

## [APPELLATE CRIMINAL].

1870  
April 23.

*Before Mr. Justice L. S. Jackson and Mr. Justice Glover.*

THE QUEEN v. CHANDRA SEKHAR ROY.\*

*Contempt of Court—Penal Code (Act XLV of 1860), s. 174—Code of Criminal Procedure (Act XXV of 1861), s. 171—Power of Subordinate Magistrate.*

A Subordinate Magistrate has no power to try an offence punishable under section 174 of the Penal Code committed against his own Court, but is bound, under section 171 of the Code of Criminal Procedure, to send the case, if in his opinion there is a sufficient ground, for investigation to a Magistrate having power to try or commit for trial.

*Baijoo Baul v. Gugun Misser and The Queen v. Gugun Misser (1) overruled.*

THE following point was referred, for the opinion of the High Court, by the Officiating Sessions Judge of East Burdwan, to whom it had been referred by the Magistrate:—

A Subordinate Magistrate, not in charge of a sub-division, and not empowered under Act X of 1854 to receive complaints without reference from the Magistrate of the district, summons certain witnesses in a case which has been made over to him. The witnesses, notwithstanding that they have received the summons, fail to appear. Can the Subordinate Magistrate, under section 171 of the Code of Criminal Procedure, proceed, without reference to the Magistrate of the district, to summon and try these witnesses on a charge of having committed an offence under section 174 of the Penal Code; or must he make over the case to some Magistrate who (if not the Magistrate of the district himself) has power to try such cases, without reference from the Magistrate of the district?

The Magistrate in referring the point said:—“The only two High Court Rulings in this point that I can find are *Baijoo Baul v. Gugun Misser (1)* and *Queen v. Tajumaddi Lahori (2)*. In the former of these rulings it is laid down

\* Reference, under section 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of East Burdwan, under his letter No. 26, dated the 26th March 1870.

(1) 8 W. R., Cr. R., 61

(2) 1 B. L. R., A. Cr., 1.

“ that, as section 171 authorizes a Magistrate to send such case to  
 “ a Magistrate having jurisdiction, he may of course send the case  
 “ to himself ; but I understand this to mean that he can send the  
 “ case to himself, only if he has jurisdiction to try it. There is  
 “ nothing in the ruling quoted to show whether the Deputy  
 “ Magistrate alluded to was or was not in charge of a sub-  
 “ division, and specially empowered under Act X of 1859.  
 “ In the second ruling it was laid down that the Deputy Magis-  
 “ trate having referred the case of contempt to the Magistrate of  
 “ the district, the Magistrate of the district could not refer the  
 “ case back to the Deputy Magistrate for trial, but must try  
 “ it himself. If this latter ruling be correct, it surely is  
 “ inconsistent that a Subordinate Magistrate should have power  
 “ on his own motion to take up a case, which the Magistrate  
 “ of the district has no power to refer to him. Lastly, I do  
 “ not think it was ever the intention of the Legislature to con-  
 “ fer on an inexperienced officer (say one who has only just  
 “ arrived in the country) the power of taking up cases of con-  
 “ tempt against his own Court and punishing the accused with-  
 “ out the knowledge of the Magistrate of the district.”

The Judge in his reference to the High Court said :—“ I do not  
 “ agree with the Magistrate. I think that the Assistant Magis-  
 “ trate is empowered to enforce his authority in his own Court, and  
 “ punish, under section 174 of the Indian Penal Code, any one  
 “ who, being legally bound to appear under a summons or subpœna,  
 “ intentionally omits to attend. In the Schedule to Act VIII of  
 “ 1869 any Magistrate is authorized to try such cases. I consider  
 “ that the ruling in *Baijoo Baul v. Gugun Misser* (1) con-  
 “ firms above expressed opinion. The other ruling referred to  
 “ by the Magistrate of *Queen v. Tajumaddi Lahori* (2) does not  
 “ in my judgment apply to this case.”

The following opinion of the High Court was delivered by.

JACKSON, J.—It appears to me that the opinion expressed by  
 the Magistrate in making this reference is correct, and that the  
 Assistant Magistrate against whose Court an offence punishable  
 under section 174 of the Indian Penal Code was committed, was

(1) 8 W. R., Cr. R., 61.

(2) 1 B. L. R. A. Cr., 7.

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not competent to take cognizance of that offence, but was bound, under section 171 of the Code of Criminal Procedure, if he was of opinion that there was sufficient ground for investigating such charge, to send the case for investigation to a Magistrate having power to try or commit for trial ; and it seems to me that the section just mentioned clearly contemplates the sending of such case before a Magistrate, not being the Magistrate against whose Court the offence was committed.

It is, undoubtedly, true that, in *Bajoo Baul v. Gugun Misser* (1), I held a different opinion ; but, on reconsidering the matter, I think that that opinion was incorrect ; and having consulted Mr. Justice Hobhouse, who was the Judge sitting with me on that occasion, I have his authority for saying that he concurs with me in overruling that case. It appears to me, now, that the provisions of section 171 recognize the general principle that no one should be a judge in a case in which he is himself interested. The only exceptions to that rule which are allowed, are to be found in section 163, where, from the necessity of the case, a Court, civil, criminal, or revenue, is empowered to take immediate and summary notice of offences of certain descriptions committed in view, or in the presence of the Court itself ; and in section 172, where the Court of Session is empowered "to charge a person for any such offence," that is, offences of the kind specified in sections 168, 169, and 170 "committed before it, or under its now cognizance, if the offence "be triable by the Court of Session exclusively, and to commit "or hold to bail and try such person upon its own charge," probably the exception in favor of the Court of Sessions is based upon the fact that that Court either acts with the aid of Assessors or tries by Jury.

The case of *Queen v. Tajumaddi Lahori* (2) has been referred to. It appears to me that there has been some misconception as to the ground on which that case was decided. I do not, therefore, refer to it as an authority ; but for the reasons just stated, I am of opinion that the Assistant Magistrate was not competent himself to deal with the case, but he ought to have sent it for trial before another Magistrate.

(1) 8 W. R., Cr. R., 61.

(2) 1 B. L. R., A. Cr., 1.