Rangacharyár for respondent.

The arguments adduced on this appeal appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

JUDGMENT.—Mr. Rangacharyár takes the preliminary objection that no appeal lies.

The objection is overruled. The order without doubt purports to be an order declaring the petitioner to be an insolvent and releasing him on that ground, but it was passed on the petition on the very day on which the application was made, and we set it aside as the notice required under chap. XX of the Code of Civil Procedure was not given. We shall not direct the District Múnsif to take any further proceedings on it, as the petition does not contain the particulars required under chap. XX.

The petitioner, if so advised, can present a fresh application.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

KUPPAN, *in re.**

1887. Sept. 27.

Act III of 1869 (*Madras*), *ss.* 2, 3—*Service of summons.*

Where a summons to a witness, issued under Act III of 1869 (Madras), was shown to a person and taken back:

Held, that the summons had not been served.

CASE referred by C. W. W. Martin, Sessions Judge of Salem.

The facts were stated as follows:—

The accused (Kuppan) was charged, at the instance of the Acting Tahsildar of Namkal taluk, with intentional disobedience to a summons under s. 174 of the Indian Penal Code, in that he failed to appear before the Tahsildar as a witness in a revenue inquiry, although summons had been served on him personally.

The accused denied the service of summons on him, but said that the parties to the revenue inquiry told him that he was summoned, without mentioning the date, and that he therefore did not appear.

The summons issued by the Tahsildar to the accused bears on its back the endorsement "I read this summons I will come

* High Court Proceedings No. 521 of 1887.

KUPPAN *in re.*

and appear according to the time fixed. Mark of Kuppan. 22-6-87."

The sole witness examined in the case, Taluk Umedwar Hussain Sahib, who took the summons to the accused, appears to have stated that the accused's mark was taken on the back of the summons, that the summons was then taken back, and that the accused was informed of the date of the summons.

The Deputy Magistrate remarks on this evidence :—"Probably so; but if, as the law requires (s. 3 of Act III of 1869), the summons was in duplicate and a copy left with the accused as it should be, the accused could not have forgotten the date of hearing as he appears to have done, &c."

The Deputy Magistrate has not stated the law correctly. The Act does not require that the summons shall be in duplicate. It ordains personal service, with the alternative that the summons may be left with an adult member of the family or with the head of the village.

The acquittal is probably correct, since the Magistrate finds that the accused forgot the date of hearing; but the Magistrate's view of the law is wrong and requires correction.

Counsel were not retained.

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

JUDGMENT.—Although the Criminal Procedure Code (s. 68) enacts that a summons shall be issued in duplicate and the Civil Procedure Code (ss. 166 and 73) directs that a copy shall be delivered or tendered to the person summoned, it does not appear that Act III of 1869 contains any express provision as to the mode in which a summons is to be personally served.

Section 2 of that Act provides that the summons shall be in writing, and s. 3 that it shall be served personally on the person summoned, or may be left with some adult male member of his family residing with him.

The summons itself should, therefore, have been delivered and left with the accused; but it was merely shown to him and taken back. The Deputy Magistrate was, under these circumstances, entitled to hold that the summons had not been properly served. It is obvious that a man in accused's position might very probably fail to understand on what day he had to appear unless the summons was left with him for reference.