

1885 not of very great gravity, is not without a certain amount of  
 JUGGISH- seriousness. We think that the reasons stated by the Magistrate  
 WAR in his judgment were quite sufficient to show that such a sentence  
 DASS was, under the circumstances, desirable. We, therefore, set aside  
 v. the conviction under s. 341, and for it substitute a conviction  
 KOYLASH under s. 426, and we direct that the prisoners be imprisoned  
 CHUNDER for the remainder of the sentence not yet suffered by them.  
 CHATTERJEE

(The remainder of the judgment was not material to this report).

*Conviction altered, but sentence confirmed.*

### FULL BENCH REFERENCE.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Prinsop, Mr. Justice Wilson, Mr. Justice Field and Mr. Justice O'Keefe.*

1885  
 September 4,

IN THE MATTER OF THE PETITION OF KRISHNANUND DAS.  
 KRISHNANUND DAS v. HARI BERA.\*

*Sanction to prosecution—Criminal Procedure Code (Act X of 1882), s. 195—  
 Notice to accused.*

No notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.

THE petitioner, Krishnanund Das, on the 30th December 1884, lodged a complaint in the Court of the Deputy Magistrate of Balasore against Hari Bera and others, for forcibly cutting and taking away the paddy from his field. The case was tried on the 19th February 1885, when the accused were discharged because, in the opinion of the Magistrate, the evidence for the prosecution was "at the best but suspicious, and the oral testimony was untrustworthy."

On the 20th February 1885 an application was made to the Deputy Magistrate by Hari Bera for sanction to prosecute Krishnanund under s. 211 of the Penal Code, which sanction was granted without any notice being given to Krishnanund.

\* Reference to the Full Bench in Criminal Motion No. 105 of 1885, against the order of Baboo Kali Podo Mookerji, Deputy Magistrate of Balasore, dated the 20th February 1885.

On motion made to the High Court to have the order granting the sanction set aside on the ground (among others) that no such notice had been given, that Court granted a rule to show cause why the order should not be set aside. The following order was made eventually on 24th April 1885 by the Court (PRINSEP and PIGOT, JJ.) referring the case to a Full Bench :—

1885  
 KRISHNA-  
 NUND DAS  
 v.  
 HARI BEHA.

“This matter arises out of an order passed under s. 195 of the Code of Criminal Procedure, giving sanction to a prosecution under s. 211 of the Penal Code, against the petitioner for having made a false charge.

“In his judgment dismissing that charge the Magistrate stated: ‘I shall be quite prepared to sanction the prosecution of the complainant under s. 211 of the Penal Code, if accused wishes to prosecute him.’

“On the following day application was made for sanction to prosecute the complainant in that case, which was at once granted.

“On motion made to a Division Bench (FIELD and BEVERLEY, JJ.), a rule was granted to show cause why the proceedings of the Deputy Magistrate sanctioning the prosecution of the petitioner under s. 211 of the Penal Code should not be set aside, on the ground that before granting sanction to prosecute under s. 211 the Deputy Magistrate did not serve the petitioner with notice and give him an opportunity to be heard.

“After hearing petitioner’s pleader in favour of the rule, and considering the case of *Abbilakh Singh v. Khub Lal* (1), we are not prepared to agree in the view therein expressed regarding the proceedings which are necessary before sanction, under s. 195 of the Code of Criminal Procedure, can be given to a prosecution for an offence as therein specified.

“We accordingly direct that this case be referred to a Full Bench of this Court in order that it may determine whether in a case, such as is described in s. 195 of the Code of Criminal Procedure, in which sanction to prosecute was not given immediately upon termination of the proceedings in the course of which the offence is alleged to have been committed, it is necessary before sanction be given that notice should be given to the person

(1) I. L. R., 10 Calc., 1100.

1885 concerned so as to give him an opportunity of appearing and  
being heard."

KRISHNA-  
NUND DAS  
v.  
HARI BEEA.

The opinion of the Full Bench was as follows :—

In our opinion no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Code of Criminal Procedure, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.

## APPELLATE CIVIL.

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Ghose.*

PRAMADA DAS (PLAINTIFF) v. LAKSHI NARAIN MITTER  
AND OTHERS (DEFENDANTS). °

1885  
June 12.

*Civil Procedure Code (XIV of 1882), s. 43—Res judicata—Suit for maintenance and suit for a share of the inheritance, distinguished—Hindu Law, Bengal School—Election, Doctrine of—Indian Succession Act (X of 1865), s. 172, except.*

A testator bequeathed all his property to his nephew, in which he included the share of his brother's widow in the ancestral property; but at the same time made a suitable provision for her maintenance and worship. The widow at first sued for and obtained the allowance allotted to her under the will, and afterwards brought a suit for a share in the ancestral property.

*Held*, that, although having regard to the doctrine of election (Succession-Act, s. 172) the widow was precluded from again bringing a suit for a share of the ancestral property, it could not be said that the suit was barred under the provisions of s. 43 of the Code of Civil Procedure, inasmuch as the two claims were distinct and indeed inconsistent, and did not arise out of the same cause of action.

THIS was a suit by a Hindu widow for her husband's share of the ancestral property. From the evidence, it appeared that she had on a former occasion sued for and obtained an allowance for maintenance under the following circumstances: one Brindabun Chunder had in the year 1871 made a will whereby he gave away to

° Appeal from Appellate Decree No. 2714 of 1883, against the decree of J. P. Grant, Esq., Judge of Hooghly, dated the 25th of June 1883, reversing the decree of Baboo Bhuban Chunder Mukherji, Subordinate Judge of that District, dated the 24th of April 1882.