

“ Act, it must be between the same parties. The Board, how-  
 “ ever, as now constituted, doubts the correctness of this view.  
 “ The omission of the words ‘ between the same parties,’ which  
 “ occur in clause (7), from clause (6) seems to show that the  
 “ intention of the legislature was that clause (6) should be con-  
 “ strued in a sense sufficiently wide to admit of a case like the  
 “ present in which, though one of the parties has been altered,  
 “ and the new document is technically of a somewhat different  
 “ nature, the transaction evidenced by both instruments is prac-  
 “ tically the same, viz., the pledging of certain land against  
 “ repayment of a loan received.

“ Clause (6), section 51 (d) of the Act, is apparently the only  
 “ provision of the Act under which refund could be made in this  
 “ case. Clauses (3) and (4) do not apply, for all the parties seem  
 “ to have executed the document, nor does clause (5) apply, for  
 “ the refusal to advance money was merely in respect of an addi-  
 “ tional amount which was not originally provided for owing to a  
 “ mistake.”

The *Acting Government Pleader (Subramanya Ayyar)* for the  
 Board of Revenue.

JUDGMENT.—We are of opinion that the view of the Board of  
 Revenue is correct, and that refund may be given under section  
 51 (d), (6) of the Stamp Act.

REFERENCE  
 UNDER  
 STAMP ACT,  
 s. 46.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Shephard and Mr. Justice Best.*

QUEEN-EMPRESS

v.

NAGAPPA,\*

1893.  
 March 28.

*Criminal Procedure Code—Act X of 1882, s. 476—The nearest Magistrate of the first  
 class—Jurisdiction of such Magistrate.*

A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure  
 Code, s. 195, on the charge of preferring a false complaint, and forwarded his

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\* Criminal Revision Case No. 111 of 1893.

QUEEN-  
EMPRESS  
".  
NAGAPPA.

proceedings to the Deputy Magistrate of another division of the district who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate :

*Held*, that the Deputy Magistrate had jurisdiction to try the charge.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by M. R. Weld, Sessions Judge of Kurnool.

The case was stated as follows :—

“ I have the honour to refer under section 438 of the Criminal Procedure Code for the orders of the High Court the proceedings of the Head Assistant Magistrate of this district under which, having sanctioned the prosecution of a K. Nagappa for preferring a false complaint under section 195, he forwarded his proceedings, giving this sanction to the Deputy Magistrate of the Cumbum division.

“ In his letter of the 18th August 1892, No. 164, he professes to do this under section 476 of the Criminal Procedure Code.

“ This section says that when a Court is of opinion that there is ground for inquiry into any offence referred to in section 195 committed before it, it may send the case to the nearest Magistrate of the first class, and, as the Magistrate of the Cumbum division is probably the nearest Magistrate of the first class to Nandyal, other than the Head Assistant Magistrate himself, that officer sent the case to him.

“ But the Deputy Magistrate of Cumbum has no jurisdiction to try offences committed in Nandyal, and so it appears to me that the sending of the case to him by the Head Assistant Magistrate is erroneous.

“ It seems to me that the reference of the case by the Head Assistant Magistrate to the Deputy Magistrate and the proceedings of the Deputy Magistrate of Cumbum are utterly illegal and must be set aside.”

The parties were not represented.

BEST, J.—Section 476 says that the Court before which the offence is committed may send the case for inquiry or trial to the nearest Magistrate of the first class. The words “ having jurisdiction to try such offence ” are not to be found in the section. Such being the case, it is to be assumed that the order making the transfer is of itself sufficient to confer jurisdiction.

The second clause of section 476 authorizes the first-class Magistrate, to whom a case is thus sent, to "transfer the inquiry" or trial to some other competent Magistrate." I fail to see anything illegal in these proceedings.

SHEPHARD, J.—The substitution of the description "nearest" "for having power to try" is significant. I agree that the transfer was not illegal.

QUEEN-  
EMPRESS  
v.  
NAGAPPA.

## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.*

QUEEN-EMPRESS

v.

PARANGA.\*

1893.  
March 29.

*Penal Code—Act XLV of 1860, s. 174—Disobedience to a summons.*

It is not an offence under Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by H. Bradley, Acting District Magistrate of Malabar.

It appeared from the letter of reference that a conviction of an offence under Penal Code, s. 174, had proceeded on proof that the accused had disobeyed his summons to appear before a British Magistrate at a place situated in the State of Cochin. The referring officer expressed the opinion that the conviction was bad.

The parties were not represented.

ORDER.—We do not think the accused was bound to appear before the Magistrate at a place outside British territory. The Indian Penal Code applies only to criminal acts done in India under section 2, except in the special cases mentioned in section 3. If the Magistrate had ordinarily power to summon witnesses to attend at a place outside British India, the act of disobedience would then be done in foreign territory and amount to an offence over which he would have no jurisdiction. The proper construc-

\* Criminal Revision Case No. 51 of 1893.