

because it is not said in the plaint that the land on which the shops stood was specially dedicated to the mosque there was no dedication of the land.

We agree with the judgment of the High Court of Calcutta in *Dhurrum Singh v. Kissen Singh* (1) that section 14 of Act No. XX of 1863 is generally applicable to all religious endowments of this nature. In *Sheoratan Kunwari v. Ram Pargash* (2) it was decided by this Court that it was not essential to bringing a suit under section 14 of Act No. XX of 1863 that the endowment should ever have been taken under the Board of Revenue.

As to the other point, the defendant, although he appears to have entered upon the mutawalliship without election or specific appointment does not pretend that he is a trespasser. He does not say that he is not the *mutawalli* of the mosque. We find him in possession professing to be the *mutawalli* of the mosque, and as such section 14 of Act No. XX of 1863 would apply to him.

The suit was properly brought in the Court of the District Judge, who alone had jurisdiction. We allow this appeal with costs. We set aside the order of the Court below with costs and direct the District Judge to receive the plaint and to enter it on the file of pending suits in his Court and to proceed with the suit according to law. The plaint, which is at present on the file in this Court, will be returned to the counsel for the appellants that it may be presented to the District Judge.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blennerhassett,
QUEEN-EMPRESS v RAM SUNDAR AND ANOTHER.

Criminal Procedure Code, section 188—Act No. XLV of 1860, section 363—Kidnapping from lawful guardianship—Offence committed outside British territory—Jurisdiction—Certificate of Political Agent.

The absence of the certificate of the Political Agent required by section 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply.

(1) I. L. R., 7 Cal., 767.

(2) I. L. R., 18 All., 227.

1896

MUHAMMAD
SIRAJ-UL-
HAQ
v.
IMAM-UD-
DIN.

1896

July 30th.

1896

QUEEN-
EMPERESS
v.
RAM SUNDAR.

Seemle that the offence of kidnapping from lawful guardianship punishable under section 363 of Act No. XLV of 1860 is not a continuing offence.

THE facts of this case are as follows:—

The child of a British Indian subject residing in Nepal, but close to the frontier, was missed, and was eventually found in company with one Ram Sundar and a woman, Musammat Anupa, at Basti in the Gorakhpur district.

The case was inquired into by a Magistrate at Basti, but without the certificate required by section 188 of the Code of Criminal Procedure having been obtained from the Political Agent in Nepal.

According to the Magistrate who inquired into the case there was no direct evidence as to whether the kidnapping actually took place in Nepal territory, though the presumption was that it occurred in Nepal.

The Magistrate committed Ram Sundar and Anupa to the Court of Session at Gorakhpur, and upon this commitment a reference was made to the High Court by the Joint Sessions Judge asking that the commitment should be quashed as being bad in law owing to the absence of the Political Agent's certificate as mentioned above.

The Public Prosecutor (for whom Mr. *A. E. Ryves*) for the Crown.

EDGE, C. J., and BLENNERHASSETT, J.—The offence of kidnapping for which Ram Sundar and Musammat Anupa have been committed for trial took place in Nepal. The charge was inquired into by a Magistrate in British India and the commitment for an offence under section 363 of the Indian Penal Code was made, but no certificate of the Political Agent in Nepal, which is required by the provisions of section 188 of the Code of Criminal Procedure as a condition precedent to the hearing of the charge in British India, was produced or is shown to have been issued. The proviso to section 188 is prohibitive, and under the circumstances we hold that the Magistrate had no jurisdiction. We quash the commitment.