

1904

March 22.*Before Mr. Justice Knox.*

EMPEROR v. ABDUL LATIF AND ANOTHER.*

Criminal Procedure Code, sections 526 and 257—Transfer—Plea that applicant wishes to summon the trying Magistrate as a witness.

In an application for the transfer to another Court of a criminal case pending against them the applicants alleged that the evidence of the trying Magistrate would be required by the accused touching certain matters connected with the case. It was held that inasmuch as the Magistrate was bound under section 257 of the Code of Criminal Procedure to issue a summons, unless he considered that the application for a summons was made for the purpose of vexation or delay, or for defeating the ends of justice, and it was not proper to leave the decision of such a question to the Magistrate whose evidence was required, the application for transfer ought to be granted.

THE circumstances out of which this case arose were as follows :—

The Municipal Board of Dehra Dun wished to establish a meat market in Dehra and to do away with private butchers' shops. This scheme met with violent opposition on the part of the butchers, and it was ultimately resolved to abandon it, but to compel the butchers to have their shops inspected and licensed. While the question of the licensing of butchers' shops was pending, Abdul Latif and Budhu, two of the butchers of Dehra Dun, waited upon the Civil Surgeon of Dehra Dun with a petition. They had an interview with the Civil Surgeon, and in consequence of what happened at that interview the Civil Surgeon made a complaint to the Joint Magistrate that the two butchers had attempted to offer him a bribe. The Joint Magistrate accordingly instituted proceedings against them. Abdul Latif and Budhu applied to the High Court to transfer the case away from the Court of the Joint Magistrate. They raised several objections to their case being tried by the Joint Magistrate, amongst them "that the evidence of the Joint Magistrate will be required by the accused respecting an inquiry he is said to have made at the house of the Civil Surgeon before issuing summonses against the accused."

Alston, for the applicants.

The Assistant Government Advocate (*Porter*), for the Crown.

* Miscellaneous No. 47 of 1904.

KNOX, J.—This is an application for transfer of a case from the Court of a Magistrate of the first class at Dehra Dun to another district; the first reason set out is that the applicants, who are two butchers, have for some time past had, with other butchers of Dehra Dun, difficulties with the Municipal Board of Dehra Dun, and the Magistrate concerned is a member of the Municipal Board. I do not consider this ground worth a moment's consideration. The next ground taken is that the Magistrate took action under section 190, clause (3) of the Criminal Procedure Code. The Magistrate has replied by an affidavit to the effect that he took action under section 190, clause (a). I have heard the letter upon which the learned Magistrate took action, and I hold that it is a complaint within the meaning of the word as now defined in the Criminal Procedure Code. The third ground taken is that the evidence of the Joint Magistrate will be required in the case. In his affidavit the Joint Magistrate has stated that he can give no evidence material or relevant to the case. There remains, however, the fact that as the law now stands an accused can, by paying expenses, enforce the appearance of the Magistrate under the provisions of section 257 of the Code, unless the Magistrate considers that the application should be refused on the ground that it is made for the purpose of vexation or delay; or for defeating the ends of justice. As it would be for the Magistrate to decide whether the application shall be granted or refused, I think it inexpedient to place the Magistrate in such a position. For this cause, and this cause alone, I grant this application for transfer, and direct that the case be transferred for trial to the Court of Mr. S. P. O'Donnell, Magistrate of the first class of Dehra Dun.

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EMPEROR

v.

ABDUL
LATIF.