

## CRIMINAL JURISDICTION.

1880  
November 11.*Before Mr. Justice Straight.*

IN THE MATTER OF THE PETITION OF RAUNAK HUSAIN v. HARBANS SINGH.

*Construction of Act with reference to Bill—Compoundable Offence—Cheating—  
Forgery—Act X of 1872 (Criminal Procedure Code), s. 188—Act XLV  
of 1860 (Penal Code), s. 214.*

Cheating and forgery are not offences which may be lawfully compounded. Where a Magistrate decided that certain offences could be lawfully compounded, having regard to a bill which the Legislature had brought in amending s. 214 of Act XLV of 1860, held that it was irregular for such Magistrate to allow his decision to be guided by any thing in a bill that had not become law, and it was his duty to have interpreted that section without reference to merely contemplated legislation.

THE Agent of the Bank of Bengal at Agra made a complaint against one Harbans Singh and one Durga Prasad of obtaining the loan of certain moneys from him by cheating, cheating by personation, and forgery, offences severally punishable under ss. 417, 419, and 465 of the Indian Penal Code. The Magistrate before whom such complaint was made, Mr. R. S. Aikman, having examined the complainant, issued a warrant for the arrest of the accused persons. Subsequently, and before any further proceedings had been taken, the Agent of the Bank presented an application to the Magistrate, in which he stated "that he did not wish to press the charges he had made against the accused persons, who had paid all the money due to the Bank, and he accordingly left the matter entirely in the hands of the Court." The Magistrate, treating this application as one to withdraw the charges against the accused persons, made the following order thereon on the 5th November 1879:—"It is with considerable hesitation that I accede to this application, and I grant it only on the following grounds:—S. 188 of the Criminal Procedure Code lays down that an offence for which a prosecution has been instituted may, with the permission of the Court, be compounded if the offence is one which may lawfully be compounded. The law on this point, *i.e.*, as to what offences are compoundable, is contained in the *Exception* to s. 214, Indian Penal Code. But the interpretation of that *Exception* and of the *Illustrations* attached to it has given rise to so much difficulty, that

1880

IN THE MAT-  
TER OF THE  
PETITION OF  
RADNAK  
HUSAIN  
vs  
HARBANS  
SINGH.

the Courts have expressed a wish that the question should be cleared up by the Legislature. Apparently in deference to this wish, the Legislature has brought in a bill which clearly defines what offences may and what offences may not be compounded. Among the former are offences such as the present (cheating by personation). Although the bill has not become law, yet I take it as indicating the mind of the Legislature on an obscure point, and accordingly permit the charge to be withdrawn."

One Raunak Husain, a stranger to the proceedings, thereupon presented an application to the High Court, praying that it would exercise its powers of revision under s. 297 of Act X of 1872, on the ground that the order of the Magistrate was contrary to law.

Mr. *Leach*, for the petitioner.

The Court made the following order :—

STRAIGHT, J.—This is an application by one Raunak Husain, of Shikohabad, zila Mainpuri, under s. 297 of the Criminal Procedure Code, for revision of an order passed by the Magistrate of Agra on the 5th November, 1879. It has this peculiarity about it, that the applicant was in no way interested in the case in which the decision was given which he now brings under notice, and admittedly, through his pleader, presents himself to the Court in the character of an informer from motives of personal ill-feeling against the two persons most concerned. I hesitated at the time the application was made to me to send for the record at the instance of a party whom it was impossible not to regard with some amount of suspicion and disfavour; but upon mature consideration, having regard to the extreme importance of the allegations made in the petition and the desirability of clearing the matter up, I acceded to its prayer. From the record it appears that some time in October, 1879, a complaint was preferred in the Court of the Magistrate of Agra by Mr. Fishbourne, the local Agent of the Bank of Bengal, against two persons named Kuar Harbans Singh and Durga Prasad, charging offences against them under ss. 417, 419, 465, and 468 of the Penal Code. The substantial allegation was that on twelve different occasions the accused Harbans Singh

