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Whether the existence of a suit, in which the matters in difference are in litigation, may under special circumstances afford sufficient cause, as contemplated by ss. 523 and 525, for not filing the agreement to arbitrate, it is not necessary to decide. We may add that the same question arose on s. 327 of the old Procedure Code (Act VIII) of 1859, the language of which is almost identical with that of s. 525 of the present Code, and was determined in the same manner in *Thakoor Doss Roy* v. *Hurry Doss Roy* (1), and that decision has not been departed from or overruled in any reported case. Upon the whole, we are of opinion that the mere circumstance of the matters having been agreed to be referred to arbitration, during the pendency of a suit in which they are in litigation, is not of itself sufficient reason for refusing to file the agreement to refer to arbitration.

Attorneys for Utamchand Manekchand—Messrs. *Rimington, Hore and Conroy.*

Attorneys for Ghellabhai Hemchand—Messrs. *Macfarlane and Gilbert.*

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[5] ORIGINAL CIVIL.

Before Mr. Justice Green.

CASSIBAI, WIFE OF VITHALDAS JAGGANNATH, EXECUTRIX OF MANKUVARBAI (*Plaintiff*) *v.* RANSORDAS HANSRAJ, INFANT, BY HIS GUARDIAN JUMNABAI (*Defendant.*)*

[4th July, 1879.]

Executor—Power of, to charge the estate of his testator.

H. K. died on the 5th July 1871, leaving two widows, J. and A., and one son (the defendant), him surviving. By his will he appointed D. his executor, and named the defendant his residuary legatee. At the time of his death, H. K. was indebted to M in a large amount, for which M. held mortgages on his property. On the 5th March 1873, M.'s debt amounted to Rs. 1,33,631, and it was agreed between M. and D. *as executor*, that the mortgaged property (estimated at one lakh in value) should be made over to M. absolutely in part payment, and that D. should become *personally* liable to her for the balance of Rs. 33,631 with interest at 9 per cent. payable within twelve months. In consideration thereof, M. was to release D. *as executor* and the defendant from liability for the sum of Rs. 1,33,631. An indenture carrying out this agreement was executed on the same day, and D. gave a bond making himself *personally* liable to M. for Rs. 33,631. Shortly afterwards a new arrangement was made. M. agreed to abandon Rs. 10,631 of the Rs. 33,631 due under the bond and to accept Rs. 23,000 payable in yearly instalments of Rs. 3,000 in satisfaction of her whole claim. In pursuance of this agreement D. *as executor*, paid the first instalment J. paid the second instalment, D. having made over the estate of H. K. to the Administrator-General under the provisions of Act II of 1874. M. died in October 1874, and the plaintiff, as her executrix, sued the defendant for the instalments due in 1876, 1877 and 1878.

Held that the estate of H. K. having been released by M. by the deed executed on the 5th March 1873, it was not competent for D. as executor, by a new contract to charge it with any liability in respect of the amount due to M.

Childs v. *Monins* (2), *Rose* v. *Bowler* (3), and *Powell* v. *Graham* (4) followed.

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* Suit No. 586 of 1878.

(1) W. R. (1864) Mis. Rul. 21.
(2) Brod. & Bing. 461.
(3) 1 H. Bl. 109.
(4) 7 Taunt. 581.

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IN this suit the plaintiff, as executrix of one Mankuvarbai, sought to recover the sum of Rs. 9,000 from the defendant as heir and residuary legatee of his deceased father Hansraj Karamsi.

Hansraj Karamsi died on 5th July 1871, leaving two widows, Jumnabai and Amrutbai, and one son (the defendant) him surviving. Amrutbai died prior to the institution of this suit. By this will, dated the 4th July 1871, he appointed one Damji Chagpur his executor, and named the defendant his residuary legatee. At [6] the time of his death he was indebted to Mankuvarbai in a large amount, for which he had mortgaged certain of his immoveable properties.

