

v. Baldeo Singh (1), in which the widow of a separated Hindu had sold property belonging to the estate of her deceased husband, and the sale as to a portion of the consideration was justified by legal necessity, and as to the remainder of the consideration not so justified. It was held that it was competent to the next reversioner to sue for and obtain a decree for the property on payment of such portion of the consideration as represented moneys borrowed by the widow for legal necessity. The principle laid down in that case applies to a sale by a guardian where a part only of the consideration was such as was binding upon the minor. The same view was held in the case of *Ram Dei Kunwar v. Abu Jafar* (2). For these reasons we are of opinion that the decree of the lower appellate court was right. We accordingly allow the appeal, set aside the decree of this Court, and restore that of the lower appellate court with costs. We extend the time for payment of Rs. 285 mentioned above for a period of two months from this date.

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BACHCHAN
SINGH
o.
KAMTA
PRASAD.

Appeal allowed.

REVISIONAL CRIMINAL.

1910

February 10.

Before Mr. Justice Tudball.

EMPEROR v. MAHADEC.*

Criminal Procedure Code (1898), sections 182, 531—*Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust—Act No. XLV of 1860 (Indian Penal Code), section 408.*

One M was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account.

Held that the Courts at Mirzapur had jurisdiction to try M for whatever offence he had committed arising out of the above transactions. *Queen-Empress v. O'Brien* (3) followed.

THE accused in this case was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold

* Criminal Revision No. 30 of 1910, from an order of Muhammad Ali, Sessions Judge of Mirzapur, dated the 4th of December 1909.

(1) (1903) I. L. R., 25 All., 330. (2) (1905) I. L. R., 27 All., 494,
(3) (1896) I. L. R., 19 All., 411.

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goods, he remitted money to his employers at Mirzapur. Finally he was called upon by his firm to furnish accounts. He offered Rs. 500 as a deposit but did not submit any account. He did not in fact pay the sum which he offered as a deposit, and he failed to account for the goods entrusted to him. The firm laid a complaint against him in Mirzapur, where he was tried and found guilty by a first class magistrate of an offence under section 408 of the Indian Penal Code. He appealed unsuccessfully to the Sessions Judge, and then applied in revision to the High Court.

Babu *Satya Chandra Mukerji*, for the applicant.

The Government Advocate (Mr. *W. Wallach*) for the Crown, and Babu *Lalit Mohan Banerji*, for the other party.

TUDBALL, J.—This is an application in revision against the conviction of the applicant of an offence under section 408 of the Indian Penal Code, by a magistrate of the first class of Mirzapur. The conviction and sentence were upheld on appeal by the Sessions Judge. Briefly stated the facts are as follows. The applicant was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. Finally, at the end of the cold weather, he was called upon to furnish accounts. He offered Rs. 500 as a deposit, but did not submit any account. It has been found that he failed to submit any account and that he failed to pay even the Rs. 500 which he had first offered to deposit. There can be no question or doubt that the applicant had to account for either the goods or the money, and that he failed to produce either.

Objection is taken that the courts of Mirzapur had no jurisdiction to try the case against the accused, as the charge showed he had embezzled the money at various places in Lower Bengal. In view of the decision in *Queen Empress v. O'Brien* (1), it seems to me that the Mirzapur courts had jurisdiction to try the case. It is impossible to state exactly where the act of embezzlement or the various acts of embezzlement took place; but they must have taken place either at Mirzapur, or at one of the various districts

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.

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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 1830 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.