

decided under the law (Act XI of 1865) in force before Act IX of 1887 was passed, and the terms of that Act were quite different from those of the present Act.

SAMINATHA  
 AYYAN  
 v.  
 MANGALA-  
 TRAMMAL.

Under the old Act certain suits relating to maintenance, viz., those for maintenance claimed on a special bond or contract had been decided by the Courts to be cognizable by a Court of Small Causes, while suits to determine the amount of maintenance had been decided not to be so cognizable (*Sidlingapa v. Sidara Kom Sidlingapa*(1), *Nuribi v. Husen Lal*(2)). The language of the present Act was apparently adopted so as to exclude from the cognizance of the Small Cause Court suits for maintenance claimed on a special bond or contract, which, under the former law, were held to be triable by a Small Cause Court (*Bhagvantrao v. Ganpatrao*(3)).

We, therefore, disallow the preliminary objection. On the merits the only ground of appeal argued before us is that, as there is no proof that the defendant received assets from his father, the suit against him personally ought to have been dismissed. We observe that the decree is merely against the defendant as the legal representative of his late father, and such decree can only be executed against assets of the father in defendant's hands. The second appeal fails and is dismissed with costs.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.*

QUEEN-EMPRESS

*v.*

KRISHTAPPA.\*

1896.  
 October 16.

*Penal Code, s. 174—Non-attendance in obedience to an order of a public servant—  
 Absence of public servant.*

The offence contemplated by s. 174, Penal Code, is an omission to appear at a particular time and at a particular place before a specified public functionary. Where therefore the public servant was absent on the date fixed in a summons:

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(1) I.L.R., 2 Bom., 624. (2) I.L.R., 7 Bom., 537. (3) I.L.R., 16 Bom., 267.

\* Criminal Revision Case No. 415 of 1896.

QUEEN-  
EMRESS  
v.  
KRISHTAPPA.

*Held*, that the person summoned could not be convicted under this section, though he failed to attend, having the intention to disobey the summons.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure, by K. C. Manavedan Raja, Acting District Magistrate of Anantapur.

The facts of this case appear sufficiently from the judgment of the High Court.

The parties were not represented.

JUDGMENT.—The accused, the karnam of Maravapalli village, on being summoned by the Tahsildar of Gooty to appear before him at Gooty on a particular day, failed to attend. For the non-attendance he was convicted under section 174, Indian Penal Code. It appears that, on the day fixed, the Tahsildar was absent from the station on public business.

Now it is manifest that the offence contemplated by the section is not an omission on the part of the person summoned to be at a particular place and at a particular time, but an omission to appear at such time or place *before a specified public functionary*. Moreover, the object of the summons was the meeting between the two. How could this object be realised unless the person summoning was present to meet the person summoned? Would it not have been futile, even if the latter turned up at the fixed place? But the law compels no man to do that which is futile or fruitless. *Lex neminem cogit ad vana seu inutilia peragenda*. No doubt in this case the accused did not say that he failed to go to Gooty because of the Tahsildar's absence. Assuming that he intended to disobey the summons, such intention alone is, of course, not punishable under section 174, or under any other provision of law.

We, therefore, set aside the conviction and order the fine, if levied, to be refunded.

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