

CRIMINAL REVISION.*Before Mr. Justice Carnduff and Mr. Justice Imam*

JOGENDRA NATH MOOKERJEE

v.

MATI LAL CHUCKERBUTTY.*

1912

Aug. 2.

Jurisdiction of Magistrate— Charge with a view to commitment, cancellation of—Criminal Procedure Code (Act V of 1898), s. 213 (2)—Cross-examination of prosecution witnesses after framing of the charge, effect of—“ Witnesses for the defence,” interpretation of—Practice.

It is open to a Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, to allow the accused to cross-examine the witnesses for the prosecution and, as the result, to cancel the charge.

The words “witnesses for the defence” in s. 213 (2) of the Code are wide enough to cover evidence elicited in cross examination of witnesses for the prosecution.

Surjya Narain Singh, In re (1) referred to.

THE petitioner, Jogendra Nath Mookerjee, on behalf of Roy Jatindra Nath Chowdhury, his master, laid a complaint before the Subdivisional Magistrate of Basirhat, charging one Mati Lall Chuckerbutty, a *naib* in the service of his master, with criminal breach of trust and falsification of accounts in respect of Rs. 7-8 and odd collected by Mati Lall Chuckerbutty as rent from a tenant named Kedar Sardar. The Subdivisional Magistrate of Basirhat, after examining the prosecution witnesses, drew up charges under ss. 408 and 477 A of the Penal Code. But instead of committing the accused to the Court of Sessions he allowed

* Criminal Revision No. 857 of 1912, against the order of Satyendra Nath Dass, Subdivisional Magistrate of Basirhat, dated April 18, 1912.

(1) (1900) 5 C. W. N. 110, 112.

1912
 JOGENDRA
 NATH
 MOOKERJEE
 v.
 MATH LAL
 CHUCKER-
 BUTTY.

the prosecution witnesses to be recalled for cross-examination. Thereupon, by his judgment, dated the 23rd of April, 1912, he acquitted the accused of the offence under s. 408 of the Penal Code and cancelled the charge against him under s. 477A.

Against this order the petitioner moved the High Court and obtained this Rule.

Babu Sarat Chandra Roy Chowdhury, for the petitioner.

Babu Haraprasad Chatterjee and *Babu Sajani Kanta Sinha*, for the opposite party.

CARNDUFF AND IMAM JJ. We think that this Rule must be discharged.

The short point raised by it is whether a Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, can thereafter allow the accused to cross-examine the witnesses for the prosecution and, as the result, cancel the charge. We are of opinion that it is open to him to take this course.

Section 213, sub-section (2) of the Code of Criminal Procedure, 1898, provides that, if a Magistrate, after having drawn up a charge, hears witnesses for the defence and is then satisfied that there are not, after all, sufficient grounds for committing the accused, he may cancel the charge and discharge the accused. No doubt, the sub-section refers to "witnesses for the defence"; but, in our view, those words are wide enough to cover evidence extracted by cross-examination from witnesses for the prosecution. The course taken by the Magistrate seems to us to be clearly within the spirit of the provision, and we consider that it is not unduly straining the words used to put the construction we have indicated upon them. We

find, moreover, that our view is in accordance with that expressed by this Court in *Surjya Narain Singh, In re* (1).

S. K. B.

Rule discharged

(1) (1900) 5 C. W. N. 110, 112.

1912
 JOGENDRA
 NATH
 MOOKERJEE
 v.
 MATI LAL
 CHUCKER-
 BUTTY.

APPELLATE CIVIL.

Before Mr. Justice Coxe and Mr. Justice Imam.

JHARULA DAS

v.

JALANDHAR THAKUR.*

1912
 March 12.

Shebait—Res judicata—Successor of a shebait, when bound by a decree passed against the shebait—Limitation Act (XV of 1877), Sch. II, Art. 124—Hereditary office of a shebait—Adverse possession of the office.

The widow of a *shebait* of a certain temple, who succeeded her deceased husband in that office, mortgaged some land, as also her interest in the temple income, to one J, who obtained a decree on his mortgage on the 24th of September 1880. In execution thereof he put up the temple income for sale, purchased it himself and obtained delivery of possession in 1892. The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable. That suit was withdrawn with liberty to bring a fresh suit. The widow alone then brought another suit which was dismissed on the ground that it was barred by section 244 of the Code of Civil Procedure (Act XIV of 1882). She having died, the reversioner brought a suit against the said J, on the 3rd of January 1910, for a declaration that he was entitled to the temple income inasmuch as it was not saleable. On objections taken by the defendant that the suit in so far as it related to the temple income was barred by the rule of *res judicata* and by limitation :

Held, that, inasmuch as there was no collusion or dishonesty about the former suits, and as in one of them the plaintiff himself was a party,

* Appeal from Original Decree, No. 152 of 1911, against the decree of Kishori Mohan Sikdar, Subordinate Judge of Bhagalpur, dated April 3, 1911.