

1895
 IN THE
 MATTER OF
 JOSHY ASSAM.

remove the girl from her present custody would be to expose her to a method and mode of life for which her up-bringing and course of training for the past two-and-a-half years has rendered her wholly unfit. I think I should be doing a wrong to the child if, upon the facts before me, I were to make an order to restore her to her parents.

This rule must therefore be discharged.

SALE, J. (to Mr. *Dunne*.)—Do you press for costs?

Mr. *Dunne*.—I am instructed to press for costs.

SALE, J.—Then the rule will be discharged with costs.

Rule discharged with costs.

Attorney for the petitioners: Babu *N. G. Ray*.

Attorney for Mr. and Mrs. Allen: Mr. *C. A. Smith*.

C. H. G.

CRIMINAL REFERENCE.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

SHAMA (COMPLAINANT) v. LECHHU SHEKH (ACCUSED.) *

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 September 9. *Cattle Trespass Act (I of 1871), sections 20 to 23—Special jurisdiction—Criminal Procedure Code (Act X of 1882), section 1, section 102—Transfer of Criminal Case.*

The jurisdiction conferred by sections 20 to 23 of the Cattle Trespass Act (I of 1871) is a special jurisdiction, and, as such, it is under section 1 of the Criminal Procedure Code (Act X of 1882) unaffected by its provisions; and, therefore, section 192 does not authorize the transfer of a case to which sections 20 to 23 of the Cattle Trespass Act apply.

THIS was a reference under section 438 of the Criminal Procedure Code (Act X of 1882) by the Sessions Judge of Mymensingh. The facts of the case appear from the following letter of reference:—

“In this case one Shama complained before Deputy Magistrate Ganga

* Criminal Reference No. 236 of 1895, made by R. H. Anderson, Esq., Sessions Judge of Mymensingh, dated the 28th and 29th August 1895, against the order passed by the Bench Magistrates of Mymensingh, dated the 11th June 1895.

Narain Roy, exercising first class powers, that the petitioner Lechhu Shekh and others had wrongfully impounded some cattle of hers. The complainant was examined, the case was made over to the Bench for disposal, and Lechhu (petitioner) was summoned. The Bench sentenced him, under section 22 of the Cattle Trespass Act, to pay a fine of Rs. 15, or suffer simple imprisonment for one month in default. An appeal was dismissed by the Deputy Magistrate vested with appellate powers.

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"The Bench, it seems, had no jurisdiction to deal with this case. The Magistrate referred to in section 22 of the Act is apparently the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference to the Magistrate of the District. Cf. section 20.

"I would not have referred this case simply because the order was in an illegal form, and I cannot but admit that no injury has been done by an order being passed by a Bench which had no jurisdiction; but as it seems to me neither the District Magistrate who transferred the case, nor the petitioner who raised no objection to the jurisdiction of the Bench could give jurisdiction, when the law itself did not, in a *quasi-penal* matter, I am bound to refer the case."

No one appeared at the hearing of the reference.

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

We must hold that the Bench of Magistrates had no jurisdiction to try this case, which was brought under section 20 of the Act, 1 of 1871, by the complainant, who complained of the illegal seizure of her cattle. The jurisdiction conferred by sections 20 to 23 of the Act on the Magistrate of the District, or a Magistrate authorized to receive and try charges without reference by the Magistrate of the District, is, we think, a special jurisdiction, and as such, it is by section 1 of the Code unaffected by the provisions of the Code. Section 192 of the Code does not, therefore, authorize the transfer of a case to which sections 20 to 23 of the Act I of 1871 apply to a subordinate tribunal. There is, we may add, no provision for an appeal in such a case, which is *quasi-civil*, and we think it is clear that the jurisdiction was intended to be limited to the Magistrates specially referred to. The case of *In the matter of Kitabdi Mundul* (1) supports this view.

We may add that the Bench of Magistrates has entirely mistaken the nature of the case, and has treated the act charged as a

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criminal offence punishable with fine, and imprisonment in default of payment of the fine. The sections in question only authorize the award of reasonable compensation, not exceeding Rs. 100, to the complainant for any loss caused by the illegal seizure. The order does not appear to have been made with reference to any loss so caused.

The order will be set aside and the fine, if realized, refunded.

S. C. B.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

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RADHA PERSHAD SINGH BAHADUR (PLAINTIFF) v. RAM-
KHELAWAN SINGH AND OTHERS (DEFENDANTS):

AND

SIAMLAL SINGH AND OTHERS (DEFENDANTS) v. RADHA PERSHAD
SINGH BAHADUR (PLAINTIFF).^{*}

Hindu Law—Joint family—Mitakshara law—Joint property, Liability of, to sale in execution of decree against one member of a family—Civil Procedure Code (Act XIV of 1882), sections 278, 280 and 283—Suit for declaration of liability to sale in execution—Limitation—Res judicata.

In execution of a decree for rent against a lessee, who was one of the members of a joint Hindu family governed by the Mitakshara law, property other than the tenure was attached by the decree-holder. Objection was raised under section 278 of the Civil Procedure Code by other members, and an order was passed under section 280 releasing the interest of all members except the lessee. Within one year of the order, the present suit was brought by the decree-holder to bring to sale the whole property, on the ground that all the defendants being members of a joint family were benefited by the lease, and were liable for the decretal money. The defendant pleaded, *inter alia*, that the suit was barred by *res judicata*, and that the suits decreed having been for rents of the years 1884 to 1887, the present suit brought in 1891 against the additional parties was barred by limitation.

Held (per PRINSEP and GHOSE, JJ.) that the suit would lie, and neither the plea of limitation nor the bar of *res judicata* was applicable to it.

Held (per PRINSEP, J.)—Sections 278—283 of the Civil Procedure Code contemplate the liability of the property to sale, because of its being the property

^{*}Appeals from Original Decree Nos. 261 and 304 of 1892, against the decree of Babu Abinash Chunder Mitter, Subordinate Judge of Shahabad, dated the 27th of June 1892.