

1882 to which reference has been made in the course of the argument by the learned vakil for the opposite party do not bear out his contention. 1902  
JULY 3 & 4.

As for the two cases relied upon, on behalf of the opposite party, it is enough to say that the question now before us did not arise in either of them. It is true in the case of *Campbell v. Jackson* (1), Mr. Justice Field, in delivering the judgment of the Court, says, after referring to section 435,—“ Now there is no suggestion in this case that this Company is a Company authorised to sue or be sued in the name of an officer or trustee. Such authority can only be conferred by Act of Parliament or by an Act of the Indian Legislature.” But these words must be taken in connection with the facts of the case. The facts of the case go to show that the Company there being a Company in British India, the only authority from which it could derive its powers would be an Act of the Indian Legislature or of Parliament. And with reference to *Yusuf Beg v. The Board of Foreign Missions of the Presbyterian Church of New York* (2), upon which reliance was placed, it appears from the judgment that it was not shown that the party claiming the benefit of section 435 was a duly constituted Corporation at all.

CIVIL  
RULE.  
30 C. 103.

That being so, we think the view taken by the Court below is erroneous, and its order rejecting the plaints must be set aside, and the Court below must be directed to entertain the plaint and to deal with the cases according to law.

The Rules are made absolute with costs.

*Rules made absolute.*

30 C. 107 (=6 C. W. N. 885).

[107] CRIMINAL REVISION.

SHAMSUDDIN SIKAR v. EMPEROR.\* [21st May, 1902].

*Bail-bond—Guarantee by surety for appearance of accused before a certain Magistrate—Non-appearance of accused before different Magistrate—Bond, forfeiture of—Criminal Procedure Code (Act V of 1898) s. 514.*

Where a surety executed a bail-bond guaranteeing that the person, for whom he stood surety, would appear at the Court of a Deputy Magistrate before whom the case was pending, and the accused failed to appear before the District Magistrate, to whose file the case had been transferred.

*Held*, that there had been no breach of the conditions of the bail-bond, and that the order forfeiting it under s. 514 of the Criminal Procedure Code should be set aside.

THE petitioners, Shamsuddin Sirkar and others, obtained a Rule calling upon the District Magistrate to show cause why the proceedings taken under s. 514 of the Code of Criminal Procedure forfeiting the bond of the surety for the appearance of the person, against whom proceedings had been taken under s. 110 of the Code of Criminal Procedure, should not be set aside on the ground that it was not within the terms of his bond to produce the principal in the Court of the District Magistrate.

One Sahebulla was accused of bad livelihood. He appeared before a Deputy Magistrate on the 2nd December 1901. The case was then

\* Criminal Revision No. 137 of 1902, against the order passed by Ramendra Krishna, Esquire, District Magistrate of Bogra, dated 13th December 1901.

(1) (1885) I. L. R. 12 Cal. 41.

(2) (1894) I. L. R. 16 All. 420.

1902  
MAY 21.  
—  
CRIMINAL  
REVISION.  
—  
30 C. 107=6  
G. W. N. 885.

fixed for the 9th December and the accused was released on bail, the petitioner executing a bail-bond, whereby he guaranteed that the accused should attend at the Court of the Deputy Magistrate, Babu Kherode Chunder Sen, on every day on which the Preliminary inquiry into the charge against him was being made. On the 7th December the case was transferred from the file of the Deputy Magistrate to the file of the District Magistrate. The accused appeared before the District Magistrate on the [108] 9th December, but absconded on the 12th, whereupon the petitioner was called upon to show cause why he should not forfeit his bail-bond, and on the 13th December an order was made under s. 514 of the Code by the District Magistrate of Bogra forfeiting the bond executed by the petitioner and directing him to pay the penalty of Rs. 100.

Babu Sarat Chunder Roy Chowdhry for the petitioner. The forfeiture or non-forfeiture depends on the terms of the bond. The Magistrate had no right to forfeit the bond, as there had been no breach of its conditions. The petitioner guaranteed to produce the accused during the inquiry before the Court of the Deputy Magistrate, and before no other Court. The case, however, was transferred to the Court of the District Magistrate, but he never agreed to produce the accused before that Court. His responsibility as surety ceased on the 7th December, when the case was transferred from the file of the Deputy Magistrate.

No one appeared for the Crown.

STEVENS AND HARRINGTON, JJ. In this case a person named Sahebulla, who was accused of bad livelihood, appeared before the Deputy Magistrate on the 2nd December 1901. The case was fixed for December the 9th, and the accused was released on bail, the petitioner standing as surety for him. On the 7th December the case was transferred from the file of the Deputy Magistrate to the file of the District Magistrate. The accused appeared before the District Magistrate on the 9th December, but on the 12th December he absconded. Under these circumstances an order has been made forfeiting the bond executed by the petitioner as surety, and this Rule has been granted calling upon the Magistrate to show cause why that order should not be set aside on the ground that there has been no breach of the condition of the bond. A reference to the bond shows that what the surety guaranteed was that the accused person should attend at the Court of Babu Kherode Chunder Sen on every day on which the preliminary inquiry into the charge against him was being made; that is to say, that he should appear at the Court of the Deputy Magistrate, Babu Kherode Chunder Sen. The breach of [109] the condition is stated to be the non-appearance of the accused at the Court of the District Magistrate on the 12th December. That, in our opinion, is not a breach of the condition of the bond, because the petitioner only guaranteed the appearance of the accused before the Deputy Magistrate, and he did not guarantee that the accused should appear before the District Magistrate or before any person other than the Deputy Magistrate. No breach therefore of the condition of the surety-bond has been proved. The rule is therefore made absolute, and we direct that the penalty, if paid, or so much of it as may have been paid, be refunded.

*Rule made absolute.*