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entirely ; such a prosecution being a very different thing from a [388] prosecution instituted on the complaint of a private party, and merely sanctioned by the Court—*The Queen* v. *Baijoo Lall* (1). The object of all prosecutions is the punishment of offences committed ; but if the view taken by the Sessions Judge is correct, this aim would, in many cases, be frustrated,as where the private person who has obtained the sanction compounds the offence, or wilfully delays so as to let the limitation of six months expire—*Empress* v. *Gauri Shankar* (2). So great an interference with the ordinary right of the Crown to prosecute offences would require express statute. But I find no such rule in the Code of Criminal Procedure or elsewhere ; and as to the authorities, those I have cited above appear to me adverse to the Sessions Judge's opinion. Similar reasoning applies to the effect of the dismissal of the private person's complaint under s. 203 of the Criminal Procedure Code. Section 403 declares that a dismissal is not an acquittal such as bars a fresh trial for the same offence ; it cannot be pleaded by the accused as a valid objection to his trial on the commitment to the Sessions ; it thus resembles a Bill preferred to a Grand Jury, who throw it out. This cannot be pleaded afterwards as an acquittal—2 Hale Pl. Cr., 246. See also *Empress on the prosecution of Jogendronath Bose* v. *Thompson* (3). The case before us is not a summons case, and I do not wish my remarks to be taken as having any reference to the construction of s. 247 of the Criminal Procedure Code. The Sessions Judge leaves somewhat in doubt the question of fact, whether the complaint had been dismissed. Assuming now that it has not been dismissed, the sanction must have expired from lapse of time. In *Empress* v. *Nipcha* (4) it was held that where the person to whom the sanction was given did not avail himself of it, the Magistrate of the district was competent, under s. 142 of the Criminal Procedure Code of 1872, to take up the case without complaint. The object of chap. 35 of the Criminal Procedure Code is to enable the Courts to take prompt and effectual means to prosecute offences affecting the administration of justice. The cases already cited show that this aim of the Legislature would in many cases be delayed and frustrated if it [389] were held, that when a Court grants the sanction to a private person, it transfers its own authority. Instead, therefore, of quashing the commitment to the Sessions, we must direct the Sessions Judge to proceed with the trial.

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REVISIONAL CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* MURARJI GOKULDAS.* [20th December, 1888.]

Indian Oaths Act (X of 1873), ss. 8, 9, 10, 11—Applicability to criminal proceedings—"Party to a judicial proceeding" does not include complainant or accused.

The provisions of ss. 8—11 of the Indian Oaths Act (X of 1873) do not apply to criminal proceedings.

The expression "party to a judicial proceeding" in s. 8 of the Act does not include either the complainant or the accused in a criminal case.

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* Criminal Review, No. 435 of 1888.

(1) 1 C. 450. (2) 6 A. 42. (3) 6 C. 523. (4) 4 C. 712.

In the course of a trial on a charge of assault the complainant's pleader agreed to be bound by the evidence on oath of a material witness, provided he swore on the *gita* (a sacred book of the Hindus). The witness took the required oath, and stated that there was no assault, but merely a taking hold of the hand. The Magistrate did not believe this witness, and proceeded with the trial. He convicted the accused on the other evidence in the case, and sentenced him to a fine of Rs. 25.

Held, that the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath.

[Rel., 13 Ind. Cas. 215=5 S.L.R. 129; R., 33 C. 386=10 C.W.N. 501; 3 Bur. L.T. 124=11 Cr.L.J. 738=8 Ind. Cas. 952=5 L.B.R. 241; 4 Cr.L.J. 471=3 L.B.R. 208 (211); 6 Cr.L J. 434=12 C.W.N. 140 (143).]

THIS was an application under the criminal revisional jurisdiction of the High Court against the order of A. W. Crawley-Boevey, Acting Chief Presidency Magistrate, Bombay, in the case of *Empress* v. *Murarji Gokuldas*.

