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turned out of her *mutwaliship*, and they, the plaintiffs, be appointed in her room. The plaintiffs say "that what they claim does not admit of being properly estimated by a money-value; but this is not so. Under the *tantiatnama* the *mutwalis* were to receive six twenty-eighths of the produce of the estate, a very considerable sum; and the plaintiffs' claim to this share as an appurtenance to the office of *mutwali* was easily to be estimated in money. I am of opinion that the plaint ought to have been engrossed on a stamp of proper value." By this I understand the Court was of opinion that the suit should be valued according to the interest of the plaintiff in the subject-matter of the suit, and in this case the plaintiff has valued it at Rs. 7,000.

*Appeal allowed.*

## CRIMINAL REFERENCE.

*Before Mr. Justice Tottenham and Mr. Justice Norris.*

QUEEN EMPRESS v. BATESAR MANDAL.\*

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*Muroh 24.*

*False statement before a Registrar—Prosecution under the Registration Act (III of 1877), s. 82, cl. (a) and s. 83—ss. 72 and 73.*

Where the accused was tried for intentionally making a false statement in the course of certain proceedings taken before a Registrar: *Held*, that even assuming that such proceedings were taken under s. 72 of the Registration Act, and not as they should have been under s. 73, the appearance of the accused before the Registrar and his taking no objection to the form of the proceedings will cure the irregularity for the purposes of a criminal trial under the provisions of the Registration Act. Nor under similar circumstances will the want of verification of a petition of appeal on the part of the applicant, as provided by s. 73 of the Act, oust the jurisdiction of the Criminal Court.

*Reg v. James Berry* (1); *The Queen v. Thomas Fletcher* (2); *Turner v. Post Master General* (3); *The Queen v. Hughes* (4); *The Queen v. Smith* (5) followed.

\* Criminal Reference No. 17, and letter No. 20, from F. Cowley, Esq. Sessions Judge of Purneah, dated the 25th February 1884.

- (1) 28 L. J. (M. C.) 86; 8 Cox C. C., 121.
- (2) L. R. 1 C. C. R., 320.
- (3) 5 B. and S., 756.
- (4) L. R., 4 Q. B. D., 614; 14 Cox C. C., 285.
- (5) L. R. 1 Q. C. R., 110; 11 Cox C. C., 10.

*Held*, also, that except as directed by s. 82 of Act III of 1877, the Magistrate has no authority on his own mere motion to frame a charge against the accused in consequence of evidence, given in the course of the trial by the Registering Officer, in respect of certain statements made before him during registration proceedings.

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IN this case one Batesar Mandal was alleged to have executed a *kabuliat* in favour of the Maharajah of Durbhanga, and his presence or testimony being necessary for the registration of the document, he was summoned before the Sub-Registrar, and, after having being duly affirmed, denied having signed the *kabuliat*, registration of which was accordingly refused. In due course the manager of the Maharajah presented a petition to the Registrar purporting to be an appeal, with the following declaration at foot: "I do declare that what is set forth in this petition is true and correct to the best of my knowledge and belief.—(Signed) Abdul Wahid, Mukhtar." After the petition had been filed, it was marginally marked in the Registration Office, "Appeal No. 15 of 1883." The Registrar, after the necessary inquiries and the examination of Batesar Mandal and others, gave this decision: "I have not the slightest doubt that the witnesses of the respondent and the respondent himself have deliberately given false evidence in the case. The appeal is decreed and the *kabuliat* is directed to be registered. Batesar Mandal is directed to give security for his appearance on the 10th instant before the Magistrate to whom he and his six witnesses are made over with a copy of the judgment." Pursuant to this order the accused afterwards appeared before the Joint-Magistrate. In the course of the investigation by the Joint-Magistrate into the alleged false statement made before the Registrar, the Sub-Registrar was examined as a witness, and in consequence of his evidence the Magistrate on his own motion further charged the accused with having made a false statement before the Sub-Registrar. When the case was ripe for judgment a petition was presented to the Sessions Judge, praying him to send for the record and refer the case to the High Court. The Sessions Judge referred the case to the High Court. Mr. Gasper for the accused contended (1) that, as regards the charge, the whole proceedings before the Registrar were *coram non judice*, inasmuch as they were taken by way of

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appeal and not as they should have been under s. 72 of Act III of 1877; (2) that inasmuch as the application made to the Registrar had not been verified in manner required by law for the verification of plaints, the whole proceedings before that officer were null and void; (3) that as regards the charge of giving false evidence before the Sub-Registrar, inasmuch as there was no sanction whatever for the prosecution, the Joint-Magistrate had no authority to frame a charge against the accused.

