

CRIMINAL REFERENCE.

Before Mr. Justice Field and Mr. Justice Beverley.

1885
March 3.

RAMANUND MAHTON, COMPLAINANT *v.* KOYLASH MAHTON, ACCUSED.*

District Magistrate's Office—Deputy Magistrate placed in charge of current duties of District Magistrate's Office—Jurisdiction—Criminal Procedure Code—Act X of 1882, s. 437, Penal Code, Act XLV of 1860, ss. 379, 417—Summary trial—Splitting of charges for purpose of jurisdiction.

A Deputy Magistrate placed in charge of the current duties of the District Magistrate's Office is not thereby vested with jurisdiction under s. 437 of the Code of Criminal Procedure.

Where an accused is charged with offences, one of which is triable summarily and the other not so triable, it is not open to a Magistrate to discard the latter charge and to proceed to try the case summarily.

ONE Ramanund Mahton preferred to the Magistrate of Sarun a complaint against one Koylash Mahton, under ss. 379 and 417 of the Penal Code. The Magistrate referred the case to a Bench of Magistrates. The Bench recorded the complainant's evidence, and referred the case to the police for enquiry and report. On the receipt of the police report, the President of the Bench passed the following order, (presumably under s. 203 of the Criminal Procedure Code):—"There is neither theft nor cheating; I refer the plaintiff to the Civil Court for enforcing payment of the consideration-money; case struck off."

The complainant then applied for a re-hearing of his case, and the President of the Bench of Magistrates, (who was then in charge of the District Magistrate's office), in his capacity of Deputy Magistrate in charge of the District Magistrate's office, ordered the case to be restored to the file.

The Bench (the Deputy Magistrate presiding) thereupon tried the case summarily under s. 379 of the Penal Code, and convicted the accused, sentencing him to a fine of Rs. 50, or in default to one month's rigorous imprisonment.

The prisoner moved the Sessions Judge to refer the case to the High Court on the following grounds:—(1) that the Deputy

* Criminal Reference No. 29 of 1885, made under s. 438, by H. W. Gordon, Esq., Sessions Judge of Sarun, dated the 11th of February 1885.

Magistrate had no jurisdiction to order the re-hearing of a complaint which he had already dismissed under s. 203 of the Criminal Procedure Code, the mere fact of his being in charge of the District Magistrate's office not giving him any power to pass such an order; and (2) that the District Magistrate having referred the case to the Bench for disposal under ss. 379 and 417 of the Penal Code, it was not open to the Bench, in order to give itself summary jurisdiction, to reject one part of the complaint under s. 417, which was not triable summarily, and to accept the other part of the complaint under s. 379, which was triable summarily.

The Sessions Judge, being of opinion that on the grounds above set out the proceedings of the Bench of Magistrates should be set aside, referred the case to the High Court.

No one appeared for either party on the reference.

The order of the Court (FIELD and BEVERLEY, JJ.) was as follows:—

For the reasons set out by the Sessions Judge, we reverse the conviction of Koylash Mahton, and direct that the fine, if realized, be refunded.

A Deputy Magistrate placed in charge of the current duties of the District Magistrate's office is not thereby vested with jurisdiction under s. 437 of the Code of Criminal Procedure.

Conviction set aside.

PRIVY COUNCIL.

DEPUTY COMMISSIONER OF RAE BABELI (PLAINTIFF) *v.* RAMPAL
SINGH (DEFENDANT.)

P. C.*
1884

November 14.

[On appeal from the Court of the Judicial Commissioner of
Oudh.]

Construction of instrument of mortgage.

An instrument, mortgaging villages for a sum payable within a certain period by instalments, and making distinct provision that, upon default in payment of an instalment, the mortgagee by his servants was to take possession, and after paying the revenue and the expenses of collection, to

* *Present*: LORD FITZGERALD, SIR D. PRADOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.