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Subordinate Judge overruled this objection, on the ground that the Munsiff, in a suit which was appealable, had ample discretion to go into the question of the defendants having rights of occupancy or not, although his finding upon the question of notice was quite sufficient to dispose of the case. In second appeal by the defendants it has been urged that upon the admitted facts of this case, it being quite clear that the plaintiff had no cause of action on the date when the suit was brought, it was unnecessary for the lower Courts to go into any other questions. On the other hand, the learned counsel for the respondent relies upon the provisions of s. 204 of the Civil Procedure Code to support the view taken by the lower Courts upon this point. Section 204 says: "In suits in which issues have been framed, the Court shall state its finding or decision, with the reason thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit." In this case the facts relating to the service of notice being all admitted by the plaintiff, it seems to us that the case clearly came within the last three lines of s. 204. It is quite clear that the finding upon the question of notice, which finding was based upon the admitted facts of the case, was quite sufficient to dispose of it finally. We are, therefore, of opinion that the objection taken before us upon this point is valid, and we accordingly set aside the decisions of the Courts below upon the question whether or not the defendants have established their right of occupancy upon the holdings in dispute.

Each party will pay his own costs in this Court and in the lower Appellate Court.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Wilson and Mr. Justice Macpherson.

GHURBIN BIND, (APPELLANT) *v.* QUEEN EMPRESS (RESPONDENT.)* 1884 September 19.

Deposition where accused has absconded—Criminal Procedure Code, Act X of 1882, s. 512—Record of evidence in absence of accused.

Where an accused person has absconded, and it is intended to record evidence against him in his absence, it is requisite, under s. 512 of the Code of

* Criminal Appeal No. 506 of 1884, against the sentence passed by F. F. Handley, Esq., Sessions Judge of Maldah, dated the 14th of July 1884.

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Criminal Procedure. that the fact of the absconding of the accused should be alleged, tried, and established before the deposition is recorded.

THE prisoner Ghurbin Bind was charged with dacoity under s. 395 of the Penal Code. It appeared that in August 1880 a gang of Binds, to the number of 12 or 13, proceeded in a boat up the river and committed a dacoity in the village of *Ghatnagar* in the district of Dinajpur. Property to the amount of Rs. 300 was carried off by force; but owing to a dispute about the division of the spoil, one of the gang, named Jogeshur Bind, informed the police, upon which information some seven of the dacoits were arrested and committed to the Sessions Court, and on the evidence of Jogeshur Bind, who was one of the dacoits and had turned Queen's evidence, the prisoners were convicted and sentenced at the November Session of Maldah, 1880.

Five of the gang absconded; their names and descriptive rolls were duly published in the *Police Gazette* of the 24th September 1880, and amongst the names so mentioned was that of Ghurbin Bind. No trace of any of those who had absconded was obtained until 1884, when Ghurbin Bind was arrested in the village of Gosainpore. Subsequently to the trial held in 1880 and previous to the arrest of Ghurbin, Jogeshur Bind died.

Ghurbin was committed to the Sessions Court in July 1884, and at the trial it was proved that he had absconded from his own village at about the time of the dacoity in 1880, and had never returned there; that he went by another name at the village in which he had taken up his abode, and at which he was arrested; that his personal appearance corresponded minutely with the descriptive roll published in the *Police Gazette* of the 24th September 1880. The deposition of Jogeshur Bind taken before the Committing Magistrate in 1880 (the records of the Sessions trial held in 1880 not being forthcoming) was tendered and admitted by the Sessions Judge as evidence against the prisoner. This deposition expressly stated that Ghurbin was present at the dacoity. As regards the admissibility of this deposition, the Sessions Judge made the following remarks:—

"The deposition of Jogeshur Bind, the dacoit who was offered a pardon, and turned Queen's evidence and who is now deceased, is put in under section 32, cl. 3, and section 80 of the Evidence Act

"and s. 512 of the Criminal Procedure Code. This deposition was "made before the Committing Magistrate as the record of the trial "before the Sessions Court was not forthcoming. It was recorded by "Deputy Magistrate Kasi Kinker Sen in Bengali. It is also evi- "dence under s. 33 of the Evidence Act. It is true the prisoner was "not present when the evidence was recorded, and had not the power "of cross-examining, but that was his own fault for absconding. "If he had appeared and stood his trial, he would have had the "right and opportunity of cross-examining the witness Jogeshur "Bind, as his fellow prisoner had and did in the former trial; and "under s. 512 of the Criminal Procedure Code, such a deposition is "expressly exempted from the ordinary procedure of s. 33 in the "case of an absconding prisoner. The (A) form, exhibit D in the "analogous trial to this (No. 7), in the trial of which charge this "deposition was recorded, contains the name of this prisoner as an "abscondee, and the evidence in this case corroborates the fact that "this prisoner Ghurbin was an absconder. It would obviously be "difficult when accused persons absconded and were not arrested for "20 years say, to get the evidence of living witnesses. Taking then "Jogeshur Bind's evidence, which the prisoner and his counsel "admit was made against this prisoner, it is found that he express- "ly mentions this Ghurbin as taking part in that dacoity."

Upon the evidence of *Jogeshur* and on the other evidence mentioned, the Sessions Judge, concurring with the Assessors, found Ghurbin guilty, and sentenced him to five years' rigorous imprisonment.

The prisoner appealed to the High Court.

No one appeared for either side at the hearing.

Judgment of the Court was delivered by

MACPHERSON, J.—The prisoner Ghurbin Bind has been convicted on a charge of dacoity, and sentenced to rigorous imprisonment for five years. The dacoity was committed in August 1880. Several persons were shortly afterwards charged with being concerned in it, and were tried and convicted, but the prisoner, who is said to have absconded, has only recently been arrested. The only proof against the prisoner is the deposition of one Jogeshur Bind, who was made an approver witness in the

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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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ABBILAKH 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 commited, 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.