no difficulty arises in coming to the conclusion to which, again with respect very rightly, Mr. Justice Rajadhyaksha and Mr. Justice Shah came.

Then there is one other point with which also the judgment has dealt and that is that a vested right was created in the defendant by reason of s. 13 (*a*) of the Code; a similar provision existed in Akalkot before merger and that vested right has been taken away and reliance is placed on s. 5 of the Merger Order. That clause, as rightly pointed out by both the Judges, only refers to vested rights which have been affected by repeal of any legislation which was in operation in the merged States. In this case, although the Civil Procedure Code of Akalkot has been repealed, s. 13 (*a*) has taken its place in identical terms and, therefore, whatever prejudice has been caused to the defendant has not been caused by the repeal of any legislation. The prejudice has been caused by an Act of State which altered the status of Akalkot and also altered the status of the defendant and made Akalkot Court a municipal Court and made the defendant a citizen, whereas Akalkot Court before was a foreign Court and the defendant was a foreigner.

The result, therefore, is that we answer the question in the affirmative.

Answer accordingly.

M. W. P.

APPELLATE CRIMINAL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

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1951 *Feb.* 9

Bombay Essential Commodities and Cattle (Control) Act (Bom. XXII of 1946), s. 4 (1)—Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (Bom. XXXVI of 1947), ss. 2 (1), 3†—Enhancement of

* Criminal Appeal No. 747 of 1950.

† The sections ran as follows: *Enhanced penalties for contravention of orders under Act XXIV of 1946 and Bom. XXII of 1946.*—2 (*1*) Notwithstanding anything contained in the Essential Supplies (Temporary Powers) Act, 1946, whoever contravenes

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penalties—Jurisdiction of Presidency Magistrate to try offence punishable with enhanced penalty—Criminal Procedure Code (Act V of 1898), s. 29.

The Bombay Essential Commodities and Cattle (Control) Act (XXII of 1946), read with Notification No. 129-I. P (5)/46 dated July 6, 1946, issued under s. 4 (*1*) of the said Act, made the sale of cement by any person without due authorisation an offence punishable with imprisonment for a term which extended to a maximum of three years. The maximum penalty was extended to seven years by s. 2 (*1*) of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947). In 1950 the accused was tried and convicted of the above offence by a Presidency Magistrate at Bombay and sentenced to six months' imprisonment. The accused appealed to the High Court and contended that although the Magistrate had been empowered under s. 3 of the Act XXXVI of 1947 to impose the enhanced penalty he had no jurisdiction to try the offence inasmuch as the offence was not mentioned in that Act as triable by him, with the result that s. 29 (*2*) of the Criminal Procedure Code, 1898, came into operation and the offence became exclusively triable by the Sessions Judge:

Held, that in enacting s. 3 of the Act XXXVI of 1947 the Legislature intended that the Magistrate referred to in it would be the Court to try offences under s. 2 (*1*) of the Act, and therefore, the conviction was legal.

State v. *Mohammed Hamid*,[1] referred to.

Criminal Appeal from conviction and sentence passed by J. M. Barot, Presidency Magistrate, Fourth Court, Bombay.

Akbaralli (accused No. 1) and Abdul Husein (accused No. 2), partners in the firm of Akabarali Abdulhusein & Co. dealing in cement, were tried by the Presidency Magistrate, 4th Court,

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an order made under s. 3 of the said Act, and notwithstanding anything contained in the Bombay Essential Commodities and Cattle (Control) Act, 1946, whoever contravenes an order made or deemed to be made under s. 4 of the said Act, shall be punished with imprisonment for a term which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to fine.

Magistrate's power to impose enhanced penalties.—3. Notwithstanding anything contained in s. 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class especially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence provided in s. 2, for contravening any order made or deemed to be made under s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, or under s. 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, in excess of his powers under s. 32 of the said Code.

[1] (1950) Cri. Appeal No. 800 of 1949, decided by Chagla C. J. and Gajendragadkar J. on February 6,1950 (Unrep.).

Bombay, for an offence punishable under s. 2 (*1*) of the Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control) (Enhancement of Penalties Act) (Bom. XXXVI of 1947), read with s. 4 of the Bombay Essential Commodities and Cattle (Control) Act (Bom. XXII of 1946), read with Notification No. 129-I.P. (5)/46, dated July 6, 1946. The act charged against them was that on July 7, 1949, they sold 100 bags of cement to a bogus customer without having any authority from the Honorary Cement Adviser to the Government of India or the Regional Honorary Cement Adviser, Bombay.

The Magistrate convicted both the accused and sentenced accused No. 1 to suffer rigorous imprisonment for six months and to pay a fine of Rs. 5,000 in default six months' rigorous imprisonment.

Accused No. 1 appealed to the High Court.

