66 of List II or Iitem No. 47 of the List III of the Constitution of India. It is in fact a tax levied to augment the general revenue of the Committee as is evident from the excessive and high rate at which it is levied. This imposition of a tax by the Committee by whatever name called and the collection thereof is without authority of law and unconstitutional and void."

(5) The decision of the Division Bench of this Court in *Piara Ram's case* (2), which was later on followed in another unreported Division Bench decision *Murari Lal Sharma* v. *The State of Punjab and others* (3), is a complete answer to this contention of the learned counsel. We see no reason to accept the contention of the learned counsel that the decision in *Piara Ram's* (2), case does not lay down correct law.

No other point was urged.

For the reasons recorded above, the appeal fails and is dismissed with costs. Counsel's fee Rs. 100.

MEHAR SINGH, C.J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before R. S. Narula, J.

RAM SARAN DASS,—*Petitioner.*

versus

GURMUKH RAM AND OTHERS,—*Respondents.*

Civil Revision No. 323 of 1969.

May 19, 1969.

Punjab Pre-emption Act (I of 1913)—Section 22(1) and 22(4)—Extension of time for deposit of pre-emption money—Court—Whether can grant such extension after the expiry of the period previously allowed—Satisfaction of the Court to grant extension—Reasons for—Whether must be given—Defendant not opposing the grant of extension—Whether sufficient justification for the Court to grant extension of time.

Held, that the Court has jurisdiction to extend time for making the deposit of one fifth of the pre-emption money under section 22(1) of Punjab Pre-emption Act, 1913, even after expiry of the time previously fixed by it.

(3) C.W. No. 1444 of 1963 decided on 24th August, 1966.

There is nothing in section 22(4) of the Act to preclude the Court from passing orders from time to time extending the period originally fixed and this too even after the expiry of the time previously allowed.

Held, that wherever the jurisdiction of the Court under sub-section (4) of section 22 of the Act is invoked by a pre-emptor for extension of time, it is the duty of the Court concerned to seriously weigh the circumstances of the case, to consider them and then to give its decision, supported by cogent reasons, extending the time after full justification for the same is available on the record of the given case. Right of pre-emption, though recognised by law and though constitutionally valid, is nevertheless a piratical right. Once a vested right has accrued to a vendee to defeat a claim for pre-emption intended to encroach upon his contractual property rights, Court should not lightly deprive the vendee of the right thus accrued to him merely because an application for extension has been made and the Court has jurisdiction to grant such an application. Simply because the defendant does not oppose the application for extension of time on merits, it does not justify the Court to grant extension. At best it creates a situation similar to the one in which a defendant does not appear to contest an ordinary civil suit despite service and proceedings are taken *ex-parte* against him. Nevertheless the Court cannot grant a decree in favour of the plaintiff simply because the defendant has not appeared and said nothing on merits about the claim of the plaintiff. Such a decree, if passed, is bound to be set aside in appropriate proceedings. Even an *ex-parte* decree cannot be passed in an ordinary suit unless the Court is satisfied from the *ex-parte* evidence led before it about the claim of the plaintiff being proved. An application for extension of time under sub-section (4) of section 22 of the Act does not form an exception to the said rule. (Para 3)

Petition under section 115 *of the Civil Procedure Code, for revision of the order of Shri V. K. Jain, Sub-Judge* 1st *Class, Sirsa, dated* 11*th April,* 1969 *extending the time for deposit of* 1/5*th of the pre-emption money as prayed.*

J. N. KAUSHAL, SENIOR ADVOCATE WITH, ASHOK BHAN, ADVOCATE, for the Petitioner.

S. S. KANG, ADVOCATE, for the Respondents.

JUDGMENT

NARULA, J.—The two questions, hereinafter mentioned, relating to jurisdiction of civil Courts in pre-emption suits have been raised in this case by Shri Jagan Nath Kaushal, learned counsel for the defendant-petitioner, in the following circumstances:—

(2) The plaintiff-respondents, hereinafter called the pre-emptors, were directed by the trial Court on February 25, 1969, to deposit one-fifth of the pre-emption money amounting to Rs. 17,950 on or before March 25, 1969. This order was passed in exercise of the

trial Court's jurisdiction under section 22(1) of the Punjab Pre-emption Act (Act 1 of 1913), hereinafter referred to as the Act, which provision reads—

> "22(1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order."

