

1884

ISREK
PERSHAD
SINGH
v
NASIB
KOOBR.

And, again, on page 54 he says: "Partition, to entitle the mother to a share, must be made of ancestral property or of property acquired by means of ancestral wealth."

And Mr. *Mayne*, in his work on Hindu law, quotes this last extract from *Macnaghten* as being the approved rule in such cases.

We think, therefore, that as these authorities seem strongly in favor of the plaintiff, and as we do not see any such reason to the contrary as would justify us in referring the question to a Full Bench, we should decide the point in favour of the plaintiff and dismiss this appeal with costs.

Appeal dismissed.

ORIGINAL CRIMINAL.

Before Mr. Justice Field.

QUEEN EMPRESS v. MATHEWS.

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July 21.

Incriminating statement by Prisoner to Police Officer—Evidence of Police Constable.

A policeman on being cross-examined stated, that when he arrested the prisoner, the prisoner said to him, some Chinamen *at the time of the occurrence* came out with hatchets; in re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute for the words *at the time of the occurrence* the words *at the time*, and on being asked if the prisoner had explained "what time," answered he said at the time I struck the deceased.

Counsel for the prisoner interposed and objected to the evidence. The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross-examination.

Held, that the evidence could not be given.

ONE Mathews had been committed to the Sessions by the Presidency Magistrate of Calcutta, charged with murder. At the trial a police officer was examined for the prosecution, and in the course of cross-examination gave the following answer to Mr. *Gasper*, who appeared for the defence.

A.—The prisoner, when I arrested him, said "some Chinamen at the time of the occurrence came out with hatchets."

Re-examined by the Standing Counsel (Mr. *Phillips*):

Q.—Did the accused use the word “occurrence?”

A.—He said “at the time.”

Q.—Did the accused explain what “time?”

A.—He said “at the time I struck the deceased——.

Mr. *Gasper*.—I object to this.

[FIELD, J.—The evidence cannot be given. I must instruct the jury to put out of their minds anything the present witness, being a policeman, may say implicating the prisoner by quoting words alleged to have been used by the prisoner himself.]

The Standing Counsel (Mr. *Phillips*).—Your Lordship will hear me on the point. I am entitled to obtain an answer to the question I have asked, even if the reply should bring out any statement or part of a statement made by the accused implicating himself to the witness. The Court will remember that my question is directed to clear up a matter left in doubt by the cross-examination, not an independent enquiry started by the prosecution. The witness used an ambiguous expression “the time.” I am entitled to fix the precise meaning he attached to these words. For instance, if the accused had said to the police officer “I did not kill the deceased with a knife, but shot him with a pistol; and the cross-examining counsel extracted from the witness the statement that the accused had used the words “I did not kill the deceased,” surely the prosecution in re-examination is entitled to get from the witness the whole statement made by the accused on the occasion.

[FIELD, J.—I don't think you would be entitled to have the words *in extenso*. You might perhaps get the witness to say the accused had qualified that statement, but you could not have the exact words he used if they amounted to an incriminating statement. The law is imperative on the point.]

Mr. *Gasper*.—As the witness has already given us a part of the statement made by the accused, I prefer the whole statement being given to the jury, as the whole statement shows that he did not strike the deceased with a knife.

[FIELD, J.—I am afraid I cannot permit that; the law is imperative in excluding what comes from an accused person in custody of the police if it incriminates him.]

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