

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

QUEEN EMPRESS *v.* DHANANJOI CHAUDHURI AND OTHERS.*

1884
June 26.

Witnesses—Summoning and attendance of Witnesses—Compelling attendance of Witnesses—Evidence—Criminal Procedure Code (Act X of 1882)
s. 257.

Certain witnesses who had been summoned for the accused failed to appear on the day of trial, and the Deputy Magistrate refused to adjourn the hearing, or to issue fresh processes for the attendance of the defendants witnesses, on the ground that they were all friends of the accused who would come to Court if the accused desired it. The prisoners were convicted.

Held, the conviction must be set aside, the Magistrate having once granted processes he was bound to assist the accused in enforcing the attendance of his witnesses.

THIS was a reference under s. 438 of the Code of Criminal Procedure, from the Sessions Judge of the 24-Pergunnahs who recommended that the order passed by the Deputy Magistrate in this case should be quashed as illegal. The fact of the case sufficiently appears in the judgment of the Court.

No one appeared on the reference.

The judgment of the Court (PRINSEP and MACPHERSON, JJ.) was as follows:—

The Deputy Magistrate in this case has convicted the accused without examining certain witnesses who had been summoned for the defence. It appears that on the day of trial these witnesses were not present and the accused asked for fresh processes. The Deputy Magistrate refused to postpone the trial or to issue fresh processes on the following ground:—

“The witnesses are all friends of the accused, and could have been produced to-day even if they did not receive the summonses. I therefore decline to grant this petition.” Having once granted the processes for the attendance of these witnesses, this was not sufficient ground for the refusal to assist the accused in obtaining

* Criminal Reference No. 80 of 1884, from an order of the Deputy Magistrate of Basirhat, dated the 31st May 1884.

1884
 QUEEN
 EMPRESS
 v.
 DHANANJOI
 CHAUDHURI.

their evidence. If the Deputy Magistrate in the first instance considered, under s. 257 of the Code of Criminal Procedure, that the application for summons for these witnesses was made for purposes of vexation or delay, or for defeating the end of justice, he might have refused to summon them at all. But having once granted the processes, he was bound to assist the accused in enforcing the attendance of the witnesses. The conviction and sentence must therefore be set aside, and the trial must proceed, processes being issued for the attendance of these witnesses.

Conviction quashed.

APPELLATE CIVIL.

Before Mr. Justice Field and Mr. Justice Pigot.

1884
 June 30.

ASSANULLAH (DEFENDANT) v. HAFIZ MAHOMED ALI
 (PLAINTIFF).*

Judgment of the Appellate Court, Contents of—The Code of Civil Procedure (Act XIV of 1882), s. 57A—Remand under ss. 506 and 587.

Where the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.

ONE Hafiz Mahomed Ali brought this suit to recover possession of a share in certain lands of mouzah Atrap, which had been washed away in 1275; but of which, since their re-formation in 1276, the plaintiff had possession until the Bengal year 1282. The defendant claimed the lands as his sole and undivided property, denied they were re-formation on the original site of mouzah Atrap, and stated that the lands in question commenced to accrete in 1260, of which the plaintiff or his predecessors had never been in possession.

The following issues were framed: (1) whether the boundaries were incorrect; (2) whether the claim was barred by limitation; (3) whether the allegation of possession and subsequent dispossession was

* Appeal from Appellate Decree No. 2231 of 1882, against the decree of T. M. Kirkwood, Esq., District Judge of Mymensingh, dated the 3rd of August 1882, affirming a decree of Baboo Nobin Chunder Ghose, Roy Bahadur, Subordinate Judge of that District, dated the 28th of July 1881.