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ing away the deceased while he was in a most helpless condition, knowing full well, as we take it, that a grievous assault had been committed on him, and then leaving him in a field in that helpless condition, which resulted, as we gather from the evidence in this case, in his death. We cannot but regard the evidence of these two witnesses as no better than that of accomplices; at any rate, they took such a part in this transaction as to make it most unsafe for the Court to rely upon their evidence, unless corroborated in some material respects, in convicting the accused. Mr. Donogh has called our attention to some of the incidents or facts in this case, which, according to his view of the matter, do corroborate the evidence of these two witnesses; but we are unable to accept his view. We do not think that there is any real corroboration of the statements made by them, nor do we consider it to be safe to proceed upon their evidence in holding that the accused took any part in the grievous assault upon Hosseinuddin.

Upon the whole, we are of opinion that the judgment of the lower Court, based as it is mainly upon the two classes of evidence to which we have referred, cannot stand.

We accordingly set aside the conviction and sentence and direct the release of the appellant.

S. C. B. *Conviction set aside.*

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Rampini.

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December 9.

SAMAR DASADH (PLAINTIFF) *v.* JUGGUL KISHORE SINGH (DEFENDANT No. 1.) *

Evidence Act (I of 1872), section 35—Public record—Admissibility of evidence —Teishkhana paper—Bengal Regulation XII of 1877, section 16.

The *teishkhana* paper kept by *patwaris* under section 16 of Bengal Regulation XII of 1817 is not a public register or record within the meaning of section 35 of the Evidence Act, and is not admissible as evidence under

* Appeal from Appellate Decree No. 420 of 1894, against the decree of Moulvi Khaja Syed Fukheruddin Hossein, Subordinate Judge of Patna, dated the 9th of February 1894, reversing the decree of Babu Jogendra Nata Mukerjee, Munsif of Behar, dated the 7th of March 1893.

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that section. *Baijnath Singh* v. *Sukhu Mahton* (1) and *Merrick* v. *Wakley* (2), referred to.

JUGGUL KISHORE SINGH obtained a decree against Manbodh Mahton and others, and in execution of that decree attached 61 bighas 10 cottahs of land, alleging it to be the *jote* land of the judgment-debtors. The plaintiff in the present case preferred a claim to a portion of those lands, but his claim was rejected without investigation. He then brought this suit claiming 3 bighas out of the said land as his *mourasi jote*. Juggul Kishore and his judgment-debtors were made defendants in the suit, but Juggul Kishore alone contested it.

The Munsif decreed the suit relying on the oral and documentary evidence adduced by the plaintiff, and one of the documents relied on was the *teiskhana* paper (literally a tabular statement in 23 columns) which was prepared by the *patwari* in 1286 (1879).

On appeal by the defendant the Subordinate Judge set aside the Munsif's decree, on the ground, among others, that the *teiskhana* was not a public document, and was not admissible in evidence, unless it was duly proved according to law. In support of his judgment on this point he cited the case of *Baijnath Singh* v. *Sukhu Mahton* (1).

The plaintiff appealed to the High Court.

Sir *Griffith Evans*, Moulvi *Mahomed Yusuf*, and Babu *Tarit Mohan Das*, for the appellant.

Babu *Karuna Sindhu Mukerjee* for the respondent.

Sir *Griffith Evans*.—The *teiskhana* paper is admissible in evidence under section 35 of the Evidence Act. It is a register kept under Regulation XII of 1817 for the purposes mentioned in that Regulation; it is not likely to be concocted, and is good corroboration of the evidence of the raiyats. Section 16 of the Regulation makes it the duty of the *patwari* to keep these papers. The case cited in the lower Court's judgment does not decide the point, there is only an *obiter dictum*. Rules 14 and 15 of the Board's Manual (p. 39) were referred to.

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Babu *Karuna Sindhu Mukerjee* for the respondent.—The paper is not a public record but simply a zemindari paper. Looking to sections 22 to 25 of the Regulation it cannot be said that the law attached to these papers the weight of a public record. I rely on the opinion expressed in the case of *Baijnath Singh* v. *Sukhu Mahton* (1).

Sir *Griffith Evans* in reply.

