

to remand the case for trial on the merits, because on another point we think that the suit must fail.

The plaintiff is opposed by defendant No. 5, whose title depends upon a registered conveyance, and this, it is settled law, must prevail over his unregistered mortgage deed.

The appeal must, therefore, be dismissed, the orders of the lower Courts being affirmed, but on grounds different from those stated in their judgments.

We allow no costs in this Court. The defendants will receive one set of costs in both the lower Courts.

Appeal dismissed.

1883

KORBAN
ALLY
MIRDHA
v.
SHARODA
PROSHAD
AICH.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

1883

September 4.

EMPRESS v. PARAMANANDA AND OTHERS.*

*Jurisdiction—Officer invested with special powers—Sections 30, 34, and 209,
Code of Criminal Procedure (Act X of 1882).*

An officer invested with special powers under s. 34 of the Code of Criminal Procedure should rarely if ever try a case himself under s. 209 of the Code of Criminal Procedure, where it appears from some of the evidence that the accused might have been charged with an offence beyond the jurisdiction of the Magistrate to take cognizance of.

In this case the accused were charged with culpable homicide, not amounting to murder, before the Deputy Commissioner of Sibsagar, an officer exercising the special powers conferred upon him under s. 34 of the Code of Criminal Procedure. The accused were convicted and sentenced by the Deputy Commissioner, but when this finding and sentence were submitted to the District Judge of the Assam Valley for confirmation, he considered, from some portions of the evidence, that the accused might properly have been tried on a charge of murder. He, therefore, submitted the case to the High Court, recommending that the conviction should be annulled, and that the Deputy Commissioner be directed to commit the case for trial to the Sessions Court.

No one appeared to argue the case.

Criminal Reference No. 118 of 1883 and letter No. 1083, from C. J. Lyall, Esq., Officiating Judge of the Assam Valley District, dated the 21st August 1883.

1888
 EMPRESS
 v.
 PARAMA-
 NANDA.

The judgment of the Court (PRINSEP and O'KINMAY, JJ.) was as follows:—

The prisoner has been convicted under s. 304 of the Code of Criminal Procedure, by an officer invested with the special powers described in ss. 30, 34, of the Code of Criminal Procedure.

The Sessions Judge, to whom the sentence has been submitted for confirmation, has referred the case to this Court as a Court of Revision, to have these proceedings set aside, and the Deputy Commissioner directed to commit the case for trial in this Court.

Section 209 empowers a Magistrate holding an enquiry to try the case himself if he thinks that only an offence within his jurisdiction has been committed. This is the course which we understand the Deputy Commissioner has taken, and we cannot, therefore, hold that it is not authorised by law, or that he has acted without jurisdiction, merely because there is some evidence which, if believed, would substantiate the charge of murder, an offence beyond his jurisdiction. At the same time we think that this course should be very rarely, if ever, taken by any officer invested with special powers under ss. 30, 34, of the Code of Criminal Procedure, and that in adopting it any such officer incurs a very grave responsibility. Looking to the evidence on the record, especially the medical evidence, we are not inclined to doubt the correctness of the finding of the Deputy Commissioner, and, therefore, we are unable to set aside the proceedings. The Sessions Judge will, therefore, proceed according to law.

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

1888
 August 15.

DEO PROSAD SING (PLAINTIFF) v. PERTAB KAIREE (DEFENDANT).

Limitation Act (XV of 1877), s. 14—Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Cause of like nature.

On the 2nd of September 1880, a suit was instituted for, among other things, the possession of land claimed under a kobala, dated the 31st October 1867. This suit was dismissed on the ground of misjoinder of

* Appeal from Appellate Decree No. 1863 of 1882, against the decree of the Judge of Shahabad, dated the 27th July 1882, reversing the decree of the First Munsiff of Berah, dated the 27th December 1881.