

CRIMINAL JURISDICTION.

Before Mr. Justice Straight.

EMPRESS OF INDIA v. DEOKI NANDAN LAL.

Offence against the Stamp Laws—Act XVIII. of 1869 (Stamp Act), s. 34—Act I. of 1879 (Stamp Act).

The Collector, being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879, should not himself try, as a Magistrate, a person accused of an offence against either of those Acts.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X. of 1872. The petitioner, the purchaser of certain property, had sued the vendor, one Amirta, on the deed of sale, in the Court of the Subordinate Judge of Gorakhpur. This suit having been dismissed by the Subordinate Judge, the petitioner appealed to the District Judge. The District Judge dismissed the appeal, and being of opinion that the full amount of the consideration-money was not stated in the deed, directed the District Magistrate to prosecute the petitioner for an offence under s. 34 of Act XVIII of 1869. The District Magistrate accordingly placed the petitioner on his trial, and finding that the full consideration-money indirectly secured by the deed was not truly stated in that document, convicted him of an offence under s. 34 of Act XVIII. of 1869. The petitioner appealed to the District Judge. The appeal was transferred for trial to the District Judge of Benares by whom the Magistrate's order was affirmed. Thereupon the petitioner preferred the present application.

Babu *Sital Prasad Chatterji*, for the petitioner.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

STRAIGHT, J.—The applicant in this case was convicted by the officiating Magistrate and Collector of Gorakhpur of an offence against s. 34 of Act XVIII. of 1869, for not having truly set forth in a sale-deed executed by him to one Amirta the full amount of consideration-money thereby secured, and was ordered to pay a fine of Rs. 135. He appealed to the Sessions Judge of Gorakhpur, but under the order of this Court his appeal was transferred for hearing to the Judge of Benares, who on the 3rd February,

1880, dismissed it. He now applies to this Court under s. 207 of the Criminal Procedure Code upon the following grounds:—(i) That a conviction could not properly be had in the absence of the original principal document; (ii) That the officiating Magistrate and Collector, being by s. 43 of Act XVIII the actual prosecutor of the case, should not have sat to hear and dispose of it in his judicial capacity.

Dealing with this latter objection first, I am of opinion it is a well-founded one and should prevail. Both the Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecution for offences against those Acts, except where the Local Government generally, or he himself specially, has authorised some other officer to discharge such duty. The letter of the officiating Judge of Gorakhpur of the 1st September, 1879, and the *rukbar* directing an inquiry under the Stamp Act of 1869 against the present applicant and Amirta were amply sufficient to justify proceedings. But the officiating Magistrate and Collector should have detailed the case for hearing and disposal to some other qualified Magistrate, more especially when it was almost impossible for him to prevent his mind being influenced by the very forcible language in which the officiating Judge had couched his letter of 1st September, 1879. The conviction must be quashed and a new trial had before such Magistrate, as the now officiating Judge of Gorakhpur may select.

(The learned Judge then proceeded to deal with the first point urged on behalf of the applicant.)

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spinkie.

JAGAT NARAIN AND ANOTHER (DEFENDANTS) v. QUTUB HUSAIN
(PLAINTIFF.)*

Mortgage—Contribution.

In March, 1864, the owner of an estate mortgaged it as security for the payment of certain moneys. Subsequently portions of such estate were purchased by the plaintiff and the defendants at an execution-sale. Subsequently again the mort-

* Second Appeal, No. 1172 of 1879, from a decree of H. Lushington, Esq., Judge of Allahabad, dated the 19th April, 1879, affirming a decree of Rai Makhaz Tal, Subordinate Judge of Allahabad, dated the 19th July, 1878.

1880

EMPEROR OF
INDIA
BY
DEPUTY NAIB
DAR LAD.

1880

April 12.