

APPELLATE CRIMINAL.

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Before Mr. Justice Ainslie and Mr. Justice McDonell.

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THE EMPRESS *v.* THACCOOR DYAL SING AND ANOTHER.*

*Criminal Procedure Code (Act X of 1872), s. 530—Constructive Possession—
 Intermediate holders.*

In a case of disputed possession between two rival zemindars, constructive possession through intermediate holders (*ticcadars*), to whom the ryots pay rents, is not such possession as is contemplated by s. 530 of the Code of Criminal Procedure.

THE reference to the High Court arose out of the following circumstances:—Disputes arose between one Sidhu Singh and Kasa Singh on the one side, and Dirgopal Singh and Thacoor Singh on the other, concerning their respective shares as rival zemindars to certain villages. Each party was, under s. 491 of the Criminal Procedure Code, bound down by the Deputy Magistrate of the Subdivision to keep the peace for six months. Sidhu Singh and Kasa Singh appealed to the Magistrate of the district, who, while upholding the order of the Deputy Magistrate, suggested that the case seemed one of disputed possession, and might therefore be dealt with under s. 530 of the Code of Criminal Procedure. The Deputy Magistrate thereupon commenced proceedings under this section against the parties. A proportion of the villages comprising the lands in dispute were admittedly not held directly by the zemindars, but through *ticca* or intermediate holders to whom the ryots paid their rents. The Deputy Magistrate decided against the claim of Dirgopal Singh and Thacoor Dyal, and they appealed to the Magistrate of the district, who referred the matter to the High Court.

Baboo *Gopal Lall Mitter* and Baboo *Anund Gopal Paulit* for the appellants.

* Criminal Reference, No. 2790 of 1877, from the order of W. S. Wells, Esq., Magistrate of Shahabad, dated the 13th December 1877.

The judgment of the Court was delivered by

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AINSLIE, J. (who, after disposing of the case on grounds immaterial to this report, proceeded as follows).—Independently of this there is another reason for which the order must be set aside. In the order of the Magistrate by which he referred the case to the Deputy Magistrate for explanation, it is said that the petitioner before him had asserted that six and twenty villages out of the thirty which formed the subject of the order were actually held in *ticca*. The Deputy Magistrate in his reply does not deny that there are certain villages in the possession of *ticca-dars*, but he contends that there being a dispute between the contending parties as to collection of rent, it is necessary to decide the question of possession in respect of all the villages held in *khas* and *ticca* jointly, by which he apparently means all the villages, whether held *khas* or leased out. No doubt it has been held that questions between zemindars as to the right of collecting rents directly from the ryots may be considered by Magistrates, and that this right of so collecting rents is in fact possession within the meaning of s. 530; but that does not apply when there is an intermediate holder who admittedly receives rents from the ryots. Therefore, the order of the Deputy Magistrate is clearly bad as to all the villages which are not held direct by one or other of the zemindars, but are in the possession of farmers. Whether they be six-and-twenty in number or less, is immaterial. It does not appear on this record which villages are held in farm and which are not. Therefore, we are unable to set aside any specific portion of the order of the Deputy Magistrate.

The only question before us is, whether we ought to quash his proceeding altogether or direct a further enquiry. We think, on the whole, that it is unnecessary that any further enquiry should be held on the present proceedings. They originated in a suggestion of the Magistrate of the district, and it appears that the subdivisional officer would not, but for that, have taken any proceedings under s. 530. He was satisfied with the steps that he had taken, in binding down both parties in recognizances to keep the peace. It is still open to him if he thinks fit to make an enquiry,

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and if he is satisfied that unless proceedings be taken under s. 530, breach of the peace is imminent, he can institute proceedings afresh; but if he should deem it proper to record any fresh proceeding under s. 530, it will be necessary for him to ascertain clearly and define the particular villages or portions of villages to which the enquiry is to apply, excluding all those which are not in the immediate possession of either one party or the other.

APPELLATE CIVIL.

Before Mr. Justice L. S. Jackson and Mr. Justice McDonell.

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Nov. 28.

GUNGAPERSAD AND OTHERS (PLAINTIFFS) v. GOGUN SING (DEFENDANT).*

Registration—Dowl Fehrist—Act VIII of 1871.

A *dowl fehrist* being merely a memorandum by a zemindar's agent of the rates of rent agreed upon, and to which the tenants affix their signatures in token of such agreement, is not a contract, and does not require to be stamped or registered.

THIS was a suit for arrears of rent at a certain rate admittedly in excess of the rent previously paid by the defendant. In proof of his claim for the excess rate, the plaintiff filed a *dowl fehrist*, purporting to be a memorandum containing a list of the holdings and rates of rents of the ryots with their signatures appended. The plaintiff obtained a decree in the Munsif's Court. The lower Appellate Court, however, reversed the finding of the Munsif on the ground that the *dowl fehrist* which formed the base of the plaintiff's claim was not registered, and therefore not receivable in evidence.

The plaintiff preferred a special appeal to the High Court.

Baboo *Unnoda Pershad Banerjee* and Baboo *Neelmadhub Sen* for the appellants.

* Special Appeal, No. 2545 of 1876, against the decree of J. R. Hallett, Esq., Second Subordinate Judge of Bhagulpore, dated the 11th August 1876, reversing a decree of Moulvi Syed Khajeh Fokhruddin Hossain, Munsif of Monghyr, dated 25th February 1876.