that the proviso applied. It is the common case that this has not been done by the defendants, for it appears that the actual objection petitions filed by the plaintiff in those proceedings have not been filed in this case. In my opinion the decision of the court below on this point is right. The appeal fails and must be dismissed with costs.

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SCROOPE, J.—I agree.

Appeal dismissed.

CRIMINAL REFERENCE.

Before Ross and Wort, JJ.

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v.

KING-EMPEROR.*

1927.

April, 7.

Evidence Act, 1872 (*Act I of* 1872), *section* 27—*confession to police—discovery of fact irrelevant to inquiry whether makes confession admissible.*

G, who was charged with having murdered *C* by administering poison to him, stated to the police officer investigating the case that he had administered to the deceased a drug in some gur and that he had applied some of the same drug to a sore on the leg of *H*. In pursuance of this statement the officer went to *H* and the latter produced some arsenic as the drug given him by the accused.

Held, that as the fact that the accused had applied arsenic to the leg of *H* was irrelevant to the present inquiry the fact deposed to as discovered in consequence of the information given by the accused was inadmissible.

The facts of the case material to this report are stated in the judgment of Ross, J.

S. K. Mitter, for the appellant.

Sultan Ahmed, Government Advocate, for the Crown.

*Death Reference no. 4 of 1927 and Criminal Appeal no. 38 of 1927. Reference made by G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, in his letter no. 1013-R., dated the 1st March, 1927, and appeal from a decision of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 24th February 1927.

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ROSS, J.

ROSS, J.—The appellant Gokul Chamar has been sentenced to death on conviction of the murder of a boy Sibcharan Chamar by poisoining him with arsenic.

The case in the first information, which was laid the day after the boy's death by his father Gahana Chamar, was that his son Sibcharan aged 3½ years was playing with his cousin's daughter Sukri and his cousin Jaglal, both young children, when a boy Anupa (aged 8 years) came and asked Sibcharan and Jaglal to come to his house saying that he would give them gur. They went to his house and Anupa gave both the children small quantities of gur. Gokul (the appellant) was sleeping in the house at the time. The children returned and Sibcharan was taken violently ill and died shortly after in spite of the efforts of Gahana Chamar to save him by giving juice of the plantain tree and other remedies. The Doctor who made the post-mortem examination reserved his opinion as to the cause of death until the viscera were examined; but on receipt of the report of the chemical examiner who found arsenic both in the vomitted matter and in the contents of the stomach, he expressed the opinion that the cause of the death was arsenic poisoning.

The learned Government Advocate concedes that the conviction, so far as it rests on the oral evidence, apart from the statement made by the accused himself to the police to which I shall presently refer, cannot be maintained, for this sufficient reason that Gahana in his evidence in court has completely changed the case from what it was in the original statement. It is clear that in the first information there is no case against Gokul Chamar. These persons are all relations. Gokul the appellant is married to a daughter of one Ramdhan whose son is the boy Anupa. Ramdhan has a brother Biswanath and a cousin Barhan whose children are Sukri and Jaglal already referred to. It appears that Biswanath and Barhan

both lost sons recently, in Chait and Sawan, and the case for the prosecution is that they suspected Gahana's mother to be a witch and on account of this enmity the death of Gahana's son was brought about. Gahana is also a relation of this family and they are close neighbours.

Now the case in the first information is that it was Anupa who gave the gur to the deceased as well as to the other little boy Jaglal and that Gokul was sleeping; but at the trial the case was changed. Anupa is said to have called the boys to the house and Gokul is said then to have given them gur to eat. The treatment of the boy after the illness developed is now attributed to Gokul and not to the complainant. It is impossible to rely on this evidence in view of the first information. But for the statement made by the appellant himself to the police which the learned Sessions Judge has admitted and relied upon, the case would be at an end. This statement, as appears from the evidence of the Sub-Inspector, Baidyanath Banerji, was as follows: " Gokul stated that he had given gur and that with the gur he had administered some drug which he had with him and that with the same drug he had made an application for putting on a sore on the leg of Siban Hajam of Adra " Prima facie this statement is inadmissible, but the learned Sessions Judge has admitted it applying the provisions of section 27 of the Evidence Act, because it appears that in pursuance of the statement the Sub-Inspector went to Siban Hajam and asked him for the medicine which Gokul had given him. That medicine was produced and was sent to the chemical examiner and was found to contain arsenic. Now it seems to me that the fact deposed to as discovered in consequence of the information received from a person accused of an offence, with which section 27 of the Evidence Act deals, must be a fact relevant to the case in which the evidence is sought to be given. The fact that at some previous date the appellant had treated one Siban Hajam with arsenic for a bad leg is not relevant in

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any way to the present charge; and the discovery of that fact in consequence of a statement made by the appellant to the police cannot make this statement admissible. The learned Government Advocate expressed his own doubts about the admissibility of this statement; and if this statement goes out, it is conceded on behalf of the Crown that the charge must fail.

In this view the reference must be discharged and the appeal must be allowed and the conviction and sentence set aside and the appellant acquitted and set at liberty.

WORT, J.—I agree.

Conviction set aside.

APPELLATE CIVIL.

Before Kulwant Sahay and Allanson, J.J.

1927.

Feb., 17.

KUMAR KAMAKSHYA NARAYAN SINGH

v.

KALYAN SINGH.*

Legal Practitioners Act, 1879 (*Act XVIII of* 1879), *section* 28—*agreement for payment of fees for work done in pending cases and in other cases—agreement not in writing and not filed in court—Remuneration not recoverable—Contract Act,* 1872 (*Act IX of* 1872), *section* 79.

The plaintiff, a mukhtar, sued for the remuneration which he alleged was due to him under an agreement by which he was employed by the Court of Wards (*i*) to "build up" certain civil cases with a view to the Government Pleader drawing the pleadings in such cases, and (*ii*) to look after the cases in court after their institution, as a mukhtar.

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*First Appeal no. 96 of 1923, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Hazaribagh, dated the 12th March 1923.