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register it. Unfortunately the application for restoration of the suit subsequently came up for disposal before another Judge who had taken the place of the Judge who had accepted the security, the latter having been transferred, and probably this has brought about the present state of affairs. In my view, the first Judge who dealt with the matter having accepted the bond as security, it was not open to the Court subsequently to say that the security was not to its satisfaction.

Rule made absolute.

SPECIAL BENCH.

Before Kulwant Sahay, Macpherson and Khaja Mahomed Noor, JJ.

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Feb. 13, 14.
March, 16.

JADUNANDAN SINGH

v.

SRIMATI SAVITRI DEVI.*

Revenue Sales Act, 1859 (*Act XI of* 1859), *sections* 2 *and* 3—kistbandi *date and latest date, distinction between—kist date, significance of—original* kistbandi *fixed according to Fasli era—7th June latest date under section* 3*—payment not made on 7th June—sale held in September, whether valid.*

In Bihar the *kistbandis* fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the Fasli era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Revenue Sales Act, 1859.

Where the original *kistbandi* under section 2 of the Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the

* Appeal from Appellate Decree no. 1597 of 1931, from a decision of D. P. Sharma, Esq., I.C.S., Officiating Additional District Judge of Monghyr, dated the 3rd October, 1931, reversing a decision of Maulavi Abdul Aziz, Additional Subordinate Judge of Monghyr, dated the 4th March, 1929.

kistbandi dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3.

Jagdishwar Narayan v. *Muhammad Haziq Hussain*(1), *Jagdishwar Narayan* v. *Muhammad Haziq Hussain*(2), *Sri Sri Radha Gobinda Deb Thakur* v. *Girija Prasanna Mookherjee*(3) and *Krishnachandra Bhoumik* v. *Pabna Dhanabhandar Company, Ltd.*(4), followed.

Musammat Saraswati Bahuria v. *Surajnarayan Chaudhuri*(5), explained.

Haji Buksh Elahi v. *Durlav Chandra Kar*(6), referred to.

Where, therefore, it appeared that the original *kistbandi* fixed in respect of the estate in arrear was according to the Fasli era, and the 7th of June was not the *kistbandi* date under section 2 but the latest date under section 3 and the June instalment was not paid on the latest date, viz., the 7th of June, *held*, that it was within the jurisdiction of the Collector to sell the estate after that date and that, therefore, the sale held on the 20th of September was a valid sale.

Appeal by the defendant.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Sir Sultan Ahmed (with him *S. N. Roy* and *Chaudhuri Mathura Prasad*), for the appellant.

L. K. Jha and *N. N. Sen*, for the respondents.

KULWANT SAHAY, J.—This is an appeal by the defendant against the decision of the Additional District Judge of Monghyr reversing the decision of the Subordinate Judge and setting aside a revenue sale under Act XI of 1859. It appears that there are several co-sharers in the estate Nadaura, bearing tauzi no. 364 of the Monghyr Collectorate. Some of

(1) (1923) 5 Pat. L. T. 473.
(2) (1926) I. L. R. 6 Pat. 200, P. C.
(3) (1931) 35 Cal. W. N. 912.
(4) (1931) I. L. R. 59 Cal. 1034, P. C.
(5) (1931) I. L. R. 10 Pat. 490, P. C.
(6) (1912) I. L. R. 39 Cal. 981; L. R. 39 I. A. 177.

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the co-sharers had opened separate accounts under section 11 of the Act and the share left after the opening of these separate accounts was known as the ijmali or the residuary share. The Government revenue payable on account of this ijmali share was Rs. 22. The plaintiff owns 1-anna 10-gandas 1-kauri, and the defendants-second-party own 11-gandas out of the total 2-annas 1-ganda 1-kauri share of the estate which was left as the ijmali share. The revenue sale of this ijmali share was held on the 20th of September, 1927, for arrears of the June instalment of 1927, and it was purchased by the defendant-first-party for a sum of Rs. 120 only. The plaintiff preferred an appeal before the Commissioner against the sale, but this appeal was dismissed on the 18th of November, 1927. The present suit was then instituted on the 4th of June, 1928, for setting aside the sale. The allegations contained in the plaint were non-service of the notices under sections 6 and 13 and section 7, and that the sale was brought about by the defendants-second-party who fraudulently made default in payment of their share of the Government revenue and who suppressed the several notices issued by the Collector and who purchased the property themselves in the name of their creature the defendant-first-party. The relief asked for was that the sale may be set aside on account of the irregularities which had occasioned serious loss to the plaintiff as property worth more than Rs. 3,000 was sold for the grossly inadequate price of Rs. 120; and secondly, that if the sale be not set aside then the defendant-first-party may be directed to execute a reconveyance in favour of the plaintiff in respect of her share in the estate. The suit was contested by the defendant-first-party alone who denied the allegations of the plaintiff as regards the irregularities as well as the fraud alleged by her in bringing about the sale.

