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that a decree against a registered tenant was to be evidence for ever in future proceedings against an unregistered transferee not a party to it, and who had become the actual owner of the tenure; but all that was held in that case was that for the purpose of that particular decree, that is, with reference to its satisfaction, the unregistered transferee was bound by that decree whether he was a party to it or not, the tenure being liable for the rent. It seems to us that upon the findings in the present case the *ex-parte* decrees in question are not admissible against the present defendant. He was not a party to them, nor does he derive his title from the parties against whom those decrees were passed. The finding of the lower Appellate Court is that the defendant's title was complete before the decrees were obtained against the registered tenants of the tenure. As the defendant therefore was not a party to the suits in which those decrees were obtained, and does not claim through the parties against whom those decrees were passed, the Full Bench decision in *Gujju Lall v. Fatteh Lall* (1) precludes us from holding that they were admissible. Although, therefore, the present defendant was bound as owner of the tenure by the *ex-parte* decrees when passed, we cannot hold that they are evidence against him in the present proceedings.

The appeal is dismissed with costs.

*Appeal dismissed.*

### FULL BENCH REFERENCE.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Prinsep, Mr. Justice Wilson, Mr. Justice Field, and Mr. Justice O'Keefe.*

IN THE MATTER OF GOPI NATHI (PETITIONER) v. KULDIP SINGH, AND OTHERS (OPPOSITE PARTIES.\*)

1885  
 May 15.

*Sanction to prosecute—Proceedings under s. 82 of Act III of 1877—Registration—Act III of 1877, ss. 82, 83.*

It is not necessary that sanction should be given before instituting a charge under s. 82 of the Registration Act.

\* Full Bench Reference on Criminal Motion No. 105 of 1885, from an order of J. Boxwell, Esq., District Magistrate of Gya, dated the 27th March 1885.

(1) I. L. R., 6 Calc., 171.

THIS case arose from certain proceedings taken in connection with a deed which purported to have been executed by one Gopi Nath and his three sons in favor of Kuldip Singh and his brothers, passing to the vendees the proprietary right of the vendors in a certain mouzah. This deed bore date the 27th March 1884, and was presented to a Sub-Registrar for registration by Kuldip Singh on the 19th July 1884. Gopi Nath and his three sons were summoned to attend before the Sub-Registrar and, failing to appear, a warrant was issued against them. On the 8th September the executants, the vendors, denied execution of the deed, and as a consequence registration was refused. An appeal was made to the Registrar, and he directed an enquiry to be held in the matter by the Deputy Collector; in enquiring into the matter the Deputy Collector reported that the parties had compromised the case, and a petition in accordance with the compromise was presented to the Registrar by Gopi Nath and his sons, in which they stated that they had received Rs. 305 as consideration for the sale, and that they were then ready to admit execution and have the deed registered. The District Magistrate, however, insisted on the enquiry being carried through, being of opinion that, if the vendors had really executed the document before its presentation, they had made a false statement in denying execution, or, if that was not so, Kuldip Singh must have committed forgery. A fresh enquiry was therefore hold, and on it the Deputy Magistrate came to the conclusion that Gopi Nath and his sons had executed the deed, and that they had falsely denied execution before the Sub-Registrar, concluding his report with the words: "They may, therefore, be prosecuted under s. 82 (a) of the Registration Act." On the 27th March 1885, Mr. Boxwell, the Magistrate of the District, passed the following order: "Gopi Nath will be prosecuted for perjury before Mr. Hampton." Gopi Nath, after being summoned to appear to answer to a charge under s. 82 (a) of Act III of 1877 on the 25th April, applied on the 18th April that proceeding should be stayed, as no sanction for the prosecution had been granted. The Deputy Magistrate, Mr. Hampton, rejected the application, stating that the prosecution had been directed by Mr. Boxwell, who was Registrar as well as Magistrate of the

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district. Gopi Nath, thereupon, applied to the High Court to have the proceedings taken against him set aside, on the ground that the District Magistrate had no jurisdiction to grant sanction; that the sanction did not comply with the terms of s. 195 of the Code of Civil Procedure. Mr. Justice *Prinsep* and Mr. Justice *Pigot* on the 24th April 1885, after expressing a doubt as to the correctness of the decision in *Queen-Empress v. Batesar Mandal* (1) ordered the record to be sent for, and directed that in the meantime proceedings before Mr. Hampton should be stayed. On the 28th April, after perusing the record, the same learned Judges referred to a Full Bench the question, whether, before proceedings can be taken before a Magistrate in regard to false evidence alleged to have been intentionally given before an officer acting under the Registration Act, sanction must have been given by such officer, or some officer to whom he is subordinate? The order of reference was as follows:—

“The irregularities complained of in this case relate to the manner in which sanction to prosecute has been granted and to the proceedings subsequently taken; but before we can properly consider the effect of those irregularities, we must first find whether any sanction is necessary before proceedings can be taken before a Magistrate regarding false evidence, said to have been given before a registration officer.

