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 GURUBIN
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original trial, and who is now dead, coupled with some evidence as to his absence from the village at the time of the dacoity, and as to his absconding therefrom afterwards. The Judge considers that Jogeshur's deposition is evidence against the prisoner under s. 33 of the Evidence Act, and also under s. 512 of the Criminal Procedure Code. It is clearly not admissible under the former Act, as it was not recorded in the presence of the prisoner; and it would only be admissible under the latter if the provisions of s. 512 were complied with. This section requires, we consider, that the absconding should be alleged, tried, and established, before the deposition is recorded. In point of fact the deposition does not appear to have been recorded under that section at all; it was recorded in the ordinary course of proceedings against other persons, and is therefore inadmissible against the prisoner.

Even assuming that it is admissible, there is, we think, an absence of any sufficient corroborative evidence. Proof of his absconding is not sufficient. He belonged to a suspected class of persons, and when several of that class were implicated in the case it is quite possible that he thought it advisable to leave the village. The evidence shows that he has been living honestly ever since. The conviction must be set aside and the prisoner released.

Appeal allowed.

Before Mr. Justice Field and Mr. Justice Norris.

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 August 19.

ABBILAKE SINGH (PETITIONER) v. KHUB LALL (OPPOSITE PARTY.)

Sanction to prosecute—Criminal Procedure Code (Act X of 1882), s. 195. clause c., para. 2—Notice, when necessary prior to sanction.

A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard.

THIS was upon an application for sanction to prosecute made under section 195 of the Code of Criminal Procedure. One

* Revision Case No. 268 of 1884, against the order passed by J. C. Price, Officiating Magistrate of Durbhangah, dated the 16th of February 1884 awarding sanction to prosecute the petitioner.

Abbilakh Singh laid a complaint against the servants of Mr. Wilson, of the Poopree factory, in the district of Durbhangah, for assault and forcible entry upon his land. The defence set up before the Deputy Magistrate was that the father of Abbilakh had, by a written *istifa* or deed of relinquishment, given up the land or jote in respect of which the complaint had been made. Thereupon Abbilakh presented an application at the Collectorate to the effect that the deed alleged to have been filed at the Collectorate by his father and produced by the factory people was a fabricated document. That application, together with the complaint, was disposed of by the Deputy Magistrate who convicted the accused (the servants of the factory) and pronounced the *istifa* to be a forgery. On appeal, the Judge, on the 27th November 1883, discharged the accused, on the ground that the *istifa* was a genuine document. On the 14th February 1884, an application was made by Khub Lall, one of the aforesaid servant of the factory, for sanction to prosecute Abbilakh on account of his petition at the Collectorate wherein he imputed forgery to the factory servants. On the 16th February 1884, the Magistrate, without serving any notice on Abbilakh, awarded his "sanction to prosecute." Against that order Abbilakh presented a petition to the High Court.

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Moulvi *Serajul Islam* for petitioner.

Mr. *C. Gregory* for the opposite party.

The judgment of the Court (FIELD and NORRIS, JJ.) was delivered by

FIELD, J.—This is an application under para. 4, clause (c), s. 195, of the Code of Criminal Procedure, for the revocation of a sanction given for the prosecution of the petitioner, dated 16th February 1884. The sanction is in the following words :—“Sanction to prosecute is awarded.” We think that this sanction must be revoked on two grounds: The second paragraph of clause (c), s. 195, provides that the sanction “shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.” The sanction which forms the subject of this application does not comply with these provisions of the law.

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The second ground upon which we think this sanction ought to be revoked is this : The sanction was not given immediately upon the termination of the proceedings in which the question of the genuineness of the *istifa* or notice of relinquishment was raised. It was given when those proceedings had terminated, and by an order of a subsequent date, which virtually re-opened the matter. We think that when a sanction is applied for under circumstances of this nature, that is, after the termination of the proceedings in the course of which the offence is alleged to have been committed, the person against whom the sanction is applied for ought to have notice and have an opportunity of being heard, and that the proceedings ought not to be re-opened in this manner to his prejudice without giving him an opportunity of appearing and being heard. Under these circumstances, we revoke the sanction so far as regards the charge under section 211. We understand, that in this same record there is a charge against the petitioner under s. 500 of the Penal Code. That is an offence for the prosecution of which a sanction is not required, and therefore, so far as regards that offence, we make no order.

Sanction revoked.

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Tottenham, and Mr. Justice Pigot.

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 September 19.
 NOBOKISHORE SARMA ROY, on his death HIS LEGAL REPRESENTATIVE,
 HIS SON GOBIND CHUNDER SARMA ROY (PLAINTIFF) APPELLANT
 v. HARI NATH SARMA ROY AND OTHERS (DEFENDANTS) RESPONDENTS.*

Hindu Law—Transfer by Hindu Widow of her estate—Consent of reversioners.

Under the Hindu law current in Bengal a transfer or conveyance by a widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person not a party thereto, who is the actual reversioner upon the death of the widow, from asserting his title to the property.

* Appeal from Appellate Decree No. 2176 of 1882, against the decree of T. M. Kirkwood, Esq., Judge of Mymensingh, dated the 14th August 1882; reversing the decree of Baboo Nobin Chunder Ghose, Subordinate Judge of that District, dated the 11th July 1881.