

1873
 KHETTER
 MONEE DASSIE
 v.
 SREENATH
 SIRCAR.

Chapter XVIII of the Code. Then "trials," after that exception, have been again subdivided into "summons cases" under s. 333 and other trials which are included with enquiries in the words "all other cases" in s. 334, and consequently it follows that we are to look to s. 334 and the following sections for the manner in which evidence is to be recorded in enquiries such as that now under consideration before the Magistrate. S. 334 directs that in such cases "the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence, of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge." Under this provision there is no exception whatever in favor of cases in which no appeal lies. The Joint Magistrate, therefore, was entirely in error in omitting to record the evidence in the mode prescribed by s. 334 and the following sections. This appears to us to be an error so material that under s. 297 we are bound to quash the proceedings, and set aside the order of the Joint Magistrate as being founded on no evidence.

In respect of the land it is unnecessary for us to make any further order and probably we have no power to make such order. It is always open to the Magistrate, if he thinks it necessary for the preservation of public peace, to bind parties who he considers are likely to break the peace by taking security or recognizance from them.

The money obtained by sale of the crops being now in deposit, it seems to us, from the necessity of the case, that it should remain so until the parties either come to a settlement of their dispute, or some of them establish a right to the land, which must be in the Civil Court.

Before Mr. Justice Pontifex.

1873
 April 8 & 10.

JOSHUA STEPHEN DEMELLO AND ANOTHER (PLAINTIFFS) v. L. P. D
 BROUGHTON (DEFENDANT).

*Illegitimacy—Letters of Administration—Administrator-General—Act XXIV
 of 1867 (The Administrator-General's Act), s. 15.*

THE plaintiffs in this case, on the 17th March 1873, applied to the High Court for probate of the will of one Rose Dixon, to be granted to them as the duly appointed executor and executrix thereof. The defendant, who had on the 1st March 1873 entered a caveat in this matter, appeared and opposed the application. Under these circumstances, the Court (Macpherson, J.) ordered that the petition for probate presented by the plaintiffs should be treated as a plaint; that both parties should file written statements; and that the case should be set down on the list of causes for hearing. Accordingly, on the 8th April 1873, the case came on for final disposal. It appeared that Rose Dixon, the testatrix, was illegitimate, and the issue for trial was whether the document set up by the plaintiffs was her will. If the Court held it not to be

then, inasmuch as no other document was put forward as the will of Rose Dixon, it would follow that she died intestate.

Mr. *Lowe* and Mr. *John* for the plaintiffs.

Mr. *Evans* and Mr. *Lingham* for the defendant.

During the hearing of the case, the Court suggested that the Crown should be represented on account of the illegitimacy of Mrs. Dixon.

Mr. *Evans*.—If the plaintiffs fail, the administrator-General will be able to administer—*Hogg v. Mendieta* (1).

Mr. *Lowe*.—The Administrator-General does not allege that Mrs. Dixon was illegitimate; if he had, then the case of *Hogg v. Mendieta* (1) might apply, neither has he applied for letters of administration. [PONTIFEX, J.—But he has entered a caveat. If the Administrator-General will undertake to apply for letters of administration under s. 224 of the Indian Succession Act (X of 1865) that would do.]

Mr. *Evans*.—He is prepared to do that, but irrespective of s. 224 of the Indian Succession Act, the Administrator-General would be entitled to administer this property by s. 15 of Act XXIV of 1867.

PONTIFEX, J., was of opinion that the Administrator-General would be entitled to letters of administration under s. 15 of Act XXIV of 1867, and that it was not necessary to make Government a party to the suit.

At a later stage in the suit, Mr. *Evans* drew the attention of the Court to a notification in the *Gazette of India* of the 5th April 1873 (2)

(1) 1 Boul. Rep., 422.

