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KAZI PARSHAD v. RAI CHARAN.

of the son to demand partition *invito patre* has been recognized in *Beer Kishore Suhye Singh* v. *Hur Bullub Narain Singh* (1); *Raja Ram Tewary* v. *Luchmun Pershad* (2); *Deo Bunsee Koer* v. *Dwarkanath* (3); *Nagalinga Mudali* v. *Subbiramaniya Mudali* (4), and that if there be no reported cases in this Court it has been accepted hitherto as well established law in this Court, we would answer that, in the case of ancestral immoveable property, the son has, under the Mitakshara law, an unqualified right to demand partition. It is unnecessary for us in the present reference to express an opinion whether the same rule applies to ancestral moveable property (5).

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April 21.

CRIMINAL JURISDICTION.

(*Sir Robert Stuart, Kt., Chief Justice.*)

QUEEN *v.* JAGAT MAI.

Act X of 1872, ss. 468, 471, 473—Offence against Public Justice—Offence in Contempt of Court—Prosecution—Procedure.

An offence against public justice is not an offence in contempt of Court within the meaning of s. 473, Act X of 1872 (6).

The Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in ss. 467, 468, 469, Act X of 1872, is not precluded by the provisions of s. 471 from trying the accused person itself for the offence charged (7).

(1) 7 W. R., 502.
(2) 8 W. R. 15; S. C., B. L. R., Sup. Vol., 731.
(3) 10 W. R., 273.
(4) 1 Mad. H. C. Rep., 77; also in *Lalject Singh* v. *Rajcoomar Singh*, 12 B. L. R., 373.
(5) With regard to the plaintiff's share, under Hindu law, in the ancestral immoveable property, and to the question of possession, the Division Court (Stuart, C.J., and Oldfield. J.), when the case was returned to it, in delivering judgment, said:—"There appears to us to be no doubt that the Judge (lower appellate Court) has erred, the extent of the share in ancestral property to which a son is entitled here, equal to that of the father, and he is entitled to such equal share at partition—Mitakshara, ch. i. s. 5, v 3, and other texts. In the present case the family interested in the partition consisted of the father and two sons, each of these three being entitled to one-third of the ancestral estate, and that is the extent of the share for which the plaintiff is entitled to a decree in this suit.....
(6) So held by Oldfield, J., in *Queen* v. *Kultaran Singh*, *ante* p. 129, and by the Calcutta High Court in *Sufatoollah*, petitioner, 22 W. R., Cr., 49. But see *Reg.* v. *Navranbeg Dulábeg*, 10 Bom. H. C. Rep., 73; and 7 Mad. H. C. Rep., Rulings, xvii and xviii.
(7) See, however, *Queen* v. *Kultaran Singh*, *ante* p. 129, *Sujat*[illegible] petitioner, 22 W. R., Cr., 49; and 7 Mad. H. C. Rep., Rulings, xvii and xviii, in which cases the opposite construction is placed on the section.

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CERTAIN persons were committed to the Court of Session for trial on a charge of causing grievous hurt. Ram Gholam, Gula Mal, and Jagat Mal gave evidence on behalf of these persons at the preliminary inquiry. The first two were also examined at the trial before the Court of Session, and gave the same evidence which they had given at the inquiry. The Court of Session considered that their evidence was false, and directed the Magistrate of the District to try them for giving false evidence. The Magistrate of the District transferred the case to the committing Magistrate. The latter proceeded also against Jagat Mal, being of opinion that he had given false evidence at the inquiry. He convicted all three persons. The conviction was, on appeal, affirmed by the Court of Session.

They applied to the High Court for the revision of the order of the Court of Session affirming the order of the Magistrate, on the ground that the Magistrate was not competent, under s. 471, Act X of 1872, to try an offence committed before himself.