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

The only question raised in this case is whether the lower Appellate Court was right in rejecting certain documents as being either irrelevant or not proved. The documents were : *First*, a copy of a plaint, Exhibit II ; *second*, a road-cess return, Exhibit III ; *third*, a peon's report, Exhibit VIII ; and, *fourth*, certain *teiskhana* papers, Exhibit I.

In regard to the first three, the contention on behalf of the appellant was not really pressed, and we are of opinion that the lower Appellate Court was quite right in rejecting two of them as irrelevant, namely, Exhibits II and III, and the third as not proved, namely, Exhibit VIII.

It was, however, strongly urged before us that Exhibit I, consisting of the *teiskhana* papers, was admissible in evidence under section 35 of the Indian Evidence Act.

Now, to render a document admissible under that section, three conditions must be satisfied : *First* of all, the entry that is relied upon must be one in any public or other official book, register, or record ; *secondly*, it must be an entry stating a fact in issue or a relevant fact ; and, *thirdly*, it must be made by a public servant in the discharge of his official duty, or any other person in performance of a duty specially enjoined by the law. We may take it that the second and third conditions are satisfied, the entry as pointed out to us being one of a relevant fact, and it having been made by a certain person called the *patwari* in the performance of a duty especially enjoined by section 16 of Regulation XII of 1817. But then there remains the question

(1) I. L. R., 18 Calc., 534.

whether the entry is in any public or other official book, register, or record, that is to say, whether the *teiskhana* papers can be regarded as forming any public or other official record. These expressions have not been defined in the Evidence Act. If a public book, register, or record be taken to be of the same nature as a public document as defined in section 74, clearly these papers do not answer the description, for they do not form the acts, or records of the acts, of the Sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial, or executive; nor are they public records kept in British India of private documents. Can they be said to form any public or other official book, register, or record?

After having carefully considered the point, we think we must answer the question in the negative. These papers are kept by the *patwari* under the provisions of section 16 of Regulation XII of 1817. The *patwari* is an officer nominated and remunerated by the zemindar of the village in respect of which he is appointed, though the appointment rests with the Collector; and he is removable from office by the zemindar with the sanction of the Collector. That is the position of the person who keeps these registers. Then, as to the nature of the register kept, it would appear from the form prescribed by the Board of Revenue under section 16 of the Regulation, a form with its *twenty-three* headings or columns, whence the name *teiskhana* is derived, that the information that is contained in these papers is what would find a place in the zemindari accounts themselves; and though the Regulation requires that copies of these papers should be sent by the *patwari* to the *canungoe*, and by this last-mentioned officer to the Collector, that fact does not alter their nature in any way or make them a public or other official book, register, or record within the meaning of section 35. They are, as we understand them, zemindari papers kept by an officer nominated and paid by the zemindar, though the Collector is vested with control in the matter of the appointment and removal of that officer with a view to enable the Collector to keep himself informed of the internal management of zemindaris within his jurisdiction. And then, if we look at the provisions of the Regulation as to how a *patwari* and his accounts are to be

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dealt with by the Collector and his subordinates, it would appear clear that it was no part of the intention of the Legislature to make these *teiskhana* papers public records. The provisions we refer to are those contained in sections 22, 23, 24 and 25, by which the Collector is empowered to summon a *patwari* whenever there may be occasion for his attendance on any matter connected with the duties of his office, and to examine him on oath and to require him to produce all accounts relating to the lands, produce, rents, collections and charges of the village or villages, &c.; further, they authorize the Collector to require the attendance of *patwaris* on officers deputed to examine village accounts; and they in like manner authorize Courts of Justice to summon *patwaris* to attend and produce their accounts. These provisions are, in our opinion, incompatible with the view that these documents were intended to be of the same nature as other public records kept by the Collector; and they go to show that it was never intended to repose in these accounts the same confidence that is reposed in public documents, a confidence which writers on the law of evidence describe as being rather extraordinary in degree, and the basis of which is said to be principally the circumstance that they have been made by authorized and accredited agents appointed for the purpose, and partly also the publicity of the subject-matter to which they relate (see Taylor on Evidence, section 1429; Best on Evidence, 8th edition, section 219). The agents here are every now and then required to pledge their oaths as to the accuracy of these papers, and are made liable to punishment if they give false evidence; and as for the matter of publicity of the entries, it is enough to say that some of these entries, especially those relied upon in this case, are far from being of a public nature, and such as would prevent any falsehood finding a place in the register. Some of these entries being in the nature of the areas of fields in the occupation of different raiyats of the mehal, one fails to see how they can be regarded as being matters of public interest. Regard therefore being had to the nature of the papers, to the position of the persons by whom they are prepared, and to the way in which the papers are required to be treated by the authorities under the Regulation itself, we do not

