

1881
 PARMESHARI
 PROSHAD
 NARAIN
 SINGH
 v.
 MAHOMED
 SYUD.

commencement of the right. But any written evidence showing that there was a time when the prescription did not exist, is an answer to a claim founded on prescription. But length of time used merely by way of evidence may be left to the consideration of the jury to be credited or not, and to draw their inference one way or the other, according to circumstances."

Case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF JAMOONA.
 THE EMPRESS *v.* JAMOONA.*

1881
 Jan. 22.

Penal Code (Act XLV of 1860), s. 211—Making False Charge to Court or Officer having no Jurisdiction.

It is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial.

THE accused, Jamoona, was charged under s. 211 of the Penal Code with having made a false charge of rape against one Sheikh Ahmed, with intent to injure him, before Captain Simpson, the Station Staff Officer of the Cantonment of Dorenda.

It was proved that she did make the charge, and it was also proved that the charge was false; and she was sentenced to one year's rigorous imprisonment.

The prisoner appealed to the High Court.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—This case came before one of the Judges of the present Bench in the vacation, and it occurred to him that no charge was made to any one competent to act upon it. Enqui-

* Criminal Appeal, No. 735 of 1880, against the order of H. L. Oliphant, Esq., Judicial Commissioner of Chota Nagpore, dated the 18th September 1880.

ries were, therefore, made as to the powers (magisterial or police) of the Station Staff Officer.

From the papers within it will be seen that he has no such powers.

The appellant appeared before Captain Simpson, Adjutant, 11th M. N. I., and Station Staff Officer, and charged a non-commissioned officer with rape. There was an enquiry, and the charge being found to be false by the military authorities, the Commanding Officer caused the appellant to be prosecuted before the criminal authorities under s. 211. She was committed for trial, and convicted by the Judicial Commissioner under that section.

We are of opinion that the appellant neither instituted, nor caused to be instituted, a criminal proceeding. She, no doubt, charged the non-commissioned officer with an offence; but the Station Staff Officer having neither magisterial nor police powers, as we are informed, it seems to us that s. 211 will not apply. We do not think it is unduly refining the words of the section to say that the false charge must be made to a Court or to an officer who has powers to investigate and send up for trial.

We, therefore, set aside the conviction, and direct the appellant's discharge.

Conviction set aside.

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Maclean.

THE EMPRESS *v.* NOBOCOOMAR PAL.*

Bengal Excise Act (Beng. Act VII of 1878), s. 53—Sale by Licensed Vendor contrary to Terms of his License.

1881
Jan. 28.

Section 53 of the Bengal Excise Act does not apply to sales by a licensed vendor contrary to the terms of his license. That section provides for a breach of the condition of a license not covered by the second clause of s. 59 of the Act.

NOBOCOOMAR PAL was summarily tried before the Magistrate of Howrah, on a charge of having sold imported liquor

* Criminal Reference, Nos. 3 and 6 of 1881, from the order of J. P. Grant, Esq., Sessions Judge of Hooghly, dated the 6th January 1881.