

PONNUSAMY
ODAYAR
v.
RAMASAMY
THATHAN.

OLDFIELD, J.

those portions can easily be drawn, the hearing of the accused under section 244 referring to the general hearing, to which he or his vakil on his behalf is entitled in the course of the trial. His entry on his defence under summons case procedure takes place earlier, when under section 242, after the particulars of the offence have been stated to him, he is asked if he has any cause to show why he should not be convicted. But, as the witnesses for the prosecution have not then been examined, there can be no question then or later of the requirements of section 342 having been fulfilled.

RAMESAM, J.

RAMESAM, J.—I agree with the judgment of the learned Chief Justice.

DEVADOSS, J.

DEVADOSS, J.—I agree with the judgment of the learned Chief Justice.

COLERIDGE,
J.

COLERIDGE, J.—I agree.

K.R.

APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,
Mr. Justice Oldfield, Mr. Justice Ramesam, Mr. Justice
Devadoss and Mr. Justice Coleridge.*

1923,
April 24.

DHARMA SINGH (ACCUSED), PETITIONER,

v.

KING-EMPEROR (COMPLAINANT), RESPONDENT.*

Criminal Procedure Code (V of 1898), Chap. XXII—Summary trials of summons cases—Sec. 342, Applicability of, to summary trials of summons cases.

The provisions of section 342, Criminal Procedure Code, requiring the Court to examine the accused generally on the case after the examination of the prosecution witnesses, are as

* Criminal Revision Case No. 894 of 1922.

inapplicable to summary trials of summons cases under Chapter XXII of the Code, as to ordinary trials of such cases.

PETITION under sections 435 and 439, Criminal Procedure Code, praying the High Court to revise the order of the Bench of Magistrates, First Class, Coimbatore, in Summary Case No. 182 of 1922.

The petitioner was charged with the offence of escaping from the lawful custody of a process-server, punishable under section 225 (b) of the Indian Penal Code. The accused was tried under the summary procedure laid down in Chapter XXII of the Criminal Procedure Code before the Court of the Bench of Magistrates (First Class), Coimbatore, and was convicted and sentenced to simple imprisonment for 15 days. Against the conviction and sentence, the accused preferred a Criminal Revision Petition to the High Court, and contended, *inter alia*, that the trial was vitiated by the non-compliance with the provisions of section 342, Criminal Procedure Code.

V. L. Ethiraj for petitioner.—Section 342 applies to summary trials. The question is when the accused is called on for his defence in a Summons Case in a summary trial. It is between the time when the prosecution evidence is closed and defence evidence begins. Plea is not the stage of entering on his defence. Section 262 makes section 342 applicable to summary trials. See *Mahomed Hossain v. Emperor*(1), *Parmeshwar Lall Mitter v. Emperor*(2).

The Public Prosecutor (J. O. Adam), for the Crown.—There is no difference between summary trials of Summons Cases, and ordinary trials of such cases, any more than there is between summary and ordinary trials of warrant cases.

DHARMA
SINGH
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KING-
EMPEROR.

(1) (1914) I.L.R., 41 Calc., 733.

(2) (1922) 67 I.C., 616.

DHARMA
SINGH
v.
KING
EMPEROR.
SCHWABE,
C.J.

The JUDGMENT of the Court was delivered by SCHWABE, C.J.—This case raises the same point as Criminal Revision Case No. 691(1), the only difference being that it was tried summarily under Chapter XXII. In our judgment, there is no difference between summary trials of summons cases and the ordinary trials of summons cases. This petition must be dismissed. The sentence is light, but in the circumstances as he has already been released and only has few more days to serve we reduce the sentence to 11 days.

K.R.

APPELLATE CIVIL—FULL BENCH.

*Before Sir Walter Sulis Schwabe, Kt., K. C., Chief Justice,
Mr. Justice Oldfield and Mr. Justice Ramasam.*

V. C. T. N. CHIDAMBARAM CHETTI (PLAINTIFF—
RESPONDENT), APPELLANT,

v.

THEIVANAI AMMAL (LEGAL REPRESENTATIVE OF
3RD DEFENDANT—APPELLANT), *Respondent.**

Decree—Execution—Legal representative of judgment-debtor—Application for execution against legal representative, ordered without notice—Property attached—Application by decree-holder for settlement of terms of sale proclamation—Notice—Service by affidavit—Ex parte order settling terms of sale proclamation—Subsequent application by legal representative for release of property from attachment as not liable to execution—Bar of res judicata.

The legal representative of a judgment-debtor was brought on record for the purpose of execution and immoveable property was attached but without notice to him, such notice not being required under Order XXI, rule 22, Civil Procedure Code. The decree-holder then filed an application for settlement of the terms of the sale proclamation; the notice thereon merely intimated the date of the hearing of the application, and was

(1) *Supra* 758.

* Appeal against Appellate order No. 106 of 1921.