On 5th March 1873, the amount due to Mankuvarbai was ascertained to be Rs. 1,33,631, and it was agreed between Mankuvarbai and Damji Chagpur, as executor of Hansraj Karamsi, with the concurrence of Jumnabai and Amrutbai, that the various immoveable properties held by Mankuvarbai as security (the value of which was estimated at Rs. 1,00,000) should be made over to her absolutely in part payment of her debt, and that Damji Chagpur should become personally liable to her for the payment of the balance of Rs. 33,631, with interest at 9 per cent., within twelve months. In consideration thereof, Mankuvarbai was to release Damji Chagpur *as executor* and the defendant Ransordas Hansraj from all liability for the sum of Rs. 1,33,631. An indenture, by which the above terms of agreement were carried out, was duly executed on the said 5th March 1873, and on the same day Damji Chagpur executed a bond under which he made himself personally liable to Mankuvarbai for the sum of Rs. 33,631.

On the 24th March 1873 a new arrangement was made. Mankuvarbai agreed to abandon Rs. 10,631 of the Rs. 33,631 for which Damji Chagpur had given the bond, and likewise all claim to interest, and to accept the sum of Rs. 23,000 in satisfaction of her whole claim. The said sum of Rs. 23,000 was to be paid by yearly instalments of Rs. 3,000 on the 5th March in each year. In accordance with this agreement, Mankuvarbai gave a receipt for Rs. 10,631. The first instalment of Rs. 3,000 was paid to the plaintiff by Damji Chagpur as executor. Damji Chagpur subsequently, *viz.*, on 27th September 1875, made over to the Administrator-General the estate of Hansraj Karamsi under the provisions of s. 31, Act II of 1874, and the second instalment of Rs. 3,000 was paid by Jumnabai. The plaintiff, as executrix of Mankuvarbai, who died in October 1874, now sued for three unpaid instalments, *viz.*, those due in 1876, 1877 and 1878.

The defendant denied his liability.

The Advocate-General (Honourable *J. Marriott*) and *Macpherson*, for the plaintiff.—We sue on the new contract entered into on [7] the 24th March 1873, which we say charged the estate with Rs. 23,000. Even though Damji Chagpur executed the bond of the 5th March 1873 in his personal capacity, he did so only as surety for the estate. He reserves the right to recoup himself out of the estate. He signs the bond as executor showing his intention. An executor who pays a debt due by the estate may retain the amount: *Boyd* v. *Brooks* (1). The effect of the new agreement of the 24th March 1873 was to substitute the estate as principal debtor to Mankuvarbai in lieu of Damji Chagpur. The arrangement was beneficial to the estate. Rs. 10,631 is given up, and the remainder is to be paid by instalment. The only questions in issue are—

(1) 34 Bea. 7 = on appeal, 34 L.J. Ch. 605.

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(1) whether the sum claimed from defendant was a debt due by Hansraj Karamsi: (2) whether, if so, it was one for which his ancestral estate is chargeable. It is immaterial in whose hands the estate is now. It is liable, unless the debt was one contracted for immoral purposes. Counsel cited Williams on Executors (7 ed.), 1771; *Powell* v. *Graham* (1); *Secar* v. *Atkinson* (2).

Latham and *Farran*, for the defendant.—The Hindu Wills Act (XXI of 1870) applies to the will of Hansraj Karamsi. The third section of that Act limits the rights of an executor. His position is not the same as that of an English executor. In India a testator's property is divided into two parts. The executor takes the self-acquired property, and the heir takes the ancestral property. Prior to the 5th March 1873, Mankuvarbai held mortgages upon the testator's immoveable property as security for her debt, which she might have enforced. On the 5th March 1873, under the arrangement then made, she gave a release to the executor, not in his individual capacity, for on that same day he gave a bond for Rs. 33,631, but as executor representing all the testator's property, except the ancestral immoveable property. The effect, therefore, of that deed was to set free all the testator's estate from liability for the debt to Mankuvarbai. By it the mortgagee took over the mortgage estate, and also obtained a remedy against the executor on his bond. The bond given by Damji Chagpur is binding on him personally, and does not effect this estate. No [8] doubt he signs as "the executor of Hansraj Karamsi," but those are words of description, and do not qualify his liability: *Price* v. *Taylor* (3); *Dutton* v. *Marsh* (4); Lindley on Partnership (3rd ed.), 364. There are no cases to be found in which the liability of an executor who was *given* a bond is discussed; but in *Hosier* v. *Lord Arundel* (5) it was held that if an executor *takes* a bond given to him as executor, he can only sue in his personal capacity: Williams on Executors (6th ed.), 882. The agreement made subsequently to the 5th March 1873 could not bind the estate any more than the previous one. Even admitting that the executor had power to contract so as to bind the assets, yet such power could only exist in relation to the assets vested in him as executor. He only takes, as such, the self-acquired immoveable property and the moveables. No agreement by him could bind the ancestral immoveable property, which devolved on the defendant. *Rose* v. *Bowler* (6), *Ashby* v. *Ashby* (7), and *Childs* v. *Monins* (8) were cited by counsel.

