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ties purchased since the death of Bhuban Mohan Mandal as also four-fifths share of other properties jointly held by the infant and his brothers.

The creditor will pay the costs of the infant in both the appeals.

G. S.

*Infant's appeal allowed ;
 Creditor's appeal dismissed.*

CRIMINAL REFERENCE.

Before Sharfuddin and Teunon J.

1914
 May 22.

EMPEROR

v.

JOGENDRA NATH GHOSE.*

Perjury—Witness—Deposition not read over to witness in the hearing of accused or his pleader but read by witness himself—Inadmissibility of deposition in subsequent trial for giving false evidence—Proceeding against witness—Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898) ss. 360(1), 476—Practice.

Section 360(1) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader, so as to enable the latter to correct any mistakes in it. The reading of the deposition by the witness himself is not a compliance with the section, and renders the record of it inadmissible in a subsequent trial against him under s. 193 of the Penal Code.

Mohendra Nath Misser v. Emperor (1) and *Jyotish Chandra Mukerjee v. Emperor* (2) followed.

Although s. 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary inquiry thereunder is

* Criminal Reference, No. 95 of 1914, by R. L. Ross, Sessions Judge of Darbhanga, dated April 22, 1914.

(1) (1908) 12 C. W. N. 845.

(2) (1909) I. L. R. 36 Calc. 955.

to be recorded, a summary of the statements of the witnesses examined thereat should be made.

An order under the same section, directing the prosecution of a person for giving false evidence, should set out the statements alleged to be false.

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ON the 19th September 1913, one Manohar Potedar, of village Kachua, lodged a complaint before the Sub-divisional Officer of Madhubani, against Banku Singh and others, of trespass into his shop, assault and theft. The accused were placed on trial before a local Sub-Deputy Magistrate, when Banku set up an *alibi* and examined Jogendra Nath Ghose, a Sub-Assistant Surgeon of Darbhanga, who deposed that Banku had been under his treatment for intermittent fever daily from the 13th to the 25th September, and had resided during this period at Kathalbari in Darbhanga. The record of the deposition did not state on the face of it that it was read over to the witness in the presence of the accused or his pleader, in accordance with the terms of s. 360(I) of the Criminal Procedure Code, but it appeared from the explanations of the District Magistrate, the Sub-Deputy and his *peshkar*, that after the witness' evidence had been taken down, the record was handed over to him and that he perused it himself. The original accused were convicted and sentenced in the case, on the 23rd December 1913, and appealed to the District Magistrate who dismissed the appeal on the 20th February 1914. Both the Trial and the Appellate Courts disbelieved Jogendra Nath Ghose.

Thereafter, the District Magistrate took action against Jogendra and held a preliminary inquiry under s. 476 of the Criminal Procedure Code, but did not record the statements of the witnesses examined during the course of it. On the 30th March 1914 he directed the prosecution of Jogendra,

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under s. 193 of the Penal Code, for giving false evidence, but the order did not contain the statements alleged to be false.

Jogendra thereupon moved the Sessions Judge of Darbhanga who referred the case to the High Court, under s. 438 of the Criminal Procedure Code, recommending the reversal of the order under s. 476 on the grounds, *first*, that the written record of the deposition was inadmissible for non-compliance with the provisions of s. 369(1) of the Code, and that the prosecution must, therefore, fail according to the ruling in *Mohendra Nath Misser v. Emperor* (1); and, *secondly*, that the evidence of Jogendra was not necessarily inconsistent with the story of the presence of Banku at the occurrence on the date and at the time assigned for it.

Babu Atulya Charan Bose and Babu Manomohan Bose, for the accused.

Mr. S. Ahmed, for the Crown.

SHARFUDDIN AND TEUNON JJ. This is a reference made by the Sessions Judge of Darbhanga under section 438 of the Criminal Procedure Code. It appears that the prosecution of the petitioner before him has been directed under section 193 of the Indian Penal Code with reference to a deposition given by that witness in a case against one Banku Singh. The Sessions Judge has recommended that the order directing the petitioner's prosecution should be set aside on the ground that, in respect of that deposition, the provision of section 360 sub-section(1) of the Criminal Procedure Code has not been complied with. The explanations submitted by the trying Magistrate, his officer, and the District Magistrate show that what happened was

(1) (1908) 12 C. W. N. 845.

that, after the deposition had been recorded, the record was handed over to the petitioner. He then proceeded to read it over himself. We are of opinion that that is not a sufficient compliance with the provisions of section 360 sub. s. (1) of the Criminal Procedure Code, inasmuch as that sub-section requires that the evidence should be read over in the presence, that is, in the hearing of the accused, in order that the accused should have an opportunity of correcting any mistake in it. On the authority, therefore, of the case cited by the learned Sessions Judge [*Mohendra Nath Misser v. Emperor* (1)] and also on the authority of the case of *Jyotish Chandra Mukerjee v. Emperor* (2), we must hold that this deposition is inadmissible in evidence. The order for the prosecution of the petitioner must be set aside.

We would further point out to the District Magistrate that in this case, in his order for prosecution, or in any proceeding referred to therein, he has failed to set out the statements alleged to be false.

We further find from his explanation that, though he made a preliminary enquiry under section 476 of the Criminal Procedure Code, and presumably examined witnesses in the course of that enquiry, he has made no record of their statements. We do not find in the Criminal Procedure Code any provision with regard to the manner in which the evidence in such enquiry should be recorded. But we are of opinion that for future reference a summary of the statements should have been made.

The petitioner is discharged from his bail.

E. H. M.

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