Section 195 of the Code of Criminal Procedure declares that no Court shall take cognizance of any offence punishable under s. 193 of the Indian Penal Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint of such Court or of some other Court to which such Court is subordinate. The offence said to have been committed in this case is punishable under s. 82 of the Registration Act. It is, no doubt, of the same nature as that punishable under s. 193 of the Penal Code; but if the terms of these sections be compared, it will be seen that, whereas under s. 82 of the Registration Act a sentence of seven years' imprisonment can be passed in any case of intentionally giving false evidence

(1) I. L. R., 10 Calc., 604.

before a registration officer, s. 193 of the Penal Code provides that that sentence shall be passed only in a case in which the false evidence has been given in a stage of a judicial proceeding. This raises the question whether a proceeding before a registration officer is a judicial proceeding, which again involves a consideration of the second point whether a registration officer is a Court within the meaning of s. 195 of the Code of Criminal Procedure.

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Our attention has been directed to the case of *Queen-Empress v. Batesar Mandal* (1) in which it was held that sanction to a prosecution, arising out of proceedings before a registration officer is necessary before it can be commenced.

We are inclined to disagree with the view thus expressed with regard to the terms of s. 195 of the Code of Criminal Procedure, and of s. 83 of the Registration Act; and we, therefore, refer for determination by a Full Bench of this Court whether, before proceedings can be taken before a Magistrate in regard to false evidence alleged to have been intentionally given before an officer acting under the Registration Act, sanction must have been given by such officer or some officer to whom he is subordinate?"

On the hearing before the Full Bench—

Mr. *Mullick* (with him Baboo *Jogesh Chunder Dey*) appeared for Gopi Nath.

Mr. *Braunfeldt*, who appeared for Kuldip Singh, was not called upon.

The opinion of the Full Bench was as follows:—

It appears that the charge against the accused with which we are now dealing was not made under s. 193 of the Penal Code, but under s. 82 of the Registration Act. It is, therefore, not necessary for the purposes of this case to consider whether, when in holding an enquiry under that Act, the Registrar is acting as a "Court," within the meaning of s. 195 of the Criminal Procedure Code. We have only to consider whether, before instituting a charge under s. 82, any sanction at all is necessary.

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We are of opinion that no sanction is required. It has been contended that, under s. 83 of the Registration Act, it is necessary that some one of the officers who are mentioned in that section must have given previous permission to institute proceedings; but we think that it is not so. The provisions of s. 83 are not obligatory. They rather seem to be intended for the purpose of enabling the officers of the Registration Department, when they should see fit, to institute any prosecution under the Act upon their own responsibility.

### CRIMINAL MOTION.

*Before Mr. Justice Mitter and Mr. Justice Norris.*

1885  
 May 19.

GOVERDHAN SINHA AND ANOTHER (PETITIONERS) v. THE QUEEN  
 EMPRESS (OPPOSITE PARTY).<sup>a</sup>

*Embankment—Addition to existing embankment.—Notification, Publication of, under Bengal Embankment Act—Beng. Act II of 1882 (Bengal Embankment Act), ss. 6, 76, cl (b), and 80.*

The word "shall add to any existing embankment" in cl. (b), s. 76 of Beng. Act II of 1882, are not intended to mean any repair of an existing embankment, even if the effect of such repair be to make the embankment higher or broader, but only mean an extension in the length of an existing embankment.

The notification referred to in s. 6 of the Act must be published in the manner provided by s. 80, and it is not sufficient for such notification merely to be published in the *Calcutta Gazette*.

THIS motion arose out of a prosecution under the provisions of s. 76 of Bengal Act II of 1882. The accused were charged with "adding to an embankment" within the prohibited area without having previously obtained the permission of the Collector as provided by clause (b) of that section.

It was not disputed that the permission of the Collector had not been obtained, but the accused pleaded that what they had done merely amounted to repairing the embankment, and not to an addition thereto, and even if there had been any addition

<sup>a</sup> Criminal Motions Nos. 134 and 135 of 1885, against the order passed by Baboo Umash Chandra Batavyal, Deputy Magistrate of Tumlook, dated the 10th of March 1885.