

Queen-empress Vs. Dan Sahai

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1885)ILR7All862

Judge : Straight, J.

Appellant : Queen-empress

Respondent : Dan Sahai

Judgement :

Straight, J.

1. The Judge has quite misunderstood the provisions of Section 288 of the Criminal Procedure Code. That section was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the Magistrate's record, as the Judge has done here, and to treat it as evidence before itself; and I entirely concur in the remarks made on this head by Phear, J., in Queen v. Amanulla 12 B.L.R. App. 15. At any rate, the Judge was bound to put to the witnesses he proposed to contradict by their former statements the whole or such portions of their depositions as he intended to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth. The course adopted by the Judge was contrary to practice, and inconsistent with all the rules regulating the admissibility of evidence, and Phear, J., in the case mentioned above, has pointed out the

mischief and dangers of such a mode of procedure.

2. Under the circumstances I cannot allow the conviction of Dan Sahai to stand, and, it being reversed, he is acquitted.

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