

of the Evidence Act provides that the Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or any Court, or Judge, Magistrate, British Consul or Vice-Consul, or Representative of Her Majesty or of the Government of India, was so executed and authenticated. This power of attorney is not executed before or authenticated by any of the persons mentioned in the section, and in order to comply with the provisions of the section, the power of attorney must be executed before or be authenticated by one of those persons. Therefore, I am reluctantly obliged to refuse this application. I have considered it necessary to say these few words in order that the profession might know what the practice is in future to be. The two cases, namely, *Anonymous* case (1) and *In the goods of Macgowan* (2) confirm the view I have taken.

1889
 IN THE
 GOODS OF
 A. J.
 PRIMROSE.

Application refused.

Solicitors for applicant: Messrs. *Sanderson & Co.*

H. T. H.

CRIMINAL MOTION.

Before Mr. Justice Trevelyan and Mr. Justice Banerjee.

IN THE MATTER OF THE PETITION OF ASLU AND OTHERS.

ASLU v. THE QUEEN-EMPRESS.*

Security for keeping the peace—Magistrate of the District—Appellate Court—Criminal Procedure Code (Act X of 1882), ss. 108, 423.

1889
 July 23.

The Magistrate of a District when acting as an Appellate Court is not competent to make an order under s. 106 of the Criminal Procedure Code (Act X of 1882), requiring the appellant to furnish security for keeping the peace.

IN this case the petitioners and one Abdul Wahed Khan were charged before the Assistant Magistrate of Midnapore with rioting under s. 147 of the Penal Code. They were all convicted and sentenced to fines of various amounts, or, in default, to various terms of rigorous imprisonment.

* Criminal Motion No. 291 of 1889, against the order passed by C. Vowell, Esq., District Magistrate of Midnapore, dated the 25th of April 1889, affirming the order passed by Stevenson Moore, Esq., Assistant Magistrate of Midnapore, dated the 18th of March 1889.

(1) Fulton, 72.

(2) Morton, 370.

1889

IN THE
MATTER OF
THE PETI-
TION OF
ASLU
v.
THE QUEEN-
EMPRESS.

Against the convictions and sentences an appeal was preferred to the District Magistrate, who set aside the conviction of Abdul Wahed Khan, but dismissed the appeal of the petitioners. The District Magistrate further considered that, as there was a probability of further breaches of the peace, the petitioners should be bound over to keep the peace, and he accordingly directed that they should each give one surety in the sum of Rs. 100 to keep the peace for one year.

The petitioners then applied to the High Court to exercise its revisional powers and set aside the convictions, sentences, and order upon various grounds, and amongst them, that the order of the District Magistrate directing them to give a surety to keep the peace was illegal.

A rule was issued which now came on to be heard.

Mr. *Dass* and Baboo *Joygopal Ghose*, for the petitioners, in support of the rule.

No one appeared for the Crown,

The judgment of the High Court (TREVELYAN and BANERJEE, JJ.) was as follows:—

This rule must be made absolute. The question raised in this case is whether an Appellate Court affirming a conviction and sentence has power, under s. 106 of the Criminal Procedure Code, to order the appellant to execute a bond for keeping the peace. In the Court below the learned Magistrate seems to have thought that he had power to pass such an order under that section, upon the authority of a Full Bench ruling in the case of *Empress v. Kanta Prosad* (1). But that was a case under the Criminal Procedure Code (Act X of 1872), s. 489, and that section provided that if "the Court or Magistrate by which, or by whom, a person is convicted, or the Court or Magistrate by which, or by whom, the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace, such Court or Magistrate may direct the taking of a bond to keep the peace." Now, the words "or the Court or Magistrate by which, or by whom, the final sentence or order in the case is passed"

(1) I. L. R., 4 All., 212.

have been left out in s. 106 of the present Criminal Procedure Code ; and it is further provided by the last-mentioned section that such Court may, at the time of passing the sentence, order the person convicted to execute a bond. Section 423 of the present Criminal Procedure Code expressly lays down what the powers of an Appellate Court are, and the power to take security for keeping the peace is not mentioned there : and there is no other provision of the law which enacts that the Appellate Court shall have the same powers as the Court of original jurisdiction has ; and that being so, we do not think that, under the provisions of the Criminal Procedure Code (Act X of 1882), the Appellate Court has the power to order a security-bond to be taken ; and we accordingly direct that the order of the District Magistrate, so far as it directs that each of the appellants, except Abdul, do give one surety of one hundred rupees to keep the peace for one year, be set aside.

H. T. H.

*Rule made absolute.**Before v. Justice Trsvelyan and Mr. Justice Beverley.*

NUR MAHOMED (PETITIONER) v. BISMULLA JAN (OPPOSITE-PARTY).*

Criminal Procedure Code (Act X of 1882), s. 488—Evidence Act (Act I of 1872), s. 120—Bastardy proceedings—Order of affiliation—Evidence.

1889
July 9.

Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf.

Upon a summons, charging that the defendant, having sufficient means, had refused to maintain his child by his *nika* wife whom he had subsequently divorced, the Magistrate found that the marriage had not been proved, but that, upon the other evidence adduced, including the similarity of the features and the name of the child with those of the defendant, who did not appear before him during the proceedings, but with whom he stated that he was well acquainted, the child was the illegitimate child of the defendant. He accordingly made an order for maintenance under the section.

Held, that, under the circumstances, he was wrong in taking into account the similarity of the names and the features of the child and the defendant,

* Criminal Motion No. 270 of 1889, against the order passed by Syed Abdul Jubber, Presidency Magistrate of Calcutta, Northern Division, dated the 3rd of June 1889.