The accused was charged with assaulting his mother with a wooden shoe. In the course of the trial the complainant's pleader offered to be bound by the oath of one Nensey Premji, provided he swore on the *gita*, (a sacred book of the Hindus), and gave a plain categorical denial to the alleged assault. To this proposal the accused's pleader consented. Nensey was sworn on the *gita*, and stated in his examination that the accused had not committed any assault, but merely held his mother by **[390]** her hand. On this statement the accused's pleader asked the Court to dismiss the complaint. But the Court refused to accept Nensey's evidence as conclusive, on the ground that it had been given in a shuffling and evasive manner. The trial was, therefore, proceeded with, and the accused was ultimately convicted of assault and fined Rs. 25.

Against this conviction and sentence the accused applied to the High Court.

The Court called for the record and proceedings in the case.

Inverarity (with him *Pestonji Cavasji*), for the accused, relied on ss. 8—11 of the Oaths Act, and contended that the evidence of the witness Nensey was conclusive of the truth of the statements it contained, and that the Magistrate was not competent to take any other evidence into consideration.

There was no appearance for the Crown or for the complainant.

JUDGMENT.

PER CURIAM :—In this case the offence charged was that of assault with a wooden shoe. The pleaders for the prosecution and defence respectively agreed that if the principal witness would give his evidence on an oath specially binding on him— to wit, on the *gita*—they would, under ss. 8 to 11 of the Oaths Act, accept the evidence as conclusive proof of the matter stated. The witness took the agreed oath, and then in substance stated there was not only no assault with a wooden shoe, but no assault at all—only a taking hold by the hand. The Magistrate, without discussing the point of law now raised, refused to consider this evidence as conclusive in fact, and found the accused guilty, and fined him Rs. 25. The case comes before us on revision, on the ground that the agreement under the Oaths Act should have been carried out by the Magistrate. The agreement no doubt would have been binding in a civil proceeding. But this was a criminal proceeding, and we have to consider whether the term in s. 8 of the Oaths Act, " party to any judicial proceeding," includes the complainant in a criminal proceeding. It must be

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remembered that all offences affect the public as well as the individual injured, and that in all prosecutions the Crown is the prosecutor. The term "party" in its [391] technical sense finds no place in the Criminal Procedure Code. Every case is conducted by the Public Prosecutor, and if any private person instructs a pleader to prosecute, that pleader acts under the direction of the Public Prosecutor (s. 493, Act X of 1882). The proceeding is always treated as a proceeding between the Crown and the accused. The Crown either proceeds itself, or lends the sanction of its name. The offence is dealt with as an invasion of the public peace, and not a mere contention between the complainant and the accused. There is only one instance, that we can find, where a criminal proceeding is deemed purely a proceeding between the prosecutor and the accused, and this exception was made for a special purpose, and required the intervention of the Legislature to make it law; we refer to s. 33 of the Evidence Act. We can find no previous interpretation of this term "party to a judicial proceeding" in s. 8 of the Oaths Act. Its construction is open to us, as to whether it applies to criminal proceedings, or is limited to civil proceedings. Considerations of convenience and reason are in favour of the more restricted meaning. Such an agreement could not, in our opinion, be made between the complainant and the accused in a criminal proceeding. The Crown, by the Public Prosecutor, is the party, not the complainant. It was argued that the agreement was binding, as this was a compoundable offence. But even in the section of the Code which creates the compounding power, (s. 345), the complainant is not described as a party, but only as the person injured. We think, therefore, the complainant was unable to consent, because the Crown in all prosecutions is the prosecutor. Nor can the accused be held a party within the meaning of the section. If he is a party within the meaning of this section, the accused could not only offer to be bound by the oath of the other party, but the other party could offer to be bound by the oath of the accused, yet the accused is rendered unable by the Oaths Act (s. 5) to take any oath whatever. Again the procedure involves a waiver of his ordinary rights on the part of the accused. Yet a prisoner on his trial can consent to nothing—*Attorney General* v. *Bertrand* (1).

[392] This procedure, giving decisive weight to a special oath, has its parallel in the Continental system when the parties can offer to be bound by a solemn oath, called a *serment decisoire*, as to the truth and falsehood of a claim. But this procedure is strictly confined in the Continental code to civil disputes. We think a similar limitation was intended by the Legislature in the Oaths Act.

In conclusion we think ss. 8—11 of the Oaths Act were not intended to apply to criminal proceedings. Consequently the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath.

Application rejected.

(1) 36 L. J. P. C. 51 (57).