Not having complied with the order, the pre-emptors made an application on March 22, 1969, before the expiry of the time originally allowed by the trial Court, praying for extension of time to make the requisition deposit. The application was allowed and time for depositing the amount in question was extended till April 8, 1969. The deposit was admittedly not made within the extended period. On the day following the expiry of the extended period, that is, on April 9, 1969, the pre-emptors filed an application for further extension of one day. By order, dated April 11, 1969, Shri V. K. Jain, Subordinate Judge, First Class, Sirsa, repelled the objection of the vendee-petitioner to the effect that sub-section (4) of section 22 of the Act does not confer on the Court jurisdiction to extend time for making the requisite deposit on the basis of an application for extension of time which is filed after the expiry of the time fixed by the Court either under sub-section (1) or under sub-section (4) of section 22. After holding that the application of the pre-emptors, dated April 9, 1969, was not barred by time and extension of deposit could be allowed even on such an application if the Court was satisfied that there was sufficient ground for granting such extension, the learned Subordinate Judge observed and held as follows—

> "Counsel for the defendants has not argued on the merits of the application. Accordingly, I am of the view that plaintiffs under the circumstances should be given extension in the deposit of 1/5th pre-emption money as prayed. Application of the plaintiffs is accordingly allowed."

It is the above-quoted order of the learned Subordinate Judge which has been called in question by the vendee in this petition under

section 115 of the Code of Civil Procedure on the following two grounds—

(1) that in allowing the application of the pre-emptors, dated April 9, 1969, the trial Court has exercised jurisdiction which is not vested in it by law inasmuch as an order under sub-section (4) of section 22 of the Act granting extension of time for making the deposit required under sub-section (1) of that section can be made in a fit case only if the application for such further extension is given to the Court concerned before the expiry of the time previously allowed by the Court for that purpose and not on an application moved after the expiry of the previously fixed time; and

(2) that the trial Court had acted in the present case illegally and with material irregularity in the exercise of its jurisdiction under sub-section (4) of section 22 of the Act by granting the application for extension of time without recording any clear finding of its own supported by adequate reasons to the effect that the Court is satisfied that there was, in fact, sufficient ground for granting further extension to the pre-emptors on the facts of this case.

(3) After hearing learned counsel for the parties, I do not have the slightest hesitation in holding that there is great force in the second contetnion of Shri Kaushal and that he must succeed on that shortground. After observing that the application could be allowed only if the Court was satisfied that there was sufficient ground for giving further extension, the Court below has mentioned only one ground on which it can possibly be argued that it was satisfied about the sufficiency of reasons for extending time for making the deposit. The said solitary ground is that "counsel for the defendants has not argued on the merits of the application". This was thaught by the learned Subordinate Judge to be enough to justify extension of time. Merely saying that under the circumstances of the case extension should be given does not amount to recording any finding about there being some real jurisdiction for time being extended. Whether or not extension or further extension in the time allowed for making the requisite deposit in a pre-emption case should be allowed necessarily depends upon the facts and circumstances of each case. Wherever the jurisdiction of the Court under sub-section (4) of section 22 of the Act is invoked by a pre-emptor for extension of time, it is the duty of the Court concerned to seriously weigh the circumstances of

the case, to consider them and then to give its decision, supported by cogent reasons, extending the time after full justification for the same is available on the record of the given case. Right of pre-emption, though recognised by law and though constitutionally valid, is nevertheless a piratical right. Once a vested right has accrued to a vendee to defeat a claim for pre-emption intended to encroach upon his contractual property rights, Court should not lightly deprive the vendee of the right thus accrued to him merely because an application for extension has been made and the Court has jurisdiction to grant such an application. The defendants not having argued on the merits of the application, at best, created a situation similar to the one in which a defendant does not appear to contest an ordinary civil suit despite service and proceedings are taken *ex-parte* against him. Nevertheless the Court cannot grant a decree in favour of the plaintiff simply because the defendant has not appeared and said nothing on merits about the claim of the plaintiff. Such a decree, if passed, is bound to be set aside in appropriate proceedings. Even an *ex-parte* decree cannot be passed in any ordinary suit unless the Court is satisfied from the *ex-parte* evidence led before it about the claim of the plaintiff being proved. An application for extension of time under sub-section (4) of section 22 does not form an exception to the said rule. The manner in which the jurisdiction has been exercised by the trial Court under sub-section (4) of section 22 of the Act in this case is illegal and wholly irregular.

