

great deference to the learned Judges who passed that decision; I think, for the reasons above given, that the Magistrate's order in this case was not illegal, and that there was no necessity for taking the evidence of witnesses in the accused's presence.

The point is an important one, and I should wish it referred to a Full Bench.

LOCH, J.—I think that the course laid down in the ruling of the Court referred to should be followed, though the law does not distinctly prescribe what is to be done after the accused appears. He is, however, in the position of a person charged with an offence, against whom evidence has been taken, and he has been summoned to answer to the charge. Now in ordinary cases, though witnesses in support of the charge have been examined before the accused appear, yet when he appears, they are required to attend to be again examined before the accused, and to give him an opportunity of cross examining them. This appears to me the course which should be taken in cases of the kind which has been referred to. A criminal charge is preferred, and the accused should have the opportunity, as in other cases, of showing, by the cross-examination of the witnesses for the prosecution, that no charge is made out against him. I would, therefore, set aside the order of the Magistrate, as recommended by the Sessions Judge.

Before Mr. Justice Loch and Mr. Justice Glover.

THE QUEEN v SHAM SUNDAR CHOWDHRY.*

Recognizance to keep the Peace—Jurisdiction—Criminal Procedure Code (Act XXV. of 1861), s. 293.

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Dec. 11.

A executes in District T, a recognizance to keep the peace towards B. A. was afterwards convicted in District S of having assaulted B in that district. Held, A had forfeited his recognizance, and the Magistrate in District T could proceed against him under section 293 of the Criminal Procedure Code.

DEFENDANT executed, at the order of the Magistrate of Tipperah, a recognizance, that he would keep the peace towards one Radhagobind Shaha. Subsequently he was convicted by the Magistrate of Sylhet of having assaulted Radhagobind within the

* Reference from Sessions Judge of Tipperah, dated 31st August 1868

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District of Sylhet. The latter thereupon applied to the Deputy Magistrate of Tipperah for the forfeiture of defendant's recognizance given to the Magistrate of Tipperah. The Deputy Magistrate dismissed the application under section 272 of the Criminal Procedure Code, on the ground that the conviction which had taken place in Sylhet, could not affect the recognizance executed in Tipperah. The Sessions Judge of Tipperah referred the case to the High Court, holding, "that a person who executes a recognizance in Tipperah to keep the peace, is clearly liable to forfeit the sum for which he gave recognizance, if he break the peace, as regards the person towards whom he was bound over to keep it, whether such breach of the peace occur in Tipperah or Sylhet."

The judgment of the Court was delivered by

LOCH, J.—We concur with the Sessions Judge in thinking that the view taken by the Magistrate is erroneous. We think that if the accused have forfeited his recognizance given to the Magistrate of Tipperah by committing a breach of the peace in Sylhet of which he has been convicted and punished, the Magistrate of the former district can proceed under the provisions of section 293 of the Criminal Procedure Code. We, therefore, set aside the order passed by the Magistrate in this case.

Before Mr. Justice Loch and Mr. Justice Glover.

THE QUEEN v. SHIFAIT ALI.

1868

Dec. 14.

Forgery—Penal Code (Act XLV, of 1860), ss. 5, 29, and 463—False Document.

To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published, or made in the name of a really existing person.

A writing which is not legal evidence of the matter expressed, may yet be a document within the meaning of section 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter.

The facts of this case are sufficiently explained in the following judgments :

LOCH, J.—Shifait Ali, Ilahi Baksh, and Mani Shah were apprehended in the act of writing the draft of a petition