heirs of Pran Krishna. Upon his death such documents as were in his possession would naturally come into their hands. Apparently, with the exception of one of the documents, none of them relate to any of the properties in suit. The mere fact therefore that she is now in possession of some of the title-deeds relating to the properties covered by the deed of gift would throw no light upon the question of possession, even as explained in the case of *Dharmodas Das* v. *Nistarini Dasi* (1), and both the Courts have negatived, upon the evidence, the allegation of possession of any portion of the property forming the subject of the gift. So far, therefore, as to the two first grounds taken by the pleader for the appellant are concerned, we must decide upon the facts against the plaintiff.

As regards the third ground, we find from the order sheet of the Munsiff that the documents were not produced until after the case had concluded and been reserved for judgment. We are therefore of opinion that the original Court was right in refusing to admit them at that stage. It is unnecessary to enter into the ground mentioned by the Lower Appellate Court for refusing to admit those documents.

On the whole, we are of opinion that the plaintiff has failed to prove her case, and that the appeals must be dismissed with costs.

A. F. M. A. R. *Appeal dismissed.*

CRIMINAL REVISION.

Before Mr. Justice Pigot and Mr. Justice Hill.

NILKANTA SINGH AND OTHERS (PETITIONERS) *v.* THE QUEEN-EMPRESS AT THE INSTANCE OF MANJHI SINGH (OPPOSITE PARTY).*

1892 *Sept.* 23.

Witnesses—Recalling witnesses for further cross-examination after charge—Evidence—Criminal Procedure Code (Act X of 1882), s. 257.

There is under s. 257 of the Criminal Procedure Code no absolute right of cross-examination which would enable the accused to recall and

*Criminal Revision No. 442 of 1892, against the order passed by F. W. Badcock, Esq., Sessions Judge of Bhagulpur, on the 1st August 1892, affirming the order passed by W. F. C. Montriou, Esq., Deputy Magistrate of Monghyr, dated the 30th of June 1892.

(1) I. L. R., 14 Calc., 446.

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cross-examine the witnesses for the prosecution, no matter how completely and fully they have already been cross-examined.

Where the witnesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day on which the judgment was to be delivered, an application under section 257 of the Code of Criminal Procedure was made on behalf of the accused asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined, *Held* that if the Magistrate was of opinion that the application was made with the intention and for the purpose of vexation or delay or for defeating the ends of justice, he was right in refusing the application.

It lies upon the party who thinks himself aggrieved, to show that the ends of justice have been in some way frustrated in consequence of the refusal to recall the witnesses. It is necessary to be very careful that persons on their trial should not be prejudiced; but it is also necessary, on the other hand, to see that proceedings in the Criminal Courts are not hampered in a needlessly carping and litigious spirit, losing sight of the main purpose of those proceedings, and giving over-attention to matter of mere form.

IN this case the petitioners were convicted by the Deputy Magistrate of Monghyr on the 30th of July 1892 of an offence under section 147, read with section 378, of the Penal Code, and sentenced each to one year's rigorous imprisonment. They were further directed to furnish certain securities to keep the peace for a period of one year.

The trial of the accused took place, commencing on the 7th of June 1892 and continuing on to the 18th of June, and on that date the examination of the witnesses for the prosecution was closed. The witnesses for the prosecution had been fully cross-examined and a charge was framed against the accused, and the case was adjourned to the 28th of June. On the latter date the witnesses for the defence were examined and cross-examined, and on the 29th of June they were finished. But between the 18th and 28th of June no application was made to recall and cross-examine the witnesses for the prosecution. After the witnesses for the prosecution had all given their evidence, and on the day when the judgment was to be delivered, an application under section 257 of the Code of Criminal Procedure was made to the Deputy Magistrate on behalf of the accused upon a petition, dated the

previous day, asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined. That application was refused and the accused were convicted; but no reasons were recorded by the Deputy Magistrate for such refusal.

The accused preferred an appeal to the Sessions Judge of Bhagulpur against the conviction and sentence of the Deputy Magistrate, but the appeal was dismissed.

The petitioners then applied to the High Court under its revisional powers for a rule to show cause why the proceedings should not be set aside and the witnesses for the prosecution recalled and cross-examined before the Deputy Magistrate, and a trial had after the hearing of that evidence.

Upon that application a rule was issued by PIGOT and RAMPINI, JJ., which now came on to be heard.

Mr. *A. P. Gasper* with Baboo *Atulya Churn Bose* for petitioners.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.

