

The only new argument presented to their Lordships by Mr. Mayne is founded on the heading of the decree of 1866, which is, "Claim, sub-proprietary title as mortgagee." Thereupon it is argued that Afzal took with an admission that he was mortgagee only. That is at best a slight ground for the desired conclusion. It is not easy to explain the heading; but it cannot refer to the mortgage by Hafiz Ali to Tafazzul, because that was unknown to the parties till more than ten years later. And it is quite inconsistent with the claim made by Afzal in his plaint, and with the *solehnama* or deed of compromise on which the decree is founded.

There is, in fact, no answer to the reasoning of the Judicial Commissioner. It is not necessary to discuss what would have been the plaintiff's position as against Afzal, if he had known his rights against Hidayat during the suit of 1865-66, and had intervened then or immediately after the decree. Time has run against him, and his appeal must be dismissed with costs. Their Lordships will humbly advise Her Majesty in accordance with this opinion.

*Appeal dismissed.*

Solicitors for the appellant: Messrs. *Young, Jackson, Beard & King.*

Solicitors for the respondents: Messrs. *Barrow & Rogers.*

C. B.

## CRIMINAL REVISION.

*Before Mr. Justice Ghose and Mr. Justice Rampini.*

JHOJA SINGH (PETITIONER) v. QUEEN-EMPRESS (OPPOSITE PARTY). \*

*Criminal Procedure Code (Act X of 1882), section 340—"Accused,"*  
*Meaning of—Right to be heard.*

1896  
February 24.

The word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction.

Under the provisions of section 340 of the Criminal Procedure Code a Sessions Judge is bound to hear the pleader appointed by a person who

\* Criminal Revision No. 86 of 1896, against the order passed by H. Holmwood, Esq., Sessions Judge of Gya, dated the 3rd of January 1896, confirming the order passed by R. A. N. Singh, Esq., Deputy Magistrate of Gya, dated the 27th of December 1895.

1895

IMDAD  
HUSAIN  
v.  
AZIZ-UN-  
NESSA.

1896 (though not accused of any offence) is ordered to give security for good behaviour under section 118 of the Criminal Procedure Code.

JHOJA SINGH

v.  
QUEEN-  
EMPRESS.

*Queen-Empress v. Mona Puna* (1) followed.

THE Deputy Magistrate of Gya made an order under section 118 of the Criminal Procedure Code requiring the petitioner to execute a bond for Rs. 500 with two sureties for his good behaviour for a period of three years. The proceedings were forwarded to the Sessions Judge under the provisions of section 123 of the Criminal Procedure Code. When the case came before the Sessions Judge, he refused to hear the pleader whom the petitioner appointed to appear on his behalf.

Babu *Karuna Sindhu Mookerji* appeared for the petitioner.

The judgment of the High Court (GHOSE and RAMPINI, JJ.) is as follows :—

This is a rule calling upon the Magistrate of the District to shew cause why the order of the Sessions Judge should not be set aside on the ground that he refused to hear the pleader who was appointed to appear on behalf of the petitioner.

It appears that in this case proceedings were taken against the petitioner, calling upon him to shew cause why he should not give security for his good behaviour, and under the provisions of section 123 of the Criminal Procedure Code the proceedings were forwarded to the Sessions Judge, as the Magistrate considered that it was necessary to detain the person in jail for a period exceeding one year. When the case came before the Sessions Judge, the learned Judge refused to hear the pleader whom the accused appointed to appear on his behalf, on the ground that the law did not require the pleader to be heard under the circumstances. We think that, under the provisions of section 340 of the Code, he was bound to hear the pleader in this case. The petitioner, no doubt, was not accused of any offence, but we understand the word "accused" to bear the meaning, which has been put upon it by the Bombay High Court in the case of *Queen-Empress v. Mona Puna* (1). The Bombay High Court has there defined the word "accused" as meaning "a person over whom the Magistrate or other Court is exercising juris-

(1) I. L. R., 16 Bom., 661.

diction." If that be the meaning of the word accused, as we think it is, the learned Sessions Judge was bound to hear the pleader appointed by the petitioner.

We therefore set aside the order of the Sessions Judge, and direct that he give the accused person's pleader an opportunity of being heard. After hearing the pleader, he will pass such order in the case as he may think it right and proper to do.

S. C. B.

1896  
JHOLA SINGH  
v.  
QUEEN-  
EMPRESS.

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

DUPEYRON AND ANOTHER (PETITIONERS) v. DRIVER (OPPOSITE PARTY).<sup>\*</sup>

*Transfer of criminal case—Criminal Procedure Code (Act X of 1882), section 526—Reasonable apprehension in the mind of the accused—Real bias—Incidents calculated to create apprehension of bias.*

1896.  
February 26

In dealing with applications for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question, whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial.

THE petitioners were charged with committing offences under sections 417 and 420 of the Penal Code, and pending the trial this application was made for the transfer of the case from the file of the Deputy Commissioner of Manbhum to some other Court in the same District, or in any other District competent to try the same. This case was the third of a series of cases between the same parties. The application for transfer was made on various grounds stated in three affidavits put in on behalf of the applicants. The following statements contained in paragraphs 16, 17, 34 and 35 of the second affidavit made in one of the two earlier cases are material for the purposes of this report :—

"16. That on the next day, at about 5-30 P.M., the Deputy Commissioner came to Court to deliver judgment and asked the accused whether he admitted a letter, purporting to have been written by him. The accused wanted

<sup>\*</sup> Criminal Miscellaneous Case No. 10 of 1896.