

not to govern the decision of the questions raised in this case. 1878
 Following the principle of distinction between moveable and PANDAH GAZI
 immoveable properties as laid down in *Raj Chandra Bose v.* v.
Dharmo Chandra Bose (1), *Nuttu Miah v. Nand Rani* (2), and JENNUDDI.
 the ruling directly upon the point in *Tofail Ahmud v. Banee*
Madhub Mookerjee (3) we think that standing crops are not move-
 able property. Consequently, supposing the Limitation Act of
 1871 was applicable to this case, the Munsif was wrong in apply-
 ing art. 26 of the second schedule of that Act. We think
 that art. No. 40 was applicable. Therefore, the remedy of the
 plaintiff was not barred until the new Limitation Act came
 into operation.

This being so, the second question referred does not arise.
 The Munsif ought there to have decided the question of
 limitation in this case with reference to Act XV of 1877;
 and under art. 36 of that Act the suit is not barred. We
 may, however, draw the attention of the Munsif to the case of
Krishna Mohun Bose v. Okhil Moni Dossee (4), which decides
 the point raised in the second question.

APPELLATE CRIMINAL.

*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, and
 Mr. Justice McDonell.*

THE EMPRESS *v.* TSIT OOE.*

*Jurisdiction — Special Court at Rangoon — Case Transferred — Criminal
 Procedure Code (Act X of 1872), s. 64 — Burma Courts Act (XVII
 of 1875), s. 35.*

1878
 Dec. 11.

The Special Court of British Burma has power to entertain an appeal from
 a sentence of death or other sentence passed by the Judicial Commissioner, in
 a case transferred by him to his own Court from that of the Sessions Judge,

(1) 8 B. L. R., 510.

(3) 24 W. R., 394.

(2) *Ibid.*, 509.

(4) I. L. R., 3 Calc., 331.

* Criminal Reference, No. $\frac{C.A.}{31}$ of 1878, from an order made by John
 Jardine, Esq., Judicial Commissioner of British Burma, dated 29th of August
 1878.

1878
 EMPRESS
 v.
 TSIT OOE.

under the powers conferred by s. 64 of the Code of Criminal Procedure, and s. 35 of Act XVII of 1875 (the Burma Courts Act), the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner.

THIS was a reference made to the High Court of Calcutta, under s. 80 (cl. 6) of the Burma Courts Act (XVII of 1875), in consequence of a difference of opinion between the two members of the Special Court at Rangoon in a criminal case.

The question referred was, whether, from a conviction and sentence of the Judicial Commissioner, in a case which he has transferred to his own Court, professedly in the exercise of the powers described in s. 64 of the Code of Criminal Procedure, an appeal lies to the Special Court.

A Chinese, named Tsit Ooe, with several others, was committed for trial by the Deputy Commissioner of Mergui to the Sessions Judge, (being the Commissioner of the Tenasserim Division), on various heads of charge, one of which was murder.

The Judicial Commissioner, of his own motion, and for reasons given at the commencement of his judgment at the trial, transferred the case to his own Court, and sat for the purpose of trying it at Mergui. It appears that the function of prosecution was performed by the Superintendent of Police, Major Munro; that the trial was held with the aid of three assessors, of whom only two sat till the end of the proceedings; that the Court adjourned on three occasions, once on the 8th, for the purpose of viewing certain places mentioned, and twice on the 14th, "in order to have the places identified," and again, "to look at the neighbourhood;" that the trial lasted from the 7th to the 17th of August; and that on that day the Judicial Commissioner delivered his judgment, whereby he convicted Tsit Ooe, differing from both assessors, and sentenced him to suffer death.

Two questions were raised before him:—*first*, whether such sentence was subject to confirmation by the Special Court; and, *secondly*, whether an appeal lay to that Court from his judgment?

The Judicial Commissioner himself decided the first question in the negative, but as the matter was one of life or death,

he suspended execution of his sentence, pending an appeal to the Special Court.

1878
 EMPRESS
 v.
 TSIT OOR.

The members of the latter Court have differed in opinion, as to whether an appeal lies to the Special Court under such circumstances.

No one appeared before the High Court; and the opinion of the High Court (after stating the facts as above set out) was delivered by

GARTH, C. J.—After fully considering the judgments of the Special Court upon this point, we have no doubt that the conviction and sentence passed by the Judicial Commissioner is subject to appeal to that Court.

We entirely agree with the learned Recorder, that the words “any original jurisdiction” must bear the ordinary natural signification which he puts upon them, and we think it clear that whenever the Judicial Commissioner exercises original jurisdiction, from whatever source derived, in criminal cases, an appeal lies to the Special Court from his decision.

Were the law otherwise, we consider that the fair administration of criminal justice might be seriously imperilled, and that the case would call for the immediate interference of the legislature. The Judicial Commissioner would then have the power, by transferring any case to his own Court, for any reason which might seem sufficient to himself, to exercise an entire control over the proceedings, and to deprive the prisoner of his right of appeal, however unjust or erroneous his decision might be.

In fact we find in this very case a forcible illustration of the danger of such a state of things, because, upon looking at the sections under which the Judicial Commissioner assumed a jurisdiction to try the prisoner, we entertain grave doubts whether he had any power to do so; and unless his jurisdiction could be inquired into by a Court of Appeal, it is by no means clear that the law has provided any other mode of raising the question.

We are of opinion, therefore, that, upon the point referred to us, an appeal does lie from the Judicial Commissioner to the Special Court.