

December, 1881, Mr. Thornton was officially located in that division, whether temporarily or otherwise, in the discharge of his public duties, and not as a mere visitor or casual resident, we see no sufficient reason for holding that he did not thereby come within the provisions of s. 41 as a Magistrate for the time being not only in but also of the Sambhal-Hasanpur Division of the Moradabad District. It seems to us that this is a legitimate and reasonable view of the question : and that the procedure of the Magistrates was not only recommended by obvious convenience, but was also justifiable on strict application of the terms of the law.

1882

---

 EMPRESS OF  
INDIA  
v.  
KALLU.

---

 FULL BENCH.
 

---

1882  
March 9.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

NAIK RAM SINGH (DECREE-HOLDER) v. MURLI DHAR AND ANOTHER  
(JUDGMENT-DEBTORS)\*

*Landholder and tenant—Sale of occupancy-right in execution of decree—Act XV. of 1873 (N.-W. P. Rent Act), s. 9—Act XII of 1881 (N.-W. P. Rent A. ss. 2, 9.*

*Held* that a landholder, who had attached the occupancy-right of an occupancy tenant in certain land in execution of a decree before Act XII of 1881 came into force, was not entitled under s. 2 of that Act to bring such right to sale after that Act came into force, that section not saving the right of a landholder to bring such a right to sale in execution of a decree, and s. 9 of that Act expressly prohibiting the sale of such a right in execution of a decree.

NAIK Ram Singh, the proprietor of certain land, on the 30th March, 1881, applied for, and obtained, in execution of a decree which he held against Murlidhar and a certain other person, the occupancy-tenants of such land, an order for the attachment of the occupancy-rights therein of his judgment-debtors, with a view to the sale of such rights. On the 1st April, 1881, Act XII of 1881, which repealed Act XVIII of 1873, came into force. After Act XII of 1881 came into force the judgment-debtors preferred an objection to the sale of their occupancy-rights on the ground that the transfer of such rights in execution of decree was prohibited by s. 9 of that Act. The Court executing the decree allowed this

---

\* First Appeal, No. 101 of 1881, from an order of Maulvi Sultan Hasan, Sub-ordinate Judge of Agra, dated the 9th June, 1881.

1882

NAIK RAM  
SINGH  
v.  
MURLI DHAR.

objection, and released the occupancy-rights of the judgment-debtors from attachment. The decree-holder appealed to the High Court, contending that, as before Act XII of 1881 came into force the proprietor of land, who held a decree against the occupancy-tenant of such land, was entitled to bring the occupancy-right of his judgment-debtor to sale in execution of such decree, and as he had caused the occupancy-rights of his judgment-debtors to be attached in execution of his decree against them before that Act came into force, his claim to bring such rights to sale was not affected by that Act, regard being had to the provisions of s. 2 thereof.

The appeal came for hearing before ~~Oldfield and Tyrrell, JJ.~~, by whom the question raised by ~~the~~ appellant's contention was referred to the Full Bench, the ~~order~~ of reference being as follows :

OLDFIELD, J.—The appellant before us is the zamindar of the estate on which the respondents (his judgment-debtors) are proprietary, that is to say occupancy, tenants. The appellant, on 30th March, 1881, applied to the Court executing his decree the attachment, preparatory to sale, of this cultivatory tenure the respondents. His application was granted, and an order or attachment was made on the 31st March, 1881. On the 1st April, 1881, the new Rent Law, Act XII of 1881, came into force in these Provinces. Under this law (s. 9) a tenure of the character of that of the respondents is not transferable in the execution of a decree. But, under the rulings of the Allahabad High Court, in respect of tenures of this class, under the terms of Act XVIII of 1873, the appellant, being the zamindar, was, on the date on which he made his application, entitled to bring the respondents' cultivatory right under attachment and transfer in execution. The question now arises,—how the provisions of s. 2 of Act XII of 1881, read with those of s. 9 of the same Act, affect the appellant's claim. Under s. 9 "no right of occupancy other than that of tenants at fixed rates shall be transferable in execution of a decree:" and s. 2 enacts that all rights acquired and liabilities incurred under the Act No. XVIII of 1873 shall, so far as may be, be deemed to have been acquired and incurred under the Act No. XII of 1881. We refer this question to the Full Bench of the Court.

Mr. *Coplan*, for the appellant.

Munshi *Sukh Ram* and *Lala Har Kishan Das*, for the respondents.

1882

---

NANK RAM  
SINGH  
2.  
MORLI DEAR

The judgment of the Full Bench (STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, J. J.) was delivered by

OLDFIELD, J.—The part of s. 2, Act XII of 1881, referred to in this reference is to the effect that “all rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred, and places appointed under that Act (*i. e.*, Act XVIII of 1873) shall, so far as may be deemed to have been made, issued, conferred, granted, fixed, acquired and appointed hereunder.” That is, so far as effect can be given to them consistently with the provisions of Act XII of 1881, they are to be deemed to have been made under that Act and to be governed by the provisions of that Act. The section so far as the question before us is concerned is not to be considered to be a saving clause; and to estimate the effect of Act XII of 1881 upon any right of sale in respect of a tenant's right of occupancy which s. 9, Act XVIII of 1873, allowed to a landlord, we must refer to s. 9 of Act XII. That Act repeals Act XVIII of 1873, but it does more than merely repeal it, for by its 9th section it expressly enacts that no right of occupancy, except that of tenants at fixed rates, shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favor of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

In the case before us the landlord had proceeded to attach the occupancy-right of the tenant in execution of his decree before Act XII of 1881 came into force, but he cannot proceed to sell the right, after that Act came into operation, since such a right has been expressly declared to be not liable to sale.

Had a sale taken place before Act XII of 1881 came into force, a right in property would have been created which is not affected by the repeal of Act XVIII of 1873, or by any provision in Act XII of 1881: not so a right of sale under Act XVIII of 1873, which is all the landlord had, and which s. 9 of Act XII of 1881 has in express terms taken away.