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not constitute an offence punishable under section 290 of the Indian Penal Code. We reverse the conviction and sentence, and direct that the fine be returned.

Conviction and sentence reversed.

APPELLATE CRIMINAL.

Before Mr. Bayley (Acting Chief Justice), Mr. Justice Birdwood, and Mr. Justice Parsons.

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February 2.

QUEEN-EMPRESS *v.* GANU SONBA' AND ANOTHER.*

Evidence Act (I of 1872), Sec. 132—Protection given to answers which a witness is compelled to give—"Compelled to give"—Meaning of the words—Indian Oaths' Act (X of 1873), Sec. 14.

Section 132 of the Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter of these cases only. Protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give.

The Queen v. *Gopál Doss*(1) followed.

Per BIRDWOOD, J., (dissenting).—Section 132 of the Evidence Act (I of 1872) read with section 14 of the Indian Oaths' Act (X of 1873), compels a witness to answer criminating questions, and he is protected by the proviso to section 132 from a criminal prosecution for any offence of which he criminates himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives the answer without so asking.

APPEALS against the convictions and sentences recorded by Shripat B. Thákur, Acting Sessions Judge at Ratnágiri, in the case of *Queen-Empress* v. *Sarasvatibái and Others.*

The facts of this case, so far as they are material for this report, are as follows:—

One Sábáji Báji obtained a decree against Kesu Rám Laka for possession of three *thikáns*, and in execution obtained possession of one of the *thikáns* on the 27th June, 1887. Thereupon Kesu's sister, Sarasvatibái, applied under section 332 of the Code of Civil Procedure (Act XIV of 1882), alleging that the *thikán* in question

* Criminal Appeals, Nos. 174 and 180 of 887.

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belonged to her, that she had purchased it from her father Rám Bhagván under a sale-deed dated 2nd November, 1875, that she had since been in possession, and that she had been illegally dispossessed in execution of Sábáji's decree.

The Subordinate Judge made an enquiry into the matter. In the course of the inquiry the accused Ganu Sonbá and Bhikáji Hari were examined as witnesses for Sarasvatibái. They deposed that the sale-deed of the 2nd November, 1875, had been executed by Rám Bhagván in their presence, and that they had both attested it. The Subordinate Judge, however, disbelieved this evidence, found the sale-deed to be a fabrication, and committed Sarasvatibái and her accomplices—Kesu Ganu, Bhikáji and Tukiá—to the Court of Session to take their trial, the first two on a charge of forgery and the others for abetment of forgery.

All the accused were tried together. They pleaded not guilty. The Acting Sessions Judge found the sale-deed in question to be a forgery, and convicted Sarasvatibái and Kesu under sections 467 and 471 of the Indian Penal Code. As regards the accused Ganu and Bhikáji, he admitted in evidence their depositions recorded by the Subordinate Judge in the summary inquiry, and solely on the strength of these depositions convicted both of abetment of forgery under sections 109 and 467 of the Indian Penal Code, and sentenced them each to one year's rigorous imprisonment.

Against this conviction and sentence both Ganu and Bhikáji appealed to the High Court.

There was no appearance either for the accused or for the Crown.

BIRDWOOD, J.:—The conviction of the appellants rests upon the depositions made by them in an execution proceeding, in which they admitted their attestations of the deed of sale, which is proved by the evidence in the present case to be a forgery. In their examinations in the present case they deny their attestations; and if their depositions in the former case are excluded from consideration, there is nothing to show that

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they attested the deed of sale. The Sessions Judge, relying on the decision of the majority of the Judges who composed the Full Bench in the case of *The Queen* v. *Gopál Doss* [1], decided by the Madras High Court on the 4th February, 1881, has admitted the depositions. I concur, however, in the opinion of the two Judges (Kernan and Muttusámi Ayyar, JJ.,) who dissented from that decision. I think that section 132 of the Evidence Act, read with section 14 of Act X of 1873, compels a witness to answer criminating questions, and that he is protected by the proviso to section 132 from a criminal prosecution for any offence of which he criminates himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is, in my opinion, "compelled to give" the answer, within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives the answer without so asking. I would, therefore, acquit the appellants. But as Mr. Justice Parsons does not concur in this opinion, the case must be laid before another Judge under section 429 of the Code of Criminal Procedure (Act X of 1882).

PARSONS, J.:—I agree with the opinion expressed by the majority of the Judges in the case of *The Queen* v. *Gopál Doss*[1], and would admit the evidence. Reading section 132 of the Evidence Act as a whole I can come to no other conclusion than that the Legislature has by it made a clear distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and has given him a protection in the latter of those cases only. If protection was to be allowed in every case in which a witness gives an answer, the words "be compelled to" in the proviso are quite superfluous. The insertion of those words clearly shows, to my mind, that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give: (see Field's Law of Evidence, p. 646, 4th ed.). In the

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present case both the accused were examined in the Court of the Subordinate Judge on behalf of Sarasvati and Kesu, and they freely and voluntarily there gave evidence to the effect that they had attested the deed on which Sarasvati and Kesu relied. This deed was held to be a forgery. Sarasvati and Kesu were prosecuted and convicted of the forgery; and the accused were tried along with them and convicted on a charge of abetment of that forgery, and their answers in the Court of the Subordinate Judge were admitted in evidence against them. I am of opinion that these answers being purely voluntary answers, and not answers which they were in any way compelled to give, can be proved against them in the present trial. And as they are proved, I would dismiss these appeals.

The case was accordingly referred to the Acting Chief Justice Mr. Bayley, who gave the following judgment:—

"For the reasons given by Sir Charles Turner, C. J., in the case of *The Queen* v. *Gopál Doss* (1) I think that the evidence is admissible, and I concur with Mr. Justice Parsons in dismissing the appeals."

Appeals dismissed.

(1) I. L. R., 3 Mad., 271.

APPELLATE CIVIL

Before Mr. Justice Nánábhái Haridás, Mr. Justice Birdwood, and Mr. Justice Jardine.

1888.

February 6.

DA'MODAR JAGANNA'TH, PLAINTIFF, *v.* ATMA'RA'M BA'BA'JI, DEFENDANT.*

Stamp Act I of 1879, *Sec.* 34, *Prov. I—Suit on an unstamped promissory note—Evidence Act I of* 1872, *Secs.* 65, *Cl. (b), and* 91.

The plaintiff sued to recover from the defendant the balance of a debt due on an unstamped note passed to him by the defendant for consideration of Rs. 38. The note recited that the defendant had received the amount, and [would] repay it after three months from the date of its execution. The defendant admitted, by his written statement, execution of the note and the receipt of Rs. 37 in the shape of paddy, but alleged that he had paid off the debt. He also contended that the note being unstamped could not be admitted in evidence. The plaintiff contended that the note was a bond, and could be admitted on payment of the

* Civil Reference, No. 41 of 1887.