

Principal Sadr Amin it is said, "The parties have agreed that the "zamindari descended to the eldest son," and the decision "that "the defendant be held liable to the payment of Rs. 50 per "mensem to the plaintiff's minor son during the period of his "minority" is founded upon the assumption that Venkatadri was by usage excluded from inheritance. No objection appears to have been made to this judgment being admitted in evidence, if it could have been made successfully.

The question whether an estate is subject to the ordinary Hindu law of succession, or descends according to the rule of primogeniture, must be decided in each case according to the evidence given in it. In this it appears that the claim of the plaintiff under the ordinary Hindu law has been answered, and that the decree of the District Court disallowing the claim ought not to have been reversed. Their Lordships will, therefore, humbly advise Her Majesty to reverse the decree of the High Court, and to affirm the decree of the District Court, with the addition of the costs of the appeal to the High Court.

The respondents will pay the costs of this appeal.

Solicitor for the appellant—*Mr. R. T. Tasker.*

Solicitors for the respondents—*Messrs. Lawford, Waterhouse, and Lawford.*

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

QUEEN-EMPRESS

v.

KATHAPERUMAL.*

1889.
Oct. 11, 15.

*Criminal Procedure Code, s. 188—Offence committed in foreign territory—
Trial without certificate of the Political Agent.*

A District Magistrate instituted criminal proceedings in British India against a native Indian subject of the Queen, in respect of offences under ss. 419, 467 and 114 of the Indian Penal Code, said to have been committed by him in French territory, without a certificate under s. 188 of Criminal Procedure Code. The accused was committed to the Sessions Court:

* Criminal Revision Case No. 423 of 1889.

QUEEN-
EMPRESS
v.
KATHA-
PERUMAL.

Held, although the District Magistrate was the Political Agent who might have certified under Criminal Procedure Code, s. 188, that the proceedings were void for want of the certificate, and the commitment should be quashed.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure, by J. A. Davies, Sessions Judge of Tanjore.

The facts of the case were stated by the Sessions Judge as follows :

“ A preliminary objection is taken by the prisoner’s pleader to the commitment to the effect that the offence having been committed in Karikal, French territory, no inquiry could be made into it without a certificate of the Political Agent for Karikal that the charge is in his opinion one that ought to be inquired into in British India, as provided in section 188 of the Code of Criminal Procedure.

“ The following being undisputed facts in the case, (1) that the prisoner is a native Indian subject of Her Majesty, (2) that the offence of which he is accused, knowingly abetting the payment of a money order for Rs. 99 to a wrong person, was committed beyond the limits of British India, that is, in the French settlement of Karikal, (3) that there is, a Political Agent for that territory, namely, Mr. Edward Gibson of the Madras Civil Service (*vide* page 218 of the Madras Quarterly Civil List, corrected up to 1st July 1889), and (4) that the certificate required under section 188, Code of Criminal Procedure, has not been issued by him—it seems to me the objection raised is fatal to the commitment, and I must, therefore, refer the case to the High Court, under section 215 of the Code of Criminal Procedure, for the quashing of the commitment on the grounds stated above.

“ It happens that Mr. Edward Gibson, the Political Agent for Karikal, is also the District Magistrate of Tanjore, and, in this latter capacity, it appears that he initiated the case and transferred it from his own file to that of the Sub-divisional Magistrate of Negapatam; but these acts of his, as District Magistrate, cannot be taken as having been done in his other capacity as Political Agent. Further, it is contended by the public prosecutor that if the required certificate were now given by Mr. Gibson in his capacity as Political Agent, it would fulfil the requirements of the law, but I hold that the certificate was

“ a preliminary requisite to the institution of proceedings, which
 “ cannot now be validated by an *ex post facto* authorization. How-
 “ ever, this is a point I submit and leave for the High Court’s
 “ decision.

“ If the offences charged were offences falling under the Post
 “ Office Act (XIV of 1886), then under the terms of section 59
 “ of that Act, the prisoner could have been tried here without a
 “ certificate from the Political Agent, but the particular offences
 “ on which the prisoner is committed to this Court are not offences
 “ under that Act, but only under the Penal Code.

“ Pending the orders of the High Court, the prisoner will be
 “ released on bail, on his own recognizance for Rs. 200, with two
 “ sureties for Rs. 200 each.”

The *Government Pleader and Public Prosecutor* (Mr. Powell) for
 the Crown.

The accused was not represented.

JUDGMENT.—The accused in this case is a native Indian subject
 of Her Majesty, and the offence with which he is charged was
 committed in the French settlement of Karikal. The District
 Magistrate of Tanjore initiated criminal proceedings against him
 as regards the offence, and transferred the case from his own file
 to that of the Sub-divisional Magistrate of Negapatam. The Dis-
 trict Magistrate, Mr. Edward Gibson, is also the Political Agent for
 Karikal; but he omitted to certify in his capacity as such, that in
 his opinion, the charge ought to be inquired into in British India.
 The inquiry held by the Sub-divisional Magistrate was therefore
 not in conformity to the provisions of section 188 of the Code
 of Criminal Procedure, and on this ground, the Sessions Judge
 objected to accept the commitment when the Magistrate committed
 the accused for trial. The Public Prosecutor offered to produce
 a certificate to remedy the defect in the commitment; but the
 Judge, considering that it could not be validated by *ex post facto*
 authorization, has referred it to this Court for orders.

Having regard to the language of the proviso to section 188,
 we agree with the Sessions Judge that the certificate mentioned
 therein is a preliminary requisite as well to an inquiry before the
 Magistrate as to the trial before him. The offence being com-
 mitted in foreign territory, it is not capable of being inquired into
 under the Code of Criminal Procedure which is applicable only to
 British India, until it is certified by the Political Agent to be one

QUEEN-
EMPRESS
v.
KATHA-
PERUMAL.

which ought to be inquired into in British India. The inquiry held by the Sub-divisional Magistrate was *ultra vires*, and the commitment wholly void. Section 188 corresponds to section 9 of Act XXI of 1879, and before it was introduced into the Code of Criminal Procedure, this Court quashed a trial held by the Sessions Judge of Mangalore without the prescribed certificate in *Bapu Daldi v. The Queen*(1). The defect cannot, in our judgment, be cured under section 532 of the Code of Criminal Procedure, for, it is not a case of mere irregular commitment under the Code of Criminal Procedure, but it is a case which cannot be dealt with at all under the Code until a certificate has been produced. If that section applied, it would not be necessary to produce a certificate even at the trial, and such a construction would tend to take away from the accused the protection to which he is entitled under section 188. Though the District Magistrate happens, by accident, also to be Political Agent in this case, that circumstance cannot alter the construction which we have to place on the last-mentioned section. The commitment is illegal, and must be quashed as such. It will be open to the District Magistrate to institute criminal proceedings *de novo*, in accordance with law.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

QUEEN-EMPRESS

v.

SAMI AND ANOTHER.*

Evidence—Trial for robbery and murder—Offences constituting parts of the same transaction—Evidence of robbery considered in trial for murder.

Persons convicted of robbery by a Sessions Judge and a Jury, and of murder by the Sessions Judge with Assessors appealed to the High Court against the conviction on the charge of murder :

Held, that in coming to a conclusion as to whether the evidence justified the conviction appealed against, the verdict of the Jury should not be taken into consideration.

But on its appearing that the two offences constituted parts of the same transaction :

(1) I.L.R., 5 Mad., 23.

* Referred Trial No. 58 of 1889.