

This was the view Mr. Justice Young took of the preliminary objection in the present case, and, rejecting it, he allowed the appeal, reversed the judgment, and restored the decree of the first Court. The only point taken here is that Mr Justice Young was wrong on the question of jurisdiction. I think he was right and dismiss the appeal with costs.

EDGE, C. J.—I agree.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* BISHAMBAR LAL.

Criminal Procedure Code, ss. 133, 136, 140—Act XLV of 1860, s. 188—Disobedience to order duly promulgated by public servant.

A person against whom an order under s. 133 of the Code of Criminal Procedure is passed, who neglects to take any steps whatever in respect of such order within the time therein specified, either by way of compliance therewith or by way of objection thereto in the manner prescribed by law, renders himself liable to be proceeded against under s. 188 of the Indian Penal Code without its being necessary to wait until the order has been made absolute. If such order is made absolute under s. 140 of the Code of Criminal Procedure, further proceedings can then be had, under s. 188 of the Indian Penal Code, against the person disobeying the order absolute. When an order under s. 133 of the Code of Criminal Procedure has been made absolute under s. 140 *ib.* its validity cannot subsequently be questioned. *Queen-Empress v. Narayana* (1). approved.

THE facts of this case sufficiently appear from the judgment of Straight, J.

Mr. *Ross-Alston*, for the applicant.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

STRAIGHT, J.—The District Magistrate of Mirzapur made an order under s. 133 of the Criminal Procedure Code requiring the applicant, Bishambar Lal, to remove from a public thoroughfare certain stones that he had placed thereon in such a way as to cause an obstruction within a period named in such order, or to appear and show cause against the order, or apply for a jury to try whether the same was reasonable and proper. The petitioner did neither one

(1) I. L. R., 12 Mad., 475.

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thing nor the other. He neither obeyed the order for removing the stones, nor did he appear on the date fixed to show cause against the order, nor did he apply for a jury to try whether the same was reasonable and proper. In other words, he wholly disregarded and flouted the Magistrate's order, and it is not surprising therefore that, upon this being brought to the Magistrate's knowledge, proceedings were instituted against him under s. 188 of the Indian Penal Code for disobedience to an order lawfully promulgated by a public servant having authority to make such order. The case was tried before the Joint Magistrate of Mirzapur, who convicted the petitioner and fined him in the very moderate amount of 5 rupees. He now comes to this Court in revision and assails that order upon two grounds, first, that the Magistrate who tried the case had no jurisdiction under the provisions of s. 487 of the Criminal Procedure Code, and, secondly, that the District Magistrate's order not having been made absolute, there could be no offence under s. 188, Indian Penal Code.

As to the first of these objections it proceeds upon a misconception of the facts. The learned counsel was instructed that Mr. Holms, the Joint Magistrate who tried the charge under s. 188, was the Magistrate who issued the order under s. 133, but this turns out not to be so. Mr. Croke, the Magistrate of the District, was the person who issued such last mentioned order.

Then I come to the second contention, and Mr. *Alston* vigorously urges that if effect is given to the views of the two Courts below the result is that a man can be punished twice over for the same offence. That does not appear to me to be quite an accurate representation of the matter. It seems to me upon the proper reading and construction of s. 136 with those sections that precede it, that where an order has been issued under s. 133, Criminal Procedure Code, and the person on whom it has been served does not perform the act he is directed to do, or do what is open to him, namely, appear on the date fixed and show cause against the order or apply for the appointment of a jury, he is treating that order of the authority entitled to make it with contempt, and that for that con-

tempt, he, neither obeying it, nor seeking by finding fault before the proper tribunal to set right that order nor asking for a jury to say whether it is right and reasonable, has rendered himself liable to punishment. It should be noted that the words of the section are that "if such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by s. 135, he shall be liable to the penalty prescribed in that behalf in s. 188 of the Indian Penal Code, and the order shall be made absolute."

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There is a clear and distinct provision as to the conditions precedent to the penalty that the section imposes, and the words with which the section closes follow after, *viz.*, "and the order shall be made absolute." Now it seems to me that in this case the order might have been made absolute under s. 140, and that after the notice contemplated by that section and the refusal still by the petitioner to obey that order, that would again be punishable, and that the person making it would have the power to enforce all the remedies provided in s. 140. In my opinion when once an order has been made absolute under s. 136, it is incompetent for the party against whom that order has been made to go behind it and question its validity in any way. In this view there is the case reported in I. L. R., 12 Mad., 475 (*Queen-Empress v. Narayana*) with the reasoning of which I entirely concur. The effect of my view, therefore is, that if, as I have said, a person to whom an order under s. 133 is issued flouts that order in the manner contemplated by s. 136, Criminal Procedure Code, not only does he render himself liable to the provisions of s. 188, Indian Penal Code, then and there, but without any further inquiry or proceeding that order must be made absolute, and behind that order he cannot at any future time go. In this aspect of the case I think that this application for revision fails and I dismiss it.

Appeal dismissed.