I. C. Dalal, with *B. R. Trivedi,* for the accused.

H. M. Choksi, Government Pleader, for the State.

VYAS J. This is an appeal by the original accused No. 1, who has been convicted by the Presidency Magistrate, Fourth Court, Girgaum, Bombay, under s. 2 (*1*) of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act, 1947, (Act No. XXXVI of 1947), read with s. 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, (Act No. XXII of 1946) read with Notification No. 129-IP (*5*), dated July 6, 1946, issued under sub-s. (*1*) of s. 4 of the above mentioned Act (No. XXII of 1946).

The gravamen of the offence alleged against accused No. 1 is that on June 7, 1949, he and accused No. 2 sold to a bogus customer, one Amritlal Girdharlal Mehta, 100 bags of pure cement at Rs. 9 per bag without having authority from the Cement Adviser to the Government of India or the Regional Cement Adviser, Bombay. Notification No. 129-IP (*5*), dated July 6, 1946, issued under sub-s. (*1*) of s. 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, (Act No. XXII of 1946), directed that no person could sell cement unless authorized in writing to do so by the Honorary Cement Adviser to the Government of India or the Regional Honorary Cement Adviser to the Government of Bombay or by a person authorized in this behalf by the said authority. Section 10 (*1*)

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of Act No. XXII of 1946 provided that if any person contravened any order made under s. 4 of that Act, he would be liable to imprisonment for a term which may extend to three years and would also be liable to fine. By Act No. XXXVI of 1947 the penalties prescribed in s. 7, sub-s. (*1*), of the Essential Supplies (Temporary Powers) Act 1946, (Act No. XXIV of 1946), for contravention of the orders made under s. 3 of that Act and those prescribed in s. 10, sub-s. (*1*), of Act No. XXII of 1946, for contravention of orders made under s. 4 of that Act were sought to be enhanced. Section 2 (*1*) of Act No. XXXVI of 1947 lays down that the penalties for breaches of orders made under ss. 3 and 4 of Act No. XXIV of 1946 and Act No. XXII of 1946, respectively, may extend to seven years, but shall not, except for reasons to be recorded in writing, be less than six months, and provides further that the deliquent shall also be liable to fine. It is in this way that both the original accused were charged under s. 2 (*1*) of Act No. XXXVI of 1947 read with s. 4 of Act No. XXII of 1946 read with Notification No. 129-IP (*5*), dated July 6, 1946, issued under s. 4 of Act No. XXII of 1946.

Now, Mr. Dalal for the appellant has contended that the Court of the Presidency Magistrate who tried the appellant had no competence at all in law to try an offence under s. 2 (*1*) of Act No. XXXVI of 1947, and a reference is made by him in this connection to s. 29 (*1*) of the Code of Criminal Procedure which lays down :—

"Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court."

It is submitted by Mr. Dalal that no Court is specifically mentioned in the body of Act No. XXXVI of 1947 which can try an offence under s. 2 (*1*) of that Act. Next, Mr. Dalal has referred to sub-s. (*2*) of s. 29 of the Criminal Procedure Code which provides as under :—

"When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable."

Now, if we turn to the eighth column of the second schedule to the Criminal Procedure Code, we find under the Caption "Offences against other laws" that if an offence is punishable with death, transportation or imprisonment for seven years or upwards, Court of Session is the only Court which can try it. From this it is argued by Mr. Dalal that as an offence under

s. 2 (*1*) of Act No. XXXVI of 1947 is punishable with imprisonment which may extend to seven years, a Court of Session alone is competent to try it. Referring to s. 3 of Act No. XXXVI of 1947, it is argued by Mr. Dalal that it only lays down that a specially empowered Magistrate of the First Class may impose enhanced penalties. It is then contended by him that there is a real distinction between power or jurisdiction to try an offence or take congnizance of an offence and power to inflict punishment for an offence, and that, therefore, s. 3 of Act No. XXXVI of 1947 which only deals with the power of certain specially empowered Magistrates to award enhanced penalties can confer no competence on those Magistrates to try offences under s. 2, sub-s. (*1*), of Act XXXVI of 1947.

Now, before we can accept the above contention of Mr. Dalal, we shall have to hold, *firstly*, that s. 3 of Act XXXVI of 1947 enacted by the Legislature is a meaningless section since there is no sense in saying that a Magistrate may impose an enhanced penalty for a certain offence when he cannot try that offence at all; and, *secondly*, that the Legislature was not even aware that in framing s. 3 it was enacting a meaningless provision. We feel ourselves unable to attribute such ignorance to the Legislature. The Legislature is presumed to know the law. It must be presumed to know that under s. 29 of the Code of Criminal Procedure "an offence under any other law" shall be tried by a court which is mentioned in such law and that where no such Court is mentioned, the offence may be tried by the Court mentioned in respect of it in the eighth column of Schedule II to the Criminal Procedure Code. In other words, the legislature must be presumed to know that unless Act No. XXXVI of 1947 provided that the Court of the Magistrate empowered under Section 3 to award an enhanced penalty was also the Court which could try offences under Section 2 (*1*) of the Act, a Court of Session alone would be competent to try such offences. In such circumstances we hold that in enacting Section 3 of Act No. XXXVI of 1947 the legislature intended that the Court of the Magistrate referred to therein was also the Court which was competent to try offences under Section 2, sub-section (1), of that Act.

