

Queen-empress on the Prosecution of Thomson Vs. Gunning

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Court : Kolkata

Decided On : Apr-27-1894

Reported in : (1894)ILR21Cal782

Judge : O'Kinealy and ;Hill, JJ.

Appellant : Queen-empress on the Prosecution of Thomson

Respondent : Gunning

Judgement :

O'Kinealy and Hill, JJ.

1. This is a reference made by the Chief Presidency Magistrate for the town of Calcutta under Section 432 of the Code of Criminal Procedure. In it he states that Henry Thomson, a steward of the British ship 'Lord Brassey,' charged Captain Gunning, master of the said ship, with offences committed on the high seas under Sections 323 and 504, Indian Penal Code, and he asks whether the accused must be tried under the English law, or whether he can be tried under the Indian Penal Code.

2. It would appear from the case of Queen v. Andersen L.R. 1 C.C.R. 161 if Captain Gunning is guilty of any offence, it is because of the general Admiralty Jurisdiction or under 17 and 18 Vic, cap. 104, Section 267, or 18 and 19 Vic, cap. 91, Section 21. In each case the offence of which he must be tried is an offence

under English law. In the case of Reg. v. Mount L.R. 6 P.C. 283, a question arose not as to the nature of the offence but as to the amount of punishment that should be inflicted. All doubts on that point are now settled by 37 and 38 Vic, cap. 27. The answer, therefore, is that the trial must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law.

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