

appear to have been considered by either of the Lower Courts, and clearly does not decide the question whether there was a trust.

The learned Judges of the High Court appear to their Lordships to have been of opinion that assuming that there was a will, and it was not revoked, Bacheha Tewari and Ram Kishen could appropriate the trust property to their own private uses, and that they did so and held adversely to the trust title and themselves acquired a title. At the end of their judgment they say: "We have not thought it necessary and indeed the points were not argued at any length before us to consider whether the alleged will of 1842 ever was revoked." Their Lordships can only understand their thinking thus by supposing they were of opinion that although there might be a trust, Bacheha Tewari and Ram Kishen might acquire a title by having possession of the property and appropriating it to their own use. The learned Judges appear not to have had in their minds the statement of the law in sections 63 and 64 of the Indian Trusts Act, 1882. They have refrained from considering the fundamental question in the case, whether there was a trust, but having, though by an erroneous process, arrived at the right conclusion and dismissed the appeal before them, their Lordships will humbly advise Her Majesty to affirm their decree and to dismiss this appeal.

Appeal dismissed.

Solicitors for the appellant—Messrs. T. L. Wilson & Co.

1896

BITTO
KUNWAR
v.
KESHO
PRASAD
MISHR.

1897
February 9.

Before Sir John Edge, Kt., Chief Justice.

IN THE MATTER OF THE PETITION OF GUDAR SINGH.*

*Criminal Procedure Code, sections 110, 117—Security for good behaviour—
Transfer—Criminal Procedure Code, section 526.*

Where a Magistrate instituting proceedings against a person under section 110 of the Code of Criminal Procedure has "acted" within the meaning of section 117 of the Code, no order can be made subsequently under section 526 of the Code transferring the case from his Court.

* Criminal Miscellaneous No. 8 of 1897.

1897

IN THE MAT-
TER OF THE
PETITION OF
GUDAR
SINGH.

PROCEEDINGS under section 110 of the Code of Criminal Procedure had been started against Gudar Singh and some others in the Court of a Magistrate of the first class exercising jurisdiction within the Meerut district. When the case came on for hearing two of the persons against whom the said proceedings were taken admitted the facts alleged against them and offered to find security. Thereupon, although no evidence had up to that time been recorded against Gudar Singh, the Magistrate, according to Gudar Singh's affidavit, informed him that unless he also admitted his guilt and furnished the necessary securities he would be dealt with severely and would be sent to jail. Upon this Gudar Singh applied to the High Court for the transfer of the proceedings pending against him to the Court of some other Magistrate.

Mr. *W. Wallach* for the applicant.

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

The following order was passed:—

EDGE, C.J.—A Magistrate of the first class having taken proceedings under section 110 of the Code of Criminal Procedure against Gudar Singh and others, is said, in the course of those proceedings and before evidence had been taken, to have stated in Court that unless Gudar Singh admitted his guilt and furnished the necessary security, he would be dealt with severely and would be sent to jail. I have taken that statement from the third paragraph of an affidavit which was sworn by Gudar Singh, and which has been filed in support of an application to transfer the case to some other Magistrate. No explanation has been offered, and no denial made that such words were used, on the part of the Magistrate concerned. Under these circumstances, there having been an opportunity for the making of an explanation or a denial, I am forced to conclude that the Magistrate concerned did threaten Gudar Singh that he would be dealt with severely and sent to jail if he did not admit his guilt and furnish security. No man charged with any criminal offence or *quasi*-criminal offence is bound or is under any obligation to make any admission injurious to his own interests. It is needless to say that no judicial officer should

attempt to compel any accused person to make any admission detrimental to his interests. As a matter of fact the procedure invariably in England is to inform the accused that he may make a statement, but that any statement he may make may be given in evidence against him. Having regard to section 117 of the Code of Criminal Procedure, and to the fact that the Magistrate concerned has 'acted' within the meaning of that section, it appears to me that I have got no power to make an order of transfer, and that also is the opinion of other Judges of this Court whom I have consulted in the matter. What I have power to do is to quash the proceedings, so far as Gudar Singh is concerned, and I accordingly make an order quashing the proceedings in question so far as Gudar Singh is concerned. This order will not prevent fresh proceedings being taken against Gudar Singh by any Magistrate other than the Magistrate referred to in the affidavit of Gudar Singh.

1897

IN THE MAT-
TER OF THE
PETITION OF
GUDAR
SINGH.

FULL BENCH.

1897

February 11.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox and Mr. Justice Burkitt.

REFERENCE UNDER SECTION 46 OF ACT NO. 1 OF 1879.*

Act No. 1 of 1879 (Indian Stamp Act) Sch. I, Art. 22—Stamp—Copy of order of a Municipal Board certified by the Secretary—Public Officer—Act No. 1 of 1872 (Indian Evidence Act), sections 74, 76, 78.

Held that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within article 22 of the first schedule to the Indian Stamp Act, 1879, and required to be stamped.

The Secretary of a Municipal Board is a public officer within the meaning of article 22 of the first schedule to the Indian Stamp Act, 1879, for the purposes indicated therein.

THIS was a reference made under section 46 of the Indian Stamp Act, 1879, by the Board of Revenue for the North-Western Provinces of the question whether a copy of an order passed by a Municipal Board, such copy being certified by the Secretary of the

* Miscellaneous No. 131 of 1896.