falsely represented to Mr. Fishbourne that the accused Maharaj Durga Prasad was one Chaudhri Durga Prasad, a man of wealth and extensive property in Etáwah, the accused Maharaj Durga Prasad aiding and abetting him in so doing, and personating the said Chaudhri Durga Prasad; and that by this false representation they induced the said Mr. Fishbourne to advance a loan of Rs. 29,500 to Harbans Singh on the security of the other accused. When the time arrived for the repayment of the loan, it was then discovered by the Manager of the Bank that Chaudhri Durga Prasad had no knowledge of the transaction, and that the loan had been obtained from him by cheating and fraudulent personation. Subsequent to this, he received Rs. 18,000 in part payment, and at the time of the institution of criminal proceedings Rs. 2,500 remained due. Upon these facts the Magistrate granted his warrant for the arrest of the two accused persons, who then, under the pressure of prosecution, seem to have paid up the balance due to the Bank. Upon the 4th of November counsel for the complainant put in a petition, stating that, all the money due having been paid, the Bank did not wish to press the charge, and application was made asking permission to withdraw it. To this course the Magistrate by his order of the 5th November assented. I am clearly of opinion that this order was illegal and improper, and that it was not competent for the Magistrate to permit the offences disclosed by the facts set out in the information to be compounded. It was irregular for him to allow his decision to be guided by anything that appeared in some proposed bill that had not become law, and it was his duty to interpret the *Exception* to s. 214. of the Penal Code without reference to merely contemplated legislation. The very essence of the crime charged against the accused was the intent to cheat and defraud, and the Magistrate having, by granting his warrant, shown that he considered there was sufficient *prima facie* evidence of this intent, he should have investigated the case to the end and either have acquitted or convicted. The circumstance that the Bank had so long delayed to prosecute after ascertaining that fraud had been practised, and that the Rs. 18,000 had been received subsequent to its discovery, might reasonably have made him hesitate as to the policy of issuing criminal processes at all; but when he

1880

---

IN THE MAT-  
TER OF THE  
PETITION OF  
RAUNAR  
HUSAIN  
vs.  
HARBANS  
SINGH.

1880

IN THE MAT-  
TER OF THE  
PETITION OF  
RAUNAK  
HUSAIN  
v.  
HARBANS  
SINGH.

had once allowed the criminal law to be set in motion, he should have required the complainant to carry his prosecution through to the end, and should either have convicted or acquitted the accused persons. A very grave charge had been made against them, which required the most serious investigation, and though the Bank authorities acted with perfect candour and straightforwardness in stating the circumstances that led them to desire to withdraw from the prosecution, he could not properly entertain their application. Nothing could be more mischievous than to allow the process of the Criminal Courts to be used for the purpose of enforcing civil claims, and Magistrates cannot too jealously guard the important and extensive powers they possess from being abused for such a purpose.

The proposed Criminal Procedure Code has not yet become law, and it may be matter for very serious doubt whether it is expedient or desirable to sanction the compounding of such an offence as cheating by personation. I regret that so long a time has elapsed since the Magistrate passed his order allowing the withdrawal, but even thus late in the day I cannot avoid quashing it. The prosecution must be revived and full inquiry made into all the circumstances, and when this has been done the Magistrate will pass such order as appears to him to be proper.

*Application allowed.*

## APPELLATE CIVIL.

1880  
November 16.

*Before Mr. Justice Spensie and Mr. Justice Straight.*

SADIK ALI KHAN (PLAINTIFF) v. IMDAD ALI KHAN AND OTHERS  
(DEFENDANTS)\*.

*Filing agreement to refer to arbitration in Court—Reference to arbitration—"Decree"  
—Appeal—Act X of 1877 (Civil Procedure Code), ss. 2, 520, 522, 523, 524.*

The sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, how the surplus at each sharer's credit, and prepare lots, after partition of the

\* First Appeal, No. 123 of 1879, from a decree of Maulvi Abdul Qayum Khan, subordinate Judge of Bareilly, dated the 5th June, 1879.