The judgment of the Court (TOTTENHAM and NORRIS, JJ.) so far as it is material for the purpose of this report, ran as follows:—

With regard to the first point we were, during the argument, inclined to think that Mr. Gasper's contention was well founded; but upon consideration and on examination of the authorities we are of opinion that it cannot be sustained. For the purpose of this case we assume that the proceedings before the Registrar were taken under s. 72 of the Act and not as they should have been under s. 73; and that what the Registrar heard was an appeal and not an application. Now, no doubt, the accused, when he appeared before the Registrar, might have pointed out this irregularity, and might have asked the Registrar to make no order or to dismiss the appeal; but he appeared, made no objection to the form of the proceedings, and must be held to have waived the irregularity. Under these circumstances we are of opinion that upon the authority of *Reg. v. Barry* (1), *Queen v. Fletcher v.* (2), *Turner v. Post Master General* (3), *Queen v. Hughes* (4), that the accused may properly be charged with giving false evidence at the enquiry before the Registrar. We are also of opinion that the accused waived any irregularity in the verification of the petition of appeal treating that document as an application under s. 73, and that the second contention by Mr. Gasper fails. See the cases above cited and *Queen v. Smith* (5).

As to the third point raised, we are of opinion that the Joint Magistrate had no authority to frame the second charge. The

(1) 28 L. J. (M. C.) 86; 8 Cox C. C., 121.

(2) L. R. 1 C. C. R., 320.

(3) 5 B. & S. 756.

(4) L. R. 4 Q. B. D., 614; 14 Cox C. C., 285.

(5) L. R. 1 C. C. R., 110; 11 Cox C. C., 10.

prosecution for the offence of giving false evidence before the Sub-Registrar was neither commenced by him, or by any of the officers mentioned in s. 83, nor was it sanctioned by any or either of them. These being our views on the case the Magistrate will proceed to dispose of the first charge against the accused as he may think proper, having regard to the evidence before him, of the sufficiency of which we offer no opinion. The proceedings on the second charge must be set aside.

*Additional charge quashed.*

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## APPELLATE CIVIL.

*Before Mr. Justice McDonell and Mr. Justice Field.*

KHADEM ALI (PLAINTIFF) v. TAJIMUNNISSA AND OTHERS  
 (DEFENDANTS).\*

1884  
 April 17.

*Restitution of conjugal rights—Registration of Mahomedan Marriages—  
 Bengal Act I of 1876, s. 6, Sch. A—Copy of entry in Register—Evidence.*

A husband and wife, Mahomedans, registered their marriage under Bengal Act I of 1876, setting out in the form prescribed in Schedule A to the Act, as "a special condition" that the wife under certain circumstances therein set out might divorce her husband.

These circumstances occurred; and the wife divorced her husband. *Held*, in a suit by the husband for restoration of his conjugal rights, that the "special condition" was a matter which, under the provisions of the Act it was the duty of the Mahomedan Registrar to enter in the register, and that therefore a copy of the entry in the register was legal evidence of the facts therein contained.

THIS was a suit brought by one Khadem Ali against Tajimunnissa, his wife, for restitution of conjugal rights. The wife's father, defendant No. 2, her brother defendant No. 3, and some other relatives were also made defendants.

The plaintiff alleged that his wife's father and brother took his wife to their house promising to send her back in 15 days, but that they failed to do so. Defendants Nos. 2 and 3 contended that the plaintiff had maltreated his wife and had driven her away, and

\* Appeal from Appellate Decree No. 1936 of 1882, against the decree of Baboo Kristo Mohun Mukerji, First Subordinate Judge of Chittagong, dated the 24th of June 1882, reversing the decree of Baboo Poorna Chunder Roy, Munsiff of Dakshinputtiah, dated 27th of December 1880.