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ABDULLAH  
KHAN  
v.  
BANKER LAL.

BY THE COURT.—The order of the Court is that a temporary injunction be issued for the stay of the sale ordered in the execution proceedings, pending the disposal of the appeal in this Court.

Let the hearing of the appeal be expedited.

*Application allowed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Chamier.*

EMPEROR v. MUHAMMAD ALAM.\*

*Bengal Regulation, No. VI of 1825, section 2—Joint Magistrate—Jurisdiction—Criminal Procedure Code, section 435—Power of Sessions Judge to make reference.*

It is only the Collector who can take action and impose a fine under Bengal Regulation VI of 1825. A Joint Magistrate has no jurisdiction under section 2 of the Regulation, even though the case may have been made over to him by the District Magistrate.

In this case one Muhammad Alam a petty zamindar in the Kanauj tahsil was convicted by the Joint Magistrate of Farrukhabad of an offence under section 2 of Regulation No. VI of 1825, and was sentenced to a fine of Rs. 50. He applied in revision to the Sessions Judge, who referred the case to the High Court, being of opinion that the Joint Magistrate had no jurisdiction to try the case.

Babu *Piari Lal Banerji* (with him Babu *Satya Chandra Mukerji* and *Maulvi Muhammad Ishaq*), for the applicant.

The Assistant Government Advocate (*Mr. R. Malcomson*), for the Crown.

CHAMIER, J.—This is a reference by the Sessions Judge of Farrukhabad in which he recommends that an order of the Joint Magistrate of Farrukhabad ordering one Muhammad Alam to pay a fine of Rs. 50 under section 2 of Bengal Regulation No. VI of 1825 be set aside. The case was taken up at the instance of the Sub-Divisional Officer, on whose report the District Magistrate directed that Muhammad Alam should be prosecuted under the section of the Regulation mentioned above. The case was made over to the Joint Magistrate by the District Magistrate, who was also of

\* Criminal Reference No. 328 of 1910.

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course the Collector of the district. According to section 2 of the Regulation it is only the Collector or other officer acting in that capacity that can impose a fine under that section. Section 4 provides for the levying of fine by the Collector as if it were arrears of public revenue, and section 5 of the Regulation gives a right of appeal to the Board of Revenue. It seems to be quite clear that proceedings cannot be taken under the Regulation by a Magistrate as such. The Joint Magistrate was not a Collector or other officer acting in that capacity within the meaning of the Regulation, and therefore had no jurisdiction under that section. But as he dealt with the case as a Magistrate, the Sessions Judge was entitled to deal with the case under section 435 of the Code of Criminal Procedure and this Court has power to set aside the order of the Joint Magistrate. The order of the Joint Magistrate is therefore set aside as having been passed without jurisdiction. The fine, if realized, will be refunded.

*Order se aside.*

## FULL BENCH.

**BEHIM SEN AND OTHERS (PLAINTIFFS) v. MOTI RAM AND ANOTHER (DEFENDANTS).\***

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

*Pre-emption—Wajib-ul-arz—Construction of document—Contract or custom—Presumption in absence of evidence that the record is one of custom.*

Where it is not apparent, either from the language of the *wajib-ul-arz* itself or from other evidence, that the pre-emption clause of a *wajib-ul-arz* is merely the record of a new contract between the co-sharers, the presumption is that it is the record of a pre-existing custom. *Majidan Bibi v. Sheikh Hayatan* (1) followed.

The pre-emptive clause of a *wajib-ul-arz* was headed "Relating to the right of pre-emption" and ran as follows:—"If a co-sharer has to sell and mortgage his *hagiat*—then at the time of transfer it will be incumbent that he should, after giving information, sell and mortgage for a proper price, &c., &c." *Held* that this, in the absence of evidence to the contrary, indicated a pre-existing custom of pre-emption rather than a contract.

\* Second Appeal No. 900 of 1909 from a decree of B. J. Dalal, District Judge of Shahjahanpur, dated the 16th of April, 1909, confirming a decree of Muhammad Mubarak Hussain, Subordinate Judge of Shahjahanpur, dated the 24th of November, 1908.

(1) Weekly Notes, 1897, p. 3.

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