

1938
 DEWARKHAND
 CEMENT
 CO. LTD.
 v.
 SECRETARY
 OF STATE
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the Chief Controlling Revenue Authority should have refused to refer the case to the Court under s. 56 of the Indian Stamp Act. The result is that, apart from the expense to the parties, a good deal of time is taken before me and, if the case goes further, some more time would be taken.

In the result, the suit must be dismissed with costs.

Attorneys for plaintiffs : Messrs. *Payne & Co.*

Attorney for defendant : Mr. *G. Louis Walker*, Government Solicitor.

Suit dismissed.

N. K. A.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

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 August 31

ABEDEALI KADARBHAI VORA (ORIGINAL OPPONENT), PETITIONER v. THE DISTRICT GOVERNMENT PLEADER, KAIRA (ORIGINAL PETITIONER), OPPONENT.*

Mussalman Wakf Act (XLIII of 1923), s. 10—Mussalman Wakf (Bombay Amendment Act XVIII of 1935)—Wakf property—Mutawalli failing to furnish particulars and accounts—Offence punishable under s. 10—Sanction of District Court necessary—Trial by Criminal Court—Trial by District Court not permissible.

A prosecution under s. 10 of the Mussalman Wakf Act, 1923, as amended by the Mussalman Wakf (Bombay Amendment) Act, 1935, must be with the sanction of the District Court and must be tried by a Criminal Court not inferior to that of a Presidency Magistrate or a Magistrate of the First Class. The District Court cannot itself try an offence under the Act.

Kalekhan v. Karim,⁽¹⁾ superseded by legislature.

*Civil Revision Application No. 99 of 1938.

⁽¹⁾ (1934) 37 Bom. L. R. 207.

CIVIL REVISION APPLICATION against the order passed by G. H. Salvi, District Judge of Kaira at Nadiad.

Application under Wakf Act.

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The Government of Bombay made the Mussalman Wakf Act (XLII of 1923) applicable to Kaira District from October 16, 1931, by Government Notification No. 5538-F/28, Revenue Department, dated December 17, 1931. The Collector of Kaira issued a notification (No. M.S.C. 67) on March 24, 1932, describing certain properties in possession of the petitioner as Wakf properties. The District Judge of Kaira called upon the petitioner as the Mutawalli to render account of properties included in the said notification. The petitioner denied his liability under the Act. The District Judge, thereupon ordered the filing of an application against the petitioner under s. 10 of the Mussalman Wakf Act, 1923, as amended by the Mussalman Wakf (Bombay Amendment) Act, 1935. Accordingly the District Government Pleader of Kaira filed an application against the petitioner in the District Court of Kaira. The petitioner did not attend the Court on the date of hearing. The District Judge proceeded to hear the application and fined the petitioner Rs. 250 under s. 10 of the Act. The petitioner applied to the High Court.

I. I. Chundrigar, for the petitioner.

B. G. Rao, Assistant Government Pleader, for the opponent.

BEAUMONT C. J. This is an application in revision against an order made by the District Judge of Kaira fining the applicant Rs. 250 under s. 10 of the Mussalman Wakf Act of 1923. An application was made by the Government

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Pleader of Kaira to the District Court alleging that the present applicant had failed to render accounts under s. 3 of the Wakf Act and asking that he might be dealt with under s. 10 of the same Act. On that application the District Judge directed notice to issue, and subsequently he heard the application. The present applicant made two applications for adjournment in order to put in a written statement, and those applications were granted; but he put in no written statement, and ultimately his pleader withdrew on the ground that he had no instructions. Conduct of that sort does not enlist my sympathy, but the point raised on this application is that the District Court had no jurisdiction to deal with the matter.

Under s. 3 of the original Wakf Act of 1923, accounts have to be rendered by the mutwalli of the wakf, and under s. 4 (2) the Court may be directed to serve an order on the mutwalli requiring him to furnish further particulars and so forth. Section 10 provides that if any person who is required by or under s. 3 or s. 4 to furnish particulars fails and does various other acts specified, he shall be punishable with fine, but the Act does not say by what. The Court whose sanction is to be obtained is clearly the Court as defined in *Kalekhan v. Karim*,⁽¹⁾ following two decisions of the Allahabad High Court, though, I think, with some hesitation, that the Court by which penalties could be imposed under s. 10 was the Court as defined under s. 2 of the Wakf Act, viz., the District Court. Now if the present case had arisen under the Wakf Act of 1923, I should have followed that decision, but since that decision was given, the legislature has passed the Mussalman Wakf (Bombay Amendment) Act of 1935, under which there is inserted in the principal Act, after s. 10, certain new

⁽¹⁾ (1934) 37 Bom. L. R. 207.

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sections, including s. 10B. Sub-section (1) of s. 10B provides that "no prosecution under this Act shall be instituted except by or with the previous sanction of the Court given in the prescribed manner." The Court whose sanction is to be obtained is clearly the Court as defined in s. 2, that is to say, the District Court. Sub-section (2) of s. 10B provides "that no criminal Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try an offence under this Act." That must involve that a criminal Court which is not inferior to that of a Presidency Magistrate or of a Magistrate of the First Class can try an offence under the Act. And if a criminal Court of that nature can try an offence under the Act it seems to me clear that the offence cannot also be tried by a District Court which is not a criminal Court. The basis of Mr. Justice Broomfield's decision in *Kalekhan v. Karim*⁽¹⁾ was that the only Court referred to in the Act was the District Court, but that basis no longer exists. In my judgment the effect of the two Acts as they now stand is that any prosecution under s. 10 of the principal Act must be with the sanction of the District Court and must be tried by a criminal Court not inferior to that of a Presidency Magistrate or of a Magistrate of the First Class. I think, therefore, that the proceedings must be quashed, and the parties will have to start *de novo*.

The fine, if already paid, will have to be refunded.

Opponent to pay costs of the applicant.

Rule made absolute.

J. G. R.

⁽¹⁾ (1934) 37 Bom. L. R. 207.