think it would be safe to hold that these are papers of the description contemplated by section 35 of the Evidence Act.

The view we take is quite in accordance with the *dictum* of the Chief Justice, concurred in by Mr. Justice Beverley, as expressed in the case of *Baijnath Singh* v. *Sukhu Mahton* (1). It is quite true that their Lordships were not called upon to pronounce an opinion upon the question of these papers being admissible in evidence under section 35 of the Evidence Act, the question raised before them being whether the learned Munsif and the learned Subordinate Judge had committed an error of law in not giving proper effect to certain registers known as the *teiskhana* registers; but treating the expression of opinion of those learned Judges as a *dictum*, we express our full concurrence in the opinion expressed in that case.

We may add that the view we take also finds support in the observations of Lord Denman, C.J., in the case of *Merrick* v. *Wakley* (2), in which it was held that a register of attendance, &c., kept by the medical officer of a Poor-law Union and laid before a Board of Guardians weekly for inspection, in obedience to rules made by the Commissioners under Statute 4 and 5, W. 4, C. 76, section 15, is not receivable in evidence for the party making it, as a public official book, notwithstanding that the entries were made by him in accordance with certain statutory rules. The reason of the decision is stated in these words: "But in these cases the entries are made by an officer in discharge of a public duty; they are accredited by those who have to act upon the statements; and they are made for the benefit of third persons. Here, it is true, the book is kept by a public officer; but no credit is given him in respect of the entries; they are merely a check upon himself. If we held this book admissible, we should make the entries of any public accountant evidence on a similar occasion." So here, there is nothing to show that the book is accredited by those who have to act upon the statements; on the contrary, the Regulation provides that whenever a Collector thinks it necessary he may summon a *patwari* and examine him on oath as to the truth of his accounts; and we may also add that if we were to hold that these books are admissible

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in evidence, in that case it would follow that if any law were to direct zemindars to keep their *jama-wasil-baki* papers in a certain form and to submit copies of them to the Collector that would make the *jama-wasil-baki* papers public documents or official registers within the meaning of section 35 of the Indian Evidence Act.

We are of opinion, therefore, that the Court below was quite right in holding that these *teiskhana* papers were inadmissible in evidence; and, that being so, the appeal fails, and must be dismissed with costs.

S. C. C. *Appeal dismissed.*

APPELLATE CRIMINAL.

Before Mr. Justice Beverley and Mr. Justice Gordon.

1895
December 4.

JUGDOWN SINHA (APPELLANT) *v.* QUEEN-EMPRESS (RESPONDENT.)*

Criminal Breach of Trust—Penal Code (Act XLV of 1860), sections 403 and 405—Immoveable property.

The property referred to in section 405 of the Penal Code is, as in section 403, moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. *Reg* v. *Girdhar Dharamdas* (1) followed.

THE appellant was a jemadar of the Muktapore Indigo Factory, and as such it was his duty to see that certain plots of the factory land were cultivated with indigo. It was alleged that he let out some plots of that land without the knowledge of the factory authorities for his own benefit to raiyats who cultivated them with other crops and gave him a portion of the produce. The charge against him was that being a servant, namely a jemadar, of the Muktapore Indigo Factory, and being in such capacity entrusted with dominion over certain plots of land, he committed criminal breach of trust in respect of these plots. On the objection being taken that criminal breach of trust could not be committed in respect of immoveable property, the Sessions Judge who tried

* Criminal Appeal No. 685 of 1895, against the order passed by F. S. Hamilton, Esq., Officiating Sessions Judge of Muzafferpore, dated the 13th of September 1895.

(1) 6 Bom. H. C. Cr., 33