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

In this case a rule was granted under section 257 of the Criminal Procedure Code applied for upon the ground that the Magistrate was wrong in rejecting the prayer of the petitioner for recalling the witnesses for the prosecution. The grounds of the rule are sufficiently stated in the judgment which was delivered at the time that the rule was granted. They were expressly stated to be, by reason of the omission of the Magistrate to record his grounds for considering the application to recall the witnesses for the prosecution, to be a frivolous and vexatious one, or, to use the terms of the section, made for purposes of vexation and delay or of defeating the ends of justice.

The Magistrate omitted to record the reasons for his refusal, and by reason of that omission we thought it right to call the case up here. When called up here the case is to be looked at for this purpose, *viz.*, to see whether or not the persons before the Court were prejudiced by reason of the witnesses not having been summoned for cross-examination. The section is a very salutary one, and it is very important that the Courts of lower jurisdiction should not be allowed in any way to hamper the due and proper

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testing by cross-examination of the testimony given by the witnesses for the prosecution. That is a right which ought to be preserved jealously for the prisoners, but that is unfortunately a right which sometimes in our Courts in this country is carried to such a length as to amount to a very serious abuse. Now it is a practice, sometimes at any rate, to cross-examine the witnesses for the prosecution before the charge is drawn at very great length. That with regard to some of the witnesses is stated by the Magistrate to have been done in this case, and indeed the length of time during which the inquiry proceeded would itself indicate that that was the case; but a protracted cross-examination by no means shows that the parties on whose behalf the cross-examination has been conducted may not be entitled to further cross-examine the witnesses; and although it may be that the cross-examination before the charge is framed has been of a lengthy and elaborate character, it may perfectly well happen that for the interests of the accused it may be desirable that that cross-examination should be, after the charge is framed, resumed, if necessary, at some length. On the other hand, it is absolutely essential to protect the time of Courts of Justice and of witnesses from being wasted by a needless, though not necessarily malicious or vexatious, cross-examination, but, as Lord Justice Turner once called it, "pruriency of cross-examination." If, therefore, the Magistrate, when it is sought to recall witnesses who have been cross-examined already for further cross-examination, is of opinion that the application is made with the intention and for the purposes indicated in the words I have read in the section, he may refuse the application; but when we are considering a case in which he has refused such an application without following strictly the terms of the section, we may think it necessary to call up the case. Now, the case having been called up, it lies upon us to consider whether the application ought not to have been granted, and whether by reason of its not having been granted the prisoners have been prejudiced. In the present case the learned Counsel who appears for the prisoners has put his case in support of this rule upon the ground that there is an absolute right of cross-examination conferred by section 257, an absolute right which can only exist if it be within the right of the accused to recall the witnesses and cross-examine them, no matter how completely and fully they have already been cross-

examined, and he puts his case so high as to say that the deprivation of that right would alone entitle him to have this rule made absolute. That we do not agree with. We think, as we have said, that it lies upon the party who thinks himself aggrieved under such circumstances to show us that the ends of justice have been in some way frustrated in consequence of the refusal to recall the witnesses. It is necessary to be very careful that persons on their trial should not be prejudiced, but it is necessary, on the other hand, to see that proceedings in the Criminal Courts are not hampered in a needlessly carping and litigious spirit, losing sight of the main purpose of those proceedings, and giving over-attention to matter of mere form.

We have asked the learned Counsel to point out any particular in which the prisoners have been damaged or prejudiced. We have none before us, and we have, on the other hand, the opinion of the Magistrate on the application which was made either the day before or on the day on which judgment was fixed to be delivered. The petition is dated the 28th of July, but upon the proceedings it would appear that the application was made on the 29th, the day on which the judgment was to be delivered. An interval of ten days had therefore elapsed from the 18th of July when the proceedings closed, to the 28th, and during that interval no application to recall the witnesses such as was made on the 29th of July was made to the Magistrate. The Magistrate says:—"Their motives in making such an application at that time are quite apparent; they wished to cause delay, harass the prosecution and in the event of a refusal on the part of the Court to comply with their request, to raise a ground for appeal." That is the opinion which the Magistrate expresses in his explanation. Had he recorded that expression of opinion when he refused to recall the witnesses, we should not have granted the rule upon the application as framed.

There being no case made of prejudice occasioned by his refusal to recall the witnesses, there seems no other reason for the application than that which the Magistrate suggests; at any rate there is no other reason shown to us for making the rule absolute, and we, therefore, discharge it.

A. F. M. A. R. *Rule discharged.*