

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Wilson, Mr. Justice Tottenham, and Mr. Justice Field.

OPENDRO NATH GHOSE (ACCUSED) *v.* DUKHINI BEWA
(COMPLAINANT).^{*}

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January 7.

Criminal Procedure Code, Act X of 1822, s. 435—Further enquiry—Inferior Criminal Court—Magistrate of the District, Powers of.

A Magistrate of a District is competent, under s. 435 of the Criminal Procedure Code, to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own District.

THIS was a reference to the High Court under the following circumstances :—

One Opendro Nath Ghose was found at night in the house of of the complainant, and was sent up for trial by the police under s. 451 of the Penal Code. The Joint Magistrate who tried the case, after examining the complainant and one other witness, discharged the accused, on the ground that there was no evidence of any criminal attempt. The complainant applied to the District Magistrate for a further enquiry into the case, and the District Magistrate directed a further enquiry by a Deputy Magistrate. Pending this further enquiry, the accused applied to the Sessions Judge to have the order directing the further enquiry set aside, on, amongst other grounds, the ground that the Joint Magistrate was not subordinate to the District Magistrate for the purpose of Chapter XXXII of the Criminal Procedure Code. The Sessions Judge on this point referred the case under s. 438 of the Criminal Procedure Code to the High Court.

Mr. Justice Prinsep and Mr. Justice Grant, before whom the reference was heard, having regard to the different opinions expressed by the High Courts on this point (for which see the cases referred to in the opinion given on the Reference), referred to a Full Bench the question, whether a Magistrate of a District, acting under s. 435 of the Code of Criminal Procedure, can call for and

^{*} Reference to a Full Bench in Criminal Motion No. 214 of 1885, against the order of the District Magistrate of Howrah, W. H. Grimley, Esq., dated the 27th March 1885.

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examine the proceedings of a Magistrate of the first class, exercising jurisdiction in the same district as an inferior Court, by reason of such Magistrate being subordinate to him under s. 12.

The *Deputy Legal Remembrancer* (Mr. Kilby), for the Crown.—The plain ordinary meaning of the words “inferior Criminal Court” in s. 435 is perfectly clear. That being so, it is not allowable by comparing the words by which the plain intention of the Legislature is now expressed with words in a repealed Act, to arrive at a meaning contrary to that clearly expressed in the Act now in force.

Inferior includes subordinate; a subordinate Court must be inferior to the Court to which it is subordinate, as it can neither be equal (*i.e.*, co-ordinate) or superior to that Court.

According to the construction put upon “inferior Court” in *Nobin Kristo Mookerjee v. Russichloll Laha* (1), that a Court is only inferior to another when it is subject to its appellate jurisdiction, the Court of a Magistrate of the third class in s. 6 of the Criminal Procedure Code is not inferior to the Court of Sessions, as appeals do not lie from it to the Judge, but to the District Magistrate; but the Court of a District Magistrate is inferior.

By the use of the more comprehensive word “inferior” in s. 435 of the present Code in place of the word “subordinate” in s. 295 of the previous Code, the necessity for inserting the last paragraph of the latter section in the new Act was done away with, and this was probably why the one word was changed for the other. See ss. 17—195. But whatever might have been the reason, it cannot be inferred, solely from the substitution of the one word for the other, that the Legislature intended to limit the authority of District Magistrates to Magistrates of the second and third class, and the authority of Sessions Judges to Magistrates of the first class. Any such rule being of the greatest administrative importance would not have been left to inference but would have been clearly expressed.

No one appeared on the other side.

The opinion of the Full Bench was as follows:—

(1) I. L. R., 10 Cal., 268.

GARTH, C.J., MITTER, WILSON and TOTTENHAM, JJ.—The question submitted to us for determination is whether a Magistrate of the first class is a Criminal Court inferior to the Magistrate of the district, within the meaning of s. 435 of the Code.

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The learned Judges who have made this reference to a Full Bench were induced to do so, because of the importance of the question, and because the existing rulings of this Court in *Nobin Kristo Mookerjee v. Russick Lall Laha* (1), and in *Queen Empress v. Nowab Jan* (2) followed as they were by the High Court of Allahabad in the case of *Jhinguri v. Buchu* (3), by a single Judge, were found to be in conflict with later rulings on the same point by the High Courts of Madras and Bombay as reported in the cases of *In the matter of the petition of Pulmanabha* (4), and *Queen Empress v. Pirya Gopal* (5). The ruling by the High Court of Madras was that of a Full Bench.

