

that they were required to remove the boats, or that they continued the obstruction after they were required to remove them.

The record proceeds: "Kabil admits the charge; Jailal, ditto; Sukea ditto; but states that his boat was not tied to a tree but to a lagi driven into the bank."

The admission of the charge does not amount to anything, unless we know what the charge was. The evidence does not show that the parties were wilfully obstructing, and the admission of the charge might be, and probably was, merely that they tied their boats to the bank, and not that they wilfully interrupted the navigation.

The finding was that the defendants "are convicted of obstructing the navigation of the Calcutta Canal," and they are then sentenced to 15 days' jail each, under Act V of 1864, section 16. The finding does not state that the accused wilfully obstructed the navigation. There is, therefore, no charge; there is nothing in the evidence or in the admission of the prisoners, or in the finding, to show or lead us to suppose that the prisoners wilfully obstructed the navigation. Mr. Galiffe appears to have considered that an obstruction, whether wilful or not, was sufficient to render the prisoners liable to imprisonment.

It is not for me to say that 15 days' imprisonment would have been too much for the offence of wilfully obstructing the navigation, or of wilfully continuing an obstruction after a request to remove it, if such an offence had been proved by the evidence; but it appears to me that there is nothing whatever to show that the prisoners acted wilfully. The accused have already suffered six days' imprisonment, and it appears to me that the order of the Deputy Magistrate ought to be quashed. It is, accordingly, quashed, and the prisoners are to be forthwith released.

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

THE QUEEN v. LUTHI BEWA AND OTHERS.*

False Personation—Registration Act

1869

March 31.

A vendor proceeded, in company with three persons, to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's

* Revision of proceedings under section 404 and 405 of the Code of Criminal Procedure.

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office ; one of them there personated the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence.

Held, on revision, that as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under sections 93 and 94 of Act XX. of 1866, and not under s. 419 of the Penal Code.

THE facts are fully set out in the judgment of the Court, which was delivered by

NORMAN, J.—The prisoner, Luthi Bewa, has been convicted, under section 419 of the Indian Penal Code, of the offence of cheating by false personation, and sentenced to one year's rigorous imprisonment ; and the prisoners, Anand Mohan and Becharam, have been convicted of abetting the offence, and sentenced to 18 months' rigorous imprisonment. On the application of the vakeel for the prisoners, the record of the case was sent for under section 404 of the Criminal Procedure Code.

The prisoners were tried by the Joint Magistrate of Dacca, and the conviction of the Joint Magistrate was upheld on appeal by the Judge. We, therefore, taking up the case as a Court of revision must take the facts as found by the lower Court.

It appears that one Kumari, having agreed to sell a small piece of land, started with three persons in a boat for Dacca for the purpose of registering the deed of conveyance. According to the finding of the lower Courts, on arriving at Dacca, Kumari was too ill to leave the boat ; and Luthi, who accompanied her to Dacca in the boat, went with the other two prisoners to the office of the Registrar, and there personated her, and had the deed registered in her name.

We think there is nothing to show that the prisoners intended to defraud or injure anybody in putting forward Luthi to personate Kumari, and do an act which, doubtless, Kumari would have done, had she not been prevented by illness from going to the office of the Registrar in person.

We think, therefore, that the prisoners should not have been convicted of *cheating* by false personation under section 419 of the Indian Penal Code. The offence which they committed, was an offence under section 93 of Act XX. of 1866. We therefore, quashing the conviction, as a conviction under section

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.

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

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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.