APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

against

MONU AND ANOTHER.*

1888. July 18.

Criminal Procedure Code, ss. 4, 191(a), 200, 530, and 537—Third-class Magistrate taking cognizance of case on receipt of a yadast from a Revenue officer and convicting accused without examining complainant.

A Revenue officer sent a yadast to a third-class magistrate, charging a certain person with having disobeyed a summons issued by the Revenue officer. The third-class magistrate thereupon tried and convicted the accused under s. 174 of the Penal Code. The District magistrate referred the case on the ground that the conviction was bad under s. 530 (*k*) of the Code of Criminal Procedure:

Held that as the yadast amounted to a complaint within the meaning of s. (4), although the complainant was not examined on oath as required by s. 200, the conviction was not illegal.

CASE referred by S. H. Wynne, District Magistrate of South Canara.

The facts were stated as follows:—

"Two persons were in these cases convicted of disobedience to summons under s. 174 of the Penal Code.

"The cases were taken up by the Third-class Magistrate of Uppinangadi on a yadast from the Deputy Tahsildar of Beltangadi.

"Under s. 191 of the Code of Criminal Procedure, the only way in which a magistrate is empowered to take cognizance of a criminal case is (*a*) on complaint, (*b*) on police report, and (*c*) on information or suspicion.

"Under s. 200 the complaint must be sworn to before process can issue. It is only a first- or second-class magistrate that can be empowered to take up cases on information or suspicion (s. 191, paragraph 3), and this magistrate only held third-class powers. His procedure was, therefore, illegal, and under s. 530 (*k*) of the Code of Criminal Procedure his proceedings are void.

"I do not think there has been any failure of justice, but

*Criminal Revision Cases Nos. 181 and 182 of 1888.

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s. 537 of the Code of Criminal Procedure begins 'subject to the provisions herein before contained,' which I take to refer to the preceding sections of the chapter, of which s. 530 is one. Section 537 therefore does not, I believe, apply to the case. I was about also to refer to the ruling in *Queen-Empress* v. *Chandi Singh*(1): 'We do not think that s. 537, which cures errors, omissions, or irregularities, is intended to cure or does cure an absolute illegality;' but that it has occurred to me that the Madras High Court have ruled differently on the particular point in question before the Calcutta High Court (Criminal Revision Case No. 495 of 1887).

"I request that the case be submitted for the orders of the High Court."

The defendants did not appear.

Mr. *Wedderburn* for the Crown.

The yadast is a complaint within the meaning of s. 4 of the Criminal Procedure Code. It states that the accused failed to obey the summons issued to them by a Revenue officer and requests the magistrate to take action. The complainant was not examined on oath as required by s. 200, but s. 530 says nothing about this irregularity. The error, therefore, falls within the purview of s. 537.

The Court (Muttusami Ayyar and Parker, JJ.) delivered the the following

JUDGMENT:—The yadast received by the third-class magistrate from the tahsildar contained allegations made in writing with a view to his taking action under the Criminal Procedure Code that the accused had committed an offence. Reading together s. 4 and s. 191 of the Code of Criminal Procedure, we consider that it was a complaint of facts constituting an offence punishable under s. 174 of the Indian Penal Code. The omission to examine the tahsildar under s. 200 is only an error of procedure. As the accused have not been prejudiced by the irregularity, we decline to interfere in revision under s. 537 of the Code of Criminal Procedure.

(1) I.L.R., 14 Cal., 395.