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to by Savliá and Somiá of the accused having been seen by them at a particular time and place, was not one that had really occurred, and it ought to have been allowed to have its natural weight with the Jury. We must, therefore, order a new trial.

Proceedings annulled, and a new trial ordered.

[APPELLATE CRIMINAL JURISDICTION.]

Sept. 7.

Application for exercise of Court's Extraordinary Criminal Jurisdiction.

No. 40 *of* 1874.

In re HARIRA'M BIRBHA'N.

Recognizance bond—The Code of Criminal Procedure, Sec. 502.

A Magistrate has no jurisdiction to call on a person who has entered into a recognizance bond, under Section 493 of the Code of Criminal Procedure, to pay the penalty or show cause why he should not do so, without previous *primâ facie* proof, by which is meant evidence on oath, that it has been forfeited. Section 502 of the Code of Criminal Procedure.

THE petitioner, Harirám, was directed by the Magistrate, F. P., W. W. Lock, to pay the penalty of a recognizance bond. His order was allowed to stand by A. Bosanquet, Session Judge of Ahmednagar.

The application for the exercise of the Court's extraordinary jurisdiction was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Honourable V. N. Mandlik for the applicant.

Dhirajlál Mathurádás, Government Pleader, for the Crown.

The facts, in so far as they are material, appear in the following judgment of the Court delivered by

WEST, J.:—The petitioner applies for the exercise of the Court's extraordinary jurisdiction. He was directed by Mr. Lock, Magistrate, First Class, in the Ahmednagar District, to pass a recognizance bond to keep the peace under Section

493 of the Code of Criminal Procedure, and having been reported by a Police Officer to have broken the conditions of the bond, the Magistrate declared it forfeited, and exacted the penalty, without having formally taken and recorded evidence before calling upon him to show cause against such forfeiture.

The Session Judge, under Section 295 of the Code, refused to interfere, or to report the proceedings to the High Court.

The question we have to determine is, whether the use of the words "whenever it is proved" in Section 502 makes it necessary that evidence should be taken and recorded by the Magistrate in the usual way in order to afford a foundation for his jurisdiction to call on the party to show cause, and to declare his recognizance forfeited, or whether his failure to do so is a mere irregularity which can be waived by the party affected omitting to take an objection. We are of opinion that the taking and recording of evidence are essential, and that when this is not done there is a failure of jurisdiction, the defect in which cannot be cured by silence or neglect, or waiver, positive or negative, of the party interested (*a*). We are led to this conclusion by a comparison of several sections of the Code. Section 530 prescribes that whenever a Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists, he is to proceed in a certain way. The jurisdiction to adopt that procedure accrues when the Magistrate, on such information as he thinks sufficient, is satisfied, and has recorded that he is so. Section 141 of the Code enacts that "a complaint, or a police report, gives jurisdiction to a competent Magistrate to inquire into, or try, an offence covered by the facts complained of or reported, and also to try, and commit for trial, any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed;" but it does not say a police report gives jurisdiction to a Magistrate to call on a person,

(*a*) See the remarks of the Judges in *Park Gate Iron Company v. Coates*, L. R. 5 C. P. 634 and Broom's L. M. 670.

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who has given a recognizance bond, to pay the penalty without previous *primâ facie* proof that it has been forfeited.

What affords the strongest inference, however, is Section 491, which relates to calling upon persons to give recognizances. Explanation I. requires a credible report or other information, and it is enacted that the Magistrate cannot bind over a person until he has adjudicated on the evidence. The expression used in Section 502 is very much stronger. It is "whenever it is proved," and therefore proof, at least *primâ facie*, that a bond has been forfeited, is necessary before he who was bound by it can be called on to pay the penalty or show cause against his doing so. It is but reasonable and consistent that the Legislature should have required a more careful and deliberate procedure in this stage than in the earlier one provided for by Section 491. There must, we think, in the first instance, be proof in the ordinary legal sense, that is, evidence on oath, to ground the Magistrate's further procedure under Section 502. We must, therefore, annul the proceedings, and order the fine to be refunded.

[APPELLATE CRIMINAL JURISDICTION.]

Sept. 10.

REG. v. BA'PU YA'DAV and RA'MA' TULSIRA'M.

Coin—Money—Indian Penal Code, Secs. 230 *and* 231.

The test of whether a coin is money or not, is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious: *Held*, therefore, that to counterfeit a coin of the Emperor Akabar's time was not an offence under Sections 230 and 231 of the Indian Penal Code.

THIS was an appeal from a conviction for counterfeiting coin by A. Bosanquet, Session Judge of Ahmednagar, and a sentence of seven years' rigorous imprisonment.

The Judge held it proved that one of the accused persons made certain coins, bearing on one side the superscription "Jaláluddin Akabar Badsháh Gází San 988"; and on the other the celebrated formula of the Mahomedan faith, viz:—