1911
*April*, 27.

## APPELLATE CIVIL.

*Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.*

MANNU LAL (PLAINTIFF) *v.* FAZAL IMAM AND OTHERS (DEFENDANTS).*

*Act No. XXI of* 1871 *(Pensions Act), sections 3, 4, 6 and 8—Pension—Definition—Grant of village by Government revenue free*—Wajib-ul-arz—*Construction of document—Condition purporting to restrain alienation.*

*Held* that a grant of zamindari the revenue of which is remitted by the Government is not a pension within the meaning of section 3 of the Pensions Act, 1871, and no certificate is necessary under section 6 to institute a suit with respect to it. Nor can an entry in the *wajib-ul-arz* to the effect that "no co-sharer is competent to transfer property" standing by itself, have the effect of making such property untransferable.

*Ganpat Rao* v. *Anand Rao* (1) and *Lachmi Narain* v. *Makund Singh* (2) referred to.

THE facts of this case were briefly as follows:—

Fazal Imam and others executed a mortgage on the 18th of February, 1896, hypothecating their *muafi* and zamindari property in a certain village in favour of Mannu Lal. The plaintiff sued on foot of his mortgage; the defence was that the property mortgaged was a pension and the suit was not maintainable without obtaining a certificate from the Collector, and that according to the conditions of the *wajib-ul-arz* the land could not be transferred. The lower court held that under sections 4, 6 and 11 of the Pensions Act, the Civil Court had no jurisdiction to entertain the suit regarding the property, which was a *muafi*, without a certificate from the Collector of the district and dismissed the suit. The plaintiff appealed.

The Hon'ble Pandit *Sundar Lal*, (with him Babu *Piari Lal Banerji* and Pandit *Uman Shankar Bajpai*), for the appellant, contended that the property mortgaged was not a pension within the meaning of section 3 of the Pensions Act. The mere fact that the Government has remitted the revenue does not make the zamindari a pension. He cited *Babaji Hari* v. *Rajaram Ballal* (3), *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai* (4), *Balvant Ramchandra Natu* v. *The Secretary of State* (5),

* First Appeal No. 442 of 1909, from a decree of Achal Behari, Subordinate Judge of Banda, dated the 1st of December 1909.

(1) (1905) I. L. R., 28 All., 104; (1909) 32 All., 148.

(2) (1904) I. L. R., 26 All., 617.

(3) (1875) I. L. R., 1 Bom., 75.

(4) (1875) I. L. R., 1 Bom., 526.

(5) (1905) I. L. R., 29 Bom., 480.

*Panchanadayyan* v. *Nilakandayyan* (1), *Lachmi Narain* v. *Makund Singh* (2) and *Ganpat Rao* v. *Anand Rao* (3).

The entry in the *wajib-ul-arz* was a mere surplusage, there being no condition about inalienability in the original grant.

The Hon'ble Nawab *Muhammad Abdul Majid*, for the respondents, submitted that the land revenue of the property being remitted, the property mortgaged came within the definition of pension. The *wajib-ul-arz* clearly prohibited all transfers of property.

The Hon'ble Pandit *Sundar Lal*, replied.

RICHARDS, C. J. and BANERJI, J. :—This appeal arises out of a suit on foot of a mortgage. The amount due to the plaintiff was a very large sum, namely, Rs. 27,000 odd. He abandoned part of his claim and only sought to recover Rs. 10,000. The property which is the subject of the mortgage is referred to in a document called "proceedings in the Revenue Court, district Banda, dated the 4th of December, 1840." This document will be found printed at page 1 of the respondents' book. The document recites the history of the village, and some ancient *sanads* would appear to have been produced at the time. It seems that a grant of the village was first made by one Raja Chattar Lal in favour of one Pahari *Bhand*, who was the ancestor of the defendants. This *sanad* was succeeded by others, long prior to the establishment of British rule. The document, we referred to, concludes with the following remarks :—"The *sanads* which have been produced were also taken into consideration.*** Therefore, under section 9 of the Circular Letter as also under other sections of the said letter, this village seems fit to be held as a *muafi* from generation to generation as heretofore. I therefore concur in the opinion of the Deputy Sahib as to the maintenance of the *muafi*." Then follows the order "that this village be maintained as *muafi* as before." The village has been held as a *muafi* village up to the present day. It is admitted that the mortgage was made and executed; but the defendants, mortgagors, plead that a suit could not be maintained without a certificate under section 6 of the Pensions Act, XXIII

(1) (1882), I. L. R., 7 Mad., 191. (2) (1904), I. L. R., 26 All., 617.
(3) (1905) I. L. R., 28 All., 104; (1909) 32 All., 148.

