directing that rulings of a High Court (whether by one or more Hon'ble Judges or by a Full Bench) have the force of law," and then he afterwards remarks that courts are not to follow "a ruling blindly, even when applicable, if such ruling appears to conflict with the existing law or to make new law." We presume that the learned Sessions Judge means by this that it rests with a subordinate Judge to decide whether or not a ruling of the High Court conflicts with the existing law and is or is not to be followed. We should have thought that it did not require any authority for the proposition that subordinate Courts must abide by and follow loyally the rulings of the High Court to which they are subordinate. We may quote the following passage bearing on this subject from a well-known work:— "It is then an established rule to abide by former precedents—*stare decisis*—where the same points come again in litigation, as well to keep the scale of justice steady and not liable to waiver with every new judge's opinion, as also because the law in that case being solemnly declared what before was uncertain and perhaps indifferent is now become a permanent rule,

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which it is not in the breast of any subsequent judge to alter according to his private sentiments, he being sworn to determine, not according to his own private judgment, but according to the known laws of the land—not delegated to pronounce a new law but to maintain the old—*jus dicere et non jus dare*" (Broom's Legal Maxims, 7th Edition, p. 118). This rule is accepted by every Court of Justice in England or Ireland and is loyally followed even by judges of co-ordinate jurisdiction. *A fortiori* is the rule binding upon subordinate Courts. The Judge of a subordinate Court, however brilliant and well trained a lawyer he may be, is not entitled to assume the powers of an appellate court or refuse to follow the decisions of the High Court to which his court is subordinate. It is the duty of every subordinate Judge loyally to accept the rulings of such High Court unless or until they have been overruled by a higher tribunal. We regret that the learned Sessions Judge should have seen fit in this case to deviate from a well recognised rule. We direct that a copy of this judgment be sent to him for his guidance in future.

We dismiss this appeal and direct that the accused Deni and Amiri be forthwith released from custody.

REVISIONAL CIVIL.

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May 30, *and* *June* 14.

Before Mr. Justice Knox.

DEBI DAS (DECREE-HOLDER) *v.* EJAZ HUSAIN (JUDGMENT-DEBTOR).*

Civil Procedure Code, sections 244, 622—*Execution of decree—Question not relating to the execution of the decree—Appeal—Revision—Practice—Exercise of High Court's revisional jurisdiction.*

The plaintiff in a suit for an injunction obtained a decree prohibiting the defendant from obstructing him in building within a certain area, and also giving costs. This decree was executed for the costs awarded. Subsequently, the judgment-debtor applied to the executing Court, asking that the decree-holder should be ordered to demolish certain structures which he had erected beyond the limits prescribed by the decree, and obtained an order as prayed. *Held* that no appeal would lie from such an order.

Held also that the High Court is competent, of its own motion, to call for the record of a civil case and pass such orders as it thinks fit, and the exercise of its powers of revision on the civil side will not invariably (though

* Civil Revision No. 29 of 1905.