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where the applicant travelled in order to sell his master's goods. Section 182 of the Code would apply, it seems to me, equally well. But even if there be any such irregularity, section 531 is clearly a bar to the interference by this Court in the matter merely on this ground. The second point pleaded is that the matter is merely one of a civil nature. With this I cannot agree. The applicant's behaviour clearly discloses a dishonest intention. The sentence in my opinion calls for no interference. The applicant was in a position of trust, and fully deserves the punishment which has been awarded. I therefore dismiss the application. The applicant must surrender and serve out the remainder of his sentence.

Application dismissed.

APPELLATE CIVIL.

1910
February 25.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

ASA RAM (DEFENDANT) *v.* KANHAIYA (PLAINTIFF).*

Pre-emption—Wajib-ul-arz—Construction of document—Custom or contract.

The wajib-ul-arz of a village in the Saharanpur district contained the following declaration on the part of the co-sharers:—"Whereas a new settlement of our village from July 1860 to 1890, for a period of 30 years, has been made on a revenue of Rs 484 annually, therefore the agreement of us proprietors and lambardars is that till the term of this settlement and in future till the completion of the next settlement we shall remain bound and carry out—," the reference intended being presumably to subsequent clauses of the document. In a later wajib-ul-arz of 1295 Fasli, the parties stated:—"In regard to the remaining customs of the village the wajib-ul-arz of 1267 Fasli should be referred to."

Held that the wajib-ul-arz of 1267 Fasli recorded a contract and not a custom, and that contract had expired with the settlement for which it was entered into. *Maratib Husain* v. *Alam Ali* (1) and *Budh Singh* v. *Gopal Rai* (2) followed.

THIS was an appeal under section 10 of the Letters Patent from a judgement of Griffin, J. The facts of the case appear from the judgement under appeal, which was as follows:—

"This is a defendant's appeal. The plaintiff's suit for pre-emption was based on the provisions of the wajib-ul-arz of 1267 and of 1295 Fasli. The defence so far as we are concerned with it in the present appeal is that the record of the right of pre-emption in the wajib-ul-arz was a record of contract

* Appeal No. 95 of 1909, under section 10 of the Letters Patent.

(1) Weekly Notes, 1907, p. 285. (2) (1908) I. L. R., 30 All., 544.

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and not of a custom and that as the settlement of 1267 has come to an end the plaintiff could no longer claim pre-emption under the provisions of that wajib-ul-arz. Both the courts below have decreed the plaintiff's suit. The defendant comes here in second appeal. The same pleas are urged here as were raised in the courts below. The wajib-ul-arz of 1267 bears the alternative heading "*dastur dehi.*' After setting out the names of the co-sharers in the village it recites "*joke bandobast jadid hamare gaon ka* 484 *rupiya salyana masawi sarkar se mukarrar hua hai, is waste iqrar kam malkan wa lambardaran ka yih hai ke ta miyad bandobast wa ayanda ta takmil bandobast sani paiband rahkar amal daramad karange.*" In the later wajib-ul-arz, so far as we can ascertain from the copy on the record, there are some provisions relating to payment of rent, to partition and to other matters, and the document concludes:—"*Baki digar dasturat dehi ke babat wajib-ul-arz san* 1267 *dekha jaega.*" For the appellant reliance is placed on the wording of the preamble recited above and particularly the words "*ta miyad bandobast wa ayanda ta takmil bandobast sani paiband rahkar amal daramad karenge*" as showing that the parties intended that the wajib-ul-arz should be enforced only until the new settlement. It is also contended that the words "*amal daramad karenge*" should be taken as governing all the succeeding clauses and not only the preceding clause relating to the assessment of revenue. I am also referred to the rulings reported in Weekly Notes, 1907, p. 285; Weekly Notes, 1908, p. 246 and 6 A. L. J., 9. In the two former, which were from the same district namely, Saharanpur, as is this case, the wajib-ul-arz recited that co-sharers will continue to be bound by 'the conditions following.' The learned District Judge regards the omission of this phrase from the wajib-ul-arz in this case as material. This omission certainly differentiates this case from the rulings reported in W. N., 1907, and W. N., 1908. The case reported in Vol. 6 of the Allahabad Law Journal at page 9 is not particularly in point. I have to look to the terms of the wajib-ul-arz in this particular case. It appears to me that the agreement set out at the opening of the document refers more particularly to the Government revenue for the term in which the settlement was to remain in force. The words '*is waste*' before the word '*iqrar*' indicates that the following words refer to the words immediately preceding, namely, to the assessment of revenue. The signatures which are appended at the foot of the wajib-ul-arz show that the signatories agreed to be bound by the conditions set out in the document, and it is not necessary to read the preamble as governing all the conditions which follow. Apart from this preamble there is no indication as to the condition relating to pre-emption that the right of pre-emption was a right created by contract solely. In my opinion the courts below were right in decreeing the plaintiff's suit. I dismiss the appeal with costs."

The defendant appealed.

Dr. *Tej Bahadur Sapru*, for the appellant.

Munshi *Gulzari Lal*, for the respondent.

STANLEY, C. J. and BANERJI, J.—The only question in this appeal is whether or not the record of a right of pre-emption

is of a right arising from contract or existing by custom. This question depends upon the provisions of the wajib-ul-arzes of the village of 1267 and 1295 Fasli. The village in question is situate in the Saharanpur district. The courts below held that the record was one of a custom and not of a contract, and that therefore, notwithstanding that the settlement had come to an end, the plaintiff was entitled to pre-empt the sale effected in favour of the defendant appellant.

