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Under this view of the law, the proceedings of the Sessions Judge are I consider, illegal, and I therefore reverse them.

I nevertheless agree with the Sessions Judge that the sentences that were passed by the Deputy Magistrate were inadequate; I also think that the convictions and sentences contained in the Sessions Judge's judgment are appropriate; and I therefore, under the provisions of s. 439 of the Criminal Procedure Code, direct that each of the four prisoners (appellants) be rigorously imprisoned for two years, under s. 335 of the Indian Penal Code, the sentences commencing from the 4th March, 1885, the date of the Deputy Magistrate's judgment.

CRIMINAL REVISIONAL.

1885.
October 26.

Before Sir W. Comer Petheram, Kt., Chief Justice.

QUEEN-EMPRESS v. MITTHU LAL.

*Act I of 1879 (Stamp Act), s. 61—Abetment of making an unstamped receipt—
Act XLV of 1860 (Penal Code), s. 107.*

A debtor, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt, promising to affix a stamp thereto.

Held that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. *Empress v. Bahadur Singh* (1) distinguished; *Empress v. Janki* (2), and *Empress v. Bhairon* (3) referred to.

THIS was a case in which one Mitthu Lal was convicted, under s. 109 of the Penal Code and s. 61 of Act I of 1879, of abetment of the offence of making an unstamped receipt.

It appeared that an unstamped receipt had been impounded in the Tahsildar's Court, and a prosecution of the maker ordered by the Collector. During this trial the Assistant Magistrate summoned Mitthu Lal, and charged and tried him and convicted him. He found that Mitthu Lal had accepted the unstamped receipt and had promised to stamp it, and had thus intentionally aided the illegal omission. The Magistrate sentenced the accused to pay a fine of Rs. 10.

(1) Weekly Notes, 1885, p. 30. (2) I. L. R., 7 Bom. 82.
(3) Weekly Notes, 1884, p. 37.

In reporting the case to the High Court for orders, the Sessions Judge observed as follows :—

“ *Empress v. Janki* (1) and *Empress v. Bhairon* (2) were cited ; but he (Assistant Magistrate) was of opinion that these cases had been overruled by the recent decision in *Empress v. Bahadur Singh* (3). As each of the Allahabad cases was the ruling of one Judge, he was at liberty to follow either ; but the cases do not conflict with each other or the Bombay ruling. There it was held that merely taking an unstamped receipt was no offence. In *Bhairon's* case, the Magistrate found that a bond had been executed on plain paper owing to the obligee's consent to take it. The Judge, in referring the case, said there was no evidence whatever of this, and the conviction was quashed. In the last case, the abettor convicted was a money-lender, who got a debtor to sign an unstamped acknowledgment. Here the abetment is that the payer took the receipt and promised to stamp it. There is evidence of this. It seems a very strained interpretation of the law to say that this is abetment ; and it would be just as reasonable to say a payer of money intentionally aids the making of an unstamped receipt by taking it without any promise to stamp it. The conviction should be quashed, I submit : anyhow it is bad, as the prosecution was not sanctioned by the Collector.”

PETHERAM, C. J.—I am of opinion that the accused, Mitthu Lal, has not been guilty of the offence of abetment as defined by s. 107 of the Indian Penal Code. The facts, as proved, are that the accused paid a sum of money to a creditor, and that when the money was paid and he was to receive a receipt, the creditor said that he could not give a stamped one as he had no stamp. Upon this the accused accepted a receipt without a stamp, and promised himself to affix one. Upon these facts it is clear that the accused did not aid the offence by any act, because he did nothing ; and the only question is, whether he illegally omitted to do anything which he was bound by law to do. As far as I can see, he did all that he could do ; he asked for a stamped receipt, and, on being informed that it was impossible to give him one, as the creditor had no stamp, he took the only thing he could get, that is, the

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(1) I. L. R., 7 Bom. 82. (2) Weekly Notes, 1884, p. 27.

(3) Weekly Notes, 1885, p. 30.

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receipt without the stamp. The decision of Brodhurst, J., in the case of *Bahadur Singh* (1) is not in point. In that case the acknowledgment was written in the accused's own book and at his request. The present case is really governed by the other cases cited. The conviction and sentence on Mitthu Lal are set aside. The fine to be refunded is paid.

Conviction quashed.

APPELLATE CIVIL.

1885
November 14.

Before Sir W. Comer Petheram, Kt. Chief Justice, and Mr. Justice Straight.

KRISHNA RAM (PLAINTIFF) v. GOBIND PRASAD AND ANOTHER
(DEFENDANTS)*

Dismissal of suit for non-appearance of plaintiff ordered to appear under s. 66, Civil Procedure Code—Rejection of application to set aside dismissal—Appeal—Civil Procedure Code, ss. 66, 103, 107, 540, 588 (8).

A plaintiff who had been ordered, under s. 66 of the Civil Procedure Code, to appear in person in Court upon a day specified, failed to appear, and under s. 107, read with s. 102, his suit was dismissed. He then applied to the Court, under s. 103 for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit, under the provisions of s. 540.

Held that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under s. 588 (8) of the Code from the order rejecting the application to set the dismissal aside. *Lal Singh v. Kunjan* (2) referred to.

The facts of this case are sufficiently stated in the judgment of Straight, J.

Munshi *Sukh Ram*, for the appellant.

Mr. *C. H. Hill* and Mr. *G. I. Spankie*, for the respondents.

STRAIGHT, J.—The circumstances of this case appear to be these:—The plaintiff instituted a suit in the Court of the Subordinate Judge of Azamgarh, on the 24th June, 1884, against the defendants, for establishment of his right to certain property which he alleged he had acquired by purchase in 1880, and for a declaration that such property was not liable to be sold in execution of the decree obtained by the defendant Gobind Prasad on the 29th

* First Appeal No 42 of 1885, from a decree of G. J. Nicholls, Esq., District Judge of Azamgarh, dated the 4th December, 1884.