

Before Mr. Justice Ainslie and Mr. Justice Broughton.

THE EMPRESS *v.* NURUL HUQQ AND ANOTHER.*

1878
June 24.

Recognizance—Power of High Court to interfere when forfeited.

The High Court has no power to reduce the amount of recognizances which have been forfeited, but in a case of hardship the matter should be referred to Government.

IN this case Nurul Huqq and Bissember Mitter were, in April 1877, bound under penalties of Rs. 700 each to keep the peace for a year. On the 31st December 1877 they were convicted by the Assistant Magistrate of Khowlna of committing mischief in respect of some cocoanuts, and sentenced to a fine of Rs. 20 each. This sentence was confirmed by the Officiating Magistrate of Jessore on appeal.

On the 2nd of May 1878 the Assistant Magistrate of Khowlna ordered that the penalty (Rs. 700) mentioned in their security-bond should be realized. The Magistrate, to whom an appeal against this order was made, was of opinion that, considering the position of the defendants, who were peons in the cutcherry of a zemindar and earning probably not more than Rs. 7 or 8 a month, a penalty of Rs. 700 each in the form of forfeited security in addition to the fine in the case of mischief was far heavier than was necessary, and reported the proceedings for the orders of the High Court under s. 296 of Act X of 1872.

Upon this reference the following order was made by

AINSLIE, J.—In the case of *Nilmadhub Ghosal* (1) a Bench of this Court held that we have no power to reduce the amount of recognizances which have been forfeited. The Bombay High Court has expressed the same opinion.

The papers must be returned. The Officiating Magistrate should refer the matter to Government, if he thinks the amount of the recognizances was excessive.

* Criminal Reference, No. P132 of 1878, from an order of W. H. Page, Esq., Officiating Magistrate of Jessore, dated the 18th June 1878.