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29 C. 387.

During the trial the accused obtained a process for the attendance of the Police Inspector as a witness on his behalf. Before the Inspector's appearance the accused asked the Court to countermand the order for the Inspector's attendance. The Court, however, refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness the Court refused to let him do so.

Mr. P. L. Roy and Babu Harendra Narain Mitter for the petitioner.  
Babu Srish Chunder Chowdhry for the Crown.

PRINSEP and STEPHEN, JJ. There are two points upon which this Rule was granted—first, that the conviction and sentence under s. 411 of the Penal Code should be set aside on the ground that the evidence disclosed the commission of an offence under s. 489 (c) of the Penal Code, as recently amended, an offence triable exclusively by a Court of Session; and next, that the petitioner was entitled to cross-examine the Inspector who had been called and examined as a witness by the Court. On the first point we are of opinion that the rule should be discharged. Offences under s. 411 and 489 (c) are distinct offences and therefore can be separately tried. Moreover, the offence under s. 411 was, under the facts found, committed before the other offence alleged to have been also committed.

[389] On the second ground, however, we think that the petitioner is entitled to an order in his favour. The District Magistrate attempts to justify his refusal to allow the accused to cross-examine the Inspector on the ground that, inasmuch as the witness had been summoned for the defence, although he was not called by the defence, he must be regarded as such witness, and therefore the accused could not cross-examine his own witness. Now, although the accused did obtain a process for the attendance of the Inspector, before the Inspector's appearance he asked the Court to countermand the order for his attendance, but the Court refused to do so, and when the witness attended, he (the accused) declined to examine him. Under such circumstances the Inspector cannot be regarded as a witness for the defence. He was thereupon examined by the Court clearly as a witness who, the Court itself thought, was necessary for the proper decision of the case, and in this matter the Court exercised its own discretion. The case must therefore be returned, in order that the proceedings may be resumed from this point by an opportunity given to the petitioner to cross-examine the Inspector, and then, after consideration of the entire evidence in the case, the Court will proceed to pass its final order.

*Case remanded.*

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*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

SARAT CHUNDER ROY v. BEPIN CHANDRA ROY.\* [21st January, 1902].  
*Security for keeping the peace—Magistrate appointed in the district—Limits of jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 12 and 107.*

A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district.

\* Criminal Revision No. 755 of 1901, against the order passed by P. C. Dutta, Esq., Deputy Magistrate of Rungpore, dated 31st July 1901.

*Held*, therefore, where a Sub-divisional Officer in a district instituted proceedings under s. 107 of the Criminal Procedure Code against a person in his sub-division and the District Magistrate transferred the case to the [390] Court of a Deputy Magistrate of the first class appointed to act in the district, holding his Court at the head-quarters of the District, that the Deputy Magistrate had jurisdiction to try the case or to institute fresh proceedings against that person.

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IN this case, upon a report submitted by the Sub-Inspector of the Sundarganj thana, dated the 7th May 1901, the Sub-divisional Magistrate of Gaibundha, a sub-division of the district of Rungpore, instituted proceedings under s. 107 of the Criminal Procedure Code for the purpose of binding down the petitioner, Sarat Chunder Roy, to keep the peace. Upon objection being taken to his trying the case, it was, under the orders of the District Magistrate, transferred to a Deputy Magistrate holding his Court at the head-quarters of the district of Rungpore. Objection was then raised before the Deputy Magistrate that the original order instituting the proceedings was bad, inasmuch as it did not give sufficient notice to the parties of the substance of the information upon which the Sub-divisional Magistrate had acted. Thereupon the Deputy Magistrate on the 31st July 1901 amended the proceedings by drawing up fresh proceedings, citing the substance of the information in full, but still relying upon the same information upon which the Sub-divisional Magistrate had proceeded.

Mr. *Swinhoe* and *Babu Harendra Nath Mukerjee* for the petitioner.

