

The Empress Vs. Nobin Chunder Dutt

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Court : Kolkata

Decided On : Mar-26-1879

Reported in : (1879)ILR4Cal865

Judge : Richard Garth, Kt. C.J., ;Jackson, ;Pontifex, ;Ainslie and ;Birch, JJ.

Appellant : The Empress

Respondent : Nobin Chunder Dutt

Judgement :

Richard Garth, C.J.

1. We find that, in the case referred to us, Nobin Chunder Dutt was bound to keep peace for the term of one year in his personal recognizance for the sum of Rs. 500. Within this term, certain other persons were charged with a breach of the peace before the Deputy Magistrate, who thereupon convicted Krishna Tappadar and others of an assault; and, although Nobin was not personally concerned in the offence, and was not made a defendant at the trial, the Magistrate decided upon the evidence that he (Nobin) had by the agency of the convicted persons caused that breach of the peace to be committed, and he thereupon called upon him to show cause why his recognizances should not be forfeited; and on his appearance in Court, he upon no further evidence [868] than that which was recorded on the prosecution of Krishna Tappadar and others declared the recognizances forfeited.

2. The course prescribed by Section 502 of the Criminal Procedure Code (and by Section 293 of the former Code), takes the place of the cumbrous proceeding by scire facias, which is in most cases necessary in England before entreating recognizances to keep the peace.

3. In this proceeding the defendant, who has entered into the recognizance, has an opportunity of pleading to the scire facias, and of thus raising the question,-- Whether he had been guilty of the assault or not: and upon the issue raised by that plea, a trial takes place, at which evidence is gone into precisely as in a civil suit.

4. We think that according to the fair construction of Section 502, a Magistrate is not justified in forfeiting a recognizance under that section, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause had been issued.

5. That opportunity may arise either upon the prosecution of the accused person before the Magistrate for a breach of the peace, or any other offence, in which case the accused being the defendant would of course have the right to cross-examine the witnesses for the prosecution; or it may arise upon a substantive application made to the Magistrate to forfeit the recognizance, in which case the witnesses upon whose evidence the rule is granted ought to be present and subject to be cross-examined by the accused, upon the occasion when cause is shown against the rule.

6. If no cause is shown, or if the accused declines to cross-examine the witnesses, the Magistrate may of course proceed to dispose of the case upon the evidence as it stands. It is obviously sufficient for the purposes of justice that the accused has had the opportunity of cross-examination.