

1871
 THE QUEEN
 v.
 HARGABIND
 PAL.

1st.—That two of the jurors not having acted, there was no jury.
 2nd.—That the Magistrate, instead of nominating the foreman and two of the jurors, had only nominated a foreman. On this application, the Sessions Judge sent up the papers in the case to the High Court.

The opinion of the Court was expressed by

JACKSON, J.—We think that the jury was not legally constituted, as the Judge has pointed out, and that its award long after expiry of the time fixed for giving an award was invalid (1), and that it was subsequently the duty of the Magistrate to take up the case himself, enquire into it, and decide it. We set aside his orders upholding the award of the jury.

 Before Mr. Justice Paul.

RAMCHANDRA BOSE AND OTHERS v. G. T. SNEAD AND ANOTHER.

1871
 May 29.

Service of Summons on one Partner for Co-partner—Lutchmeput Dogare v. Sibnarayin Mundle (2) dissented from.

THIS was a suit for the sum of Rs. 23,217-4-2, due to the plaintiffs by the defendants, under an agreement under which the plaintiffs had acted as banians to the defendants firm. The plaintiffs carried on business in co-partnership as such banians in Calcutta: the defendants were described as carrying on business in co-partnership as merchants in Calcutta under the name of George Snead and Co. The defendant Snead was, at the time the suit was brought, residing in London. Service of summons was effected on the defendant Snead by serving the summons on Behrends, but service was not accepted by him. The defendant Behrends, in his written statement, alleged that he was carrying on the business in Calcutta as agent only for the defendant Snead; and it appeared that he held a power of attorney from the defendant Snead, which, however, did not authorize him to accept service of commons. When the case came on for hearing, the question arose as to whether there had been sufficient service of summons on the defendant Snead, and the case of *Lutchmeput Dogare v. Sibnarayin Mundle* (2) was referred to.

Mr. Lowe for the plaintiffs.

Mr. Phillips for the defendants.

PAUL, J., after expressing his dissent from the ruling in the case of *Lutchmeput Dogare v. Sibnarayin Mundle* (2), and his opinion that the service of summons on one partner for his co-partner was a good service adjourned the case to allow of substituted service being made.

Attorneys for the plaintiff: Messrs Judge and Gangooly.

Attorneys for the defendants: Messrs. Berners and Co.

(1) See sec. 310, Act VIII of 1869. (2) 1 Hyde, 97.