JUDGMENT.

GREEN, J.—The plaintiff is the executrix of one Mankuvarbai who died in October 1874, and who was widow and executrix of Gungadas Vibjhukandas, deceased. The defendant is an infant, and son and heir of one Hansraj Karamsi who died on the 5th July 1871, leaving two widows, Jumnabai and Amrutbai, and a son, the defendant (who was the child of Amrutbai). Hansraj Karamsi executed a will, dated the 4th July 1871, and thereby appointed one Damji Chagpur, his executor (during the minority of his infant son, the defendant), and bequeathed the residue of his property to the defendant, subject to certain allowances to his two said widows.

Damji Chagpur proved the will of Hansraj Karamsi on the 5th June 1872, and for some time acted as executor; but on the 29th September

(1) 7 Taunt. 580 (585). (2) 1 H. Bl. 102. (3) 75 H. & N. 540.
(4) 6 L.R.Q.B. 261. (5) 3 B. & C. 7. (6) 1 H.B.L. 108.
(7) 7 B. & C. 444. (8) Brod. & Bing. 460 = 5 Moo. 281.

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1875 he made over the estate, effects and interests of Hansraj Karamsi, vested in him as such executor, to the Administrator-General under s. 31 of Act II of 1874. Differences had, it appears, in or before 1874 arisen between Damji Chagpur as executor and Jumnabai, the surviving widow of Hansraj Karamsi (and who is guardian *ad litem* of the present defendant) with [9] reference to the estate of Hansraj Karamsi, of which, or parts of which, it is alleged, Jumnabai had possessed herself. The will of Hansraj Karamsi was subsequent to and subject to the provisions of the Hindu Wills Act (XXI of 1870). By s. 3 of that Act it is provided (*inter alia*) that nothing therein contained is to authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to vest in an executor any property which the testator could not have alienated *inter vivos*. It has been contended on the part of the defendant that, whatever power Hansraj Karamsi may have had to bequeath his moveables and self-acquired immoveable property, his will had no operation on his ancestral immoveable property, which would, therefore, vest in the defendant as heir, and that it is only in respect of such property so vested in him that the present defendant can be charged. No evidence has, however, been given in this suit, so far as it has been heard, to show of what, in particular, the estate and effects of Hansraj consisted, and how far the immoveable property, of which he died possessed, was ancestral or self-acquired, or how far it has come to the possession of the defendant or Jumnabai on his behalf.

Hansraj Karamsi at the time of his death was indebted to Mankuvarbai in a large amount for moneys borrowed; and to secure repayment of those moneys he had mortgaged to Mankuvarbai, by assignment or deposit of title-deeds, certain immoveable property.

In March 1873 three documents (Exs. A, B and C), all dated the 5th March 1873, were executed. The first is an indenture of assignment and release, expressed to be made between Damji Chagpur, described as "Executor and Manager appointed under the will of Hansraj Karamsi" of the first part, Jumnabai of the second part, Amrutbai of the third part, the present defendant of the fourth part, and Mankuvarbai of the fifth part. The second document is a bond, executed by Damji Chagpur in favour of Mankuvarbai to secure Rs. 33,631 and interest, and the third is a deed of covenant by Damji Chagpur, Jumnabai and Amrutbai respectively with Mankuvarbai, that Ransordas Hansraj, the present defendant, should, on attaining eighteen years, execute the assignment of [10] even date first mentioned. By the recitals in the first-named instrument it is stated (*inter alia*) that since the death of Hansraj Karamsi the interest on the mortgaged debt to Mankuvarbai had not been kept down, Damji Chagpur alleging he had no sufficient funds of the estate of Hansraj Karamsi in his hands to keep down the same, and that the sum then due to Mankuvarbai as security of the said mortgage amounted to Rs. 1,33,631, and that Mankuvarbai was willing to execute a release and discharge of the said mortgage debt upon having a grant and release of the mortgaged property (therein stated to be estimated as of the value of Rs. 1 lakh) executed to her, and upon Damji Chagpur executing to her "in his personal capacity" a bond of even date for the sum of Rs. 33,631. It is also recited that Jumnabai, Amrutbai and Damji Chagpur were of opinion that it would be beneficial to Ransordas Hansraj, the infant son, and that it had been agreed by and between the several parties thereto, that such grant and release of the said mortgaged premises and such release and discharge of the mortgage debt aforesaid, should be

