

1868.
Aug. 11.

Special Appeal No. 228 of 1868.

A'BA'S ALLI' ZIENUL ABA'DDIN Appellant.
GHULA'M MUHAMMAD valad BA'BA' MIRZA'. Respondent.

Muhammadan Law—Usage of District—Local Custom—Reg. IV. of 1827, Sec. 26—Wakf Land—Religious Endowment—Mortgage.

By Sec. 26 of Reg. IV. of 1827, the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of Civil suits.

By local custom in the Broach District, *wakf* land, or land left as a religious endowment, may be mortgaged, although such practice is contrary to Muhammadan Law.

GHULA'M, the plaintiff, brought this action in the Court of the Munsif of Broach to recover possession of five *bighás* of *wakf* land forming portion of a religious endowment, which he alleged had been improperly mortgaged by the trustee in charge. The previous proceedings held in the case, together with the judgment of the late Sadr Court, remanding the suit for inquiry as to the existence or otherwise of any local custom in the Broach District sanctioning the mortgage of *wakf* land, will be found in Vol. IX. of Harrison's Reports, p. 258.

The Senior Assistant Judge of Broach (W. M. Coghlan), who tried the case on remand, found "that there is a local custom in the Broach district allowing the sale and mortgage of *wakf* land, but that it is not a custom having the force of law, being opposed to law and equity, and that it cannot be allowed to render nugatory the intentions of a testator, or to overrule the plain meaning of Muhammadan law, and that consequently Abás Allí had not established any claim to the land in dispute." He accordingly awarded the land in question to Ghulam.

A special appeal was thereupon preferred against this decision by Abás Allí, on the ground, amongst others, that the Senior Assistant Judge having found the existence of a local custom sanctioning the mortgage of *wakf* land in the Broach district, where the land in dispute was situated, he had departed from law in not giving effect to the same, merely because it was contrary to Muhammadan law.

The appeal was heard before NEWTON and TUCKER, JJ.

Dádábháí Fránjí for the appellant.

Dhirajlál Mathurádás for the respondent.

The Court delivered the following judgment :—

We are of opinion that as, by Reg. IV. of 1827, Sec. 26 (a), the usage of the country in which the suit arose is, in the determination of Civil actions, to have precedence over the law of the defendant, and as the Court below has found that, by custom in the Broach District, the mortgage of *wakf* land is permissible, as was so long ago as A.D. 1814 held to be the case in the Surat Zillá (Borradaile's Reports, Vol. I., p. 124, new edition), the decision of the Acting Senior Assistant Judge is erroneous.

The Court, therefore, reverses the decree, and remands the case, that the amount of the defendant's lien on the land as mortgagee may be determined, and a new decree passed. Costs on the respondent, Ghulam.

Decree reversed.

REG. v. JOTI bin SATU and others.

13ny2.

Stamp—Engrossing Document on Unstamped Paper—Act X. of 1862, Sec. 3.

The mere engrossing of a document, requiring a stamp, on unstamped paper constitutes no offence under the Stamp Act X. of 1862.

IN this case prisoners 1 and 2 were charged with having mutually given and received agreements on unstamped paper, and prisoners Nos. 3 and 4 with having engrossed the same on unstamped paper, contrary to the provisions of Act X. of 1862, Sec. 3, and Sch. A, cl. 3; and having been found guilty by G. Waddington, F. P. Magistrate at Sátará, were sentenced respectively to pay a fine of Rs. 3, the fines to be levied under Sec. 54 of Act X. of 1862.

The case was called for by the Sessions Judge of Sátará, R. F. Mactier, to ascertain if the requisite authority for the prosecution had been granted by the Collector, and this authority appearing from the miscellaneous papers in the case, the Sessions Judge saw no cause for interference.

(a) Sec. 26 :—“The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case: in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone.”

1863.

A' BAS ALLI
v.
GHULAM
MUHAMMAD.