

(1895) 07 CAL CK 0006
In the Calcutta High Court

Rajendro Narain Roy

APPELLANT

Vs

Chunder Mohun Misser

RESPONDENT

Date of Decision : 26-07-1895

Acts Referred:

Citation : (1896) ILR (Cal) 128

Hon'ble Judges : Norris, J;Gordon, J

Bench : Division Bench

Judgement

Norris and Gordon, JJ.—We think that this appeal must be allowed. The cases of *The Secretary of State for India in Council v. Judah* ILR Cal. 652 and *In the matter of Bolye Chund Dutt* ILR Cal. 876 are clearly distinguishable from the facts of the present case. In both those cases the judgment-debtor had been arrested and imprisoned. In this case he had been arrested but not imprisoned, and we think that u/s 341 of the CPC his immunity from a second arrest depends, not only upon his having been arrested, but upon his having been imprisoned under the arrest. In this view we are supported by the case of *Chengalraya Chetti v. Subhiah* 6 Mad 84 and *Subba v. Venkata* ILR Mad. 21.

2. We therefore think that the judgment appealed from must be set aside and a second warrant of arrest allowed to issue. The appellant is entitled to his costs.