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made and executed as therein contained. Then by the operative part Damji Chagpur, as executor and manager of Hansraj Karamsi, and Jumnabai and Amrutbai join in granting and releasing to Mankuvarbai and her heir the hereditaments therein described which were the mortgaged premises. It was, therefore, in fact, an assignment to Mankuvarbai of the equity of redemption in the mortgaged premises. Then, in pursuance of the agreement aforesaid and in consideration of the said grant and release, Mankuvarbai releases Damji Chagpur as such executor and manager as aforesaid and the said Ransordas Hansraj, their heirs, executors, administrators and assigns, from the said sum of Rs. 1,33,631 and other principal sums advanced by Mankuvarbai, and all interest due in respect of the said principal sums.

On the same day Damji Chagpur executed the bond already mentioned to Mankuvarbai in the penal sum of Rs. 67,262 to be paid by him, his *heirs, executors or administrators* to Mankuvarbai her executors, administrators or assigns, subject to a condition for payment by him, *his heirs, executors or administrators, of* Rs. 33,631 with interest at 9 per cent. on the 15th March 1874. [11] The bond in the body of it does not, as did the assignment, purport to be made by Damji Chagpur in his character of executor and manager. The deed of covenant of even date, the scope of which has been already sufficiently stated, is expressed to be between Damji Chagpur, Jumnabai and Amrutbai, and purports to contain covenants by Damji Chagpur in his personal capacity, just as Jumnabai and Amrutbai covenant respectively in their personal capacity. All three deeds are executed by Damji Chagpur in the same manner, *viz.*, by signing his name with the added description "Executor of Hansraj Karamsi." But the two last-named documents on the face of them are by Damji Chagpur in his individual capacity; the first, on the other hand, being by him as executor and manager, and this for the reason that he was to join in the assignment of the equity of redemption in his character of executor, in which character alone any interest in such equity of redemption was vested in him, and it was in respect of the same character, too, that he was made a party to the same deed as representing, or partly representing, the estate of Hansraj Karamsi for the purposes of the release by Mankuvarbai. Bearing date the 24th of the same month, however, we have two other documents (Exs. D and G), and it is contended on the plaintiff's behalf that even assuming that, under the documents of the 5th *idem*, the liability of Damji Chagpur to pay the Rs. 33,631 and interest was a personal one, yet that, by a subsequent arrangement in the same month, evidenced in part by the said Exs. D and G, it was agreed that the balance due on the bond beyond Rs. 23,000 should be given up by Mankuvarbai, and in consideration of the promise of Damji Chagpur as executor to pay off the same sum of Rs. 23,000 in yearly instalments of Rs. 3,000 within two months after the 5th March in each year, that she (Mankuvarbai) would not claim any interest as mentioned in the bond. The document Ex. D is simply an acknowledgment, by Mankuvarbai, of the receipt from Damji Chagpur of Rs. 10,631 on account of the sum due under the bond for Rs. 33,631 of the 5th March 1873. The document Ex. G is in the form of a letter on stamped paper addressed to "Damji Chagpur, Esquire" and then below this name in a different writing (which, however, is of a clerk in the same office where the rest of [12] the letter was written) the words "Executor to the Estate of the late Hansraj Karamsi." The evidence may, I think, be taken sufficiently to show that the words, by whomsoever written, ere on the document