(4) In spite of my upholding the second contention of Shri Kaushal, I have to decide about the validity of his first argument also, because my decision on that point will lead to the grant of materially different relief. If it is found that the trial Court had no jurisdiction to grant the application presented after April 8, 1969, the plaint of the suit of the pre-emptors shall have to be rejected under subsection (4) of section 22 of the Act and the Court would have no choice in the matter. If however, the finding of the trial Court on the question of the maintainability of the application is upheld, the matter will have to go back to the trial Court for being re-adjudicated upon in accordance with law. I, therefore, proceed to decide the first point also.

(5) Sub-section (1) of section 22 of the Act has already been quoted verbatim. Sub-sections (2) and (3) are not relevant for our purposes. Sub-section (4) then states—

> "22(4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to

make the deposit or furnish the security mentioned in sub-section (1) and (2), his plaint shall be rejected or his appeal dismissed, as the case may be."

Clause (b) of sub-section (5) of section 22 may also be quoted at this stage, as an argument has been built by Shri Kaushal on the basis of the language of that clause—

"(22)(5)(b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish fresh security or to increase the security, as the case may be, within a time to be fixed by the Court, if the plaintiff fails to comply with such order, the suit or appeal shall be dismissed."

It is unnecessary to refer to sub-rection (6) of section 22 of the Act.

(6) The Punjab Pre-emption Act, 1905, hereinafter called the 1905 Act, was repealed by sub-section (1) of section 2 of the Act and was replaced by the Act. Section 19(3) of the 1905 Act corresponded to sub-section (4) of section 22 of the Act. Both the provisions were similar except that the words "or within such further time as the Court may allow" now contained in section 22(4) were not there in the corresponding provision contained in section 19(3) of the 1905 Act. For all practical purposes, therefore, contends Shri Kaushal, the language of section 19(3) of the 1905 Act was similar to the language now employed in clause (b) of sub-section (5) of section 22 of the Act inasmuch as the words "or within such further time as the Court may allow" have not been introduced by the Punjab Legislature in section 22(5)(b), though such words have been introduced in section 22(4) of the Act at the time of re-enacting the law of pre-emption in 1913. It is with this back-ground that the learned counsel referred to a somewhat ancient judgment, which appears to me to still hold the field, given by Johnstone and Rattigan, JJ., in *Lala Nar Singh Das* v. *Hakim Ghulam Nabi* (1). The sole question, which the Division Bench was called upon to decide in that case, was whether it was open to a Court after it has once fixed a time under section 19(1) of the 1905 Act (corresponding to section 22(1) of the Act) to enlarge that time by a subsequent order. While dealing with that question, the learned Judges observed that section 19(3) of the 1905 Act was in a sense supplementary to section 54 of the Code of Civil Procedure, 1882 (Corresponding to

(1) 78 P.R. 1909.

Order 7, rule 11 of the 1908 Code). Section 54 of the 1882 Code enumerated the circumstances in which the plaint of a suit was liable to be rejected. Clause (d) of that section provided that if the plaint having been returned for amendment within a time fixed by the Court, is not amended within such time, the plaint was liable to be rejected. Similarly, the provisions of section 602 of the 1882 Code (Corresponding to Order 43 rules 5 and 6 of the 1908 Code) requiring an applicant for a certificate of fitness of appeal to the Privy Counsel to give security for costs of the respondent and to deposit printing charges, etc., within certain time fixed in the Code were referred to. It was then observed that section 19 of the Act was in *pari materia* with the above-said provisions in the Code of Civil Procedure and the said section found place in that chapter of the 1905 Act which dealt with procedure. The Punjab Chief Court held that construing section 19(3) of the 1905 Act, with reference to the decisions of the Courts upon similar provisions of the Code of Civil Procedure (to which I have already referred) was fully justified. While so holding the learned Judges observed—

> "We have accordingly the highest authority for holding that in provisions of this kind, the words 'within a time to be fixed by the Court' or the like, do not preclude the Court from passing orders from time to time extending the period originally fixed by it, *and this too even after the expiry of the time originally fixed by the Court.*"