Precisely the same point arose in *State* v. *Mohammed Hamid*[1] in which it was observed by Chagla, C. J.,

[1] (1950) Cri. App. No. 800 of 1949, decided by Chagla C. J. and Gajendragadkar J., on Feb. 6, 1950 (unrep.).

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that s. 3 of Act No. XXXVI of 1947 might have been drafted better and should have specifically mentioned that, pursuant to the provisions of Section 29, sub-s. (*1*), of the Criminal Procedure Code, a Presidency Magistrate should be the Court to try the offence although the sentence for that offence was up to seven years' rigorous imprisonment. Their Lordships went on to hold in that case that although Section 3 of the Act might have been better worded, it did contain a substantial compliance with the provisions of s. 29, sub-s. (*1*), of the Criminal Procedure Code. They observed "that the very fact that the legislature empowered the Presidency Magistrate to pass a sentence up to seven years' rigorous imprisonment for the offences contemplated by the special law made it clear that that was the tribunal which the legislature intended should try those offences and, therefore, in their opinion, that was the Court mentioned in that behalf in the special law as required by Section 29, sub-s. (*1*), of the Criminal Procedure Code." We follow that judgment; but, with great respect, it appears to us that as a general proposition the argument employed in the above-quoted observations does not seem to be a necessarily conclusive one. There are quite a number of offences which are punishable with more than two years' rigorous imprisonment and which are yet triable by a First Class Magistrate's Court or by a Presidency Magistrate's Court under the Criminal Procedure Code. If in the case or cases of any of such offences the legislature intends to enact a provision that a specially empowered Magistrate of the First Class or a Presidency Magistrate may inflict a sentence of more than two years' rigorous imprisonment, it would be appropriate to enact a section like s. 3 of Act No. XXXVI of 1947. But it could not be said that the said Magistrate derived an authority or jurisdiction to try those offences under that section. He has already got the jurisdiction to try those cases under the Criminal Procedure Code. Take the case of an offence of voluntarily causing grievous hurt. It is triable by a Court of a First Class Magistrate or even by a Court of a Second Class Magistrate. Now if the legislature intends to enact a provision that a specially empowered First Class Magistrate or a Presidency Magistrate may inflict a heavier sentence than two years' rigorous imprisonment in such cases, the appropriate procedure would be to enact a section like s. 3 of Act No. XXXVI of 1947. But it could not be said that the Magistrate concerned derived his authority to try such offences of voluntarily causing grievous hurt under that

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section. The obvious reason is that he has already got jurisdiction to try such offences under the Criminal Procedure Code. We are accordingly of the opinion, with great respect, that it would not be necessarily conclusive argument to say that because the legislature by enacting a section empowers a First Class Magistrate or a Presidency Magistrate to pass a sentence of more than two years' rigorous imprisonment, it must follow that the Magistrate derives competence to try a particular offence under that section. In the case in hand, however, we have already seen that unless the legislature intended that the Court of the Magistrate referred to in s. 3 of Act No. XXXVI of 1947 was also to be the Court to try offences under s. 2, sub-s. (*1*), of the Act, s. 3 would be meaningless. We have also pointed out that unless we hold that the intention of the legislature was that the Magistrate referred to in s. 3 of Act No. XXXVI of 1947 was also to be the Court which could try offences under s. 2, sub-section (*1*), of the Act, we shall have to attribute ignorance of law to the legislature which we are not prepared to do. We must, therefore, hold, as the learned Chief Justice and Gajendragadkar, J. held in Criminal Appeal No. 800 of 1949 of this Court, that in enacting s. 3 of Act No. XXXVI of 1947, the legislature intended that the Magistrate referred to in s. 3 would be the Court to try offences under s. 2 (*1*) of the Act. Therefore we reject the first contention advanced before us by Mr. Dalal for the appellant. [The rest of the judgment is not material to this report.]

Appeal dismissed.

M. W. P.

APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

ALARAKHIA SOMJEE BHIVANDIWALA *v.* COLLECTOR OF NASIK.*

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Bombay Land Requisition Act (Bom. Act XXXIII of 1948) s. 5 (1) and (2)—Nature, extent and scope of inquiry to be determined by Government under s. 5 (2)—Order of requisition made under s. 5 (1)—Whether such order quasi-judicial or administrative—Writ of Certiorari.

* Civil Application No. 1507 of 1951.