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PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA ROY

appear that both parties consider it necessary to have it determined where the *mokami* kutcherry is situated, as both parties say that the cause of action arose there. The plaintiff alleges that the *mokami* kutcherry is in Bardowla, within the Alipore Sub-division, and the defendant alleges that it is in Barehgola or Naraintola, within the Diamond Harbour Sub-division; and we think, looking to the terms of the kabuliat given by the defendant, which required him to make the principal kutcherry his place of business, that must be considered to be the place where the cause of action arose. It was to the *mokami* kutcherry that all moneys were remittted, it was there that all the accounts were prepared, and it was there that the money first came under the control of the defendant, where by his order it would be disbursed, and where in fact according to his accounts, the money was disbursed.

We therefore do not agree in the opinion expressed by the Judge, that the plaintiff was at liberty to institute his suit in either one or the other sub-division, for he ought to have instituted it in that sub-division where the defendant had his place of business; we therefore remand the case to the Judge to determine whether the *mokami* kutcherry is, as is stated by the plaintiff, in the Alipore Sub-division, or whether it is in the Diamond Harbour Sub-division as is alleged by the defendant, and to dispose of the case accordingly.

Costs will follow the result.

Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Loch.

1871
May 12.

THE QUEEN *v.* DURGA DAS BHUTTACHARJEE.*

Surety—Recognizance.

A surety who was bail for an accused person, having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, *first*, of the accused, and, *secondly*, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal.

ONE Durga Das Buttacharjee was sent up by the police for trial under section 448 of the Penal Code. It seems that the accused was sent up on bail, one surety in the sum of Rs. 100 having been required by the police and found. The surety was bound over to cause the accused to appear before the Joint Magistrate on the 10th November 1870. The case was made over for trial to the Deputy Magistrate. The accused was not present on the 10th. On the 11th, the Deputy Magistrate recorded a "proceeding" ordering that the bail-bond should be forfeited, and that "a warrant be issued for attach-"ment and sale of the moveable property belonging to (1st) Durga Das "Bhuttacharjee, and (2nd) to his surety, Jadab Chandra Sarnokar, to the "extent of Rs. 20 each."

* Reference, under section 434 of the Code of Criminal Procedure, by the Officiating Magistrate of Nuddea.

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THE QUEEN v. DURGA DAS BHUTTACHARJEE.

The Magistrate who referred this case to the High Court, thought this order illegal. He said that the Deputy Magistrate ordered the money to be realized from the accused himself, being under the impression that the accused gave his own recognizance to appear. But as a matter of fact, he did not give it; and therefore the money could not be demanded from him.

With reference to the order against the surety, the Magistrate remarked that it was the Deputy Magistrate's duty, under section 220 of the Criminal Procedure Code, to give notice to the surety to pay or to show cause why he should not pay the penalty mentioned in the bond; but no notice was given to the surety. It seems the Deputy Magistrate in his explanation said that he had given the surety a verbal notice. With reference to this, the Magistrate observed that a mere verbal and unrecorded order to show cause would not have been sufficient even if it had actually been given.

The judgment of the Court was delivered by

NORMAN, J.—The order of the Deputy Magistrate is illegal, and must be quashed for the reasons mentioned in the Magistrate's letter.

There seem to be several other objections to it.

1871
March 23.

Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Loch.

NABIN CHANDRA MAZUMDAR (PLAINTIFF) *v.* MUCTA SUNDARI DEBI AND OTHERS (DEFENDANTS).*

Res Judicata—Bar to Suit.

S. died in 1865, leaving two sons, N. and G. M. took possession of the property of S. under a will alleged by her to have been executed by S. In 1867, G. brought his suit, as one of the heirs of S., to set aside the will, and made his brother N. a co-defendant. The Principal Sudder Ameen dismissed the suit, finding on the evidence that the will was genuine. In 1869, N. brought this suit for his share as heir of S. against M. The first Court found that the will was a forgery, and gave the plaintiff a decree. On appeal, the Judge held that N.'s claim was barred by the decision in the former suit brought by his brother, and reversed the decision of the first Court.

Held, on special appeal, that it was not barred by the findings of the Court in G.'s suit, as N. was no party to that suit, and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share.

Baboos *Mohini Mohan Roy* and *Iswar Chundra Chuckerbutty* for the appellant.

Baboos *Srinath Das* and *Girija Sankar Mazumdar* for the respondents.

THE facts of this case are fully stated in the judgment.

NORMAN, J.—This is a very simple case. One Sarup Chandra Mazumdar died on the 30th of Sraban 1272 (August 13th, 1865) leaving two nephews, Nabin

* Special Appeal, No. 1797 of 1870, from a decree of the Judge of Nuddea, dated the 1st August 1870, reversing a decree of the Moonsiff of that distsict, dated the 30th November 1869.