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the defendant of mischief: inasmuch as there was no evidence to show that the hole was made in the wall maliciously or for the purpose of annoying the prosecutor. The conviction was therefore ordered to be quashed.

Mr. *Jackson* applied for an order for refund of the fine: but the Court was of opinion it had no power under the section to order repayment of the fine.

An application by Mr. *Jackson* for costs was refused, the Court being of opinion that the defendant was not wholly free from blame in the matter, and that the prosecution did not appear to have been a malicious prosecution.

Conviction quashed.

Attorney for the complainant: Mr. *Pittar.*

Attorney for the defendant: Mr. *Leslie.*

Before Mr. Justice Phear and Mr. Justice Markby.

THE QUEEN *v.* UPENDRONATH DOSS AND ANOTHER.

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March 9, 16 & 20.

Act X of 1875 (*High Courts' Criminal Procedure Act*), *s.* 147—*Case transferred to High Court—Notice to Prosecutor—Penal Code, ss.* 292 *and* 294—*Specific Charge—Procedure on Transfer to High Court.*

In an application for the transfer of a case under s. 147, Act X of 1875, in which the prisoner has been convicted and is undergoing imprisonment, it is in the discretion of the Court to order, for sufficient *primâ facie* cause shown, that the case be removed, without notice to the Crown.

Semble.—A charge under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should in his decision state distinctly what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections. Where no such specific decision has been given, the High Court, when the case has been transferred under s. 147, Act X of 1875, may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.

THE prisoners had been charged with offences under ss. 292 and 294 of the Penal Code, and had been on conviction sentenced

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by the Magistrate for the Northern Division of Calcutta to one month's simple imprisonment. On their application to the High Court, Phear, J., made an *ex parte* order under s. 147 of Act X of 1875, removing the case to the High Court, and allowed the release of the prisoners on bail under s. 148. The case now came on for hearing.

Mr. *Branson*, Mr. *M. Ghose*, and Mr. *Palit* appeared for the prisoners.

The *Standing Counsel* (Mr. *Kennedy*) for the Crown.

Mr. *Branson* contended that the conviction could not be sustained, first, on account of the vagueness of the charge, inasmuch as it did not specify the nature of the crime charged: secondly, that the prisoners had committed no offence under ss. 292 and 294; and thirdly, that the evidence did not justify the conviction. He also contended that the Magistrate had no power to dispose of the case summarily.

The *Standing Counsel* raised an objection to the order made removing the case to the High Court, inasmuch as no notice thereof had been given to the Crown. The Court offered to adjourn the case if the Crown required time to enable them to proceed with it, but the *Standing Counsel* said he thought an adjournment was unnecessary. He then contended that the Magistrate had power to try, and dispose of, the case summarily, and that on the evidence the conviction ought to be upheld. After hearing Mr. *Branson* in reply, the Court took time to consider its judgment, which, on a subsequent day, was delivered by

PHEAR, J.—This case now comes before us by reason of its having been removed to this Court from the Court of the Magistrate of Calcutta, Northern Division, by an order made under s. 147 of the High Courts' Criminal Procedure Act.

The learned Standing Counsel, on behalf of the Crown, objected that the order had been irregularly made, because the Crown was not served with notice of the application for it,

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and was not given an opportunity of being heard upon that application. We are of opinion, however, that when, as in the present case, a conviction has been arrived at by the Magistrate, and the petitioner is actually suffering imprisonment thereunder, it is within the discretion of this Court to order for sufficient *primâ facie* cause shown, on the application of the prisoner, that the case be removed, without notice to the Crown. We intimated our readiness to give time to the Standing Counsel, if he required it, for the purpose of this hearing, but he said he was quite prepared to go on with the case without delay.

The charge preferred against the petitioners and some other person, upon which they were tried by the Magistrate, appears in the Court book, which the Magistrate has sent up to us, in the following words:—"Defendants are charged with having, on 1st March, at Beadon Street in Calcutta, exhibited to public view certain obscene representations. Defendants are further charged with having at the time and place aforesaid uttered or recited certain obscene words to the annoyance of others: ss. 292 and 294 of the Penal Code;" and the original order or conviction made and signed by the Magistrate after hearing the evidence given on both sides appears to have been as follows:—"Defendants (2) and (3) Upendronath Doss and Omirtolall Bose" (the two petitioners to this Court) "are found guilty under ss. 292 and 294 of the Penal Code, and sentenced to suffer imprisonment for one month."

The scope of each of the two sections, 292 and 294, of the Penal Code is wide; and it is much to be regretted that the charge against the prisoners was not made specific in regard to the representations and words alleged to have been exhibited uttered, and to be obscene, before at least the accused persons were called upon to answer it. And it was certainly very important, both in the interest of the accused persons, and of the public, that the Magistrate, in his decision of the matter, should have stated distinctly what were the particular representations and words which he found in the evidence the convicted persons had exhibited and uttered, and which he adjudged to be obscene within the meaning of these sections.

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Had the case remained as the Magistrate's book represents it, we should have been reduced to the alternative of either practically trying the case *de novo* or of dismissing it, upon the ground that the Magistrate had come to no finding upon which his conviction could be sustained. Fortunately, however, since the conviction has been impeached by the making of the application for the removal of the case to this Court, the Magistrate has formally drawn up his specific findings of fact, and his order thereon, and we may now safely assume that this document discloses all that in the opinion of the Magistrate is established by the evidence against the petitioners within the scope of ss. 292 and 294 of the Penal Code. (After going through the specific findings of the Magistrate his Lordship found that the evidence was not sufficient to justify the findings of fact arrived at by the Magistrate, and that the words and passages were not obscene within the meaning of ss. 292 and 294, and continued:) It thus appears to us that the grounds upon which the Magistrate has placed his conviction in this case fail: and we can discover in the evidence no other ground upon which it could legally be supported. It follows that the conviction must be quashed, the sentence set aside, and the petitioners released from the obligation of their recognizances.

Conviction quashed.

Attorney for the Crown: *The Government Solicitor*, Mr. *Sanderson.*

Attorney for the defendants: Baboo *G. C. Chunder.*

APPELLATE CIVIL.

Before Mr. Justice Glover and Mr. Justice Mitter.

GOUREE LALL SINGH (PLAINTIFF) *v.* JOODHISTEER HAJRAH AND OTHERS (DEFENDANTS).*

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Jany. 26.

Regulation VIII of 1819, *ss.* 8 *and* 14—*Suit for Reversal of Sale—Service of Notice.*

Where, in a suit to set aside a patni sale under Reg. VIII of 1819, it was proved that the notice of sale was first stuck up in the cutcherry of the ijaradar (the mehal having been let out in ijara by the patnidar), and on the refusal of the ijaradar's gomasta to give a receipt of service, it

* Regular Appeal, No. 295 of 1874, against a decree of the Subordinate Judge of Zilla East Burdwan, dated the 27th April 1874.