

of the High Court No. I, dated January 1st, 1865, and Rule No. 83, dated January 2nd, 1866, see Broughton's Civil Procedure, 4th Edition, pages 719 and 742 (1).

PHEAR, J.—I was at first inclined to think this rule was obsolete, but on reconsideration, I do not think so, and that it may be useful in some cases. But as this suit would have been on the Equity Side, and the Rule is one on the Plea Side of the Supreme Court, I think it does not apply. The order will be refused, but without costs.

1871
KAILAS CHAN-
DRA BOSE
v.
BHUBAN
CHANDRA
BOSE.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

PANCHUDAS (PLAINTIFF.) v. SRIMATI SHUDHAMAYI (DEFENDANT.)*
Criminal Procedure Code (Act XXV of 1861), s. 316—Maintenance of Children—Willingness of Father to support them.

1871
Dec. 2.

In this case the prosecutrix applied for an order against her husband under section 316 of Act XXV of 1861 for maintenance. The Deputy Magistrate held that she had failed to establish her right to maintenance under section 316, but awarded maintenance to her for their two infant children, although the husband was willing to take charge of them and also to support the mother if she would live with him.

(1) *Rule 176.*—“Either party, after plea pleaded and a reasonable time before trial, may give notice to the other in the form annexed to this rule, or the like effect, of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent, by indorsement on such notice, to make the admission specified, the party requiring such admission may call on the party required, by summons to show cause before a Judge why he should not consent to admission, or in case of refusal be subject to pay the costs of proof. And unless the party required shall expressly consent to make such admission, the Judge shall, if he think the application reasonable, make an order that the costs of proving any document specified in the notice which shall be proved at the trial to the satisfaction of the Court, certified by the prothonotary's indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause.

Rule 1, January 1st, 1865.—“All rules which at the time of the abolition of the Supreme Court of Judicature at Fort William in Bengal, were in force in that Court, shall, so far as the same are applicable, be continued as rules of the High Court, with regard to all matters in which that Court has original jurisdiction, civil or criminal, except so far as the same may be contrary to the provisions of the Act 24 & 25 Vict., c. 104, or the Letters Patent granted in pursuance thereof; or to the provisions of Act VIII of 1859, or as the same have been or shall hereafter be altered or modified by the Court.”

Rule 83, January 2nd, 1866.—“All rules which were in force in the High Court on 31st December shall continue in force until further orders, except so far as they have been altered in regard to grants of probate and letters of administration by Act X of 1865.”

*Reference under Section 434 of the Code of Criminal Procedure by the Officiating Sessions Judge of Midnapore.

1871
 PANCHUDAS
 v.
 SRIMATI
 SHUDHAMAYI.

The Sessions Judge being of opinion that the Deputy Magistrate's award of maintenance for the children was illegal, sent up the proceedings of the Deputy Magistrate to the High Court under section 434 of Act XXV of 1861, for the purpose of having the order quashed.

The judgment of the High Court was delivered by
 KEMP, J.—We think that the proceedings of the Deputy Magistrate are illegal. He finds that the wife is not entitled to receive maintenance, as she has not been able to prove that her husband illtreated her, or was living in adultery with another woman. There is no evidence that the husband is unwilling to support his infant children; on the contrary he states that he is willing to do so provided they reside under his roof and not in his father-in-law's house. The order of the Deputy Magistrate is quashed.

Before Mr. Justice E. Jackson and Mr. Justice Glover.

GOPAL MAZUMDAR (PLAINTIFF) v. HARO SUNDARI BAISTAMI
 (DEFENDANT.)*

1871

Nov. 23.

Criminal Procedure Code (Act XXV of 1861), ss. 169 and 435—Sanction for Prosecution of Certain Offences.—Jurisdiction of Court of Session.

A Court of Session has no power to interfere under section 435 of Act XXV of 1861 with an order of a Magistrate permitting a prosecution under section 169 of Act XXV of 1861.

IN this case one Gopal Chandra Mazumdar was prosecuted before the Magistrate for an offence and discharged. Subsequently the Magistrate permitted the accused, Gopal Chandra Mazumdar, to prosecute one Haro Sundari Baistami, who had deposed against him, for having given false evidence. The Sessions Judge, under section 435 of Act XXV of 1861, sent for the record of the preliminary enquiry by the Magistrate into the charge of giving false evidence, and held that the sanction given by the Magistrate for the prosecution was illegal. The Magistrate having expressed to the Judge that he doubted the jurisdiction of the latter officer to interfere with the sanction given by him for the prosecution for giving false evidence, the Judge referred the matter for the opinion of the High Court, under section 434 of Act XXV of 1861. The point referred was whether under section 435 the Court of Session has no jurisdiction to interfere in any other arising in a preliminary enquiry by a Magistrate to an offence triable exclusively by the Court of Session, and consequently in the matter of the sanction given by the Magistrate in this case for the prosecution for giving false evidence.

The opinion of the High Court was delivered by

JACKSON, J.—We think that the Sessions Judge had no authority under the law to interfere with the order of the Magistrate allowing the prosecution

*Reference under Section 434 of the Code of Criminal Procedure by the Officiating Sessions Judge of Rajshahye.