

under section 426, Indian Penal Code. The fine, if paid will be refunded. I have now to deal with the rule which was issued to Mehdi Hasan by this Court on the 19th of April 1907 calling upon him to show cause why his conviction should not be altered to one under section 167 of Act No. I of 1900. I am clearly of opinion that that section is even less applicable to the facts of this case than section 426. That section deals with offences against the person and has nothing to do with offences against property. This is clear from the section itself. Were any authority needed I would refer to *King Emperor v. Patan Din* (1) as exactly in point. The rule is discharged.

1907

 EMPEROR
 v.
 MEHDI
 HASAN.

APPELLATE CIVIL.

1907

 May 14.

Before Mr. Justice Banerji.

BAKHTWAR MAL (PLAINTIFF) v. ABDUL LATIF (DEFENDANT).*

Civil Procedure Code, section 424—Suit against public officer—Suit to recover articles seized by police during a search.

The plaintiff sued to recover from the defendant three account books which he alleged that the defendant, a Sub-Inspector of Police, had seized during a search, apparently in pursuance of the provisions of section 165 of the Code of Criminal Procedure, of the plaintiff's house. *Hold* that the defendant, if he seized the books, which was denied, did so in his capacity as a police officer, and that the suit was not maintainable in the absence of the notice prescribed by section 424 of the Code of Civil Procedure. *Muhammad Saddiq Ahmad v. Panna Lal* (2) distinguished. *Jogendra Nath Roy Bahadur v. Price* (3) referred to.

THE plaintiff in this case sued for the recovery of three account books. He alleged in his plaint that the defendant, who was a Sub-Inspector of Police, had searched his house and carried away these books amongst other property, and that at the trial of the case against the plaintiff the Sub-Inspector was asked to produce these books, but refused to do so, stating that he had not taken them. The Court of first instance (Munsif of Deoband) dismissed the suit upon the ground that the notice prescribed by

* Second Appeal No. 1240 of 1905, from a decree of G. C. Badhwar, Esq., Additional District Judge of Saharanpur, dated the 24th of November 1905, confirming a decree of Pandit Knuwar Bahadur, Munsif of Deoband, dated the 14th of September 1905.

(1) Weekly Notes, 1905, p. 19. (2) (1903) J. L. R., 26 All., 220.
 (3) (1897) I. L. R., 24 Cal., 584.

1907

BAKHTWAR
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LATIF.

section 424 of the Code of Civil Procedure had not been served upon the defendant, and on appeal this decree was confirmed by the Additional District Judge. The plaintiff appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

BANERJI, J.—The suit out of which this appeal has arisen was brought by the appellant against a Sub-Inspector of Police for recovery of possession of three account books. It has been dismissed on the ground that the notice required by section 424 of the Code of Civil Procedure was not served on the defendant before institution of the suit. The allegations of the plaintiff are these. The defendant in his capacity as a Sub-Inspector of Police searched the plaintiff's house and carried away several articles including jewellery and these account books; that at the trial of the case he was asked to produce the account books, but he refused to produce them, alleging that he had not taken them. The present suit was therefore brought for recovery of the account books. It is clear on the plaintiff's own allegation that when the defendant searched the plaintiff's house he did so in the capacity of a public servant. In seizing the account books (assuming that he seized them) he also acted in the same capacity apparently in pursuance of the provisions of section 165 of the Code of Criminal Procedure. The suit is therefore a suit against a public officer and in respect of an act purporting to have been done by him in his official capacity, and the defendant was entitled to a notice under section 424 of the Code of Civil Procedure. This case is distinguishable from that of *Muhammad Saddiq Ahmad v. Panna Lal* (1) to which the learned vakil for the appellant referred. The circumstances of that case are quite different, the defendant having acted in that case, not in his capacity as a public officer, but illegally and in bad faith. The case more in point is that of *Jogendra Nath Roy v. Price* (2), in which it was held that a notice was necessary under similar circumstances. I dismiss the appeal with costs.

Appeal dismissed.

(1) (1909) I. L. R., 26 All., 220.

(2) (1897) I. L. R., 24 Cal., 584.