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It was, however, contended that, granting the disqualification of the Assistant Magistrate, we were precluded under the provisions of section 537 of the Code from setting aside his order, unless it were shown that a failure of justice had resulted from his being personally interested in the case. We do not think that this contention is sustainable. The saving provisions of section 537 extend only to the orders and so forth of Courts of competent jurisdiction; and in our opinion a Magistrate who in consequence of a personal disqualification is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said with respect to that case to be a Court of competent jurisdiction. Section 537 has therefore in our opinion no application to the present case, and it must be dealt with on the footing of its having been tried by a Court which for want of jurisdiction was incompetent to deal with it.

We accordingly set aside the convictions and sentences, but we think that in the case of those of the petitioners who have not already served their full term of imprisonment, there must be a new trial by such Magistrate, other than the Magistrate who has already tried them, as the Magistrate of the District may appoint. In the event of the trial resulting in the conviction of any of the accused the Magistrate will, in awarding sentences, take into account the imprisonment they have already undergone. Those of the petitioners who have already served their full terms of imprisonment will not be retried.

S. C. B. *Convictions set aside.*

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Banerjee.

KANTO PRASHAD HAZARI (ONE OF THE DEFENDANTS) *v.* JAGAT CHANDRA DUTTA AND OTHERS (PLAINTIFFS.) *

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Evidence Act (I of 1872), sections 36, 83—Map made by Deputy Collector for particular purpose—Proof of accuracy of map.

* Appeal from Appellate Decree No. 215 of 1894, against the decree of Babu Mohim Chandra Ghose, Officiating Subordinate Judge of Chittagong, dated the 25th of November 1893, affirming the decree of Babu Mohim Chandra Guha, Officiating Munsif of Satkanea, dated the 8th of July 1893.

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A map made by a Deputy Collector for the purpose of the settlement of land forming the silted bed of a river is not one which is admissible in evidence under sections 36 and 83 of the Evidence Act; but it is a map the accuracy of which must be proved before it can be admitted in evidence.

The contention that the map was admissible in evidence was held to be open to the appellant on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible.

Savitri v. *Ramji* (1), and *Rameshur Singh* v. *Sheodin Singh* (2), followed

THE only question for report in this case was as to the admissibility in evidence of a map which had been made by a Deputy Collector in the course of proceedings for the settlement of land forming the bed of the River Sankho. For this purpose the facts are sufficiently stated in the judgment of the High Court.

The *Officiating Advocate-General* (Sir *Griffith Evans*), Moulvie *Serajul Islam* and Mr. *J. R. Percival* for the appellant.

Babu *Akhil Chunder Sen* for the respondents.

Sir *Griffith Evans*.—No objection was made as to the admissibility of the map by the other side, and the Subordinate Judge, who remanded the case to the first Court, was wrong in rejecting it. This contention can be raised in second appeal, although we did not appeal against the order of remand; see the cases of *Savitri* v. *Ramji* (1), *Rameshur Singh* v. *Sheodin Singh* (2), and *The Jatinga Valley Tea Company* v. *Chera Tea Company* (3).

Babu *Akhil Chunder Sen* for the respondents referred to the following cases: *Womesh Chunder Goopto* v. *Raj Narain Roy* (4), *Goluck Monee Dossee* v. *Huro Chunder Ghose* (5), *Junmajoy Mullick* v. *Dwarkanath Mytee* (6), *Kooldeep Narain Singh* v. *The Government of India* (7), and *Ram Chunder Sao* v. *Bunseedhur Naik* (8).

The judgment of the Court (NORRIS and BANERJEE, JJ.) was delivered by

BANERJEE, J.—This appeal arises out of a suit brought by the plaintiffs, respondents, to recover possession of some land as included

(1) I. L. R., 14 Bom., 232.
(2) I. L. R., 12 All., 510.
(3) I. L. R., 12 Calc., 45.
(4) 10 W. R., 15.
(5) 8 W. R., 62.
(6) I. L. R., 5 Calc., 287.
(7) 11 B. L. R., 71.
(8) I. L. R., 9 Calc., 741.

within the permanently settled estate Taraf Joy Narain Ghosal, which was purchased at a sale for arrears of Government revenue by their lessors, and of which they alleged that they held a sudder *putni*. The defence of the principal defendant Kanto Prashad Hazari was that the land did not form any part of the permanently settled estate Taraf Joy Narain Ghosal; that it was a part of the bed of the river Sankho; that on the river being silted up the land was measured and settled by Government with him; and that it had ever since remained in his possession, and the plaintiffs' title, if any, was consequently barred by limitation. In support of his allegations the defendant put in a map prepared by Babu Jagabundhu Sen, Deputy Collector, in the year 1869, and the first Court, after a local investigation, came to the conclusion that a portion of the disputed land fell within the permanently settled estate of the plaintiffs' lessor, and that the remainder fell outside that estate and was part of the *chur* lands settled with the defendant Kanto Prashad; and it accordingly limited the decree in favour of the plaintiffs to the land that fell to the north of the boundary line laid down in Babu Jagabundhu Sen's map.

