the plaintiffs suit will fail. The lower Appellate Court will also retry the question of gift.

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NIRMALA SUNDARI DASSI v. DEVA NARAYAN DAS CHOUDHURI.

MITTER J.

The decree of the lower Appellate Court is set aside and he is directed to rehear the appeal in the light of the observations made above.

The appellant is entitled to costs of this appeal. As to the costs in the Courts below they will abide the final result.

RANKIN C. J. I agree.

S. M. *Appeal allowed; case remanded.*

APPELLATE CRIMINAL.

Before C. C. Ghose and Cammiade JJ.

BHUBAN CHANDRA PRADHAN
v.
EMPEROR.*

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May 26.

Sessions Judge—Power of, to hold an inquiry during the course of a sessions trial into the conduct of the foreman of the jury—Power to examine witnesses on oath at the inquiry—Complaint by the Judge without a preliminary inquiry under section 476 of the Criminal Procedure Code (Act V of 1898).

A Sessions Judge has power, during the progress of a sessions trial, on receiving information that the foreman of the jury had been seen talking to a person who was an accused in a connected case and was acting as *tadbirkar* of the accused in the case under trial, to make an inquiry into the allegation.

Rahim Sheikh v. *Emperor* (1) followed.

Such an inquiry is a judicial proceeding, and in the course of it the Sessions Judge is entitled to call on persons to appear before him, to administer oaths to them, and to require them to give evidence.

The jury are not entitled to discuss the case tried before them out of Court, or to talk to persons connected with the accused under trial.

* Criminal Appeal No. 34 of 1927, against the order of N. K. Bose Additional Sessions Judge of Midnapur, dated July 26, 1926.

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The fact that the Court considered that the ends of justice required an inquiry before the Magistrate follows by implication from its order that, in its opinion, a person had given false evidence.

Any preliminary inquiry that may be deemed necessary under section 476 need not be of an exhaustive nature.

The facts of the case were as follows. Two persons, Kunja Roy and Jharu Dalai, were committed to the Court of Session, at Midnapore, under section 395 of the Penal Code; and three others, including one Gadadhar Das, under section 412 of the same Code. The latter case was postponed till after the disposal of the dacoity case. The trial on the dacoity charge commenced on the 23rd July 1926. Gopal Chunder Maity was the foreman of the jury, and Gadadhar was making *tadbir* for the accused in the case. The appellant, Bhuban Chandra Pradhan, was the president *panchayat* of the Union in which the dacoity took place, and was a witness at the sessions trial. On the night of the 25th July he reported to the police officer, who had investigated the case, that he had seen the foreman talking, earlier in the evening, to Gadadhar. He repeated the information, on the 26th, to the public prosecutor who reported the matter to the Sessions Judge. The latter directed that the information should be put in the form of an affidavit by the appellant, which was done. The Sessions Judge thereupon held an inquiry on the same day into the allegation, and examined, on oath, the appellant, the foreman, a pleader's clerk and another person. The trial then proceeded, and all the accused were acquitted on the 29th July.

The Sessions Judge thereafter called upon the appellant to show cause why he should not be prosecuted under section 193 of the Penal Code for having sworn a false affidavit. The latter showed cause, and an objection was taken that the *sheristadar* had no power

to administer the oath. The Judge upheld the contention, but called upon the appellant to show cause why he should not be prosecuted for giving false evidence at the inquiry held on the 26th instant. The appellant did not show cause, and the Judge, without making any preliminary inquiry, under section 476 of the Criminal Procedure Code, drew up an order or complaint, on the 20th November 1926, against the appellant. He now appealed to the High Court from such order.

Babu Bir Bhusan Dutt, for the appellant.

The Deputy Legal Remembrancer (*Mr. Khundkar*), for the Crown.

GHOSE AND CAMMIADE JJ. This appeal must be dismissed. What has happened in this case is this. A trial was going on before the learned Sessions Judge in which the accused had been charged with having committed an offence punishable under section 395 of the Indian Penal Code. It appears that certain other people had been committed to take their trial in the Sessions Court in respect of an offence punishable under section 412 of the Indian Penal Code. There was an order made in the last mentioned case that the trial of the accused under section 412 of the Indian Penal Code should be taken up after the trial of the case under section 395 had been concluded. It appears further that one of the accused in the case under section 412 of the Indian Penal Code was the *tadbirkar* of the accused in the case under section 395. The appellant before us is the president *panchayat* of the Union, and it is said that he noticed, on one particular day, that the foreman of the jury, who were trying the accused under section 395 of the Indian Penal Code, was talking to the accused in the case under section 412, who was the *tadbirkar* of the accused in the case under section 395. He thereupon