The learned Subordinate Judge found that there was no irregularity inasmuch as the notices under sections 6 and 13 and section 7 were properly served,

and no fraud was proved to have been practised in respect thereof. He further held that the plaintiff was not entitled to a reconveyance inasmuch as the defendant-first-party did not make the purchase for the defendants-second-party but was the real purchaser at the sale. He found that the price fetched at the sale was inadequate; but having regard to the finding of want of irregularity and fraud he held that mere inadequacy of price was no ground for setting aside the sale. Against the decree of the Subordinate Judge the plaintiff preferred an appeal before the District Judge. The learned District Judge affirmed the finding of the Subordinate Judge on the two points raised by the plaintiff in her plaint and pressed before the Subordinate Judge. A third point was, however, raised before the District Judge, which had not been raised either in the plaint or in the grounds of appeal before the District Judge and which did not form the subject-matter of any of the issues framed in the suit. The point was that the sale made by the Collector was without jurisdiction and as such it was liable to be set aside. The learned Officiating District Judge gave effect to this contention of the plaintiff and set aside the sale. The defendant no. 1, who was the purchaser at the revenue sale, has preferred this second appeal, and the only contention raised in the appeal was whether the Collector had jurisdiction to sell the ijmali share of the estate.

The question of jurisdiction is raised in this way. The sale purported to be made for the arrears of the " June-kist " of 1927. The learned District Judge finds that there was an arrear in June-kist of 1927. The notification issued by the Collector showed the arrears to be Rs. 6-12-6. The District Judge was of opinion that the arrears amounted to only Rs. 3-11-0. The actual amount of arrears is immaterial. The fact found is that there was an arrear in the June-kist of 1927. The learned District Judge, however, refers to the provisions of sections 2 and 3 of the Revenue Sales Law (Act XI

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of 1859) and says that under section 2 it did not become an arrear of revenue until the 1st of July, 1927, and under section 3 of the Act the latest date for payment of such arrears was the 28th of September, 1927, and as the sale was held on the 20th of September, 1927, it was illegal and invalid as the Collector had no jurisdiction to hold the sale before the 28th of September, 1927, and he relied upon the decision of the Privy Council in *Musammat Saraswati Bahuria* v. *Surajnarayan Chaudhuri*(1).

In the first place it is to be noticed that the point upon which the learned District Judge set aside the sale was not taken by the plaintiff at any stage of the suit until the argument of the appeal before the District Judge. The point involved a determination of a question of fact, viz., what was the kist or instalment according to which the settlement and kistbandi of the mahal in question had been regulated within the meaning of section 2 of the Act. No allegation was made that the 7th of June, 1927, was the date of the kist or instalment within the meaning of section 2 and it is overwhelmingly improbable that it could be. No opportunity was given to the defendant to show that the 7th of June was not the kist date under section 2. It is conceded that the latest dates of payment fixed by the Board of Revenue under section 3 of the Act in so far as the present estate is concerned, are the 7th of June, 28th of September, 12th of January, and 28th of March of each year. The learned District Judge has taken it for granted that the 7th of June, 1927, was the kist date within the meaning of section 2 of the Act. It is a well-known fact that in Bihar the original *kistbandis* fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the Fasli era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of

(1) (1931) I. L. R. 10 Pat. 496, P. C.

Revenue under section 3 of the Act and could not possibly be *kistbandi* dates of the Fasli era. It was pointed out in *Shama Kant Lal* v. *Kashi Nath Singh*(1) that where the original *kistbandi* under section 2 of the Revenue Sales Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the *kistbandi* dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3 of the Act. The word 'kist' no doubt appears in the Tauzi Ledger and the dates in the four months mentioned above are shown there as the June-kist, September-kist, January-kist, and the March-kist. But it has been expressly stated in the Tauzi Manual that the word 'kist' is therein used to indicate the period between one latest day of payment of the arrears of revenue and the next, and is not used in the restricted sense in which the word is used in section 2 of the Act.

In *Saraswati Bahuria's* case(2) it is evident that it was found as a matter of fact (and not held as a matter of law) that on the evidence which the parties in that case were able to adduce before the court of first instance, the original kist dates under section 2 of the Act coincided with the dates fixed under section 3 of the Act, and it was solely upon the facts as there found that it was held that the sale in that case took place before the latest date of payment prescribed by the Board of Revenue and so was illegal. This distinction was brought out by the Calcutta High Court in *Sri Sri Radha Gobinda Deb Thakur* v *Girija Prasanna Mookherjee*(3). That was also the case in *Krishnachandra Bhoumik* v. *Pabna Dhanabhandar Company, Ltd.*(4)

That in some very rare cases the two dates fixed under sections 2 and 3 of the Act may coincide is

(1) (1926) 7 Pat. L. T. 747.
(2) (1931) I. L. R. 10 Pat. 496, P. C.
(3) (1931) 35 Cal. W. N. 912.
(4) (1931) I. L. R. 59 Cal. 1034, P. C.

