

1893

SHOME
SHANKAR
RAJENDRA
VARERE
v
RAJESAR
SWAMI
JANGAM.

of his father's collateral kinsmen." (See Mitakshara, Chapter I, section XII, §§ 30 and 31).

For the above reasons we are of opinion that the plaintiff appellant has been rightly held not to be the heir of Raja Lingraj, deceased, and his suit has been properly dismissed. We dismiss the appeal with costs.

Appeal dismissed.

1898
August 22.

CRIMINAL REVISIONAL.

Before Mr. Justice Banerji.

QUEEN-EMPRESS v. BABU LAL.*

Criminal Procedure Code, section 285—Assessors—Effect of incapacity of assessors to understand the proceedings.

Three assessors were chosen to assist the Court at a trial. Before the case commenced it was discovered that one of the assessors was deaf, and his presence was accordingly dispensed with. The trial proceeded with two assessors present; but after the Public Prosecutor had closed his case, it was discovered that one of the remaining assessors was so deaf as to be incapable of understanding the proceedings. Under these circumstances it was held that the trial having being held with practically only one assessor, the proceedings ought to be set aside and a new trial ordered.

THE record of this case was submitted to the High Court by the Officiating Sessions Judge of Azamgarh for such orders as the Court might think fit to pass. There was also an appeal to the High Court by the convict. The facts which led to the case being referred are stated in the order of the High Court, which was as follows :—

BANERJI, J.—This case has been reported to this Court by the learned Sessions Judge of Azamgarh. It appears that before the trial began it was discovered that, of the three assessors who attended, one was deaf, so that the trial began with two assessors. It was discovered, after the Public Prosecutor had closed his case, that another assessor was so deaf as to be incapable of understanding the proceedings. The learned Judge, however, proceeded with the trial, being of opinion that by the analogy

* Criminal Miscellaneous No. 86 of 1898.

of section 285 of the Code of Criminal Procedure the trial would be a valid one, one assessor having been present throughout and having understood the proceedings. I am unable to agree with the learned Sessions Judge. Section 285 contemplates the case of a trial which had commenced with the aid of two or more assessors, who at the commencement of the trial were capable of acting as assessors. Such was not the case here. The assessor who has been discovered to be deaf and incapable of understanding the proceedings was not a fit person to be selected as an assessor; therefore the trial was really held with the help of one assessor only. Section 263 requires that all trials before a Court of Session should be either by jury or with the aid of assessors, and under section 284 two or more assessors should be chosen to aid the Judge. Where, as in this case, the trial was held with the aid of only one assessor who was capable of acting as such, the Court holding the trial was not properly constituted, and all the proceedings were null and void. The same view appears to have been taken by the Madras High Court—see the case cited at p. 270 of Henderson's edition of the Code of Criminal Procedure, 1898. I set aside the proceedings held by the learned Sessions Judge of Azamgarh, and direct that the accused be tried again with the aid of assessors chosen according to law.

1898

 QUEEN-
EMRESS
v.
BABU LAL.

REVISIONAL CRIMINAL.

1898.

August 24.

Before Mr. Justice Banerji.

QUEEN-EMRESS v. MUTASADDI LAL.*

Criminal Procedure Code, sections 110, 119—Security for good behaviour—Power to order further inquiry—Accused person—Criminal Procedure Code, section 437.

Held that a person against whom proceedings under Chapter VIII of the Code of Criminal Procedure are being taken is "an accused person" within the meaning of section 437 of the Code. Queen-Emress v. Mona Puna (1) and Thaja Singh v. Queen-Emress (2) followed.

 * Criminal Revision No. 441 of 1898.

(1) (1892) I. L. R. 16 Bom., 661.

(2) (1896) I. L. R. 23 Calc., 498.