PRINSEP and STEPHEN, JJ. The objection taken in this case on which a Rule was granted is represented to us as being this. The Sub-Divisional Magistrate instituted proceedings under s. 107 of the Criminal Procedure Code for the purpose of binding the petitioner down to keep the peace. Objection was taken to his trying the case, and consequently it was, under the orders of the District Magistrate, transferred to a Magistrate not in the sub-division, but holding his Court at the head-quarters of the district. When the case was taken up before this Magistrate objection was raised that the original order instituting the proceedings was bad, inasmuch as it did not give sufficient notice to the parties of the substance of the information upon which the Sub-divisional Magistrate had acted. The Magistrate, out of consideration for the parties, amended the proceedings by [391] drawing up a fresh proceeding, citing the substance of the information in full, but still relying upon the same information upon which the Sub-divisional Magistrate had proceeded. It has been objected that this was a fresh proceeding which the Magistrate had no jurisdiction to make, inasmuch as the matter was within the jurisdiction of the Sub-divisional Magistrate, and, we understand, that it was on this ground that the Rule was granted.

The Code of Criminal Procedure as amended by the Act of 1898, however, distinctly provides for such a case. S. 12 empowers the Local Government to appoint certain persons to be Magistrates of certain classes in a district, and it enables such Government to define the local areas within which such Magistrates may exercise all or any of the powers with which they may be invested. Sub-section (2) declares that, except as otherwise provided by such definition, that is, without an order restricting the power of any Magistrate appointed by the Local Government, "the jurisdiction and powers of such persons shall extend throughout such district." Consequently, unless the powers of this Magistrate had been restricted to a certain local area, he had jurisdiction over the entire

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district. We have examined the *Calcutta Gazette* in which the appointment of this Magistrate was notified, and we can find no such restriction. Under such circumstances the Deputy Magistrate had jurisdiction over the entire district and had jurisdiction to institute this proceeding, if it were necessary to consider this as a fresh proceeding, which is doubtful. At all events, the objection fails and the Rule must be discharged.

*Rule discharged.*

29 C. 392.

[392] *Before Mr. Justice Prinsep and Mr. Justice Stephen.*

ALIMUDDIN HOWLADAR v. EMPEROR.\* [5th February, 1902.]

*Security for good behaviour from habitual offenders—Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V of 1898) ss. 110, 117 and 191.*

Where a Magistrate has framed a proceeding under s. 110 of the Criminal Procedure Code against a party and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party, such Magistrate is not a proper person to proceed with the trial under s. 117 of the Code and inquire into the truth of the information upon which action has been taken.

IN this case the Sub-Inspector of Police at Bhandaria submitted a report to the Sub-divisional Officer of Pirojpur, wherein he suggested that the present petitioners, Alimuddin Howladar and another, might be bound down to keep the peace under s. 107 of the Criminal Procedure Code. The Sub-divisional Officer, however, knowing the petitioners' antecedents, of his own accord on the 7th July 1901 framed proceedings against them under s. 110 of the Code in the following words:—

"Whereas it appears from the report of the Sub-Inspector of Police, Bhandaria, and also from my knowledge of previous cases that the above mentioned persons have been habitually committing offences involving a breach of the peace, and they are so desperate and dangerous as to render their being at large without security hazardous to the community, they are called upon to appear before the District Magistrate to show cause why they should not be ordered to execute a bond for Rs. 800 each with two sureties each for the same amount, for their good behaviour for three years."

The petitioners thereupon applied under s. 191 of the Code to be tried by another Magistrate. The case was then submitted to the District Magistrate, who on the 16th August 1901 passed the following order:—

"S. 191 of the Criminal Procedure Code has no application; it relates to offences. The Sub-divisional Officer is quite competent to dispose of the present case."

Babu *Dasarathi Sanyal* for the petitioners.

[393] PRINSEP and STEPHEN, JJ. This Rule must be made absolute.

Although the law does not expressly provide for a case such as the present, which is under s. 110, Chapter VIII of the Criminal Procedure Code, in the same manner as s. 191 declares the course to be taken when a Magistrate has taken cognizance of an offence upon his own knowledge or suspicion, still the principle holds good that no man ought to be a Judge in his own cause. In the proceeding in which action was taken under s. 110 the Magistrate records:—

"Whereas it appears from the report of Babu Kristo Chandra Chandra, Sub-Inspector, Bhandaria, also from my knowledge of previous cases, that the above-mentioned persons have been habitually committing offences involving a breach of

\* Criminal Revision No. 921 of 1901, made against the order passed by C. C. Chatterjee, Esq., Deputy Magistrate of Pirojpur, dated the 21st of July 1901.