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"NOTICE.

"Whereas information has been received from the Traffic Manager, Great Indian Peninsula Railway, that certain of the level-crossings over the Railway, which are provided *solely* for the accommodation of villages on either side of the line, are used as public thoroughfares by much heavy traffic, which leaves the highroad to Bombay in order to evade the toll-bars; and whereas the passage of many heavily-laden carts in constant succession over such accommodation crossings is attended with danger to passengers travelling by railway: It is hereby notified that orders have been issued to the gatekeepers at the said accommodation level-crossings, and to the Pátíls of the villages in which they are situated, to prohibit general traffic from passing over them. Any person disobeying this prohibitory order will be punished according to law.

"This injunction is issued under cl. 6, Sec. XIX. of Reg. XII. of 1827."

This notification was submitted to the High Court, for its approval or otherwise, under Reg. XII. of 1827, Sec. XIX., cl. 6.

The notice was considered by LLOYD and KEMBALL, JJ.,

PER CURIAM:—The notice issued by the District Magistrate under date the 31st of March 1871, not coming within the scope of Reg. XII. of 1827, Sec. XIX., cl. 6, is hereby forbidden, as the Court is of opinion that it does not come within the scope of the law quoted.

April 26.

REG. v. TA'I, wife of NA'NCHAND.

Sanction for Prosecution—Specification of Section—Crim. Proc. Code, Sec. 169.

Sanction for the prosecution of the accused was accorded by an Assistant Session Judge in the following terms:—

"There is no doubt whatever that Tái, Báji, and Bálá, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction) "for their prosecution."

Held that this gave sufficient sanction for the prosecution of the accused under Sec. 193 of the Indian Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.

THE accused was convicted by the Honorable G. A. Hobart, Session Judge of Khándesh, of giving false evi-

dence in a judicial proceeding, and was sentenced to three months' rigorous imprisonment.

She appealed to the High Court, and, the record and proceedings having been sent for and received, the case was heard before GIBBS and KEMBALL, JJ., who, entertaining doubts as to the sufficiency of the sanction for the prosecution, admitted the accused to bail, and referred the question for the determination of the Full Bench.

On the 26th of April 1871, the question referred was argued before WESTROPP, C.J., GIBBS, MELVILL, and KEMBALL, JJ.

Shántárám Náráyan:—I submit that, in order to give jurisdiction to the trying court, the section of the Indian Penal Code under which it is intended that the accused shall be tried must be specified in the order granting the sanction for prosecution. It has been held by the Calcutta High Court, in *Reg.* v. *Ooma Moye Debea* (*a*), that where a civil court gives sanction to a prosecution under Secs. 169 and 170 of the Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. In *Reg.* v. *Dwarkanath Bose* (*b*) it was held that a Deputy Magistrate could not commit a person for forgery under Sec. 170 of the Code of Criminal Procedure when the civil court has sanctioned the prisoner's committal under Sec. 169, unless with the express sanction of that court. [WESTROPP, C. J., referred to *Reg.* v. *Kadir Bux* (*c*).] Again, in *Reg.* v. *Kartick Chunder Holdar* (*d*), it was held by Kemp and E. Jackson, JJ., that a general sanction by a Judge to a prosecution for giving false evidence under Sec. 193 of the Penal Code, and for false verification, was not sufficient; and that the exact words upon which the prosecution was based, and the exact offences which the Magistrate was to investigate, should be pointed out. He also cited *Reg.* v. *Poosa Ram* (*e*), *Reg.* v. *Gobind Chunder* (*f*), and *Reg.* v. *Khushál Hirámun* (*g*).

(*a*) 13 Calc. W. Rep., Cr. R. 25.
(*b*) 2 *Ibid.* 31. (*c*) 11 Calc. W. R., Cr. R. 17.
(*d*) 9 *Ibid.* 58. (*e*) 6 Calc. W. Rep., Cr. R. 11.
(*f*) 10 *Ibid.* 41. (*g*) 4 Bom. H. C. Rep., Cr. Ca. 28.

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Dhirajlál Mathurádás (Government Pleader) was not called upon.

WESTROPP, C.J.:—In this case the prisoner Tái is convicted, on the second head of charge, "with having—on or about Ashad Shudh 9th, Shake 1792, being a witness in Case No. 55 of 1870, which was a judicial proceeding then pending before the Assistant Session Judge at or near the town of Dhuliá, and being bound by affirmation according to law to speak the truth—intentionally given false evidence by stating as follows:—'I stated before the Magistrate that I had seen two women like accused Sálu and Bhágu, not that they were Sálu and Bhágu.'" It is said on behalf of the prisoner Tái that the sanction given for her prosecution by the Assistant Session Judge is insufficient. The order recording the sanction runs thus:—

"There is no doubt whatever that Tái, Báji, and Bálá, these three persons, made certain statements before me contradictory of the statements which they had made in the depositions taken by the committing Magistrate. Therefore, if from such statements of theirs they be liable to any charge against them, there is sanction from here" (*i.e.*, I give my sanction) "for cases being made against them" (*i.e.*, for prosecuting them). "Be this known.

