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on behalf of the Court of Wards, and to the property alleged to have been mortgaged, and to be reversed as to the other defendants; and that it be declared that Said-un-nissa and Nawab Muhammad Husain Khan are liable to pay the amount of principal and interest due on the bond in original suit No. 4 of 1878, such interest to be computed at the rate of nine annas per cent per mensem from the date of the bond to the date of the Order of Her Majesty on this report, and at the rate of six per cent. from the date of the Order to that of payment; that the case be remitted to the High Court with directions to cause the principal and interest to be computed in accordance with the above directions: and that in Appeal No. 122 of 1878, the decree of the High Court ought to be affirmed.

The appellant must pay to the Collector of Ghâzipur, on behalf of the Court of Wards, his costs of these appeals to Her Majesty in Council, after deducting therefrom the costs of the appellant caused by the opposition to the motion to consolidate the appeals.

Solicitor for the appellant: Mr. *T. L. Wilson.*

Solicitor for the respondent (the Collector of Ghâzipur): Mr. *H. Treasure.*

P. C.* 1882 *November* 15.

LACHCHO (PLAINTIFF) *v.* MAYA RAM AND OTHERS (DEFENDANTS)

[On appeal from the High Court for the North-Western Provinces.]

Pre-emption of village lands—Construction of wajib-ul-arz.

THE *wajib-ul-arz* of a village, divided into three thôks and comprising also undivided land, contained a clause giving the right of pre-emption to such brothers and nephews of the vendor as were sharers, "and in case of their refusal to the other owners of the thôk:" *held*, that under this clause, an owner of one of the three thôks having sold all his interest in the village, no right of pre-emption attached to the ownership of another of the thôks.

Appeal from a decree of the High Court (12th January, 1880,) reversing a decree of the Subordinate Judge of Aligarh, (11th December, 1878).

The question was whether, under the terms of the *wajib-ul-arz* of mauza Tholai, a village in the Aligarh district, the appellant was

*Present:—LORD FITZGERALD, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

entitled, in virtue of her being owner of one of the three thôks into which the village was divided, to the right of pre-emption, on the sale by the owner of another of the thôks of all his right, title and interest in the village lands.

Of the three thôks, one belonged to one of the defendants, Muhammad Ibrahim Khan, a second to the appellant, and the third to a person not interested in this suit. Besides the land in the thôks, there were the undivided lands of the mauza, held in common by the sharers of the different thôks, proportionately to their shares in the mauza. The record-of-rights showed the divided land, comprising each thôk, and the common land as outside the thôks.

The *wajib-ul-arz* dated 3rd December, 1873, was in regard to pre-emption, in the terms stated in their Lordships' judgment.

In 1878, Lachcho being in treaty with Muhammad Ibrahim Khan for the purchase of his share in the village, and two other persons, Chait Ram and Maya Ram, offering a larger price, the latter obtained a deed of sale, whereby in consideration of Rs. 23,000, Muhammad Ibrahim sold all his interest in the divided as well as in the undivided lands of village Tholai. Lachcho then brought the present suit against the vendor and purchasers, claiming to pre-empt.

The Subordinate Judge, who tried the suit, was of opinion that the plaintiff had established her claim on the strength of her ownership of one of the thôks, and directing payment of the purchase-money within one month, decreed the claim.

This decree was, on appeal, reversed by a Divisional Bench of the High Court, (R. SPANKIE and R. C. OLDFIELD, JJ.,) for the reason thus stated. "The plaintiff is not a sharer in the vendor's thôk, that is, in the divided lands held by him separately; but she is, in common with all the sharers of the different thôks, a sharer of the common lands left undivided; and it is contended that on this ground she has a right of pre-emption. But this contention fails; the thôk as already stated is not comprised of the common lands, but of those divided, and a sharer in the former will not from that circumstance become a sharer in a thôk." (1)

On this appeal,

(1) The judgment of the High Court is reported at p. 631, 2 All., I. L. R.

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Mr. *R. V. Doyne* appeared for the appellant.

The respondents did not appear.

For the appellant it was contended that on the proper construction of the words—"other owners of the thôk," the owner or owners of another thôk were included among those who had a right of pre-emption.

Their Lordships' judgment was delivered by

SIR B. PEACOCK.—Their Lordships are of opinion that the judgment of the High Court was correct.

The question is, whether, upon the construction of the *wajib-ul-arz*, the plaintiff was entitled to a right of pre-emption in the defendant's thôk. The words are:—"Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews, who may be sharers, and, in case of their refusal, in favour of the other owners of the thôk." The lower Court seems to have treated the case as though the *wajib-ul-arz* had said, "in favour of the other owners or share-holders of the village;" but it is "the other owners of the thôk." Now whether the thôk comprised the divided lands which were recorded as belonging to Ibrahim alone, or included the undivided lands which were appurtenant to those divided lands, the plaintiff was no co-owner with Ibrahim. She was not a joint tenant, nor a tenant in common with him as to the divided portion of the lands; if she were a tenant in common of the undivided lands, that did not make her an owner of Ibrahim's share in those lands. A tenant in common is the owner of his own share; but he is not an owner of the other tenant in common's share. It appears, therefore, to their Lordships that the plaintiff was not an owner of the thôk which was sold. The right of pre-emption is in favour of the tenant's own brothers and nephews. If they and the owner of the share were a joint undivided family, the brothers or nephews would be co-owners and sharers; there might also be other owners of the share with them. In such case, if the sharer wished to sell his share, his own brothers or nephews in the first instance, and in case of their refusal the other co-owners, would be entitled to the right of pre-emption. In this case the

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plaintiff was not an owner or share-holder in the share sold, nor had she any interest in it; consequently the High Court was right in deciding that she was not entitled to the right of pre-emption.

Under these circumstances, their Lordships will humbly advise her Majesty that the decree of the High Court be affirmed, and the appeal dismissed.

Solicitors for the appellant: Messrs. *Oehme* and *Summerhays*.

REVISIONAL CRIMINAL.

1882 *September* 15.

Before Mr. Justice Mahmood.

IN THE MATTER OF THE PETITION OF LACHMAN *v.* JUALA AND OTHERS.

Improper discharge—Powers of Magistrate making inquiry in Sessions case—Act X. of 1872 *(Criminal Procedure Code), ss.* 195, 196, 297—*High Court's powers of revision.*

A Magistrate inquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction; but is competent, if he discredits such evidence, to discharge the accused.

The High Court can only interfere under s. 297 of Act X of 1872 (Criminal Procedure Code) in such a case, if it comes to the conclusion that the Magistrate has illegally and improperly under-rated the value of such evidence.

The meaning of the words "sufficient grounds" in s. 195 of that Act explained.

ONE Juala and certain other persons were accused of murder. Among the witnesses examined at the inquiry into this charge, there were some who stated themselves to be eye-witnesses to the offence. The Magistrate making the inquiry, after examining the witnesses for the prosecution, was of opinion that the direct evidence in the case had been fabricated and was false, and that putting aside such evidence there was no case against the accused. He accordingly discharged them.

The persons prosecuting applied to the High Court to revise the Magistrate's order, and to direct that the accused persons should be committed for trial.

Mr. *Spankie* and Munshi *Kashi Prasad*, for the applicants.

Mr. *Leach*, for the accused persons.