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illustrated by *Haji Buksh Elahi* v. *Durlav Chandra Kar*(1) which was a modern case in a Government Khasmahal. The distinction between the *kistbandi* date under section 2 and the latest date of payment under section 3 was brought out by this Court in *Jagdishwar Narayan* v. *Muhammad Haziq Hussain*(2) which went in appeal before the Privy Council [*Jagdishwar Narayan* v. *Muhammad Haziq Hussain*(3)] and the Privy Council affirmed the view of this Court on this point and explained the decision in *Haji Buksh Elahi's case*(1), but the decision in *Jagdishwar Narayan* v. *Muhammad Haziq*(3) does not appear to have been brought to their Lordships' notice in *Saraswati Bahuria* v. *Surajnarayan Chaudhuri*(4).

The learned District Judge has, therefore, fallen into an obvious error in treating the 7th of June, 1927, as the *kistbandi* date under section 2 of the Act, in which view the Government revenue would not become an arrear until the 1st of July and the estate could not be sold until the next latest date of payment which was the 28th of September. That the 7th of June. 1927, was actually not the *kistbandi* date under section 2 has now been set at rest by the production on behalf of the appellant of the original *kistbandi* from the office of the Collector of Monghyr. Having regard to the fact that the point was not taken in the trial Court and no opportunity was given to the defendant to show what the actual kist dates were under section 2 of the Act, we thought it fit to admit in evidence in this Court the original *kistbandi*. The learned Advocate for the plaintiff-respondent waived his right of formal proof of the document, although he objected that the document ought not to be admitted in evidence at this late stage; but having regard to the circumstances, and in order to enable us to give judgment, we were of opinion that this is a fit case

(1) (1912) I. L. R. 39 Cal. 981; L. R. 39 I. A. 177.
(2) (1923) 5 Pat. L. T. 473.
(3) (1926) I. L. R. 6 Pat. 200, P. C.
(4) (1931) I. L. R. 10 Pat. 496, P. C.

for admission of new evidence on the point. On referring to this document it is clear that the original *kistbandi* fixed in respect of this estate was according to the Fasli era and the eleven kists were payable for the months of that era (except Bhado which is blank) in sicca currency as follows :—

	Rs.	a.	p.
Asin	2	8	0
Kartik	2	8	0
Agrahan	7	8	0
Pous	15	0	0
Magh	10	0	0
Phalgun	2	8	0
Chait	10	0	0
Baisakh	50	0	0
Jeth	50	0	0
Asarh	5	0	0
Sravan	5	1	13

This was certainly the *kistbandi* of the whole estate bearing tauzi no. 364 and could only vary with the compensation for sicca currency. By the opening of the separate accounts the revenue for the residuary or ijmali share was fixed at Rs. 22 and on referring to the Tauzi Ledger it appears that for the payment of this sum of Rs. 22 the latest dates were as follows :—

	Rs.	a.	p.
7th June	15	2	0
28th September	1	10	0
12th January	1	10	0
28th March	3	10	0

The payment not having been made on the latest date, viz., the 7th of June, 1927, it was within the jurisdiction of the Collector to sell the estate after that date, and, therefore, the sale held on the 20th of September was a valid sale.

The decree of the learned District Judge must, therefore, be set aside and that of the Subordinate

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Judge restored. The appeal must be allowed with costs throughout.

MACPHERSON, J.—I agree.

KHAJA MOHAMED NOOR, J.—I agree.

Appeal allowed.

REVISIONAL CRIMINAL.

1933.

March, 3, 17.

Before Dhavle and Rowland, JJ.

BALDEO PRASAD

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 190(*1*) *and* 191—*Magistrate, cognizance taken by, under section* 190(*1*) (*b*) *on a police report—different offence disclosed by evidence—cognizance taken of the new offence—Magistrate, whether deemed to have taken cognizance under section* 190(*1*) (*c*)—*section* 191, *whether applies in such circumstances —principle applicable to summons cases, whether applies to warrant cases—taking of cognizance, significance of—court, power of, to frame charges as may be justified by evidence irrespective of offence or offences of which cognizance is initially taken.*

If a Magistrate takes cognizance of an offence under section 190(*1*) (*c*), Code of Criminal Procedure, 1898, his further proceedings are bad unless he informs the accused that he is entitled to have the case tried by another court. *Emperor* v. *Chedi*(1), followed.

But where the Magistrate has before him a police report disclosing one offence of which he takes cognizance, and if in the course of taking evidence a different offence is disclosed and he takes cognizance of it, he would be deemed to have taken cognizance of the latter offence, not under

* Criminal Revision no. 76 of 1933, from an order of Ramchandra Chaudhuri, Esq., Sessions Judge of Shahabad, dated the 23rd December, 1932, affirming the decision of P. K. Misra, Esq., Magistrate. First Class, Arrah, dated the 25th August, 1932.

(1) (1905) I. L. R. 28 All. 212.