"S. N. TAGORE,

"Assistant Session Judge."

Now in the first place we may fairly infer, unless the contrary appears, that the Assistant Judge gave sanction for prosecution under some section of the Criminal Procedure Code, which requires that a sanction to prosecute must in certain cases be given; and in the second place, looking to the language of the sanction, we have not any difficulty in ascertaining the section of that Code under which he was acting in giving the sanction.

From what he has said with respect to the contradictory statements, it is evident that he was referring to Sec. 169, and not 170, of that Code. Sec. 170 refers to offences in respect of documents, and there is nothing in the sanction, here given, relating to offences of that nature. Secs. 166 to 168 inclusive are equally inapplicable. If, therefore, any indication as to the section of the Criminal Procedure Code

acted upon in giving the sanction were necessary, there has in this case been a sufficient indication of it. It is unnecessary for us to decide here that such an indication is indispensable. But, howsoever that may be, we do not think that it was intended by the Legislature that the Judge granting the sanction should be bound in all cases to specify the section of the Penal Code under which the trial is to take place. There is not any express provision to that effect in the Criminal Procedure Code, and the Legislature probably intentionally refrained from making such a provision in order to prevent inconvenience. The sanctioning and the committing or trying authorities might differ as to the section of the Penal Code which it would be proper to apply to the case, and the result of an express direction in the Criminal Procedure Code, requiring the sanctioning court to specify the section of the Penal Code, might be a failure of justice. We do not think that we ought to add to the Procedure Code by deciding that the section of the Penal Code must be specified. The sanction given by the Assistant Judge in this case bears some resemblance to the sanction given by the Munsif in the case of *Reg.* v. *Kadir Bux* (*ubi suprà*), which sanction was, by L. Jackson and Markby, JJ., deemed sufficient. It was in these words: "The defendant, Kadir Bux Mahomed, gave different statements regarding the same subject-matter in two different cases. His deposition was once given in plaintiff's and at another time in defendant's favour. He has also changed his name from Kadir Bux to Kadir Mahomed to show that he is not the same person. I see no objection to give the petitioner permission to prosecute the defendant criminally for giving false evidence on oath deliberately." In that case L. Jackson and Markby, JJ., declined to adopt the doctrine laid down in *Reg.* v. *Kartick Chunder Holdar* (*a*), which required that the exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be specified. We are not disposed to follow the other decisions* of the Calcutta High Court which

(*a*) 9 Calc. W. Rep., Cr. R. 58.

* 10 Calc. W. Rep., Cr. Rep., 41; 13 Calc. W. Rep., Cr. R. 25.

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have been cited to us, and which seem to require a greater amount of particularity in the sanction than we find in the present case. Were we to do so, we think that we should needlessly add to the language of the Legislature, and probably cause many failures of justice. The case of *Reg.* v. *Khushál Hiráman* (*ubi suprà*) differs so much in its facts from this case that we do not offer any opinion upon it.

April 27.

REG. v. SUBI SA'NI.

Sanction to prosecute—Sections of Code specified—Power of Magistrate to commit under different Sections—Crim. Proc. Code, Sec. 170.

Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under Secs. 463 and 471 of the Indian Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under Sec. 193 (giving false evidence):

It was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge.

THIS case was referred for the opinion of the High Court by A. Spens, Acting Session Judge of the District of North Cánará.

The facts of the case are briefly these:—

One Ráchá Sáni adopted the accused Subi, and executed to her a power of attorney, whereby Subi, in consideration of her paying off the debts of Rácha to the extent of Rs. 250, became owner of Ráchá's estate, moveable and immoveable. One of the creditors of Ráchá, by name Bhistápa, brought a suit against her in the Court of the Principal Ṣadr Amín of Sirsi for Rs. 100. Subi applied to be made a defendant in that suit, and in support of her application produced the power of attorney above referred to. The Principal Ṣadr Amín, on inspection of the power, suspected that the figure 250 had been altered to 25. He, accordingly, wrote the following letter to the First Class Subordinate Magistrate of Sirsi:—

"I have sent herewith a copy of my judgment, dated 31st January 1865, passed in Original Suit No. 352 of 1863, between Nadigá Bhistápá, *alias* Goudápá, as plaintiff, and Ráchá Sáni as defendant.