

1878
 IN THE
 MATTER OF
 THE PETITION
 OF MODUN
 MOHUN.

The Sessions Judge has fallen into error by varying the words of the Act. He says it was the duty of the prisoner to take money paid in on account of Government. The definition of a public servant, which, if any, is applicable to this case, runs, "every officer whose duty it is as such officer to take on behalf of Government."

It may be that the money was paid by the Court of Wards manager on account of Government; but it was on behalf of the Bank, and not on behalf of the Government, that it was taken by the accused. He was the servant of the Bank, and if he had in any way failed in his duty, any consequent loss would have fallen upon the Bank, and not upon the Government, which, in making this deposit, was dealing with the Bank as any other constituent might have done.

The conviction and sentence are set aside. The fine, if paid, is to be refunded.

Conviction set aside.

Before Mr. Justice Jackson and Mr. Justice McDonell.

1878
 Nov. 28.

IN THE MATTER OF THE PETITION OF MACKENZIE v. SHERE BAHDOR SAHI.*

Possession—Butwara Proceedings—Possession given by Ameen, Effect of—Criminal Procedure Code (Act X of 1872), s. 530.

The possession given by an ameen in a butwara proceeding is simply one of ownership and not of occupancy. Such possession cannot, therefore, in proceedings under s. 530 of the Code of Criminal Procedure, be held to oust tenants occupying lands previous to such delivery of possession.

The petitioner in this case had obtained leases of two respective plots of land, part of the joint and undivided estate of the respondent and certain other co-proprietors. A partition was afterwards effected between these proprietors, and a portion of the

* Criminal Motion, No. 198 of 1878, against the orders of C. F. Worsley, Esq., Magistrate of Muzufferpore, dated the 18th September 1878.

land comprised in each of the two leases, together with other lands, fell to the share of the respondent, who received formal possession of the same from the Court ameen deputed for the purpose. Disputes having arisen, the petitioner alleging the apprehension of a breach of the peace, applied to the Criminal Court to be retained in possession of the disputed lands under s. 530 of the Code of Criminal Procedure. The Criminal Court, being of opinion that the action taken by the ameen conferred actual possession of the lands on the respondent, refused the petitioner's application.

The petitioner thereupon applied to the High Court under s. 297 of the Criminal Procedure Code.

Mr. *Jackson* for the petitioner.

Mr. *Braunfeld* for the opposite party.

The judgment of the Court was delivered by

JACKSON, J.—We think it clear that the order of the Magistrate is erroneous. He seems to be under the impression that the effect of the butwara proceedings and the orders therein is to oust the tenants previously holding under parties either in joint possession or holding separately by consent. That clearly is not so. The injustice would be monstrous if it were so.

The possession given by the butwara ameen to Shere Bahadoor in this case was possession as owner, not possession as occupier. The Magistrate's order, therefore, must be set aside. The Magistrate will enquire into the fact of actual possession by the complainant, Mr. Jackson's client, and if he be found to be in actual possession, will maintain him in it.

Order set aside.

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