It was again stated—

> "......We have no hesitation in holding that there is nothing in clause (3) of section 19 of the Punjab Pre-emption Act to debar a Court from extending the period originally fixed by it *and this too in a case where the period so fixed has expiry of the time orlginally fixed by the Court.*"

(7) This was stated to be the view of the legislature itself as regards the provisions of the Code of Civil Procedure, as is apparent from a reading of section 148 of the 1908 Code. If the law laid down in the case of *Lala Nar Singh Das* (1), is correct, the petitioner must fail in his first submission. Shri Kaushal, however, contended that the observations in the judgment of the Division Bench (which have been underlined by me (in italics in this report) in the above-quoted portions from the judgment in the case of *Lala Nar Singh Das* (1), were mere obiter, as the only question which the Bench was called

upon to decide was whether it was open to a Court to enlarge time after having once exercised its jurisdiction to extend time for making the requisite deposit and the question whether such jurisdiction extended to allowing applications filed after the expiry of the time originally fixed, did not directly arise before their Lordships of the Chief Court of Punjab.

(8) Shri Kaushal then referred to the Division Bench judgment of the Lahore High Ccourt in *Sardar Zorawar Singh and others* v. *Jasbir Singh and others* (2). That case related to the construction and scope of clause (b) of sub-section (5) of section 22 of the Act. It was held by the Division Bench of the Lahore High Court (Addison and Din Mohammad, JJ.), that the legislative intent is clear from the words 'or within such further time as the Court may allow' having been deliberately inserted in sub-section (4) on account of the two previous judgments of the Lahore High Court, but not having been repeated in clause (b) of sub-section (5) of section 22. It was then observed—

> "Had the Legislature intended to empower the Court to extend time under sub-section (5)(b) it would have conferred this power in explicit terms as it had done in subsection (4). The omission cannot be due to inadvertence as the Legislature was alive to the importance of the question. We have no hesitation in holding, therefore, that the Court below had no power to extend the time once fixed by it under sub-section (5)(b) of section 22."

The law laid down in the case of *Lala Nar Singh Das* (1), does not appear to have been departed from in the case of *Sardar Zorawar Singh and others* (2). It was only in the changed complexion of things on account of the introduction of the words in question in sub-section (4) and in the deliberate omission of introducing those words in section 22(5)(b) that section 22(5)(b) was construed in contra-distinction to section 22(4). I am unable to hold that the Lahore High Court took a different view of the matter than the one taken earlier by the Chief Court of Punjab in the case of *Lal Nar Singh Das* (1) insofar as the jurisdiction of the Court to allow an application filed after the expiry of the time originally allowed for making the requisite deposit is concerned.

(2) A.I.R. 1938 Lah. 606.

(9) Learned counsel for the petitioner further submitted that I should contrast the phraseology of sub-section (4) of section 22 (already quoted) with the following language of section 148 of the Code and hold that if the legislature intended to give jurisdiction to the Court to enlarge or extend the time "even if the period originally fixed may have expired", it would have adopted that language as has been done in the case of section 148 of the Code:—

> "148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Another argument advanced by Shri Kaushal is that while giving legislative recognition to the rule laid down by the Punjab Chief Court in the case of *Lala Nar Singh Das* (1); insofar as the power of the Court to extend time already extended by it is concerned the legislature appears to have deliberately refused to give the same sanctity to the observations of the Division Bench which have been underlined by me (in italics in this report) while quoting from its judgment. I am unable to find any force in either of these two contentions. It is not necessary that the same language must be employed by different legislatures while enacting different laws for giving expression to the same intention. In the absence of any indication to the contrary, either in the provision itself or in any other part of the Act, it does not appear to be proper to impose by judicial precedent a limit on the jurisdiction conferred on a Court by the legislature under sub-section (4) of section 22 of the Act by reading into the section the following words which, for all practical purposes; Shri Kaushal wants me to read in that provision—

> "Provided that no such extension shall be granted if the application for extending the time is not made before the expiry of the period within which the deposit was allowed to be made by the previous order of the Court."

