

Act VIII. of 1859, by the High Court in concurrence with the Sudder Board of Revenue, and that in authorizing the trial of the suit the High Court inadvertently followed a practice which had been introduced in 1864, but discontinued as being of doubtful legality in 1867. The later opinion has more recently been embodied in a judicial ruling in S. A. No. 969 of 1877, decided the 14th December, 1877 (1). We are disposed to concur in that ruling, and to consider that the provisions of s. 13 of Act VIII of 1859 were not applicable in a case in which a portion of the immoveable property in suit is situate within the domains of the Maharaja of Benares. Those domains do not constitute a district within the meaning of the section. We agree with the lower Court in holding that the suit is not precluded by reason of the rejection of the application made under s. 313 of Act X of 1877, and is not bad for misjoinder. It is unnecessary to discuss the second ground of appeal and the fourth was abandoned. The appeal is dismissed with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v. CHIDDA KHAN.

Witness—Judge or Magistrate—Act I of 1872 (Evidence Act), s. 121—Power of Sessions Judge to compel Magistrate to give evidence.

A Sessions Judge, finding in the course of a trial, as regards the examination of the accused person taken by the committing Subordinate Magistrate, that the provisions of s. 346 of Act X of 1872 had not been fully complied with, summoned the committing Magistrate and took his evidence that the accused person duly made the statement recorded. The Magistrate of the District objected to this proceeding of the Sessions Judge, contending that it was "contrary to law." The Sessions Judge referred the question whether or not his proceeding was contrary to law to the High Court.

Per STUART, C. J., PEARSON J., OLDFIELD, J., and STRAIGHT, J.—That the privilege given by s. 121 of Act I of 1872 is the privilege of the witness, *i. e.*, of the Judge or Magistrate of whom the question is asked: if he waives such privilege or does not object to answer such question, it does not lie in the mouth of any other person to assert the privilege: the reference, the objection not

(1) Unreported.

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having been taken by the Subordinate Magistrate but by the Magistrate of the District, should be answered accordingly.

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INDIA
v.
CHIDDA
KHAN.

Per SPANKIE, J.—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate.

THIS was a case stated for the opinion of the High Court by Mr. Clarmont Daniell, Sessions Judge of Moradabad. It appeared from the referring letter of the Sessions Judge to the Registrar of the High Court, dated the 25th January, 1881, that, in a certain trial held by him, having ascertained that the committing Magistrate, a Native Subordinate Magistrate, had failed to comply with the provisions of s. 346 of Act X of 1872, in the examination of several of the accused persons, the Sessions Judge had summoned him, with reference to the last paragraph of that section, to give evidence that such persons duly made the statements recorded by him. The Magistrate of the District objected to this proceeding on the part of the Sessions Judge, relying on s. 121 of Act I of 1872. The Magistrate was of opinion that the Sessions Judge's "procedure in examining" the committing Magistrate "as to his own conduct in Court as a Magistrate without a special order, either of the High Court or of the Magistrate of the District was contrary to law," arguing, with reference to the case of *Gur Dayal* (1) that the committing Magistrate was not subordinate to the Sessions Judge, and that there was nothing in Act X of 1872 which empowered the Sessions Judge to issue to any Magistrate the special order referred to in s. 121 of Act I of 1872. The Sessions Judge contended, with reference to the powers conferred on him by s. 295 of Act X of 1872, that the committing Magistrate, as such, was subordinate to him, and, therefore, the examination by him of the committing Magistrate did not conflict with the rule laid down in s. 121 of Act I of 1872 and was not "contrary to law." The Sessions Judge desired an authoritative settlement by the High Court of the question indicated above at issue between himself and the Magistrate of the District. The case was laid before the Full Court, by which the following judgments were delivered:—

STRAIGHT, J. (STUART, C. J., PEARSON, J., and OLDFIELD, J., concurring).—The privilege given by s. 121 of the Evidence Act is

(1) I. L. R., 2 All. 205.

the privilege of the witness, *i.e.*, of the Judge or Magistrate of whom the question is asked. If he waives such privilege or does not object to answer the question, it does not lie in the mouth of any other person to assert the privilege. We would answer this reference accordingly, the objection not having been taken by the Deputy Magistrate, but by the Magistrate of the District.

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SPANKIE, J.—I have considerable doubt whether we ought to entertain this reference. Neither the Deputy Magistrate examined by the Sessions Court nor the Magistrate of the District have called for the Court's interference. S. 121 of the Evidence Act merely provides that, except upon the special order of some Court to which he is subordinate, no Judge or Magistrate shall be *compelled* to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to any thing which comes to his knowledge in Court as such Judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting. There is nothing in this section which forbids such Judge or Magistrate being called as a witness, and if he does not object to answer questions as to his own conduct in Court, there appears to be no prohibition to his doing so. But he cannot be compelled to answer such questions except upon the special order of some Court to which he is subordinate. The illustrations to s. 121 seem to show that the Sessions Judge could not compel the Magistrate to answer such questions. I know of no provision in the Code of Criminal Procedure which gives the Sessions Judge, whilst trying a case, the power of compelling a Magistrate to answer questions as to his own conduct in Court as such Magistrate.

CIVIL JURISDICTION.

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Before Mr. Justice Oldfield and Mr. Justice Straight.

**THE MAHARAJA OF BENARES (PLAINTIFF) V. DEBI DAYAL NOMA
(DEFENDANT).**

* Signed"—"Stamped"—Act X of 1877 (Civil Procedure Code), s. 2.

The expression "person referred to" in s. 2 of Act X of 1877 means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name.