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before it was signed by Mankuvarbai and before it and Ex. D were delivered to Damji Chagpur. On the 6th May 1874, a sum of Rs. 3,000 was paid by Damji Chagpur to Mankuvarbai's munim, Narsidas, and the latter gave a receipt (Ex. E) addressed to "Hansraj Karamsi" and in the name of "Gungadas Vijbhukandas," under which name, that of her deceased husband, Mankuvarbai carried on business. The receipt admits payment of Rs. 3,000 in cash on account of "the debt due to me, the same have been credited to your account." This Rs. 3,000 Damji Chagpur seems to have paid by means of money recovered from a creditor of the estate of Hansraj Karamsi. Shortly after this time it was, he says, that disputes arose between him and Jumnabai. Then on the 9th September 1875, Jumnabai paid to the present plaintiff Rs. 3,000, and the present plaintiff, as executrix of Mankuvarbai, then deceased, gave the receipt (Ex. F), admitting receipt from Jumnabai, widow of Hansraj Karamsi, of the sum of Rs. 3,000, "the second instalment due on the sum of Rs. 23,000 agreed to be paid by the estate of Hansraj Karamsi, to Mankurvarbai, widow of Gungadas Vijbhukandas, on the settlement of the mortgage claim of the said Mankuvarbai against the said Hansraj Karamsi." A sum of Rs. 1,000 is also acknowledged to have been paid in respect of some costs. No subsequent or other moneys then as aforesaid appear to have been ever paid to Mankuvarbai or Cassibai on account of the sums so as aforesaid originally due by Hansraj Karamsi, or on account of the bond of the 5th March 1873, or the alleged agreement of the 24th March 1873.

The issues settled were as follows:—(1) whether Mankuvarbai in the plaint mentioned has not released the defendant from all claim in respect of moneys due or alleged to be due by Hansraj Karamsi in the plaint mentioned to the said Mankuvarbai; (2) whether Mankuvarbai did not in the same manner release the estate of the said Hansraj Karamsi; (3) whether the bond, in para. 5 of the plaint mentioned, is binding on the [13] defendant; (4) whether the claim, if any, of the plaintiff in the said bond is not barred by the Limitation Act; (5) whether the agreement, in para. 5 of the plaint mentioned, is binding on the defendant; (6) whether, if this suit be maintainable against the defendant, the Administrator-General is not a necessary party to it; (7) whether, in case there be any claim maintainable at all against the estate of Hansraj Karamsi, his self-acquired property is not liable to satisfy such claim in priority to his property which was of an ancestral character; (8) whether the defendant is in possession of any self-acquired property of the said Hansraj Karamsi; (9) whether the plaintiff is entitled to any and what relief as claimed in the plaint.

The principal witness on behalf of the plaintiff was Damji Chagpur, and it is obvious that any evidence of his, on what has been the main question in this suit, is open to the observation that it is strongly for his interest (particularly in the events which have happened, *viz.*:—the disputes with Jumnabai, the alleged possession by her of property of Hansraj Karamsi, and his (Damji's) own retirement from the office of executor) to escape any personal liability in respect of the estate which he has represented. Beyond, however, any argument founded on what appears on the face of the documentary evidence, and the fact that may be considered to be established, that Damji was unwilling to sign the bond of the 5th March 1873, except as executor, the case of the plaintiff really depends on this evidence. As to what was agreed subsequently to the 5th March 1873, and in pursuance of which alleged agreement Exs. D and G were executed, the evidence of Damji, that

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such latter agreement was one for throwing the balance of the debt on the estate of Hansraj Karamsi, is not at all supported by Narsidas, who, as Mankuvarbai's munim, took part in that alleged subsequent arrangement. Narsidas says: "Damji Chagpur on his part agreed to pay Rs. 23,000 by annual instalments of Rs. 3,000 each. Damji did not say that it was to be paid out of the estate; in fact, that matter was not discussed." Then, too, however, Damji may have thought he was protecting himself against personal liability by signing the bond as executor. I cannot understand how the present plaintiff, claiming as she does through Mankuvarbai, can contend that he did so having [14] regard to the express recital in the assignment and release (prepared as it was by Mankuvarbai and others, and executed by her) that the bond by Damji was to be given "in his personal capacity." The whole scope of the arrangement, as disclosed by the three documents of the 5th March 1873, seems to me to show that what Mankuvarbai wanted, and was supposed to get as a consideration for the release of the mortgage debt (then amounting to Rs. 1,33,631) over and above the assignment of the equity of redemption (the value of the property being roughly estimated at Rs. 1 lakh), was to have the personal liability of Damji for the balance due made payable at a definite time so as to be independent of the question of the condition for the time being, of the estate of Hansraj Karamsi, leaving him (Damji) to take his own steps to provide for the satisfaction of the liablity so undertaken by him, either out of the estate of his testator in his hands or otherwise. Nor is there anything in the agreement alleged to have been come to in March 1873, but subsequently to the 5th, that could, whatever Damji may have supposed, in law operate to throw the personal liability of Damji under his bond of the 5th upon the estate of Hansraj, at least directly. On the authorities referred to, and having regard in particular to *Childs* v. *Monins* (1), *Rose* v. *Bowler* (2), and *Powell* v. *Graham* (3), I am of opinion that it was out of the power of Damji Chagpur as executor by any new contract to charge the estate of Hansraj Karamsi; and I consider that this principle is particularly applicable in the present case, where the assets sought to be charged are (at least so we must for the present purpose assume) assets vested in the defendant as heir, which never vested in Damji as executor, and over which he had, as executor, no control. As to any liability of the defendant or the estate vested in him as heir, in respect of any principal or interest of the original mortgage debt, that, of course, was released by Mankuvarbai by the assignment and release of the 5th March 1873 (Ex. A). As to the payment, by Jumnabai, of Rs. 3,000 on the 9th September 1875 (the moneys for which she seems to have obtained out of the estate of Hansraj) and the acceptance, by her, of a receipt from the present plaintiff for such sum in the form "second instalment due on the [15] sum of Rs. 23,000 agreed to be paid by the estate of Hansraj Karamsi to Mankuvarbai, &c.," I do not consider it affects the question. That Jumnabai chose to make such payment and accept a receipt in that form, cannot operate, it is evident, to charge any estate of the defendant. Jumnabai did not represent in any way the estate of her deceased husband.

