

1878

EMPRESS
v.
ABDOOL
KARIM,
—
EMPRESS
v.
GOLAM
MAHOMED.

This Court has frequently laid down that no Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.

As the Deputy Magistrate was bound to treat this case as a charge under s. 144, it follows from the construction that has been put on the 34th section of the Criminal Procedure Code, that we are bound to hold his proceedings void.

All these proceedings must, therefore, be quashed, and the Deputy Magistrate must try the prisoners *de novo*.

The same order will be made in the case of Golam Mahomed.

Proceedings quashed.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

IN THE MATTER OF THE PETITION OF HURRO SOONDERY
CHOWDHRAIN (PETITIONER).*

1878

June 24.

Pardanashin Female—Right to be examined on Commission—Procedure on Examination—Mode in which a Magistrate should show cause against a Rule.

A pardanashin woman summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court, and to be examined on commission.

When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.

IN this case the petitioner, Hurro Soondery Chowdhrain, was summoned by the Magistrate of Mymensing to attend at his Court on the 7th of June and give evidence for the prosecution at a trial in which her son and five others were the persons accused. The petitioner, on the 30th of May, applied to the Magistrate to be excused from personal attendance, on the ground of being a pardhanashin. She further stated that she

* Criminal Reference, No. 105 of 1878, from an order of R. H. Pawsey, Esq., Magistrate of Mymensing, dated the 17th June 1878.

had no personal knowledge of the matters about to be enquired into, and prayed that should her evidence be deemed essential, it might be taken on commission, and not in open Court. The order of the Magistrate on this application was—"the evidence of Hurro Soondery Chowdhraïn appears, on the sworn information of the Police, to be of the first importance, and her attendance cannot be dispensed with."

1878
 IN THE
 MATTER OF
 THE
 PETITION OF
 HURRO
 SOONDERY
 CHOWDHRAÏN.

From this order the petitioner appealed to the High Court, which, on the 12th of June, made an order directing the Magistrate to issue a commission for the examination of Hurro Soondery Chowdhraïn, at the same time giving him leave to abstain from doing so, and to show cause why the order should not be withdrawn. The Magistrate, instead of applying to the Legal Remembrancer to cause an appearance to be made for him in Court, addressed a letter to the Registrar of the High Court, which was as follows:—

"SIR,—I beg to acknowledge receipt of the orders of the High Court, No. 841, dated 12th instant, and to request that the Court may be pleased to withdraw its direction for the examination of Sreemutty Hurro Soondery Chowdhraïn on commission, for the following reasons,—

"In the case against Mohim Chunder Rai Chowdhri, petitioner, his mother, will be wanted as a witness; but as the precise nature of the falsehoods that may have to be exposed is not known to me, I cannot frame a series of questions which will extort the whole truth.

"It is an untrue allegation that, in the absence of her son, petitioner had no hand in the management of the affairs of the estate; and I am in possession of certain letters purporting to have been written at the dictation of petitioner, and undoubtedly written by the naib at her residence. In some cases these letters contain her specific directions for collection, payment, and operations of lattials or clubmen, and for the commission of affrays on her son's behalf.

"In order to determine the full responsibility of the zemindars in these matters, the examination of Hurro Soondery Chowdhraïn will, I think, now appear to the Court to be necessary.

1878

IN THE
MATTER OF
THE
PETITION OF
HURRO
SOONDERY
CHOWDHRAIN.

“Further, as the petitioner is likely to persevere in avoiding attendance here, I would beg the favor of the Judges of the High Court having her bound down in substantial bail to appear within fifteen days before me.”

On the 24th of June 1878, the Advocate-General (the Hon'ble G. C. Paul) appeared for the petitioner and submitted that the letter addressed by the Magistrate to the Registrar could not properly be taken into consideration by the Court on disposing of the rule; and further, that even if the statements in the letter were accepted, they afforded no reason for discharging the rule.

The judgment of the Court was delivered by

AINSLIE, J. (BROUGHTON, J., concurring).—On the 12th of this month we made an order directing the Magistrate to issue a commission for the examination of Hurro Soondery Chowdhrain, at the same time giving him leave to show cause why the order should not be withdrawn.

The Magistrate has now sent up a letter addressed to the Registrar of this Court. This is not the proper form in which he ought to have shown cause. If he wished to show cause he should have applied to the Legal Remembrancer to cause an appearance to be made for him in Court.

We might deal with this matter as if the Magistrate had not made any appearance at all, but we think it better, under the circumstances, to dispose of the rule on its merits.

The reasons assigned by the Magistrate in his letter appear to us to be wholly insufficient. It may be that this lady, as well as any other person under examination, may make statements which are not wholly true: but the Magistrate can guard against that by deputing some person thoroughly instructed for the purpose of examining on any fresh matters that may arise on her answers to written interrogatories, if it is necessary in the case to issue written interrogatories at all. At any rate, we cannot assume beforehand that the witness will make false statements.

There is in the letter of the Magistrate some indication that

an attempt was to be made to make the witness criminate herself by her answer. This ought not to be done, and is a further reason for directing that she should be examined by commission, in order that what she may give may be carefully weighed by her, and not given without full consideration.

The rule is made absolute.

Rule made absolute.

1878
 IN THE
 MATTER OF
 THE
 PETITION OF
 HURRO
 SOONDERY
 CHOWDHURAIN.

PRIVY COUNCIL.

BHOOBUN MOHINI DEBIA AND ANOTHER (PLAINTIFFS) v. HURRISH
 CHUNDER CHOWDHRY (DEFENDANT).

P.C.*
 1878
 March 13 &
 April 13.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Grant of Talook—Construction of Sanad—Will.

S. C., a Hindu, granted a talook to his sister, *K.*, by a sanad in the following terms:—"You are my sister: I accordingly grant you as a talook for your support the three villages, *H.*, *F.*, and *K.*, belonging to my zemindary, with all rights appertaining thereto, at a tahut jamma of Rs. 361. Being in possession of the lands and paying rent according to the tahut jamma, do you and the generations born of your womb successively (*santan sreni kreme*), enjoy the same. No other heir of yours shall have right or interest."

At the date of the sanad, *K.* had one child, a daughter *C.* She had afterwards a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son *C. L.*

K. held undisputed possession of the talook during her lifetime, and by her will devised it to *C.*, her daughter, and *C. L.*, her grandson by adoption, in equal moieties.

On *K.*'s death *H. C.*, as heir of his father *S. C.*, took possession of the talook. Whereupon *C.* and *C. L.*, claiming under the will of *K.*, sued for possession.

Held by the Court of first instance, that *C.* took an absolute estate under the sanad on the death of her mother *K.*, but that having elected to take under her mother's will, and to admit the co-plaintiff *C. L.* to a half share in the estate, both plaintiffs were entitled to maintain the action.

Held by the High Court on appeal, that *C.*, having been born before the date of the sanad, took under it a life-interest in the talook in succession to the life-interest of her mother. But that as the plaintiffs had not sued in respect of the life-interest, but claimed under the will of *K.*, which she was incompetent to make, the suit must be dismissed.

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and
 SIR R. P. COLLIER.