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inconsistent with the decision in *Imperatrix* v. *Kabhai Ujam* (1) and with the tendency of the decision in *Imperatrix* v. *Kalidas Samal* (2), we are unable to accept it as a conclusive authority.

"Under the circumstances we think it desirable to refer to a Full Bench the question, whether an accused person can be convicted, in the alternative, of intentionally giving false evidence in a stage of a judicial proceeding before a Magistrate, or of intentionally giving false evidence before a police officer making an investigation under chap. XIV of the Code of Criminal Procedure (see *Reg.* v. *Mahammad* (3); *Queen-Empress* v. *Ramji* (4); *Queen-Empress* v. *Ismal* (5); *Queen-Empress* v. *Bharma* (6); *Imperatrix* v. *Kabhai Ujam* (1), *Imperatrix* v. *Kalidas Samal* (2); *Imperatrix* v. *Annya* (7) and if so, in what form the charge or charges should be framed, when the only available evidence is the fact that two contradictory statements have been made.

"Apparently in *Queen-Empress* v. *Ramji* (4) the possibility of charging in the manner adopted in the later case of *Kabhai Ujam* (1) was not considered."

This reference was heard by a Full Bench (Sargent, C. J., and Telang, Candy and Fulton, JJ.).

There was no appearance for the Crown or for the accused.

JUDGMENT.

PER CURIAM.—He cannot be charged and, therefore, still less convicted on an alternative charge, having regard to the ruling **[380]** in *Imperatrix* v. *Kabhai Ujam* (1) which, we think, should not be re-opened.

As to the propriety of framing separate charges where there is no other evidence before the Magistrate, but the contradictory statements made by the accused, the decision in *Imperatrix* v. *Kabhai Ujam* (1) and the opinion in *Imperatrix* v. *Annya* (7) are, we think, necessarily conflicting. After a careful consideration of the question we are of opinion that we ought to adopt the reasoning of the Court in the latter case, and must, therefore, hold that separate charges under the above circumstances cannot be framed.

The question, therefore, must be answered in the negative.

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CRIMINAL REFERENCE—FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Telang, Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* RAIJI DAJI.* [3rd July, 1893.]

Criminal Procedure Code (Act X of 1882), s. 487—Magistrate competent to try an accused person for disobedience of a summons issued by him as Mamlatdar.

A Magistrate is not debarred by s. 487 of the Code of Criminal Procedure (Act X of 1882) from trying an accused person under s. 174 of the Indian Penal Code (XLV of 1860) for disobedience of a summons issued by him in his capacity of Mamlatdar.

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* Criminal Reference, No. 34 of 1893.

(1) Criminal Ruling No. 26 of 1887.
(2) Criminal Ruling No. 57 of 1889.
(3) 13 B.L.R. 324.
(4) 10 B. 124.
(5) 11 B. 659.
(6) 11 B. 702.
(7) Criminal Ruling No. 40 of 1890.

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In construing s. 487 of Act X of 1882, effect must be given to the words "as such Judge or Magistrate," and these words must be read in connection with all the three classes of offences previously referred to.

Queen-Empress v. *Sarat Chandra Rakhit* (1) followed.

[R., U.B.R. (1897—1901) 61 (a); D., Rat. Unr. Cr. Cas. 904.]

THIS was a reference to a Full Bench.

The accused was charged with the offence of not obeying a legal order to attend before the Mamlatdar of Vagra in accordance with a summons issued by the Mamlatdar under s. 189 of the Bombay Land Revenue Code (Act V of 1879).

[381] The Mamlatdar acting in his capacity as a Magistrate of the Second Class tried the accused on the above charge, convicted him under s. 174 of the Indian Penal Code, and sentenced him to the fine of Rs. 20.

Thereupon, the District Magistrate referred the case to the High Court under s. 438 of the Code of Criminal Procedure (Act X of 1882).

The District Magistrate was of opinion that the summons, which was disobeyed, having been issued by the trying Magistrate in his capacity as Mamlatdar, he was disqualified, under s. 487 of the Code of Criminal Procedure, from trying the accused for contempt of his own authority.

The District Magistrate was also of opinion that the prosecution was bad for want of the sanction or complaint required by s. 195 of the Code of Criminal Procedure.

On both these grounds the District Magistrate recommended that the conviction and sentence should be quashed and a retrial ordered.

This case came on for hearing before a Division Bench (Candy and Fulton, JJ.), who referred the following question to a Full Bench :—

"Whether a Second Class Magistrate is debarred by s. 487 of the Criminal Procedure Code (Act X of 1882) from trying a person under s. 174 of the Indian Penal Code for disobeying a summons issued by him in his capacity as Mamlatdar?"

The reference was heard by a Full Bench, consisting of Sargent, C.J., Telang, Candy and Fulton, JJ.

There was no appearance, either for the Crown or for the accused.

JUDGMENT.

PER CURIAM.—Following the decision of the Calcutta High Court in the case of the *Queeen-Empress* v. *Sarat Chandri Rakhit*(1), we think that in determining the construction of s. 487 of the Criminal Procedure Code, effect must be given to the words "as such Judge or Magistrate," and that as **[382]** those words must be read in connection with all the three classes of offences previously referred to, they preclude us from holding that a Magistrate is debarred by law from trying an accused person under s. 174 of the Indian Penal Code for disobedience of a summons issued by him in his capacity of Mamlatdar. This is, in our opinion, the correct construction of the section, although we are aware that it leads to a distinction between offences committed before him in his capacity as a Civil Judge and those committed before him as a Magistrate, for which there seems to be no sufficient reason.

(1) 16 C. 766.