

1884
 ASSAN-
 ULLAH
 v.
 HAFIZ
 MAHOMED
 ALI.

consequence of the death of the Judge or of his removal ; but where it can be done, that is the course which ought to be adopted." In the present instance we are informed that Mr. Kirkwood, whose decree is now under appeal, is no longer the Judge of Mymensingh. The course suggested in the passage just cited is therefore not open to us. We think, however, that the course which we take is warranted by the provisions of s. 566 read with s. 587 of the Code of Civil Procedure. The lower Appellate Court has, in our opinion, omitted to determine certain questions, namely, the questions raised in the petition of appeal to that Court, which appear to us essential to the right decision of the case ; and we therefore now refer these questions for trial to the Court of the District Judge of Mymensingh. The case will remain on our file, and on receipt of the District Judge's findings, we shall proceed to dispose of the appeal. It will be open to the appellant, within seven days after the receipt by this Court of those findings, to amend his grounds of appeal, and to the respondents to take any grounds of cross-appeal which they may be advised.

Case remanded.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

1884
 July 1.

QUEEN EMPRESS v. SADHEE KASAL AND OTHERS.*

*Pardon—Criminal Procedure Code (Act X of 1882, s. 337, read with s. 338)
 —Offences not exclusively triable by Court of Sessions.*

A Sessions Judge cannot tender a pardon to an accused under s. 338 of the Criminal Procedure Code, where the offence for which he has been committed is not " triable exclusively by the Court of Sessions."

ON inspection of the statement of the Criminal Session of the Judge of Gya for the months of April and May, the High Court, under s. 435 of the Criminal Procedure Code, called for the record of the above mentioned case, in which Ohowri Kasal and Sadhee Kasal had been charged under s. 411 of the Penal Code with dishonestly receiving and retaining certain stolen property,

* Criminal Motion 201 of 1884, from a decision of A. Smith, Esq., Judge of Gya, dated 17th May 1884.

knowing it to be stolen. It appeared, that in the Sessions Court Chowri Kasal had been granted a pardon under s. 338 of the Criminal Procedure Code and released, and Sadhee Kasal was found by both assessors to be guilty under s. 411 of the Penal Code, and was sentenced to rigorous imprisonment for two years by the Sessions Judge. After perusing the record, the Court (PRINSEP and MACPHERSON, JJ.) passed the following order:—

As the case is now presented to us on review of the Sessions Judge's statement, and on perusal of the record we think it sufficient to point out to the Sessions Judge that the offences under trial not being exclusively within the jurisdiction of the Court of Sessions, the Sessions Judge was not competent to tender pardon under s. 338 of the Criminal Procedure Code to Chowri Kasal.

Before Mr. Justice Wilson, Mr. Justice Tottenham and Mr. Justice Norris.

HABIBULLAH (ACCUSED) v. QUEEN EMPRESS (COMPLAINANT).*

Alternative charge and conviction—False evidence—Penal Code (Act XLV of 1860), s. 193—Criminal Procedure Code (Act X of 1882), ss. 233, 554 and Sch. 5, XXVIII, II, (4.)

1884
April 28,
July 7.

A prisoner was convicted on an alternative charge in the form provided by Sch. 5, XXVIII, II, (4) of the Criminal Procedure Code (Act X of 1882) of having given false evidence, such evidence consisting of contradictory statements contained in *one* deposition which he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false.

Held, (NORRIS, J., dissenting) that s. 233 of the Criminal Procedure Code did not affect the matter and that the conviction was good.

Semle per WILSON, J.—The decision in *The Queen v. Bedoo Noshgo* (1), though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not, affect the law applicable to the matter.

THIS was a rule to show cause why the conviction of the petitioner under s. 193 of the Indian Penal Code before the Joint

* Rule No. 66 of 1884 against the order of E. Staley, Esq., Officiating Joint Magistrate of Dacca, dated the 10th day of December 1883, affirmed by T. Smith, Esq., the Sessions Judge of Dacca, dated the 14th January 1884.

(1) 12 W. R., Cr. 11.