

1894  


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MUCHIRAM  
BARIK  
v.  
ISHAN  
CHUNDER  
CHUCKER-  
BUTTI.

some time or other *before* judgment "affirming the claim," and *before* "the claim has been made clear by evidence and is ready for judgment," as mentioned in clause (d) of the section. I do not think that the Legislature could have intended that, where the defendant contests the truth of the assignee's claim, and does not pay or offer to pay before judgment the amount of the consideration that the assignee paid, he, the defendant, may yet get a discharge by paying simply the consideration for the assignment and the costs. And I do not quite see why the clause (d) of section 135 should be held to apply only to a case where the assignment is made after decree has been pronounced in favour of the original holder of the bond. If the Legislature had so intended, nothing could have been easier than for them to adopt the same phraseology in clause (d) which they followed in the preceding clauses of section 135, *viz.*, they might have said, "When it is made subsequent to the judgment of a competent Court affirming the claim," etc., etc.

*Appeal allowed.*

T. A. P.

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## CRIMINAL REVISION.

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*Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.*

1893.  
Dec. 18.

BASUMOTI ADHIKARINI (PETITIONER) v. BUDRAM KALITA  
(OPPOSITE PARTY).\*

*Parda-nashin lady—Attendance of parda-nashin—Warrant case—Issue of summons—Criminal Procedure Code, 1882, ss. 204, 205—Discretion of Court.*

In a warrant case, the accused being a *parda-nashin*, the Magistrate can dispense with her attendance under s. 205 of the Criminal Procedure Code if he issues a summons in the first instance, and this he has a discretion to do under s. 204.

\* Criminal Revision, No. 764 of 1893, against the order passed by G. Godfrey, Esq., Judge of the Assam Valley Districts, dated 31st October 1893, affirming the order of Babu Parosuram Khand, Extra Assistant Commissioner of Goalpara, dated the 26th September 1893.

THE facts were as follows :—

The complainant brought a charge against Basumoti Adhikarini under section 500 of the Penal Code. The charge was dismissed by the Deputy Magistrate of Goalpara on the 14th of March 1893. The case having been remanded by the Judge of the Assam Valley Districts was again dismissed on the 13th May 1893. The case was a second time remanded, and on the 22nd of August 1893 the Deputy Magistrate issued a summons on the accused, who was a *parda-nashin* woman. The accused then applied to be allowed to appear by agent and to have the proceedings set aside, on the ground that they had been instituted by a person who under the law could not institute such a charge. The application was rejected on the 31st of October 1893. The accused being dissatisfied with the Judge's decision, petitioned the High Court for revision of the Judge's order.

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On the application for the rule being made—

Mr. *H. E. Mendies* appeared for the petitioner, and referred to the decisions of the lower Court, and to the terms of sections 204 and 205 of the Criminal Procedure Code.

The judgment of the Court (PRINSEP and AMBER ALL, JJ.) was as follows :—

This is an application complaining of an order passed by the Extra Assistant Magistrate of Goalpara, refusing to dispense with the personal attendance of a *parda-nashin* woman who has been charged with defamation. The Magistrate seems to think that, under the law, he has no such power, and the terms of his order leave it doubtful whether, if he held that he has such power, he would not have exercised it. It seems to us that the Magistrate has taken an erroneous view of the law in this respect, and that he is competent to dispense with the personal attendance of the lady under the provisions of section 205, Code of Criminal Procedure. The offence, no doubt, is a warrant case, but under section 204, a Magistrate can exercise his discretion in such a case and issue a summons instead of a warrant. In the present case the Magistrate apparently did exercise such discretion. Section 205 declares that, whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal

1894 attendance of the accused and permit him to appear by his  
 BASUMOTI pleader. The application of this section is not limited to summons  
 ADHIKARINI cases, but to any case in which a Magistrate may issue a summons.  
 v. Section 205 consequently applies to a case of this description.  
 BUDRAM With the expression of this opinion as to the law, we leave it  
 KALITA. to the Magistrate to exercise such discretion as he thinks fit and  
 proper.

C. S.

## PRIVY COUNCIL.

P. C. <sup>7</sup>  
 1893  
 Nov. 23, 24.  
 1894  
 Jan. 27,

MAKUND RAM SUKAL (PLAINTIFF) v. SALIQ RAM SUKAL  
 (DEFENDANT.)

[On appeal from the Court of the Judicial Commissioner, Central  
 Provinces.]

*Arbitration—Submission to arbitration—Award not disposing of all the mat-  
 ters referred—Finality of award—Validity of award—Consent of parties.*

The ground for holding an award to be invalid on account of its not disposing of all the matters referred appears to be that there is an implied condition in the submission of the parties to the arbitration that the award shall dispose of all. This condition may be waived by the consent of the parties before the arbitrators.

The partition of joint estate, consisting of different properties, having been submitted to arbitration, and the parties agreeing to a division being made by steps, and that each division should be final, without any condition that the award should not be final while part remained undivided: *Held*, in a suit brought by one of the parties for partition of the whole estate, after such a division of part, that, although cases cited as to the invalidity\* of an incomplete award might have been applicable had the arbitrators awarded as to only part of the property of their own authority, and without that of the parties, it was competent to the latter to agree before the arbitrators to the division being made as it had been; and that here the partition, as to the property divided, was final. Only a decree for the partition of the undivided residue could be made.

APPEAL from a decree (16th July 1888) of the Judicial Commissioner, in part affirming and in part modifying a decree (28th August 1887) of the Commissioner, Nerbudda, which decree affirmed, with modifications, after two remands and intermediate

\* *Present*: LORDS WATSON, HOBHOUSE, and SHAND, and SIR R. COUCH.