1911

MANNU LAL v. FAZAL IMAM.

of 1871, and secondly, that it was not competent for the co-sharers to transfer the property at all.

An extract from the *wajib-ul-arz* of 1880 was given in evidence by the defendants. There the entry is to the following effect:—The *jama* of this mahal was remitted for the support of the zamindars. It is still remitted by the Government. No co-sharer is competent to transfer property." The learned Subordinate Judge considered that a certificate was necessary under the provisions of the Pensions Act. In our opinion he was wrong. Section 4 provides that no Civil Court shall entertain any suit relating to any pension or grant of money, or land revenue, conferred or made by the British or any former Government. It seems to us clear that the grant of the land was not a "pension." The expression "grant of money" or "land revenue" is defined in section 3 of the Act as including anything payable on the part of the Government in respect of any right, privilege, perquisite or office. Section 8 of the Act throws some light upon what was meant by pensions and grants by Government of money or land revenue, because it is there provided that they are to be paid by the Collector, Deputy Commissioner or other authorized officer. The grant of these villages was certainly not a grant of land revenue within the ordinary meaning of that expression. It is contended, however, that inasmuch as Government remitted the revenue, they must be said to have granted it. We do not think that this is the true meaning of the expression in the Act. If it were, all *muafi* holdings would fall within the purview of the Act. It is, however, conceded that ordinary *muafi* can be and is daily transferred both by way of sale and mortgage, and that the Pensions Act does not apply to ordinary *muafi*. A Bench of this Court held in the case of *Ganpat Rao* v. *Anand Rao* (1) that a grant of land revenue free was not a grant of land revenue within the meaning of the Act. On appeal their Lordships of the Privy Council did not differ from the finding of this Court. The same view was taken in the case of *Lachmi Narain* v. *Makund Singh* (2).

(1) (1905) I. L. R., 28 All., 104; (1909) 32 All., 148.

(2) (1904) I. L. R., 26 All., 617.

1911

MANNU LAL v. FAZAL IMAM.

The only question which remains is the effect of the entry in the *wajib-ul-arz*. It seems to us that this entry standing by itself cannot have the effect of making property which *prima facie* is transferable, untransferable. We do not know under what circumstances the entry was made. In the proceedings of 1840, to which we have referred, there is not the smallest reference to any restraint upon alienation on the grantees. In our opinion the decision of the court below was wrong.

We, therefore, allow the appeal; set aside the decree of the court below, and decree the plaintiff's claim with costs in both courts. We fix six months from this date for payment and direct that the decree be drawn u in the terms of order 34, rule 4, of the Code of Civil Procedure.

*Appeal allowed.*

## MISCELLANEOUS CRIMINAL.

1911
*April*, 28.

*Before Mr. Justice Tudball.*

EMPEROR *v.* HARGOBIND AND OTHERS.

*Criminal Procedure Code, section 526—Transfer—Riot—Cross cases before same court—Opinion expressed by court on evidence in one case no ground for considering it incompetent to try the other.*

The fact that a court before which there are pending two cross cases of riot has, on the trial of the first case, expressed opinions to some extent unfavourable to the accused in the second case is no good ground for holding that the court is incompetent to try the second case. *Asimaddi* v. *Gobinda Baidya* (1) referred to.

THE facts of this case are, briefly, as follows:—Two cross cases of riot were sent for trial before the Joint Magistrate of Benares—one faction, Adit Narain, Baij Nath and Prag Dat Singh, on charges under sections 147 and 304, and the other, Hargobind and others, on a charge under section 147. The case of Adit Narain and others was taken up first. The Magistrate committed one member of this party to the Court of Sessions and discharged two of the accused. In his order of discharge the Joint Magistrate observed:—"The aggressors in this case were undoubtedly Hargobind and his party." On the strength of this remark Hargobind and others applied to the High Court for the transfer of the case against them.

Miscellaneous No. 60 of 1911.

(1) (1897) 1 C. W. N., 426.