

1902

February 10.*Before Sir John Stanley, Knight, Chief Justice.*

EMPEROR v. KALI CHARAN AND OTHERS.\*

*Criminal Procedure Code, section 188—Offence committed outside British India by a Native Indian subject of His Majesty—Certificate of Political Agent not obtained before making inquiry.*

Where an inquiry into an offence to which section 188 of the Code of Criminal Procedure was applicable was commenced without the certificate provided for by that section having been obtained, it was held that the proceedings were void, and that the subsequent commitment to the Court of Session must be quashed, notwithstanding that the necessary certificate was in fact granted some days before the commitment was made, though at the time of the commitment being made it had not come into the hands of the Committing Magistrate.

In this case certain persons, Native Indian subjects of His Majesty, and residents of a village in the Basti district, were charged before a first class Magistrate of that district with the offence of dacoity, alleged to have been committed by them in Nepal. At the time when the inquiry before the Magistrate commenced no certificate, such as is required by section 188 of the Code of Criminal Procedure, had been obtained. The Magistrate committed the accused to the Court of Session on the 21st of November, 1901, the necessary certificate up to that time apparently not having reached him. At that time, however, the certificate of the Political Agent in Nepal was in existence, having been signed by the Political Agent on the 19th of November. On the commitment coming before the Sessions Judge, he referred the case to the High Court with a view to the commitment being quashed as illegal owing to the absence of the requisite certificate.

The Assistant Government Advocate (Mr. W. K. Porter) in support of the order of the Magistrate.

STANLEY, C.J.—This is a reference by the learned Sessions Judge of Gorakhpur, submitting the record to the High Court with a recommendation that the commitment of the accused Kali Charan Arakh, Behari Arakh, and Girdhari Arakh, who are British subjects, be quashed under section 215 of Act No. V of 1898, on the ground that the same was illegal. The offence with which the accused are charged is alleged to have been committed in Nepal. The Magistrate inquired into the charge without

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\* Criminal Reference No. 43 of 1902.

having the certificate of the Political Agent of Nepal as required by section 188 of the Code of Criminal Procedure. This section provides that no charge as to, among others, an offence committed beyond the limits of British India, or by a British subject in the territories of any Native Prince or Chief in India, shall be enquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is said to have been committed, certifies that, in his opinion, the charge ought to be enquired into in British India. It is admitted that the certificate of the Political Agent in Nepal was not obtained before the commencement of the inquiry by the committing Magistrate, although it was subsequently obtained. It appears to me that under the language of this section the obtaining of such certificate is a preliminary requisite to the holding of an inquiry into such a charge. The alleged offence having been committed without the limits of British India, the section forbids any inquiry until the certificate has been obtained. I think, therefore, that the commitment was illegal, and I declare it to be so and quash the commitment. It will be open, however, to the Magistrate to institute criminal proceedings *de novo* against the accused in accordance with law.

[See in this connection the cases of *Queen-Empress v. Ram Sundar* (1) and *Queen-Empress v. Kathaperumal* (2), in which, however, there was no certificate at all in existence at the time of the commitment being made.—ED.]

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## APPELLATE CIVIL.

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1902  
February 11.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.*  
HAMID ALI AND ANOTHER (PLAINTIFFS) v. MUJAWAR HUSAIN KHAN  
AND ANOTHER (DEFENDANTS).\* \*

*Muhammadian Law—Shias—Waqf—Essentials of a valid waqf according to the Shia law—Illusory dedication.*

One Muhammad Faiyaz Ali Khan, a Muhammadian of the Shia sect, on the 7th of May, 1878, caused to be drawn up an instrument, by which he purported to make a waqf of the whole of his property. This instrument, beyond the

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\* First Appeal No. 2 of 1899 from a decree of J. Denman Esq., District Judge of Allahabad, dated the 19th September, 1898

(1) (1896) I. L. R., 19 All., 109.

(2) (1869) I. L. R., 13 Mad., 423.