

119, substitute a conviction under section 93 of Act XX. of 1866 against the prisoner Luthi for falsely personating Kumari, and a conviction under section 94 against Anand and Becharam for abetting the offence. Under all the circumstances of the case, we think a slight sentence only is called for, and, therefore, direct the prisoner Luthi to be imprisoned for four calendar months, and the prisoners, Anand and Becharam, for six calendar months to be reckoned from the day of the Joint Magistrate's order, viz., the 15th of December last.

1866.

THE QUEEN
v.
LUTHI BEWA.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869

March 25.

MAHANT DHANRAJ GIRI GOSWAMI v. SRIPATI GIRI GOSWAMI.*

Possession—Certificate—Act XXVII. of 1860—Criminal Procedure Code, s. 318.

A and B had a dispute about possession of a certain muth. A was declared by the Magistrate, under Section 318 of Criminal Procedure Code, to be in possession. Subsequently, B got a certificate under Act XXVII. of 1860, and applied to the Magistrate for possession, which was given to him.

Held, that the Magistrate's order giving possession to B was irregular, and must be set aside.

This case was brought before High Court by the Judge of Cuttack in the following letter of Reference :—

Under section 434, Act XXV. of 1861, and Circular Order of the High Court, dated 15th July 1863, No. 18, I herewith transmit the record of the case, noted in the margin, to be laid before the High Court, with the following report .—

Case No. 32 of 1868.
Mahant Dhanraj Giri
Goswami v. Sripati Giri
Goswami.

There was a dispute between two parties, Dhanraj Giri and Sripati Giri, about possession of a certain muth and its appurtenances. Dhanraj Giri was found to be in possession by the Joint Magistrate Mr. Barton, and was ordered to retain the property under section 318, Code of Criminal Procedure. Subsequently,

* Reference to the High Court, under Section 434 of the Code of Criminal Procedure, from the Sessions Judge of Cuttack.

1860

MAHANT
DHANRAJ
GIRI GOSWAMI
v.
SRIPATI GIRI
GOSWAMI.

On the other claimant, Sripati, obtaining a certificate under Act XXVII. of 1860, the Officiating Joint Magistrate, Mr. Boxwell, made over possession of the property to him ; and against this order Dhanraj Giri appeals.

The order passed by the Officiating Joint Magistrate appears to me to be illegal for the following reasons :—The possession of the property in question was found by the late Joint Magistrate to be with Dhanraj Giri ; and under section 318 of Act XXV. of 1861, he was kept in possession. The present Joint Magistrate would not legally interfere with that possession, and nothing, except a decree of the Civil Court, can oust the party put in possession under the former order. I am clearly of opinion that a certificate under Act XXVII. of 1860, does not amount to a decree, and is not sufficient to warrant possession of property being made over, under such circumstances as appears in this case. As I think that the order passed is illegal, I beg to refer the case for the consideration of the Court.

Judgment of the High Court.—The order of Mr. Boxwell appears irregular. In the first place the grant of the certificate under Act XXVII. of 1860, does not decide the title to the land ; and if it did, an order of the Civil Court must be executed by that Court, and not by the Magistrate.

Mr. Boxwell appears to have been misled by Mr. Barton's order, which was also irregular. Mr. Barton should have declined to interfere, except to keep the peace, and left the parties to apply to the Judge under the provisions of Act XIX. of 1841 to appoint a curator, or make some order with regard to the property, till the right of succession should be determined. The question which was not of a disputed possession, but of a right of succession, could not be properly dealt with under section 318 of the Code of Criminal Procedure. We quash Mr. Boxwell's order.