In the wajib-ul-arz of 1267, which is intituled "*wajib-ul-arz yane dastur dehi mauza Sidhauli*" after setting out the names of the co-sharers in the village, there is the following recital:—"Whereas a new settlement of our village from July 1860 to 1890, for a period of 30 years, has been made on a revenue of Rs. 484 annually, therefore the agreement of us, proprietors and lambardars, is that till the term of this settlement, and in future till the completion of the next settlement, we shall remain bound and carry out." The sentence is incomplete, it not being stated what the signatories to it agreed to carry out. But it appears to us to be clearly the intention that they were to carry out the provisions of the document contained in the subsequent clauses and that some such words as 'the provisions herein contained' must be supplied.

In the later wajib-ul-arz, after dealing with the provisions relating to the payment of rent, partition and other matters, the document concludes with the following words:—"In regard to the remaining customs of the village the wajib-ul-arz of 1267 Fasli should be referred to."

In the courts below reliance was placed by the appellant upon the rulings in *Maratib Husain* v. *Alam Ali* (1) and *Budh Singh* v. *Gopal Rai* (2). In the first mentioned of these cases the wajib-ul-arz of the year 1861 declared that the zamindars of the village, which was in the district of Saharanpur, would be bound by and act upon the undermentioned conditions for 30 years, until the completion of the next settlement, and amongst the undermentioned conditions were certain conditions relating to the right of pre-emption. A fresh settlement was commenced in 1890, and in the wajib-ul-arz prepared at the time of that

(1) [illegible] Notes, 1907, p. 285. (2) (1908) I. L. R., 30 All., 544.

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settlement it was provided that as to the remaining customs in the village the record of rights prepared in the former settlement is to be looked at. The language of these two wajib-ul-arzes is very similar to that of the wajib-ul arzes which are relied upon in the case before us. It was held in that case that the earlier wajib-ul-arz recorded not a custom but a contract, which came to an end with the term of the settlement, and the later wajib-ul-arz could not be construed as the record of a custom which sprung up in the interval of 30 years between the two settlements, and there was therefore no right of pre-emption in the village. This was an appeal under the Letters Patent from the decision of one of us and that decision was upheld by a Bench of two Judges of this Court of which the other of us was a member. It was followed in the case of *Muhammad Sabir* v. *Sat Ram*, First Appeal No. 222 of 1905, decided on the 22nd of July 1907, the particulars of which are given in a note to the report of the case of *Maratib Husain* v. *Alam Ali*. In the second mentioned case of *Budh Singh* v. *Gopal Rai* the wajib-ul-arz of a village in the same district of Saharanpur, of the year 1867, contained an agreement on the part of the *khewatdars* of the village that up to the term of settlement and in future up to the termination of the next settlement they would abide by "the following terms and act upon them." Amongst the subsequent provisions were certain conditions relating to the right of pre-emption. In the later wajib-ul-arz of 1890 no mention was made of any custom of pre-emption, but there were the following words "for the remaining village customs see the wajib-ul-arz prepared in 1867." It was therein held that the wajib-ul-arz of 1867 recorded a contract and not a custom, and that the rights conferred by it would not be perpetuated by the reference made in the later wajib-ul-arz to the customs existing in the village.

We are unable to distinguish the provisions of the wajib-ul-arz in the present case when properly interpreted from the wajib-ul-arz in the cases which we have cited. The learned Judge of this Court from whose decision this appeal has been preferred differentiated the two cases by the fact that in the wajib-ul-arz before us the words "undermentioned conditions" or "conditions following" do not appear in the preamble. It [illegible] to us,

with all deference to our learned brother, that no weight can be attached to this distinction. The language of the preamble clearly is not complete. To render it complete it appears to us to be absolutely necessary to incorporate into it some such words as "the provisions," or "the clauses," or "conditions following," words which occur in wajib-ul-arzes of the same district which have received judicial interpretation. That was clearly, we think, the intention of the parties who signed it. Again, we do not agree with the learned Judge in the view that the words "*is waste*" before the word "*iqrar*" indicate that the following words refer to the words immediately preceding, namely, to the assessment of revenue. For the signatories of the wajib-ul-arz to express an agreement on their part to pay the revenue fixed by the settlement officer and be bound by the settlement would be redundant and unnecessary. The natural meaning of the preamble is that in view of the fact that a new settlement had been framed, the proprietors express in it an agreement to be bound by the provisions of the wajib-ul-arz generally. The words "*is waste*" do not indicate that they were merely binding themselves to pay the Government revenue. We cannot distinguish the case before us from the cases to which we have referred, and we think that the decisions in those cases govern the present case. We may point out the importance in cases of the kind of uniformity of decision, if such is possible to be attained. Nice distinctions, should not, we think, be drawn with the object of differentiating one case in a district from another in the same district. As far as is possible a broad rule should be observed, and if possible that broad rule should be applied to all cases which reasonably come within it. We think that the courts below and also the learned Judge of this court were wrong in not following the decisions to which we have referred.

We accordingly allow the appeal, set aside the decree of the learned Judge of this Court, and also the decrees of the lower courts and dismiss the plaintiff's suit with costs in all courts.

Appeal decreed.