

Before Mr. Justice Markby and Mr. Justice Prinsep.

1878
April 16.

THE EMPRESS *v.* GANGADHUR BHUNJO AND OTHERS.*

Stamp Act (XVIII of 1869), ss. 29, 43—Procedure—Magistrate authorized to prosecute.

A Magistrate who has been authorized by the Collector of a district, under s. 43 of the Stamp Act, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions.

THE petitioners were convicted by the Assistant Magistrate of Contai, under s. 29 of Act XVIII of 1869, for evasion of the stamp law, and were fined Rs. 18.

PRINSEP, J.—These cases have been submitted to us by the Sessions Judge of Midnapore, because sentences of fine have been imposed by the Magistrate of the Division of Contai for breaches of the stamp law contrary to the rule laid down in the case of the *Queen v. Nadi Chand Poddar* (1).

It appears that the Collector authorized this officer, under s. 43 of the Stamp Act, to institute and conduct the prosecution in these cases. Under these circumstances we think that he was not competent also to try them. Any possible inconvenience might have been obviated by the Collector's employing the Government pleader or some other person to conduct the prosecution under s. 43. We quash the convictions and sentences, and direct that the fines, if paid, be refunded.

* Criminal Reference, No. 43 of 1878, from an order of W. Cornell, Esq., Officiating Sessions Judge of Midnapore, dated the 8th April 1878.

(1) 24 W. R., Cr. Rul., 1.