

the date under these circumstances is not forgery, as there is nothing to show that it was done "dishonestly or fraudulently" within the meaning of cl. 2, s. 464 of the Penal Code.

1880

 IN RE MIR
 EKRAR ALI.

It is not contended that the bond itself was not genuine, or that the accused intended to support a false claim by a false bond. It is clear that his intention in altering the date of the bond was to cause the registering officer to entertain an erroneous opinion touching a point material to the result of the registration proceedings; and this being so, his acts constituted fabricating false evidence (ss. 192, 193, Penal Code), and using fabricated evidence (s. 196, Penal Code).

In this view of the law, and as the Sessions Judge did not take a serious view of the offence committed, we reduce the sentence of imprisonment to two months' rigorous imprisonment. The sentence of fine will stand.

Sentence modified.

ORIGINAL CIVIL.

*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Pontifex, and
 Mr. Justice Morris.*

IN THE GOODS OF GRISH CHUNDER MITTER, DECEASED.

Letters of Administration—Estate of Deceased Hindu, consisting of Immoveable and Moveable Property.

1880

 Dec. 4.

Except under special circumstances, letters of administration to the estate of a deceased Hindu must be taken out in respect of the immoveable as well as the moveable property forming part of such estate.

THIS was a reference to the Chief Justice under s. 5 of the Court Fees Act (VII of 1870), under the following circumstances:—An application was made on the Original Side of the High Court, before Broughton, J., for the grant of letters of administration to the estate of one Grish Chunder Mitter, deceased, limited to certain Government securities. In addition to these securities, the deceased had left landed property, but the applicant expressly omitted any request for letters of administration in respect of such property. In the opinion of the learned Judge, the question whether letters of administration for such limited purpose could be granted in respect of the estate of a Hindu

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deceased, was a fit one for reference, under s. 5 of the Court Fees Act (VII of 1870), to the Chief Justice.

This question was accordingly referred to the Chief Justice by the Taxing Officer. In the letter of reference the attention of the Chief Justice was directed to the following cases: *Mancharji Pestanji v. Narayan Lakshumanji* (1); *In the goods of Ram Chandra Dass* (2), as also to a note on the subject by Mr. Collis, the then Officiating Administrator-General, in which note the following cases were also quoted:—*Kadumbinee Dossee v. Koylash Kaminee Dossee* (3), *Jebb v. Lefevre* (4), *Freeman v. Fairlie* (5), *Naoroji Beramji v. Rogers* (6), *Doe dem Savage v. Bancharam Tagore* (7), *In the goods of Bibee Muttra* (8), *Mohar Ranee Essadah Bye v. East India Company* (9), *Lallubhai Bapubhai v. Mankuvarbai* (10), *Srimati Jaykali Debi v. Shibnath Chatterjee* (11), *Nilkant Chatterjee v. Peari Mohan Das* (12), *Gopal Narain Mozoomdar v. Shosheebhushun Mozoomdar* (13), *Lal Chand Ramdayal v. Guntibai* (14), *Brajanath Dey v. Anandamayee Dasi* (15), and *Mussamut Bhoobunmoyee Debia v. Ram Kishore Acharji* (16).

The point being a very important one, the Chief Justice requested Pontifex and Morris, JJ., to hear the case with him.

The *Advocate-General* (Mr. Paul) for the Secretary*of State.

Mr. *Piffard* for the petitioner.

The opinion of the Court was delivered by

GARTH, C. J.—We think it quite clear that, in this case, and as a rule in all cases, general letters of administration of a Hindu's estate must be taken out for the immoveable as well as the moveable property, and that duty must be paid upon the value of the

(1) 1 Bom. H. C. Rep. 77 at p. 83.

(2) 9 B. L. R., 30.

(3) I. L. R., 2 Calc., 431.

(4) Montriou's Morton, 152.

(5) 1 Moore's I. A., 305.

(6) 4 Bom. H. C. Rep., O. C., 1, at pp. 68, 71.

(7) Montriou's Morton, 105.

(8) *Id.*, 191.

(9) 1 Tay. and B., 290.

(10) I. L. R., 2 Bom., 388.

(11) 2 B. L. R., O. C., 1.

(12) 3 B. L. R., O. C., 7.

(13) 13 B. L. R., 21.

(14) 8 Bom. H. C. Rep., O. C., 140.

(15) 8 B. L. R., 208, at p. 220.

(16) 10 Moore's I. A., 279, at p. 308.

whole. Limited administration can only be granted under special circumstances.

The real point in the case decided by Kennedy, J., in the case of *Kadumbinee Dossee v. Koylash Kaminee Dossee* (1), is beside the present question; and the opinion there expressed by the learned Judge seems not to have been necessary for the purposes of his decision.

Attorney for the Secretary of State: *The Government Solicitor* (Mr. Upton).

Attorney for the petitioner: Baboo *Shamoldhone Dutt*.

Before Mr. Justice White.

KRISTO MOHINEY DOSSEE AND OTHERS v. KALLY PROSONNO
GHOSE AND ANOTHER.*

1880
Dec 7.

Execution—Relief asked for in accordance with Statements in Plaint not forming a Separate Prayer in the Plaint—General Prayer for Relief—Control of Execution.

A, a joint owner of an estate with *B*, saved the joint estate from sale for arrears of Government revenue in payment of which *B* had made default, for such purpose mortgaging her share in the estate to *E*. *A* then sued *B* for contribution. Pending that suit, *B* again made default, and the estate was sold and purchased by *C*, subject to incumbrances. Subsequently, *A* obtained her decree against *B*, and assigned her decree to *D*, who obtained an order for execution and attached certain property belonging to *B*. *D* and *B* then entered into an agreement with *C*, that they would release *C* and the share charged with payment of *A*'s decree, from all liability, and that they would entrust the whole conduct of the execution-proceedings to *C*, in consideration of his granting a perpetual lease of part of the property to *D* and *E*. In pursuance of this agreement, *D* and *E* granted a release to *C*, and *C* granted a lease to *E* for himself, and it was contended, also, as benamidar of *D*. The agreement contained a proviso that should the Court, in which the decree should be executed, of its own accord or on the petition of *B*, or his legal representative, notwithstanding objection on the part of *D* and *E*, make any order directing the decree to be executed against the estate, then in such case *D* and *E* should not be bound by the release, and that it should be open to *C* to cancel the agreement. *D* applied for execution against the estate of the adopted son of *B* (who had died), but subsequently abandoned all proceedings and transferred his decree to the High Court to obtain execution against a house belonging to *C*, in Calcutta. The adopted son and widow of *B*,

* Application in suit No. 632 of 1880, Original Side.

(1) I. L. R., 2 Calc., 430.