

1881
 PRESS OF
 INDIA
 v.
 LAMANAND.

fifty rupees, and I therefore reduce the amount of the fine to twenty rupees each, and the excess realized will be handed back. The record may be returned.

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APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

TAJAMMUL HUSAIN (DEPENDANT) v. UDA AND ANOTHER (PLAINTIFFS).*

Pre-emption—Right of pre-emptor—Sale-contract—Purchase-money.

A pre-emptor is entitled to all the benefit which the vendee takes under the contract of sale. *Held* therefore, where a certain sum was fixed as the price of the property, and such sum was paid by the vendee, but it was subsequently agreed between him and the vendor, as part of the sale-contract, that the vendee should recover for his own benefit certain moneys due to the vendor at the time of the sale, and the vendee recovered such moneys, that the pre-emptor was entitled to a deduction of the amount of such moneys from the sum originally fixed as the price of the property.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Babu *Oprokash Chandar Makarji*, for the appellant.

Babu *Barodha Prasad Ghose*, for the respondents.

The judgment of the Court (SPANKIE, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—The plaintiff sues to recover by right of pre-emption property sold to appellant on payment of Rs. 13,866-6-6. The lower appellate Court decreed the claim, and the only question before us is the sum which appellant should receive from plaintiff. It has been found, and is not disputed, that the price of the property was fixed at Rs. 14,483-0-0, and appellant paid that sum to the vendor; but it was subsequently agreed between him and the vendor, as part of the sale-contract, that appellant should recover for his own benefit certain sums due on the estate to the vendor at the time of sale, namely, Rs. 209-8-6, compensation for land received

*First Appeal, No 121 of 1880, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 24th June, 1880.

by the vendor, and the kharif kists due at the time of sale. In accordance with this agreement appellant received from the vendor Rs. 209-8-6, compensation for land, and Rs. 165-12-3, kists realized by the vendor, and he was given the account-sheet of the balance of the kharif kists amounting to Rs. 241-4-9, in order to realize the same; and we find he admitted in the lower Court that he had realized the amount. Thus he got back from the sale-price he had paid Rs. 616-9-6, and plaintiff as pre-emptor, standing precisely in appellant's place as purchaser, is entitled to all the benefits which the appellant had under the sale-contract, that is, to a deduction of the above sum of Rs. 616-9-6 from the price originally fixed, leaving Rs. 13,866-6-6, payable to the appellant. The decision of the lower Court is therefore correct, and the appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sparkie and Mr. Justice Oldfield.

PATTERSON (DEFENDANT) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF) *.

Cantonment—Grant of land for building purposes—Right of Government to eject grantee—Regulations and Orders for the Bengal Army—Alluvial lands—Assessment of rent—Jurisdiction.

Certain ground situate within the limits of a cantonment was granted for building purposes by the military authorities in 1802. In June, 1873, such cantonment was abandoned and the ground comprised therein was made over to the Collector of the district in which it was situate. The Government subsequently sued *P*, who had succeeded to such grant, claiming (i) a declaration of its proprietary right to the ground comprised in such grant and to the alluvial accretions to such ground, (ii) that *P* should be directed to pay rent for such ground and such alluvial accretions, and (iii) that, should *P* refuse to pay the rents fixed, she might be ejected and the Government put in possession. *Held* that, inasmuch as under the Military Regulations relating to such grants such a grant cannot be resumed by the Government without a month's notice and without payment of the value of such buildings which may have been authorised to be erected, and as the Civil Courts had no jurisdiction in the matter of assessing rent on such alluvial accretions, which were outside the original grant, the Government was not entitled to the second and third reliefs it claimed, but was entitled only to a declaration of its proprietary title to such ground and to such alluvial accretions.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. Conlan and Lala Lalta Prasad, for the appellant.

*First Appeal, No. 98 of 1880, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 16th April, 1880.

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