And it appears that in a more recent case at Allahabad—*Queen Empress v. Laskari* (6)—a Full Bench of the High Court have practically dissented from the ruling of this Court by holding that the Magistrate of a District is competent to call for and deal with the record of a Magistrate of the first class under ss. 435 and 437 of the Code.

We think that the question should be answered in the affirmative.

The supposed difficulty lies in assigning a meaning to the word "inferior" in s. 435. The learned Judges who decided the case of *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) thought it necessary to attach a limited or technical meaning to the word, and held that the words "inferior Criminal Court" must be construed to mean inferior so far as regards the particular matter in respect of which the superior Court is asked to exercise its revisional jurisdiction. They were accordingly of opinion that in cases tried by a Magistrate of the first class, whose jurisdiction to try is equal to that of the Magistrate of the district to whom no appeal would lie, the former officer is not inferior to the latter, although he is subordinate to him: because they considered the term "inferior" to refer only to

(1) I. L. R., 10 Cal., 268.

(4) I. L. R., 8 Mad., 18.

(2) I. L. R., 10 Cal., 551.

(5) I. L. R., 9 Bom., 100.

(3) I. L. R., 7 All., 134.

(6) I. L. R., 7 All., 853.

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judicial authority in respect of the particular case of which revision is sought.

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It appears to us, however, unnecessary to devise any special or technical meaning for the word "inferior" in s. 435, unless we find that its ordinary meaning is not applicable. And we see no reason for holding that it is not. If we take the ordinary meaning of the word, there can be no question but that all subordinates are inferior to the authority to which they are subordinate; although inferiors are not necessary subordinates. So within the territorial jurisdiction of a High Court, all other Courts are inferior to it: in a Sessions Division the Sessions Court is superior to all other local Criminal Courts, and all such other Courts are inferior to it: and in a District all other Magistrates are by s. 17 of the Code subordinate to the Magistrate of the District, and consequently inferior to him: and inferior as much for the purpose of s. 435 as in any other respect.

The High Court can under that section call for the record of any proceeding before any Criminal Court within the local limits of its jurisdiction; a Court of Session may do so as regards every other Criminal Court in the Sessions Division; and the Magistrate of the District can do the same as regards every other Magistrate's Court within his District. We entirely agree with the learned Judges who decided the case of *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) in the opinion, that the word "inferior" in s. 435 was advisedly substituted for the word "subordinate" used in the corresponding s. 295 of the Code of 1872. But we think that the true reason for this substitution must be that which is suggested by Mr. Justice Straight in the Full Bench case of *Queen Empress v Laskari* (2). It seems to us, as to the High Court of Allahabad, that the reason for this change in the word used was to meet the rulings that a District Magistrate is not subordinate to the Sessions Judge, and to provide that, nevertheless, the revisional authority of the latter over the former should remain unquestionable. We cannot suppose that there was any intention on the part of the Legislature to suggest that Courts *subordinate* to the Magistrate of the District are not also *inferior* to him.

(1) I. L. R., 10 Calc., 268.

(2) I. L. R., 7 All., 853.

We, therefore, in reply to the question referred to the Full Bench, state our opinion that a Magistrate of the District is competent under s. 435 to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own District.

FIELD, J.—When the case of *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) was before Mr. Justice McDonell and myself the question now referred to a Full Bench was a new one, and had not been discussed or considered by the other High Courts (so far as the reports show), or by other Judges of this Court. I gave in the judgment in that case reasons which then appeared to me to support the view there taken. Since the appearance of that judgment, the question has been fully considered and discussed by the Madras and Bombay High Courts, who have taken a different view from that acted upon in the case of *Nobin Kristo Mookerjee v. Russick Lall Laha*. My colleagues adopt the view taken by the Madras and Bombay High Courts. Under these circumstances, although I cannot say that my mind is wholly free from doubt, I think I ought to defer to the large majority who are in favor of a construction different from that which I originally accepted.

I therefore concur in holding that a Magistrate of a District can, under s. 435 of the Code of Criminal Procedure, call for and examine the proceedings of a Magistrate of the first class.

T. A. P.

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Wilson.

DANMULL (PLAINTIFF) *v.* BRITISH INDIA STEAM NAVIGATION COMPANY (DEFENDANTS.) *

Limitation Act, 1877, Sec. II, Arts. 30, 115—Bill of Lading—Contract, Breach of, for non-delivery—Onus of proof of loss of goods. 1886
January 12

Where a plaintiff brings a suit for breach of contract for non-delivery of goods under a bill of lading, it is not open to the defendants, after having

*Small Cause Court Reference in case No. 6 of 1885, made by H. Millett, Esq., Chief Judge of the Court of Small Causes, Calcutta, dated the 22nd of May 1885.