

necessary consequence of such adjudication that the penalties realized shall go to the parties indicated by the Act. If no fine comes into the Magistrate's hands under the adjudication, the matter then passes to the Board of Revenue who can grant a reward. This appears to indicate clearly that the distribution of the penalty is no part of the judgment, and, therefore, not a matter over which this Court can exercise control.

There is another point which the Sessions Judge seems to treat as immaterial, but on which we entertain considerable doubt,—namely, whether a person who does not come forward in person as an informer and take the responsibilities together with the possible profits of his information, is entitled to any part of the penalties recovered. It is however not necessary to consider this matter at length. We cannot interfere. Let the papers be returned to the Sessions Judge.

1871

THE QUEEN
v.
DWARKA
NATH HAZRA.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

THE QUEEN v. DWARKA NATH HAZRA (PETITIONER).*

Act III of 1864, B. C., s. 67—*Fine for suffering Premises to be in a filthy State*

Dwarka Nath Hazara petitioned the High Court stating as follows :

1871
Nov. 25.

1. That your petitioner practises as a mookhtear in the district of Burdwan, and is the mookhtear of Baboo Pyari Mohan Mookerjee and several other persons. That Baboo Pyari Mohan of Uttarpara, Zilla Hooghly, is the owner of a piece of land near the Railway Station which is occupied by his tenants Annada Prasad Bhuttacharjee and others.

2. That the said Annada Prasad and others deposited certain broken earthen pots and some *sál* leaves on the land.

3. That thereupon your petitioner, as the mookhtear of Baboo Pyari Mohan Mookerjee, was fined by Mr. Cockburn, Municipal Commissioner, in the sum of Rs. 50, on the 23rd February last.

4. That your petitioner thereupon appealed to the Chairman, who rejected the appeal on the 20th March last.

5. That your petitioner then brought a Civil suit, which was dismissed on the 21st July last on the ground that the suit does not lie.

6. That your petitioner therefore begs to move your Lordships under sections 404 and 405 of the Criminal Procedure Code, and prays that the order of Mr. Cockburn, dated the 23rd February last, be quashed, and the fine be directed to be refunded.

Baboo *Anand Chandra Ghosal* for the petitioner.

The judgment of the Court was delivered by

* Miscellaneous Criminal Case, No. 142 of 1871, against an order of the Municipal Commissioner of Burdwan, dated the 23rd February 1871.

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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.
