

1871

THE QUEEN
v.
RAMDYAL
SING.

KEMP, J.—This is a charge brought in the first instance against Baboo Ja Krishna Mookerjee of Uttarpara, who was supposed to be the owner of the soil. The charge, looking to the form 5 of the Nuthi, was for depositing *sāl* leaves for more than 24 hours. Harish Chandra Mookerjee, a sub-overseer of the Burdwan Municipality, appeared as prosecutor. The mookhtear Dwarka Nath Hazra in defence stated that the land belonged to Baboo Pyari Mohan Mookerjee, the son of the aforesaid Jai Krishna Mookerjee; upon which notice was served upon Pyari Mohan Mookerjee. In answer to that notice Baboo Pyari Mohan Mookerjee admitted that the land belonged to him, but urged that the ryots in occupation were liable, and not the landlord. The defence of Dwarka Nath Hazra was that he was the mookhtear; that the land was occupied by tenants; that his employer lived in another district, and, therefore, to use the words of the mookhtear, could scarcely be liable. He admitted that he was the employee of Baboo Pyari Mohan Mookerjee. Upon this Mr. Cockburn fined the mookhtear Rs. 20. Under section 67 of Act III of 1864, B. C. the Municipal Commissioner was empowered to fine either the owner or occupier of the land who suffered the same to be in a filthy state. Now, looking to the fact that the owner of the land, Baboo Pyari Mohan Mookerjee, admittedly lives in another district, and as there is no evidence that he suffered the land to be in a filthy state, we think that the discretion which the above section of the Act gives the Court has not been properly exercised in this case. We therefore quash the proceedings, and direct that the fine, if paid, be refunded.

The Municipal Commissioners are at liberty to proceed against the occupiers of the land if they think fit so to do.

Before Mr. Justice Phear.

1871
Sept. 4.

W. P. DUFF v. G. E. FISHER.
Act V of 1866—Sum under Rs. 500.

THIS was a suit under Act V of 1866 on a promissory note made by the defendant for Rs. 342-15-6, of which the plaintiffs were payees. The note bore no interest. The petition did not show that the suit could not have been brought in the small Cause Court. The suit was undefended.

Mr. *Ferguson* appeared for the plaintiff.

The Court gave a decree for the amount sued for with costs on scale No. 1.