On appeal by the plaintiffs the lower Appellate Court set aside this decree of the first Court and remanded the case to that Court for a fresh trial, holding that the map of the Deputy Collector, Babu Jagabundhu Sen, was no evidence against the plaintiffs, as they did not take any part in the proceedings in the course of which that map was prepared. After the remand, the first Court found that the land in dispute was wholly included within the permanently settled estate Taraf Joy Narain Ghosal, and it decreed the plaintiffs' claim in full, and upon appeal by the defendant Kanto Prashad against that decree, the lower Appellate Court has affirmed the same.

In second appeal it is contended on behalf of Kanto Prashad Hazari, that the decree of the lower Appellate Court is wrong, *first*, because the map prepared by Babu Jagabundhu Sen, which was admissible in evidence under sections 36 and 83 of the Evidence Act, and against the admissibility of which no objection was taken by the plaintiffs, has been improperly excluded; and, *secondly*, because the lower Appellate Court, quite independently of the question of title, ought to have held that the suit was

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barred by limitation by reason of the defendants having been in adverse possession for more than twelve years.

Upon the first contention, we do not think that the map in question is of a description which is one of those referred to in sections 36 and 83 of the Evidence Act. It purports to be a map of the silted bed of the river Sankho. It is evidently, on the face of it, neither a thak map nor a survey map, such as is made by, or under the authority of, Government for public purposes. It appears to have been made by Government for a particular purpose, which is not a public purpose, namely, the settlement of the silted bed of a certain river. That being so, we do not think that the provisions of sections 36 and 83 of the Evidence Act are applicable to this map; and this view is fully supported by the decisions of this Court in the cases of *Junmajoy Mullick* v. *Dwarkanath Mytee* (1), and *Ram Chunder Sao* v. *Bunseedhur Naik* (2).

It remains now to notice the further contention under this head that the Court of Appeal below in its remand order was wrong in rejecting this map when no objection was made as to its admissibility by the other side. A question might arise how far it is open to the appellant to raise this contention now, he not having preferred any appeal against the remand order; but we think upon the authority of the cases cited on behalf of the appellant by the learned Advocate-General, namely, the cases of *Savitri* v. *Ramji* (3) and *Rameshur Singh* v. *Sheodin Singh* (4), that it is open to the appellant to raise this point, notwithstanding that he did not appeal against the remand order. On the merits, however, we do not think that the objection is tenable. The document was not absolutely inadmissible in evidence. It was admissible in evidence, but its accuracy had to be proved by the party producing it. It was not therefore necessary for the plaintiffs to object to the filing of the document as one that was absolutely inadmissible, and the fact of the plaintiffs not having objected to the filing of this map does not go to prove that it is accurate. The defendant adduced no evidence before the first Court to prove the correctness of the map; and that being

(1) I. L. R., 5 Calc., 287.
(2) I. L. R., 9 Calc., 741.
(3) I. L. R., 14 Bom., 232.
(4) I. L. R., 12 All, 510.

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so, we think that the lower Appellate Court, when remanding the case to the first Court, was quite right in holding that the map could not affect the question at issue between the parties.

It was argued that as the Amin had made use of this map in making the local investigation and had referred to it in his report, the plaintiffs ought to have objected to the Amin's report on the ground of this map having been improperly used by him, and that as they did not do so, we must take it that they had waived all objection to the accuracy of the map, and that the lower Appellate Court was therefore bound to accept it as accurately prepared. We do not think there is much force in this contention. The Amin referred to this map only for the purpose of drawing a certain line, but his conclusion was that the whole of the disputed land was included within the permanently settled estate Taraf Joy Narain Ghosal; and as that conclusion was entirely in favour of the plaintiffs, they were not bound to raise any objection to the Amin's report. For all these reasons we must hold that the first ground urged before us has not been made out.

[After deciding the second point, also against the appellant, his Lordship continued].

The grounds taken before us, therefore, both fail, and the appeal must be dismissed with costs.

F. K. D. *Appeal dismissed.*

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, and Mr. Justice Ghose.

RAMHARI SAHU AND OTHERS (PETITIONERS) *v.* MADAN MOHAN MITTER (OPPOSITE PARTY.) *

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March 5.

Appeal—Appeal from Original Decree—High Court Rules, Part II, Chapter VIII, Rule 17—Deposit of costs for Paper-book—Dismissal for default—Application for re-admission—Review—Letters Patent of High Court, clause 15—Limitation.

The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper book, the

* Rule 1844 of 1894 in connection with appeal from Original Decree No. 278 of 1893, and appeal No. 6 of 1895 under section 15 of the Letters Patent from an order of Beverley, J., dated 4th February 1895.