

and to set up in a Court of appeal a plea which they had directly and fraudulently repudiated in the Court below; see *Dabee Misser v Mungur Meah* (1). We, therefore, think it right to reverse the decision of the learned Judge of this Court, and to restore the judgment of the Court below. The appellant will have her costs of both hearings in this Court.

1880

SUTYA-  
BHAMA  
DASSEE  
v.  
KRISHNA  
CHUNDER  
CHATTERJEE.

*Appeal allowed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

THE EMPRESS v. BUTOKRISTO DASS AND ANOTHER.\*

1880

May 3.

*Conduct of Prosecution by Advocate or Attorney—Permission by Magistrate—  
Presidency Magistrates' Act (IV of 1877), s. 129.*

With the exception of the Advocate-General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate.

THE following letter of reference under s. 240 of Act IV of 1877 (The Presidency Magistrates' Act) was sent by the Chief Presidency Magistrate, with the object of eliciting an expression of opinion from the High Court on the question therein asked:—

“I have the honor, under s. 240 of Act IV of 1877, to refer, for the opinion of the High Court, the following question:—

“Under s. 129, Presidency Magistrates' Act, are counsel or attorneys entitled, as a right, to prosecute cases in the Presidency Magistrate's Court, or must they obtain the sanction of the Magistrate to do so?”

The opinion of the Court (MORRIS and PRINSEP, JJ.) was as follows:—

MORRIS, J.—In our opinion, under s. 129 of the Presidency Magistrates' Act, with the exception of the Advocate-General,

\* Criminal Reference, No. 95 of 1880, made by F. J. Marsden, Esq., Chief Presidency Magistrate of Calcutta, dated the 26th April 1880.

1880  
 EMPRESS  
 v.  
 BUTOKRISTO  
 DASS.

Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate.

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## ORIGINAL CIVIL.

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*Before Mr. Justice Wilson.*

GOVIND CHUNDER GOSWAMI v. RUNGUNMONEY.

1880  
 March 18.

*Limitation Act (XV of 1877), sched. ii, art. 178—Application to revive a case and restore it to the Board.*

After a decree had been made in a suit, the case was, in 1875, struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under s. 13 of the Code of Civil Procedure, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the Code. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board,—

*Held*, that the application was not barred under art. 178 of sched. ii to the Limitation Act of 1877.

Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted.

The Legislature did not intend to include in the Limitation Act every application to a Court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth.

THIS was an application to revive a certain suit and to have it restored to the board of causes. It appeared that one Cossinath Mullick died, leaving a will, of which he appointed his wife, Rungunmoney Dossee, executrix, and by which he appointed one Govind Chunder Goswami trustee for the purpose of carrying out certain religious trusts. On the 4th of June 1869, Govind