Mr. *Colvin* for the petitioners—The petitioner Jagat Mal has been tried and convicted on a charge of giving false evidence by the Court before which the offence was committed. This procedure is directly opposed to the provisions of s. 471, Act X of 1872, which enacts that the Court before which an offence under s. 193, Indian Penal Code, is committed, may, after making such preliminary inquiry as may be necessary, either commit the case itself, or may send the case to any Magistrate having power to try or commit for trial. It is also opposed to the spirit of s. 473, which clearly recognizes the doctrine that no man shall be a judge in his own cause. It is true that a Court of Session may, under s. 472, try an offence committed before itself, but it does not do so alone, it is aided by assessors or by a jury. It is inexpedient that the Court before which an offence is committed, and which has in all probability formed an opinion on the case, should itself try the offence. He cited 7 Mad. H. C. Rep., Rulings, xvii; *Sufatoollah*, petitioner (1); and *Queen* v. *Kultaran Singh* (2). With regard to the petitioners Ram Gholam and Gula Mal, they are in the same position as Jagat Mal. Their statements before the Court of Session were

(1) 22 W. R., Cr. 49. (2) I. L. R., 1 All. 129.

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repetition of what they had stated before the committing Magistrate. Their offences were really committed before the Magistrate. The transfer of the case under the last paragraph of s. 471 by the Magistrate of the District to whom it was sent to the committing Magistrate did not give the latter jurisdiction, if my argument is good and his jurisdiction was barred by the preceding portion of the section. If such transfer did do so, then the last portion of the section nullifies the first. The last portion has been enacted to obviate a practical inconvenience, the Courts having held under the old Code that the Magistrate to whom a case was sent for trial could not transfer it to a Magistrate subordinate to him, but was obliged to try it himself—6 Mad. H. C. Rep., Rulings, ii, xli.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) for the Crown.—No question can arise under s. 471 with respect to the petitioners Ram Gholam and Gula Mal. Their offences were committed before the Court of Session. S. 471 does not deprive the Magistrate before whom an offence mentioned in the section is committed of any power which he may possess to try the case.

STUART, C.J.—This is an application for revision of the order of the Judge of Farukhabad made in an appeal to him by Ram Gholam, Gula Mal, and Jagat Mal. These three persons were, along with others, tried and convicted by Mr. C. W. Watts, Joint Magistrate of Farukhabad, of false swearing, under s. 193, Indian Penal Code, and respectively sentenced by that officer to two years' rigorous imprisonment.

The circumstances out of which the case arose are these—In January last three men, Kanhaiya, Bishan, and Lalman were prosecuted and convicted by the Judge on a charge of grievous hurt, under s. 326, Indian Penal Code. After convicting and sentencing them, the Judge directed that ten of the witnesses who had been examined in the case before him, including Ram Gholam and Gula Mal, should be tried by the Magistrate of the District on a charge of giving false evidence. On receipt of the Judge's order, Mr. Harrison, the Magistrate, transferred the case to Mr. Watts, the Joint Magistrate, who had made the commitment in the grievous hurt

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case to the Sessions Court. In the course of his investigation for that commitment Jagat Mal had been examined as a witness, and had then, in Mr. Watts' opinion, given false evidence, and Mr. Watts, having represented this state of things to the Magistrate, received sanction for Jagat Mal being included in the proceedings directed by the Judge under s. 193. Mr. Watts having concluded the inquiry committed the whole eleven accused for trial before himself, and convicted Ram Gholam, Gula Mal, and Jagat Mal, and another (deferring judgment as regards the remaining seven). There was an appeal to the Judge, but the result was its dismissal by him.

Ram Gholam, Gula Mal, and Jagat Mal now apply to this Court in revision, urging that Mr. Watts had no jurisdiction to try and convict them, because, according to the terms of s. 471 of the Criminal Procedure Code, he should have sent the case to another competent Magistrate. This, however, is a clearly mistaken view of the law, Mr. Watts being fully competent for all he did. The only case where a Criminal Court cannot itself try is that described in s. 473, which relates exclusively to contempts of Court. Here the charge was not for a contempt, but under s. 193 for false swearing. The conviction and sentence in the case of the three applicants are approved and confirmed, and their application to this Court is refused.

BEFORE A FULL BENCH.

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April 24.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.)

RATAN SINGH AND ANOTHER (DEFENDANTS) *v.* WAZIR (PLAINTIFF)

Act VIII of 1859, s. 354—Remand—Objection—Procedure.

Where an appellate Court, under s. 354, Act VIII of 1859, refers issues for trial to a lower Court and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed without his having filed such memorandum.

On special appeal by the defendants in this suit to the High Court, the Court (Turner and Spankie, JJ.), under s. 354, Act VIII of 1859, referred certain issues for trial to the lower Court