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revenue, was an advance made for such necessary purposes as would have enabled the Hindu widow to have made a mortgage of the ancestral property, which would not have been limited to her own interest, and on behalf of the plaintiff the decision in *Ramcoomar Mitter* v. *Ichamoyi Dasi* (1) was relied on. If the decision in that case is good law, the plaintiff would be entitled to a decree. On the other side the decision in *Ramasami Mudaliar* v. *Sellattammal* (2) and the decision of this Court in *Shiamanand* v. *Har Lal* (3) have been relied on.

It appears to us that the case presents no difficulty. The plaintiff, if he had chosen, could, before lending his money, have obtained from the Hindu widow the security of the ancestral property by obtaining a mortgage. He did not choose to demand a mortgage before advancing his money; he accepted the personal liability of the widow. He now seeks to get a decree under which he can bring to sale the ancestral property in the hands of the reversioners. He seeks a decree which would bind that property. In other words, he is seeking a decree in this suit, there being no assets of the widow in the hands of the reversioners, which he could only have obtained if he had had a valid charge on the ancestral property. The plain answer to his suit is that the plaintiff lent his money on the personal liability of the widow, and, the defendants reversioners having no assets of the widow in their hands, the plaintiff cannot get a decree against them. We dismiss this appeal with costs.

Appeal dismissed.

CRIMINAL MISCELLANEOUS.

1897 *February* 12.

Before Sir John Edge, Kt., Chief Justice.

IN THE MATTER OF THE PETITION OF LALJI AND OTHERS.

Criminal Procedure Code, section 526—Transfer—Magistrate, powers of—View of the scene of the occurrence by a Magistrate trying a criminal case.

It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the

(1) I. L. R., 6 Calc. 36. (2) I. L. R., 4 Mad. 375.
(3) I. L. R., 18 All., 471.

occurrence in order to understand fully the bearing of the evidence given in Court. But if he does so he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other.

THIS was an application under section 526 of the Code of Criminal Procedure for the transfer of a criminal case based chiefly on the ground that the trying Magistrate had personally inspected the scene of the occurrence out of which the case arose, and was said to have made inquiries relative to the subject of the complaint from persons present at the time of the inspection.

The facts of the case sufficiently appear from the order of Edge, C.J.

Babu *Jogindro Nath Chaudhri* and Babu *Satish Chandar Banerji* for the applicants.

The Public Prosecutor (Mr. *E. Chamier*) for the Crown.

EDGE, C.J.—This is an application under section 526 of the Code of Criminal Procedure to transfer a case from the Court of one Magistrate to the Court of some other Magistrate. It is said in the application that, after examining some of the witnesses for the prosecution, the Deputy Magistrate, before whom the case was, personally inspected the ground and made inquiries relative to the subject of the complaint from persons present at the time of the inspection: also that he expressed a wish that some of the accused should compromise the case. In support of the application the decision in *Queen-Empress* v *Manikam* (1) and *Hari Kishore Mitra* v. *Abdul Baki Miah* (2) have been relied on. The Magistrate has stated that he did inspect the place. He has denied that he made any inquiry from any persons except the witnesses in their examination. He has stated that he directed the patwári to prepare a plan.

It appears to me that it never could have been the intention of the Legislature that in a criminal case, in which the evidence was conflicting or was difficult to understand by a person not acquainted with the locality, the Magistrate trying the case should not go and see the locality for himself. It is highly convenient

(1) I. L. R., 19 Mad. 263. (2) I. L. R., 21 Calc. 320.

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that he should adopt such a course, if the evidence is conflicting or if the guilt or innocence of the party depends upon local peculiarities of situation which cannot be understood except by the Magistrate seeing the place himself. When a Magistrate goes to view a place for the purpose of understanding the evidence, he should be careful not to allow any one either side to say anything to him which might prejudice his mind one way or the other. It would be practically impossible in some cases that the Magistrate should be accompanied by each side. Take the case of a dacoity with, let us say, twenty prisoners. It might be one necessary for the Magistrate to see the village in order rightly to appreciate the evidence for the prosecution or the evidence for the defence. It surely could not be the law that the Magistrate should not go and see the village in order to understand the case unless he was accompanied by some one for the Crown and all the twenty dacoits in fetters, they not being represented by any one. In this particular case it appears to me that the Magistrate acted wisely. The question was—Had the shrubs been torn up by the accused, as said by the prosecution, or had they been destroyed by the accumulation of rain, as was said by the defence? It would probably be difficult to decide in such a case, for example, whether six witnesses for the prosecution were to be believed who might say that the shrubs had been destroyed by the accused, or whether six witnesses for the defence were to be believed who might say that an accumulation of rain water had destroyed the shrubs. A Magistrate does not make himself a witness by going to a place and viewing it for the purpose of understanding the evidence, any more than does a Judge in England who goes to view a place, or do jurymen who view a place under an order, make himself or themselves witnesses in the case. It would be seldom that a Magistrate, or a Judge or jury could come to a correct conclusion on conflicting evidence if they did not import into the consideration of the evidence before them, not only common sense, but also common knowledge of what ordinarily passes in life. In this case I do not see that the Magistrate has done anything improper or anything

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to suggest to my mind that a fair and impartial trial will not be had before him. It is very possible that the accused may think that the Magistrate's mind may have been biassed against their case by what he saw on the view. Possibly the view explained to the Magistrate's mind on which side the truth was, and the accused may be under the impression, rightly or wrongly, that the view would support the case for the prosecution and show that the case for the defence was utterly improbable. But the ends of justice are that the truth should be arrived at, and should be arrived at whether an accused person objects to the truth being ascertained or not. I see nothing here to bring this case within s. 526 of the Code of Criminal Procedure, and I dismiss this application.

Application dismissed.

APPELLATE CRIMINAL.

1897
February 12.

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.**

QUEEN-EMPRESS *v.* NAND KISHORE.

Act No. XLV of 1860 *(Indian Penal Code), section* 218—*Offence—Public servant framing an incorrect record to save himself from legal punishment.*

A public servant who does that which, if done to save another from legal punishment, would bring the public servant within section 218 of the Indian Penal Code, has equally committed the offence punishable under section 218 if the person whom he intends to save from legal punishment is himself. *Queen-Empress* v. *Gauri Shankar* (1) *quoad hoc* overruled. *Queen Empress* v. *Girdhari Lal* (2) referred to.

THE facts of this case are as follows:—

On May 29th, 1896, Nand Kishore, who was a patwári, was summoned as a witness in a rent case before a Deputy Collector. He did not bring with him, according to the usual practice in such cases, his copy of the settlement record. The Deputy Collector took his reply in respect of this omission, and he stated that he had not brought it because he had come to Court straight from the tahsíl, where he had been engaged in some account business,

* Criminal Appeal, No. 36 of 1897.

(1) I. L. R., 6 All. 42. (2) I. L. R., 8 All. 653.