not seem to be a case to which section 233 (*k*) applies, the matter not being a matter relating to the union or separation of mahals. The mahals as formed by the revenue authorities would remain as they are. The only claim of the plaintiff is that he should be declared to be the owner of one of the mahals formed by the revenue authorities as a separate mahal. As has been already stated, the finding of the lower appellate court is that title to the property is in the plaintiff. As section 233 (*k*) of the Land Revenue Act or section 11 of the Code of Civil Procedure is no bar to the present suit, the plaintiffs' claim ought to prevail and the decree of the lower appellate court ought to be reversed to this extent that the claim of the plaintiff should be decreed in respect of all the property claimed by him.

KNOX, J.—I agree

BY THE COURT.—The order of the Court is that the appeal be allowed, and the decree of this Court and of the two lower courts be reversed, and in lieu thereof a decree be made in favour of the plaintiff decreeing the whole of his claim with costs in all courts.

*Appeal decreed.*

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

1920
*January*, 6.

MURLI DHAR (PETITIONER) *v* BABU RAM AND OTHERS (OPPOSITE PARTIES).* *Act (Local) No. II of* 1901 *(Agra Tenancy Act), section* 159—"*Co-sharer*"—*Owner of specific plots of land assessed to revenue—Suit by lambardar to recover revenue paid on behalf of such person.*

The word "co-sharer" in section 159 of the Agra Tenancy Act means a person holding proprietary rights in the mahal, who is jointly and severally liable for land-revenue with other proprietors in the mahal and whose revenue is payable through the lambardar under the provisions of section 144 of the United Provinces Land Revenue Act, 1901.

THIS was a reference made by the Collector of Etah under section 195 of the Agra Tenancy Act, 1901. The suit before him was a suit by a lambardar to recover from the defendants payments made by the plaintiff of Government revenue, for the payment of which, he asserted, the defendants were really liable.

* Civil Miscellaneous No. 275 of 1919.

1920

MURLI DHAR v. BABU RAM.

The defendants were holders of certain specific plots of land in the mahal, which had once been revenue-free but were subsequently assessed to revenue, and their defence was that the revenue payable in respect of these plots was not payable by them, but by the general body of co-sharers, that is to say, by the owners of fractional interests in the proprietary rights of the mahal as a whole. The question raised by the Collector was whether, supposing that the revenue on the plots was payable by the defendants and not the general body of co-sharers, the defendants were "co-sharers" within the meaning of section 159 of the Agra Tenancy Act, 1901.

Munshi *Gulzari Lal*, for the petitioner.

Munshi *Sheodihal Sinha*, for the opposite parties.

PIGGOTT and WALSH, JJ.:—This is a reference under section 195 of the Agra Tenancy Act (Local Act No. II of 1901) made by the Collector of Etah. The plaintiff in the suit is admittedly the lambardar of a certain mahal. The defendants are the proprietors of certain specific plots of land appertaining to that mahal. These plots of land were at one time held revenue-free, but revenue has now been assessed upon them. The plaintiff came into court alleging that the revenue assessed upon these plots was payable by the defendants; that he as lambardar had paid the said revenue, and that he was entitled to recover it from the defendants by a suit brought against them under section 159 of Local Act No. II of 1901. The defence, on the merits, was that the revenue assessed upon these plots of land was not payable by the defendants at all, but by the general body of co-sharers, that is to say, by the owners of fractional interests in the proprietary rights of the mahal as a whole. Of course, if the plaintiff is unable to prove that the land revenue in respect of which this suit is brought was in fact payable by the defendants whom he is suing, his suit will fail on the merits. The courts of the Etah district, however, have felt a difficulty upon a question of law which has nothing to do with the merits of the dispute. The Collector's order of reference seems to assume that the revenue in question was in fact payable by the defendants. We have thought it necessary to point out that this is a matter upon which the

parties were at issue and in respect of which there will have to be a clear finding of fact. The difficulty which we are asked to consider, however, proceeds on the assumption that the revenue assessed on the plots of land in question when the revenue-free grant was resumed is in fact payable by the owners of those particular plots, that is to say, by the defendants to this suit. The doubt suggested is that, even should this fact be established, the lambardar is not entitled to maintain a suit under section 159 of Local Act No. II of 1901, because the defendants could not be correctly described as "co-sharers" in the mahal. The Collector has pointed out that there is the authority of an unreported decision of the Board of Revenue in support of this contention. This decision has been laid before us, and we have considered it along with the Collector's order of reference and with the appropriate provisions of the Land Revenue Act. We think that it is impossible to apply to the interpretation of section 159 of the Agra Tenancy Act those decisions in which the question before the Court was one of the right of pre-emption. In a pre-emption suit the attention of the Court is in no way directed to the question of the meaning of the word "co-sharers" as used in section 159 aforesaid. The court has before it a certain record of rights, drawn up in the vernacular, in which it finds the word "hissedar" or some cognate expression. The point for determination is whether, within the meaning of that particular document, the word "hissedar" is to be interpreted as applying only to the holders of fractional shares in the proprietary rights of the mahal as a whole, or whether it may include also persons holding separate proprietary rights in respect of particular plots of land. The correct test for the interpretation of the word 'co-sharer' in section 159 of the Tenancy Act is to be found in the interpretation to be put on sections 141, 142 and 144 of the cognate Statute, namely, the Land Revenue Act of these provinces (Local Act No. III of 1901). We think it beyond doubt that, assuming the facts to be as alleged by the plaintiff in this case, namely, that the liability for the land revenue of these particular plots of land lies on the defendants, then the defendants would be jointly and severally responsible

1920

MURLI DHAR v. BABU RAM.

for the revenue of the mahal by reason of the provisions of section 142 of Local Act No. III of 1901, and the payment of the revenue assessed upon these plots would rightly be made on behalf of the defendants by the lambardar under section 144 of the same Statute. In our opinion, therefore, the word 'co-sharer' in section 159 of the Agra Tenancy Act (No. II of 1901) means a person holding proprietary rights in the mahal, who is jointly and severally liable for land revenue with the other proprietors in the mahal, and whose revenue is payable through the lambardar under the provisions of section 144 of the United provinces Land Revenue Act (No. III of 1901). This is our answer to the question referred to us by the Collector, and our order on his reference is that his court do proceed with the case. The costs of this hearing will be costs in the cause.

*Reference answered.*

## REVISIONAL CRIMINAL.

1920
*January*, 8.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

EMPEROR v. JOTI PRASAD AND OTHERS *

*Criminal Procedure Code, section 42—Act No. XLV of 1860 (Indian Penal Code), section 187—Omission to give assistance to the police—Extent of power of police to require assistance.*

A Sub-Inspector of police having received information that persons who had been concerned in a number of dacoities in the neighbourhood and who recently committed a dacoity at a village about two miles off had been seen in a forest tract near by, called upon the zamindar's agent to lend him a gun belonging to the zamindar, who was absent, and on two villagers to join him in a search for the dacoits. The agent refused to lend the gun, and the two villagers refused to join the expedition in search of the dacoits.

*Held* that the circumstances of the case were not covered by the provisions of section 42 of the Code of Criminal Procedure, and the persons in question could not, therefore, rightly be convicted under section 187 of the Indian Penal Code.

THIS was a reference by the Sessions Judge of Saharanpur recommending that the convictions of Joti Prasad and two others under section 187 of the Indian Penal Code should be set aside upon the ground that they were not warranted by the facts found against the accused.

* Criminal Reference No. 608 of 1919.