

1872
 AMJAD ALI
 v.
 KUNKUSHAW.

precise form in which it is taken now, though the suit was dismissed by the Munsif on somewhat different ground as informally brought. For the reasons I have stated, I think that judgment was right, and that it ought to be affirmed, and it is unnecessary to consider in this case whether, after a suit has been heard and determined without objection, the Court of Appeal will allow an objection to be taken that the suit, as brought, will not lie.

I think the suit should be dismissed, and that the plaintiff should pay the costs in this Court and the Courts below. But I think that the plaintiff may be at liberty to bring a fresh suit, upon condition of his first paying to the defendant the costs which he has been ordered to pay in this suit.

BAYLEY, J.—I am of the same opinion. Under the facts of the case, the plaintiff's pleader could show no real cause of action, or specific subject-matter of injury, but wanted a declaration vaguely of a right, the actual destruction or injury of which right is not shown. I concur in all the order proposed by Markby, J.

1872.
 Aug. 29.

Before Mr. Justice Bayley and Mr. Justice Mitter.

QUEEN v. KUMODINIKANT BANERJEE CHOWDHRY *

Recognizance—Criminal Procedure Code (Act XXV of 1861), s. 290.

Under s. 290 of the Criminal Procedure Code, an order to execute a second recognizance during the time the first recognizance is in force is illegal.

The following reference was made by the Officiating Sessions Judge of Dacca,

“During the pendency of one recognizance for a time of one year, the Deputy Magistrate has called on the applicant to execute a second engagement for a similar period.

Now the form of recognizance prescribed by the Code is perfectly general and seems simply to declare that the recognizant is a turbulent character, and must be subjected to special restraint. So that if, at the suit of A., a recognizance were taken from B., and he broke the piece ultimately against C. and not A., I have no doubt that his recognizance might be forfeited. I do not think, therefore, that it can in any way be urged correctly that the recognizances were required in reference to separate transactions.

Under these circumstances it appears to me that the Deputy Magistrate's order of the 15th June last, requiring the applicant to execute a recognizance for a term of one year, during the pendency of a similar recognizance, was illegal under s. 290, and I beg therefore to refer it to the Court, in order that it may be quashed, and the Deputy Magistrate may be directed to proceed according to law.”

The judgment of the Court was delivered by

MITTER, J.—We concur with the Officiating Sessions Judge in holding that the second recognizance was illegal. The first recognizance was general and unlimited in its terms according to the form given in the law, and it is therefore clear that, to take a second recognizance before the period fixed in the first recognizance had elapsed, would be a virtual interference with the provisions of s. 290, Criminal Procedure Code.

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Dacca.