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by the ruling in the Full Bench case referred to, but in my opinion even assuming the court to be a Civil Court, its powers in cases like the present are confined to powers conferred on it by section 195. In my opinion the learned District Judge had no jurisdiction to make the order in the present case. In any event after the parties had compromised, I hardly think it was a case for sanction. I therefore allow this application and set aside the order of the District Judge, dated the 20th January, 1911.

Application allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piddall.

EMPIEROR v. KRISHNA NATH TIWARI.*

Criminal Procedure Code, sections 188, 227—Offence committed in Nepal territory—Certificate granted by political officer specifying a particular section of the Indian Penal Code—Trying Magistrate not debarred from convicting under another section if within the facts stated.

A certificate granted by a political officer under section 188 of the Code of Criminal Procedure in respect of a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain. The certificate is granted on the allegation of certain facts which constitute the charge against the accused, and the trying Magistrate is not restricted to the section which is mentioned in the certificate, but at the utmost to the facts.

THIS was an application for revision of an order passed by a Magistrate of the first class, convicting the applicant under section 355, read with section 109 of the Indian Penal Code, and sentencing him to a fine of Rs. 30. Part of the facts which led to the applicant being arrested and charged occurred in Nepal, and the question raised in the present case was whether on a proper construction of the certificate granted under section 188 of the Code of Criminal Procedure by the resident of Nepal, which mentioned only section 363 of the Indian Penal Code, the applicant could under the circumstances be tried by a Magistrate in British India under a different section. The facts of the case are fully set forth in the order of the Court.

Babu Satya Chandra Mukerji, for the applicant.

*Criminal Reversion No. 55 of 1911, from an order of C. W. Gwynne, Magistrate, first class, of Benares, dated the 7th of November, 1910.

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The Assistant Government Advocate (Mr. R. Malcomson),
for the Crown.*

TUDBALL, J.—One Kheru Lal, Bania, made a complaint against the applicant Krishna Nath Tiwari and certain other persons to the effect that he had been seized by the servants of Krishna Nath Tiwari in the village of Bhagwanpur, which is in British territory, and had been conveyed by them across the border to the village Bairihwa in Nepal territory, where, after he had been placed before Krishna Nath Tiwari, the latter ordered his servants to shoe-beat him. Krishna Nath Tiwari is a British subject, but in recent years has taken up his residence in the above mentioned village across the Nepal territory. According to Kheru Lal, the complainant, the kidnapping was aided and abetted by the accused Krishna Nath Tiwari. It will be seen that part of the transaction took place in British territory and part within Nepal territory. An application was made to the political officer in Nepal, who granted a certificate under section 188, Criminal Procedure Code, to the effect that the charge under section 363, Indian Penal Code, against Krishna Nath Tiwari, was one which ought to be inquired into in British India. The Magistrate who has tried the case, found that Kheru Lal was kidnapped as stated, held that there was nothing to show that that had been done with the knowledge and sanction of Krishna Nath Tiwari. He therefore acquitted him of the offence under section 363, read with section 109, Indian Penal Code. He found it proved that when Kheru Lal was placed before Krishna Nath Tiwari, the latter, as a matter of fact, had the man shoe-beaten. He therefore convicted him of the offence under section 355, read with section 109, Indian Penal Code, and sentenced him to a fine of Rs. 30. Krishna Nath Tiwari has now come in revision to this Court, and it is urged that inasmuch as the certificate granted by the resident in Nepal relates only to the offence under section 363 of the Code, the Magistrate had no jurisdiction to convict the accused of an offence under section 355, Indian Penal Code, which is not mentioned in the certificate. It is quite clear that the offence of kidnapping was committed within British India, and that really in respect to that offence no certificate was necessary. But, as in the course of the transaction of which

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complaint was made, the applicant had committed an offence under section 355, Indian Penal Code, a certificate was certainly necessary, as he was a British subject who had committed the offence in the territory of a Native Prince. The facts disclosed in the complaint and in the proceedings which led up to the grant of the certificate clearly disclosed the offence of which the applicant has been convicted. It is true that the charge was one which was entered as an offence under section 363. But it seems to me quite clear that the certificate granted under section 188 was only necessary to enable the whole matter to be inquired into in British India. In my opinion it cannot prevent the court making the inquiry or conducting the trial from taking action under section 227 of the Criminal Procedure Code. The mere circumstance that the offence under section 363 alone was entered in the certificate does not necessarily lead to the conclusion that that certificate was granted for the purpose of a trial only on that charge and not in respect to any other offence disclosed by the facts proved. In my opinion the certificate granted under section 188 in respect to a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain. In my opinion there is no force in the contention of the applicant. The certificate is granted on the allegation of certain facts which constitute the charge against the accused and the Magistrate is not restricted to the section which is mentioned in the certificate, but at the utmost to the facts. The conviction under section 355, read with section 109, Indian Penal Code, is perfectly legal. The application is, therefore, dismissed.

Application dismissed.