

The Empress Vs. Maguire

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Court : Kolkata

Decided On : May-14-1879

Reported in : (1880)ILR5Cal124

Judge : Morris and ;White, JJ.

Appellant : The Empress

Respondent : Maguire

Judgement :

White, J.

1. We have referred to the 101st section of the Mutiny Act (41 Vic., c. 10, A.D. 1878), and are of opinion that that Section (which is also to be found in the Mutiny Acts between 1873 and 1878) does not deprive the Civil Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The 101st section simply provides that as regards civil offences committed by British soldiers serving in India or its dependencies, and at a distance of more than 120 miles from the Presidency-town, the offenders may be tried by a general court martial, the appointment of which rests with the Commander-in-Chief. It appears to us that the section is merely permissive of a military trial being held. In this case the Court has got possession of the investigation of the offence, and the military authorities have not availed

themselves of the alternative procedure of trying the offender by a general court-martial. Under these circumstances, we think that the Court of the First Assistant Superintendent was a competent Court to commit the accused for trial on a charge of theft, and that the Court of the Sessions Judge and Chief Commissioner is a competent Court to deal with the case so committed, and we accordingly direct the latter Court to dispose of the case.

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