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I think all that is put in issue by the plea of not guilty on this charge, is what follows the word "charge," just as on an indictment presented by a Grand Jury, all that is put in issue is what follows the word "present." I think it would lead to the greatest inconvenience, if on every trial the correctness of the procedure by which the prisoner was brought before the Court was considered as challenged.

I, therefore, think I was right at the trial in refusing to leave to the jury any question as to whether the Magistrate at Serampore had been duly authorized to hold the preliminary inquiry.

With regard to the motion in arrest of judgment, I concur in the construction which has been put upon section 29 of the Charter by the Chief Justice.

Attorney for the Crown: Mr. *Mirfield*, (Offg. Govt. Solicitor)

Attorneys for the prisoner, Nabadwip: Messrs. *Swinhoe, Law, and Co.*

Before Mr. Justice Norman.]

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THE QUEEN *v.* RAJKRISHNA MITTER.

Irregular Deposition—Act XIII. of 1865, *s.* 8.

The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held*, that the depositions were illegally taken, and, therefore, could not sustain a charge.

THE prisoner was charged with cheating.

Before the prisoner was arraigned, Norman, J., asked Mr. Marindin, Officiating Standing Counsel, whether he thought the charge could be sustained upon depositions taken in the manner appearing on the face of the depositions in this case, sent up by the Magistrate. The manner in which the depositions were taken, is fully set out in the judgment of the learned Judge.

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Mr. *Marindin*, without admitting that the depositions were absolutely illegal, did not think it necessary to argue the point on behalf of the Crown.

NORMAN, J.—On the 3rd of October 1867 one Gopal Ghose was charged with cheating. The evidence of a number of witnesses was taken in the case of Gopal Ghose, and I suppose he was committed for trial in the usual way. Recently, the prisoner, who is alleged to have been the principal offender in the case of Gopal Ghose, was apprehended. The depositions taken before the Magistrate in the case of Gopal Ghose, were read over to the witnesses in the presence of the prisoner, and the Magistrate made a note as follows upon each of the depositions: "Recalled before me, Justice as aforesaid on the 28th day of July 1864, in the presence and hearing of Rajkrishna Mitter, and on oath confirms his former statement, and further saith, my above deposition is true;" and the witnesses were not cross-examined by the prisoner.

The only evidence taken against the prisoner is, evidence so taken, and it appears to me that it is not sufficient legally to enable me to try the case. It appears to me that a charge supported only by evidence not taken in a legal manner, is no charge at all, and I feel bound to enter a minute in terms of section 8 of Act XIII. of 1865.

The evils of such a mode of taking evidence are shown in the case of the *Attorney General of New South Wales* v. *Bertrand* (1). It was then objected that this mode of taking evidence deprived the jury of the opportunity of observing the demeanour of witnesses. The objection in this case is analogous, though not similar. The witnesses against Gopal Ghose stated what they supposed to be true, but the prisoner was not present to cross-examine them, or elicit any thing that might be in his favour. It is like evidence elicited by leading questions. Asking the witnesses, "If this is what they said on a former occasion, and whether what they said is true," is the worst form of leading question. It is giving a value to it which it cannot have.

(1) 1 L. R. (P. C.), 520.

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if taken a-fresh. It appears to me that this mode of taking the evidence is entirely erroneous, and that the Magistrate ough not to have taken it, or to have committed the prisoner. A note must be made that the charge is not sustainable.

The prisoner was thereupon taken before the Magistrate, and the depositions taken a-fresh.

Attorney for the Crown: Mr. *Mirfield*, (Offg. Govt. Solicitor).

Before Mr. Justice Norman.

THE QUEEN *v* MAHBUB KHAN.

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Act IV. of 1866 (*B. C.*), *s.* 26—*Penal Code* (*Act XLV. of* 1860), *s.* 116.

Police Magistrate has power to convict summarily, under Act IV. of 1866 (B. C.), s. 26, for an offence punishable under s. 116 of the Penal Code.

THE prisoner was charged with having abetted an offence by offering a bribe to a Custom House officer, whereby he became punishable under section 116 of the Penal Code.

The prisoner pleaded Guilty.

Mr *Marindin* (Officiating Standing Counsel) stated, that the committing Magistrate had been asked by the Crown Solicitor to convict summarily under the 26th section of Act IV. of 1866 (B. C.), but that the Magistrate had declined, on the ground that he had no power to do so, inasmuch as section 116 of the Penal Code is not mentioned in that Act. The learned Counsel asked for an expression of the opinion of the Court upon this point.

NORMAN, J.—I think it quite clear that the Magistrate might have convicted summarily in this case, under the 26th section of Act IV. of 1866 (B. C.) The prisoner is rightly charged with abetting the offence described in section 161 of the Penal Code. The Custom House officer, on board the ship