

1885

Subordinate Judge of Moradabad. The costs will be costs in the cause.

AFZAL-UN-  
NISSA  
v.  
AL AM.

OLDFIELD, J.—I am of the same opinion.

*Cause remanded.*

## CRIMINAL REVISIONAL.

*Before Mr. Justice Brounser.*

QUEEN-EMPRESS v. GANGA RAM AND ANOTHER.

*Act XLV of 1860 (Penal Code) s. 211—Prosecution for making a false charge—  
Opportunity to accused to prove the truth of charge.*

A complaint of offences under ss. 323 and 379 of the Penal Code, was referred to the police for inquiry. The police reported that the charge was a false one, and thereupon the Magistrate of the District passed an order, under s. 195 of the Criminal Procedure Code, directing the prosecution of the complainants for making a false charge, under s. 211 of the Penal Code.

*Held* that the order under s. 195 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. *The Government v. Karimulal* (1) referred to.

In this case the petitioners, Ganga Ram and Durga, prosecuted two persons, named Chidda and Chandan, for theft, under s. 379, and assault, under s. 323 of the Penal Code. The complaint was referred to the police for inquiry. The police reported that the charge was a false one, and thereupon the Joint Magistrate of Aligarh dismissed it, ordered the prosecution of the petitioners under s. 211 of the Penal Code for making a false charge, and sent the case to the Magistrate of the District, who, on the 25th July, 1885, passed an order under s. 195 of the Criminal Procedure Code, referring the case to the Deputy Magistrate for disposal. An application for revision of this order was made to the District Judge of Aligarh, upon grounds which it is not necessary to set forth. The Judge dismissed the application by an order dated the 29th August, 1885. The petitioner applied to the High Court to revise this order on the following grounds:—

“The sanction for the prosecution should not have been given without giving the complainants an opportunity of proving the truth of their case, which was merely thrown out on the report of the police.

“It was for the Magistrate alone to ascertain whether the statements of the complainants were credible or not.”

Babu *Ram Das Chakarbatī*, for the petitioners.

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

BRODHURST, J.—One of the grounds for revision is, that sanction under s. 195 of the Criminal Procedure Code should not have been given until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police.

This objection is, I think, valid, and it is supported by the judgment of Garth, C.J., and Field, J., in *The Government v. Karimdad* (1). Under the circumstances above referred to, I set aside the Magistrate's order of the 25th July, 1885.

## PRIVY COUNCIL.

MUHAMMAD ABDŪL MAJID (DEFENDANT) v. FATIMA BIBI (PLAINTIFF).

[On appeal from the High Court for the North-Western Provinces.]

*Muhammadan law—Will—Disposition of estate among sharers—Words of duration of estate not denoting more than interest for life—Construction—Restriction upon alienation.*

Words such as “always” and “for ever,” used in an instrument disposing of property, do not in themselves denote an extension of interest beyond the life of the person named as taking, their meaning being satisfied by the interest being for life.

An instrument in the nature of a will, made by a Muhammadan, gave shares in his property to his surviving widow, son, and grand-children, and devoted a share to charitable purposes. It directed that his son “should continue in possession and occupancy of the full sixteen annas of all the estates..... All the matters of management in connection with this estate should necessarily and obligatorily rest ‘always’ and ‘for ever’ in his hands.” It also, with the express object of keeping the property in the family, attempted to restrict alienation by the sharers. There were other provisions to the same effect, in regard to the management by his son, who retained it till his death. The defendant, who was a son of that son, having claimed to retain possession of the property, in order to carry out the provisions of the will: *held* that, on its true construction, the plaintiff, a sharer under it, was entitled to the full

\* *Present*.—SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

(1) I. L. R., 6 Cal., 496.

1885

QUEEN-  
EMPRESE  
v.  
GANGA RAM.

P.C.\*  
1885  
June 23  
and 24.