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prosecution as evidence upon the second prosecution, or as it is called in the reference before us—"take up the case for the prosecution where it was left when the prisoner was discharged"—the Magistrate would in effect be acting as if he had adjourned the enquiry *sine die*, which he has no power to do. It cannot be supposed that the Legislature intended by the mere use of the word "revival of a prosecution" in expl. 2, s. 87, to give the Magistrate such a power, after it had carefully made provision by s. 82 against unlimited adjournments. In my opinion the proper reply to the question of the Officiating Chief Magistrate is, that a "revival of a prosecution" as mentioned in expl. 2 of s. 87 is not a continuation of the original prosecution from which the accused has been discharged; and that upon the revival of the prosecution, all the witnesses on whose evidence the prosecutor intends to rely as justifying the committal of the accused must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo*.

Before Mr. Justice Morris and Mr. Justice White.

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 May 14.

THE EMPRESS v. MAGUIRE.*

*Mutiny Act, s. 101—Jurisdiction of Civil (as opposed to Military) Courts—
 Offence committed by British Soldier.*

Section 101 of the Mutiny Act does not deprive the Civil (as opposed to Military) Courts of jurisdiction over British soldiers committing offenses within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held.

IN this case the prisoner, who was a European British subject, and a private in the army, was charged with the offence of theft, and was committed by the First Assistant Superintendent for trial to the Sessions Judge and Judicial Commissioner of the

* Criminal Reference, No. G $\frac{1}{4}$ of 1879, from an order made by Lieutenant-General C. A. Barwell, C. B., Sessions Judge and Chief Commissioner of Andaman and Nicobar Islands, dated the 24th April 1879.

Andaman and Nicobar Islands. That officer referred the case to the High Court under s. 296 of Act X of 1872 and s. 13 of the Andaman and Nicobar Islands Regulation of 1876, on the ground that the commitment had been made without regard to the provisions of s. 101 of the Mutiny Act, 1878, which provides in such cases for a trial of the prisoner by court-martial, and without any communication on the subject having been made to the Commander-in-Chief. He was therefore of opinion that he had no power to try the case.

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 v.
 MAGURRA.

The opinion of the Court was delivered by

WHITE, J.—We have referred to the 101st section of the Mutiny Act (41 Vic., c. 10, A.D. 1878), and are of opinion that that section (which is also to be found in the Mutiny Acts between 1873 and 1878) does not deprive the Civil Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The 101st section simply provides that as regards civil offences committed by British soldiers serving in India or its dependencies, and at a distance of more than 120 miles from the Presidency-town, the offenders may be tried by a general court-martial, the appointment of which rests with the Commander-in-Chief. It appears to us that the section is merely permissive of a military trial being held. In this case the Court has got possession of the investigation of the offence, and the military authorities have not availed themselves of the alternative procedure of trying the offender by a general court-martial. Under these circumstances, we think that the Court of the First Assistant Superintendent was a competent Court to commit the accused for trial on a charge of theft, and that the Court of the Sessions Judge and Chief Commissioner is a competent Court to deal with the case so committed, and we accordingly direct the latter Court to dispose of the case.