(10) Shri Kaushal lastly referred to the following observations in the unreported judgment of S. B. Capoor, J. (as he then was) in *Bahal Singh* v. *Jahangir* (3)—

> "The Subordinate Judge has already exercised discretion and if he had adjourned the matter to the next day, i.e., 17th

(3) C.R. No. 560 of 1967 decided on 5th January, 1968.

May, 1967, the time within which the deposit had to be made would have expired and the Subordinate Judge would have no jurisdiction to extend it further."

The above observations were made by the learned Judge merely as an argument in support of his decision to dismiss the revision petition against an order refusing to grant an adjournment and do not, in my opinion, lay down any law on the subject with which we are concerned.

(11) It is unnecessary to deal with the judgment of the Division Bench (Mehar Singh, C.J., and Sodhi, J.), in *Dalip Singh and others* v. *Hardev Singh and others* (4), for the simple reason that it was the outside limit for extending time fixed by sub-section (1) of section 22 (that is, till the framing of issues) which fell for decision before the Division Bench. The question which has been agitated by Shri Kaushal before me did not arise there. Similarly, it is unnecessary to refer, in any detail, to the decision of Pandit, J., in *Kartar Singh and another* v. *Ajmer Singh and another*, (5), as it was the scope of sub-sections (1) and (2) of section 22 which alone had to be considered by the learned Judge in that case.

(12) On a careful consideration of the entire matter, I am of the opinion that the observations of Johnstone and Rattigan, JJ., in the case of *Lala Nar Singh Das* (1), relating to the Court having jurisdiction to extend time for making the deposit of the one-fifth of the pre-emption money even after the expiry of the time previously fixed by it still hold good and the law laid down there is correct.

(13) For the reasons already recorded, I allow this revision petition, set aside the order of the trial Court on account of my finding on the second contention of Shri Kaushal (disposed of by me before dealing with the first contention) and direct that the application of the pre-emptors filed on April 9, 1969, shall now be heard and disposed of by the trial Court on merit in accordance with law.

(14) Counsel for the petitioner is, I think, fully justified in praying for transfer of the case from the Court of Shri V. K. Jain, to avoid embarrassment to him for re-deciding the issue of fact with

(4) I.L.R. (1970)1 Pb. & Hrya 58=1969 P.L.R. 61.

(5) I.L.R. (1970)2 Pb. & Haya. 335=1969 Curr. L.J. (Pb.) 358.

which he has once dealt with. I, therefore, direct under section 24 of the Code of Civil Procedure that the suit in which the order under revision has been passed shall stand transferred to the Court of Shri Parkash Chand Nariala, Subordinate Judge, Second Class, Sirsa, who has the jurisdiction to try the suit, in view of the value of the suit for purposes of jurisdiction being only Rs. 540.

(15) Costs of this revision petition shall abide the decision of the trial Court on the application of the pre-emptors, dated April 9. 1969. Parties have been directed to appear before the transfree court on June 3, 1969.

K.S.K.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MADAN LAL LAMBA,—*Petitioner.*

versus

INDERJIT MEHTA,—*Respondent.*

Criminal Revision No. 25-R of 1968.

May 19, 1969.

Code of Criminal Procedure (V of 1898)—Section 197(1)—Indian Penal Code (XLV of 1860)—Section 218—Act of a public servant preparing false records constituting offence under section 218, Indian Penal Code—Such act—Whether amounts to official act of the public servant as contemplated by section 197(1), Criminal Procedure Code—Sanction of the State Government—Whether essential for prosecution of such public servant—Official acts of public servants under section 197(1)—Scope of—Stated.

Held, that the contents and nature of the ingredients of section 218, Indian Penal Code, leave no doubt that the act of public servant preparing false accounts falls within the scope of official acts contemplated by section 197(1) of the Code of Criminal Procedure. It is not material what mode is adopted for incorrect preparation of the record. The mere act of the public servant in preparing false record falls as much within the scope of section 197 Criminal Procedure Code as it does within the scope of section 218 Indian Penal Code. The public servant, therefore, cannot be prosecuted under section 218 I.P.C. unless sanction for his prosecution has been obtained under section 197 Criminal Procedure Code. (Para 14)

Held, that a public servant is treated to have acted or purported to act in the discharge of his official duty, if his official duties as a public servant enable him to justify the act falling within the scope of those duties. In