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brought the matter to the notice of the learned Sessions Judge. The learned Sessions Judge thereupon determined to hold an inquiry into the matter, and as preliminary thereto, the appellant before us was required to file an affidavit stating what he had observed in respect of the matter to which he had drawn the attention of the learned Sessions Judge. The appellant filed an affidavit which was sworn to before the *sheristadar* of the Court. The affidavit was brought to the notice of the Sessions Judge on the 26th July 1926, when he, after perusing the affidavit called upon the appellant before us to step into the witness box and to state orally on oath the circumstances referred to in his affidavit. The appellant thereupon gave evidence before the learned Sessions Judge. It subsequently transpired that the *sheristadar* had no power to have affidavits sworn before him. It followed therefrom that no action could be taken on the affidavit referred to above, but the learned Sessions Judge having come to the conclusion, in the course of the inquiry which he held, wherein the appellant before us gave evidence, that the information which had been supplied by the appellant was false, directed that a complaint should be lodged against the appellant for having committed an offence punishable under section 193 of the Indian Penal Code. He accordingly drew up proceedings under section 476 of the Criminal Procedure Code in respect of the statement made by the appellant during his examination on the 26th July 1926 at the inquiry referred to above.

It is argued before us that the proceedings initiated by the learned Sessions Judge under section 476 of the Criminal Procedure Code are incompetent, because there is no provision whatsoever in the Code of Criminal Procedure which authorized the

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learned Judge to hold an inquiry such as he did in the midst of the trial of the accused under section 395 of the Indian Penal Code into the circumstances to which attention had been drawn by the appellant and that, therefore, the inquiry which he held was not, and should not be treated as, a judicial inquiry, and no oath could be administered to the appellant on the 26th July 1926. It is further argued that there is nothing in the Code of Criminal Procedure which prevented or could prevent the foreman of the jury from talking to the *tadbirkar* of the accused in the case under section 395.

Lastly it is argued that the learned Judge has nowhere recorded that it is expedient in the ends of justice to make a complaint such as he directed to be made under the provisions of section 476 of the Criminal Procedure Code, nor did he find as a fact that the evidence before him was of such a nature as could warrant him in taking action in the manner in which he did.

It is perfectly true that there is no express provision in the Code of Criminal Procedure for an inquiry of the nature such as was held by the learned Sessions Judge during the progress of the trial of the accused under section 395 of the Indian Penal Code, but there can be no doubt whatsoever that the learned Judge had power to make such an inquiry, and in this connection reference may be made to the case of *Rahim Sheikh* v. *Emperor*, (1). As observed in that case, it would be farcical to hold that when a matter of this description is brought to the notice of the learned Sessions Judge in the midst of a sessions trial, he has no jurisdiction to make an inquiry, such as in his discretion he may consider necessary in the ends of justice.

In our opinion, whenever the conduct of the jury is taken exception to, during the progress of a trial

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in the Sessions Court, the presiding Judge has undoubted jurisdiction to inquire into the same. It follows from what has been stated above that an inquiry such as is referred to must in the nature of things be a judicial inquiry. In the course of such an inquiry the Sessions Judge is entitled to call upon persons to appear before him, to administer oath to such persons and to require them to give evidence. We must, therefore, negative the first point argued before us.

As regards the second point, the statement of the proposition carries, in our opinion, its own refutation. We entirely dissent from the proposition sought to be canvassed before us that the jury were entitled, (we leave aside the cases referred to in sections 293 and 300 of the Criminal Procedure Code), during the progress of a trial of a case, to talk to persons connected with the accused. The jury are obviously not entitled to discuss the case which is being tried before them, or to talk to persons connected with the accused before them. The second point must, therefore, be negatived.

As regards the third point, the learned Judge's order shows that in his opinion the appellant had given false evidence before him. That order by itself, and in view of the proceedings started under section 476 of the Criminal Procedure Code, carries the implication that the learned Judge must have felt that the ends of justice required that an inquiry before a Magistrate should take place. It is not necessary, having regard to the terms of section 476 of the Criminal Procedure Code, that any preliminary inquiry that may be deemed necessary should be of an exhaustive nature. The third point also fails, and the result is, as stated above, that this appeal must stand dismissed.

E. H. M.