offences in the same trial. We accordingly set aside the conviction and sentences, and leave it to the District Magistrate to consider whether, having regard to the sentences passed and undergone, it is necessary that a fresh trial should be held.

1902

GOBIND KOERI v. EMPEROR.

D. S.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

MOHENDRO NATH DAS GUPTA

v.

EMPEROR.*

1902 *Feb. 7.*

Witness, examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Possession of forged or counterfeit currency notes—Distinct offences—Separate trial—Criminal Procedure Code (Act V of 1898) ss. 233 and 540—Penal Code (Act XLV of 1860) ss. 411 and 489 (c).

During the trial of a case the accused obtained a process for the attendance of a witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so.

Held, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him.

Held, also, that offences under ss. 411 and 489 (*c*) of the Penal Code are distinct offences and should be tried separately.

THE accused Mohendro Nath Das Gupta obtained a Rule calling upon the District Magistrate of Chittagong to show cause why the conviction and sentence of the accused under s. 411 of the Penal Code should not be set aside on the ground—

(1) that the evidence disclosed the commission of an offence under s. 489 (*c*) of the Penal Code, as recently amended, an offence exclusively triable by a Court of Session;

(2) that the accused was entitled to cross-examine the Inspector who had been called and examined as a witness by the Court.

On the 28th August 1900, two Marwaris sent from Chittagong a sum of Rs. 1,700 in currency notes—one of Rs. 1,000, another of Rs. 500, and two of Rs. 100, the notes being in halves in two

* Criminal Revision No. 952 of 1901.

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MOHENDRO NATH DAS GUPTA v. EMPEROR.

registered covers addressed to two firms in Calcutta. On delivery of these registered covers to the addressees, it was found when the covers were opened that they contained pieces of blank paper. The notes for Rs. 1,000 and Rs. 500 were stopped by the Currency Office, where it was discovered that the numbers of the notes had been altered. It was subsequently discovered that the accused, who was a sorter in the Railway Mail Service, had changed the stolen notes for Rs. 1,000 and Rs. 500 under very suspicious circumstances at Chittagong soon after the theft. The accused was sent up for trial under ss. 379 and 411 of the Penal Code, and was convicted under s. 411 of that Code and sentenced to imprisonment and fine.

During the trial the accused obtained a process for the attendance of the Police Inspector as a witness on his behalf. Before the Inspector's appearance the accused asked the Court to countermand the order for the Inspector's attendance. The Court, however, refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness the Court refused to let him do so.

Mr. P. L. Roy and *Babu Harendra Narain Mitter* for the petitioner.

Babu Srish Chunder Chowdhry for the Crown.

PRINSEP and STEPHEN JJ. There are two points upon which this Rule was granted—first, that the conviction and sentence under s. 411 of the Penal Code should be set aside on the ground that the evidence disclosed the commission of an offence under s. 489 (*c*) of the Penal Code, as recently amended, an offence triable exclusively by a Court of Session; and next, that the petitioner was entitled to cross-examine the Inspector who had been called and examined as a witness by the Court. On the first point we are of opinion that the rule should be discharged. Offences under ss. 411 and 489 (*c*) are distinct offences and therefore can be separately tried. Moreover, the offence under s. 411 was, under the facts found, committed before the other offence alleged to have been also committed.

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On the second ground, however, we think that the petitioner is entitled to an order in his favour. The District Magistrate attempts to justify his refusal to allow the accused to cross-examine the Inspector on the ground that, inasmuch as the witness had been summoned for the defence, although he was not called by the defence, he must be regarded as such witness, and therefore the accused could not cross-examine his own witness. Now, although the accused did obtain a process for the attendance of the Inspector, before the Inspector's appearance he asked the Court to countermand the order for his attendance, but the Court refused to do so, and when the witness attended, he (the accused) declined to examine him. Under such circumstances the Inspector cannot be regarded as a witness for the defence. He was thereupon examined by the Court clearly as a witness who, the Court itself thought, was necessary for the proper decision of the case, and in this matter the Court exercised its own discretion. The case must therefore be returned, in order that the proceedings may be resumed from this point by an opportunity given to the petitioner to cross-examine the Inspector, and then, after consideration of the entire evidence in the case, the Court will proceed to pass its final order.

Case remanded.

D. S.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

SARAT CHUNDER ROY
v.
BEPIN CHANDRA ROY.*

1902
Jan. 21.

Security for keeping the peace—Magistrate appointed in the district—Limits of jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 12 and 107.

A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district.

Held, therefore, where a Subdivisional Officer in a district instituted proceedings under s. 107 of the Criminal Procedure Code against a person in his subdivision and the District Magistrate transferred the case to the Court of a Deputy Magis-

* Criminal Revision No. 755 of 1901, against the order passed by P. C. Dutta, Esq., Deputy Magistrate of Rungpore, dated 31st July 1901.