

sion of the High Court be affirmed. Inasmuch as the respondents have not appeared by counsel, there will be no costs of this appeal.

*Appeal dismissed.*

Solicitors for the appellants: Messrs. *Watkins and Lattey.*

Solicitor for the respondents: Mr. *T. L. Wilson.*

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## APPELLATE CRIMINAL.

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*Before Mr. Justice White and Mr. Justice Field.*

GOGUN CHUNDER GHOSE *v.* THE EMPRESS.\*

*Evidence, Admissibility of--Judgment in Civil Suit out of which Criminal Prosecution arises.*

In suit by *A* against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of *A* on a charge of forgery. On the trial of *A* before a jury, this judgment of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury.

*Held*, that this judgment had been illegally admitted.

Mr. *M. Ghose* and Baboo *Bykant Nath Dass* for the accused.

THE facts of this case sufficiently appear in the judgment of the Court (WHITE and FIELD, JJ.), which was delivered by

WHITE, J. — This was an appeal by the prisoner Gogun Chunder Ghose against a conviction under s. 471 of the Code and a sentence of five years' rigorous imprisonment.

The circumstances out of which the prosecution arose are these: The prisoner had brought a suit against Basheeram Mundle and his two brothers, Babooram Mundle and Dharani Dhur Mundle, for the recovery of 726 rupees, being the amount of principal and interest due upon a kistibandi, or bond, alleged to have been executed in favor of the prisoner by the three brothers.

\* Criminal Appeal, No. 433 of 1880, against the order of W. H. Page, Esq., Officiating Additional Sessions Judge of the 24-Pargannas, dated the 10th June 1880.

1880

GRISH-  
CHUNDER  
CHUCKER-  
BUTTY

*v.*

JIBANESWA-  
RI DEBIA.

GRISH-  
CHUNDER  
CHUCKER-  
BUTTY

*v.*

BISESWARI  
DEBIA.

1880

July 16.

1880

GOGUN  
CHUNDER  
GHOSE  
v.  
THE  
EMPRESS.

The Munsif found that the bond had been executed by one of the three, Dharani Dhur, but dismissed the suit, because he was of opinion that the signature of the other two defendants, Basheeram and Babooram, were forged; and he entertained so strong an opinion upon this point that he directed this prosecution, which we are now considering, to be instituted against the prisoner for forging the kistibandi, and using it as genuine knowing it to be forged.

The case has been tried by a jury, and they have come to a unanimous verdict that the prisoner is guilty of using this bond knowing it to be forged, and in answer to a question they said, that they found the signatures of Basheeram and Babooram to be forged, but the signature of Dharani Dhur to be genuine. At the trial, the judgment of the Munsif in the civil suit, although objected to on the part of the prisoner, was put in evidence by the prosecution, and read out to the jury, and the substance of the judgment was also referred to by the Sessions Judge in his charge to the jury.

The ground of the appeal is, that this judgment was improperly admitted as evidence, and that eliminating the judgment there is not sufficient evidence to justify the verdict. There can be no doubt the judgment was improperly received. Technically it was inadmissible, because it was not between the same parties, the present parties technically being the Queen-Empress on the one hand, and the prisoner on the other, and the respective parties in the civil suit being the prisoner and the three defendants; and furthermore, it was not admissible on the substantial ground that the issues in the civil and criminal suit were not identical, and that the burden of proof rested in each case on different shoulders. It was not necessary for the Munsif in the civil suit to find more than that the execution of the bond by the three defendants was not proved. When the Munsif went further and pronounced the bond a forgery, and directed a prosecution, it was not a decision on the question of forgery, but merely an opinion which, although he was entitled to give expression to, ought no more to have been put in evidence on the present charge than the opinion of a Magistrate who commits a prisoner to take his trial upon a criminal charge.

The Judge, in his summing up, draws the attention of the jury to this judgment and to the Munsif's opinion contained in it, and uses the following words: "The Munsif believed that one of the brothers, Dharani, executed the document, and that the other names were added afterwards by the prisoner, or with his knowledge, and with a dishonest intent. Whether this or whether all three names are forgeries, the offence is the same." It is true that the Judge, later on, says to the jury—"You are not in any way bound by the finding of the Munsif;" and that he also, still later on, draws their attention to the fact that in the civil suit the *onus probandi* was on the prisoner, whereas at the trial of forgery the onus was on the prosecution. But inasmuch as neither the judgment nor the Munsif's opinion were evidence, the Judge, if he referred to them at all, ought to have told the jury not merely that they were not bound by them, but that it was their duty to dismiss them altogether from their mind. We have next to consider whether, independently of the objectionable evidence, there is sufficient evidence to justify the verdict of the jury.

[The learned Judge then proceeded to consider the other evidence in the case, and ultimately arrived at the opinion that, independently of the Munsif's judgment, there was not sufficient evidence which, even if believed, pointed with reasonable certainty to the guilt of the accused, and therefore made an order of acquittal.]

*Conviction set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Pontifex and Mr. Justice McDonell.*

AJOODHYA PERSHAD AND OTHERS (PLAINTIFFS) *v.* GUNGA PERSHAD AND ANOTHER (DEFENDANTS).\*

1880  
June 10.

*Appeal against order rejecting Plaintiff—Plaint insufficiently Stamped—Court Fees Act (VII of 1870), s. 12, para. 1; sched. ii, div. ii, art. 17, part iii—Civil Procedure Code (Act X of 1877), s. 1, tit. "Decree."*

An appeal lies against an order rejecting a plaintiff on the ground of its being insufficiently stamped.

\* Appeal from order, No. 64 of 1880, against the order of Roy Matadeen, Bahadur, Subordinate Judge of Gya, dated the 21st November 1879

1880  
GOGUN  
CHUNDER  
GHOSE  
*v.*  
THE  
EMPRESS.