

follows s. 220, authorizes a Magistrate, although a charge may have been drawn up, to stop further proceedings and commit for trial: for this purpose s. 221 may be regarded as a proviso to s. 220. It may be added that, though the explanation to s. 220 provides that if a charge is drawn up, the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew it.

We see no reason, therefore, to quash the commitment.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

THE EMPRESS v. BUTTO KRISTO DOSS AND ANOTHER.*

Public Servant—Penal Code, ss. 21 and 109.

1878
EMPRESS
v.
KUDRITTOOL-
LASH.

1878
March 4.

A person appointed by the Government Solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as Prosecutor in the Calcutta Police Courts, is a public servant within the meaning of s. 21 of the Indian Penal Code.

IN this case the accused were charged under s. 109 of the Penal Code with offering a bribe to Mr. Hume, who was alleged to be a public servant. It would appear that Mr. Hume was appointed by the Government Solicitor, with the approval of the Government, and under arrangements sanctioned by the Governor-General in Council, to act as Government Prosecutor in the Calcutta Police Courts.

The point referred by the Presidency Magistrate for the opinion of the High Court was, whether, under these circumstances, Mr. Hume was to be considered a public servant.

No one appeared on the hearing of the reference, and the judgment of the Court was delivered by

JACKSON, J.—We think it clear that the person appointed by the Government Solicitor, with the approval of the Government, to act as Government Prosecutor, under the arrangements made by the Governor-General in Council, is a public servant within the meaning of s. 21, Indian Penal Code.

* Criminal Reference, No. 51 of 1878, from an order passed by F. J. Marsden, Esq., Presidency Magistrate of Calcutta.