The issues will be found as follows:—

On the first and second in affirmative and for the defendant. On the third in the negative, and for the defendant. On the fourth in the

(1) 2 Brod. & B. 461. (2) 1 H. Bl. 109. (3) 7 Taunt. 581.

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affirmative, and for the defendant, so far as any claim of the plaintiff upon the present defendant is concerned. The bond, of course, may have been kept alive, for all the Court in this case knows, as against Damji Chagpur. On the fifth and ninth in the negative, and for the defendant. No finding on issues 6, 7 and 8.

The suit must be dismissed, and with costs.

Attorneys for the plaintiff.—Messrs. *Hearn, Cleveland and Little.*

Attorneys for the defendant.—Messrs. *Tyabji and Sayani.*

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4 B. 15=4 Ind. Jur. 312.

APPELLATE CRIMINAL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice.

IMPERATRIX *v.* SIBSAPA.* [5th August, 1879.]

Statement before a Magistrate—Confessions—Refusal to sign—The Indian Penal Code, s. 180—*The Code of Criminal Procedure (X of* 1872), *ss.* 122 *and* 346.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court, commits no offence punishable under s. 180 of the Indian Penal Code.

[F., 4 Cr.L.J. 205=3 L.B.R. 199; R., 16 Ind. Cas. 521=8 P.R. 1912 (Cr.)=245 P.L.R. 1912=37 P.W.R. 1912 (Cr.)=13 Cr.L.J. 718.]

THIS was a reference under s. 296 of the Code of Criminal Procedure by J. Elphinstone, Magistrate of the District of Dharwar.

The Second Class Subordinate Magistrate of Hubli fined the accused Rs. 200 for refusing to sign his statement made in answer to the Magistrate while the accused was being tried by him for an offence. Though it is optional with an accused person, under s. 343 of the Code of Criminal Procedure, to [16] answer or refuse to answer any questions put to him, the District Magistrate felt a doubt as to whether, when the accused did actually make a statement, it was obligatory on him to sign it. He accordingly referred the case for the orders of the High Court.

There was no appearance either on behalf of the accused person or the Crown in the High Court.

The case was considered by Mr. Justice Kemball and Mr. Justice F. D. Melvill, who having differed in opinion, it was referred to the Honourable the Chief Justice. Their Lordships delivered judgments as follows:—

F. D. MELVILL, J.—The question here is, whether a prisoner, when being examined by a Court, can by refusing to sign his statement be considered as having committed an offence punishable under s. 180 of the Indian Penal Code.

Section 346 of the Criminal Procedure Code lays down that the accused person shall (after the statement has been read over to him and made conformable to what he declares to be the truth) sign such statement. Now, it may be that this is equivalent to a mere direction that the Magistrate or Court shall take his signature to it. But, even taking this view of it, it seems to me that s. 180 of the Indian Penal Code still applies in the case of a refusal on the part of the accused to sign when called upon. The section is "whoever refuses to sign any statement

* Reference No. 98 of 1879.