Financial Despatch, No. 53, dated India Office, London, 12th February 1873, to His Excellency the Right Hon'ble the Governor-General of India in Council.
MY LORD,

(2) Notification No. 2189, Fort William, the 31st March, 1873. Republished, No. 3099. The 15th December 1871.—The Governor-General in council is pleased to rule that the effects of illegitimates dying intestate, which have already become escheats to the Government since the Indian Succession Act, 1865, came into operation, as well as those which may hereafter become escheats, shall, after deduction of the expenses incurred and the established proportion of the Crown's share, be distributed in conformity with the aforesaid Act.

The following Financial Despatch from the Right Hon'ble the Secretary of State for India, No. 53, dated 12th February 1873, is published in the *Gazette of India* in continuation of Financial Notification No. 2099, dated 15th December 1871:—

Para. 1.—With reference to your Despatches in this Department of 20th December 1871, No. 345, and 20th December 1872, No. 468, I have to signify my approval of your proceedings in regard to the estate of the late Mr. P. T. Saunders

2.—On the general question of dealing with estates of illegitimate persons, I approve of the course suggested by you being followed in all cases where all the parties clearly entitled to consideration are resident in India, but in case where no such claim is established within one year from the date of the escheat, or when the probable claimants are in this country, then the practice of remitting home those estates must be adhered to

ARGYLL.

1873
DE MELLO
v.
BROUGHTON,

1873

DEMELO
v.
BROUGHTON.

PONTIFEX, J.—The Succession Act does not say any thing about illegitimate persons. The notification can do no more than make public the fact that the Crown will do that in future which it has hitherto done.

Before Mr. Justice Kemp and Mr. Justice Phear.

1873
Jun. 4.

IN THE MATTER OF MOONSHEE SYUD ABDOOL KADIR KHAN
(PETITIONER) v. THE MAGISTRATE OF PURNEAH.*

Powers of High Court—Non-compliance with Orders of High Court—Transfer of Proceedings—Jurisdiction—Criminal Procedure Code (Act X of 1872), ss. 64, 142, 297, 389, 390, 391, 398—Revision of interlocutory Proceedings before Magistrate—Suspension of Proceedings—Order for Bail—Non bailable Offence—Warrant of Arrest—ommitment to Custody without Evidence taken—Remand without Evidence taken.

See also
12 B. L. R.
p. 235.

THIS case came before the High Court upon three rules which had been obtained on the 12th, 19th, and 28th of May by Mr. Ghose on behalf of Abdool Kadir Khan. The first rule directed Mr. Kemble, the Magistrate of Purneah, to send up to the High Court the record, processes, and papers in certain criminal proceedings against Abdool Kadir Khan, to stay proceedings in his Court until further orders of the High Court, and in the meanwhile to release Abdool Kadir Khan upon specified security. The second rule, called upon Mr. Kemble to show cause why he did not carry out the order involved in the former rule, Mr. Kemble having, after receipt of such rule, directed (in his capacity of Collector) the imprisonment of Abdool Kadir Khan upon certain fresh charges. And the third rule required Mr. Kemble to send up the records of the original proceedings, and also of proceedings upon such fresh charges instituted by Mr. Kemble before the Joint Magistrate, and under which Abdool Kadir Khan had again been committed to custody.

The *Legal Remembrancer* (Mr. Bell) showed cause.

Mr. Ghose and Mr. *Ameer Aly* for Abdool Kadir Khan.

The facts of the case and the nature of the arguments appear fully from the judgments of the High Court. The argument on behalf of the petitioner was, at the instance of the Court, addressed simply to the necessity of transferring the proceedings, and rested entirely on the facts.

The following judgments were delivered :—

PHEAR, J.—Three rules which were issued by this Court on the 12th, 19th and 28th of last month respectively in the matter of one Abdool Kadir Khan have come before us to be adjudicated upon and disposed of. Before, however, I state the exigency of those rules, I will mention a few preliminary facts. In

* Rules Nos. 666, 704, & 740 of 1873.