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receive a fair trial from him. As regards the suggestion that inasmuch as the Honorary Magistrate in private life happens to be the manager of somebody else who has some claim to the Bettiah Raj, he is likely to support the complainant and go against the accused, we need only say that the statement is absurd upon its face. The Magistrate of the district says that if a proper application is made to him, he would transfer the case from the file of the Honorary Magistrate to that of some other Magistrate with first class powers so that an appeal might not lie to him but to the Sessions Judge. With this, however, we are not at present concerned. On the whole, therefore, we think no ground has been made out for the application for transfer in this matter and we accordingly discharge the Rule.

D. S. *Rule discharged.*

Before Mr. Justice Prinsep and Mr. Justice Handley.

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August 29.

PROKASH CHUNDER SARKAR (PETITIONER) *v.* RAM PRASAD PATTAK (OPPOSITE PARTY).*

Jurisdiction—Costs—Order for assessment of, without notice to party affected thereby—Revision by High Court—Code of Criminal Procedure (Act V of 1898) s. 148.

A Magistrate has no jurisdiction to pass an order under s. 148 of the Code of Criminal Procedure making a party liable for a certain sum as costs without notice to him, so that he may have an opportunity of contesting the same.

IN this case a proceeding was drawn up under s. 145 of the Code of Criminal Procedure between Ram Prasad Pattak as the first party and the petitioner Prokash Chunder Sarkar as the second party in the Court of Mr. Cook the Joint Magistrate of Gya. On the 30th December 1899, the proceedings terminated in favour of Ram Prasad Pattak, who was declared to be in possession of some of the disputed lands and an order was made awarding him costs. Mr. Cook left the district and Mr. O'Malley, who succeeded him on the application of Ram Prosad Pattak assessed costs on the 18th May 1900, at Rs. 201-13-6 against the

* Criminal Revision No. 513 of 1900, made against the order passed by L. S. S. O'Malley, Esq., District Magistrate of Gya, dated the 18th day of May 1900.

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petitioner without notice to him. The petitioner then applied to the District Magistrate to set aside the order passed on the 18th May, but Mr. O'Malley, who was officiating as District Magistrate, rejected the application.

The petitioner thereupon applied for and obtained a rule from the High Court calling upon the District Magistrate to show cause why the order of assessment of costs should not be set aside as being made without notice to the petitioner.

Mr. *Swinhoe* (with him Babu *Atulya Charan Bose* and Babu *Hari Bhusan Mookerjee*) for the petitioner.

The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The Rule is made absolute as the Magistrate admits that he passed the order under s. 148, Code of Criminal Procedure, making the petitioner liable for a certain sum as costs, without notice to him so that he might have an opportunity of contesting the same. The Magistrate is now at liberty to proceed after due notice to the parties concerned.

D. S. *Rule made absolute*

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Brett.

BENI MADHUB MITTER (DEFENDANT No. 2) *v.* PREONATH MANDAL AND ANOTHER (PLAINTIFFS).*

1900 *Dec.* 13.

Arbitration—Award—Acquiescence—How far a defendant, not a party to an application for reference to arbitration, is bound by his conduct.

In a suit brought by the plaintiffs for recovery of possession of certain immoveable property on a declaration of title thereto, a reference was made to arbitration.

One of the defendants (defendant No. 2) did not join in the reference and did not take any part in the proceedings before the arbitrators, although it appeared that he, in obedience to a summons which was issued at the instance of another defendant, sent his servant to produce a document

* Appeal from Appellate Decree No. 2039 of 1898, against the decree of C. P. Caspersz, Esq., District Judge of 24-Pergunnahs, dated the 9th of July 1898, reversing the decree of Babu Bulloram Mullick, Subordinate Judge of that District, dated the 25th of July 1897.