

## REVISIONAL CRIMINAL

1909  
July 14.

*Before Mr. Justice Alston.*

EMPEROR v. AHMAD HUSAIN KHAN.\*

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 147, 195 and 196—Act No. XLV of 1860 (Indian Penal Code), section 173—Citation to appear—Refusal to accept citation or to sign duplicate.*

*Held* that the refusal to accept a citation issued under section 147 of the Land Revenue Act or to sign the duplicate thereof is not an offence under section 173 of the Indian Penal Code. *The Queen v. Panamalai Nadan* (1), *Reg. v. Kalya bin Fakir* (2), *In the matter of Bhoobunshwar Dutt* (3), *Queen-Empress v. Hira Lal* (4) and *Queen-Empress v. Krishna Gobindu Das* (5) referred to.

THE facts of this case were as follows. A citation to appear had been issued under section 147 of the United Provinces Land Revenue Act, 1901, for service upon one Ahmad Husain Khan. It was found that on the process server tendering the citation to Ahmad Husain Khan he abused the process server; that on receiving the citation paper he threw it away, and that he refused to acknowledge its receipt. On these findings Ahmad Husain Khan was convicted by a Magistrate of the first class of an offence under section 173 of the Indian Penal Code and fined Rs. 10. An application in revision was presented to the Sessions Judge of Shahjahanpur, who referred the case to the High Court recommending that the conviction and sentence should be set aside on the ground that the facts found did not constitute an offence under section 173 of the Indian Penal Code.

*Mr. W. Wallach*, (Government Advocate) for the Crown.

The accused was unrepresented.

ALSTON, J.—In dealing with this reference I do not propose to discuss the question now pending before a Bench of this Court, as to whether a citation issued under section 147 of the Land Revenue Act is a “summons, notice or order.” within the meaning of sections 172, 173 and 174 of the Penal Code. For the purpose of this case I will assume that it is, and will confine myself to the question directly raised in the reference, which is

\* Criminal Reference No. 330 of 1909.

(1) (1882) I. L. R., 5 Mad., 199. (3) (1877) I. L. R., 3 Calc., 621.  
(2) (1863) 5 Bom., H. C. Rep., Cr. C., 34. (4) Weekly Notes, 1883, p. 222.  
(5) (1892) I. L. R., 20 Calc., 358.

whether the accused, to whom a citation was issued under section 147 of the Land Revenue Act (III of 1901), has been rightly convicted of an offence under section 173 of the Penal Code, having regard to the facts found. The answer to this question depends on whether the accused, by declining to accept the citation or by refusing to sign the duplicate citation, can be said to have prevented the serving of the citation on himself. Sections 195 and 196 of Act III of 1901 enact that a summons or notice may be served by tendering or delivering a copy to the person to whom the summons or notice is directed. In the case of *The Queen v. Punamalai Nadan* (1), it was ruled that neither the refusal to receive a summons nor the refusal to sign the duplicate was an offence under section 173 of the Penal Code, the reason given by KERNAN and KINDERSLEY, JJ., for taking this view being that the words "prevents the serving on himself" in section 173 of the Penal Code cannot be held applicable in a case where the summons is tendered and refused, inasmuch as tendering is in itself good service. With this view I agree. The foot-note to the report of the case mentioned shows that INNES and KINDERSLEY, JJ., had previously held that a refusal to receive a summons, by throwing it down after it had been presented was not punishable under section 173 of the Penal Code. It has also been ruled that a refusal to sign a receipt for a summons, *i.e.*, refusal to sign and return the duplicate, was not an act which prevented the service of the summons. This view, with which I agree, was taken in the following cases:—*Reg. v. Kalya bin Fakir* (2), *In the matter of Bhoobuneshwar Datt* (3), *Queen Empress v. Hira Lal* (4), (where section 172 appears to have been inadvertently printed for section 173) and *Queen-Empress v. Krishna Gobinda Das* (5).

As regards the rules made by the Board of Revenue to regulate the service of summonses and notices I agree with the learned Sessions Judge that they cannot add to or override the provisions of sections 195 and 196 of the Land Revenue Act; nor do they attempt to do so. They are for the guidance of the serving officer, and do no more than point out how he should proceed when serving summonses or notices. They do not profess to declare what

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(1) (1882) I. L. R., 5 Mad., 199.

(3) (1877) I. L. R., 3 Calc., 621.

(2) (1868) 5 Bom., H. C. Rep., Cr. C., 34. (4) Weekly Notes, 1883, p. 222.

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constitutes good and sufficient service in law. For the reasons given I accept the recommendation of the learned Sessions Judge of Shahjahanpur and set aside the conviction and sentence passed upon Ahmad Husain Khan and acquit him; and I direct that the fine, if paid, be refunded to him.

*Conviction and sentence set aside.*

## REVISIONAL CIVIL.

*Before Mr Justice Banerji.*

AKBAR KHAN AND OTHERS (APPLICANTS) v. MUHAMMAD ALI KHAN AND OTHERS (OPPOSITE PARTIES).\*

*Civil Procedure Code (1882), sections 626, 629—Review of judgment—Rejection of application for review upon the ground of want of jurisdiction—Revision.*

Section 629 of the Code of Civil Procedure, 1882, must be read with section 626. Where the Court does not consider whether or not there are sufficient grounds for review, but rejects the application on the erroneous view that it has no jurisdiction to entertain it, the order is open to revision. *Ram Lal v. Ratan Lal* (1) distinguished. *Willis v. Jawad Husain* (2) referred to.

THE applicants in this case obtained a decree in the year 1897 for possession of certain immovable property. In 1906 they sued for possession of part of the property which had formed the subject of the former claim. On appeal the suit was dismissed on the ground that the property claimed had not been decreed to them in the former suit, and against this decision they appealed to the High Court.

Pending this appeal the applicants asked for a review of the former judgment upon the plea that both courts had intended to decree their claim in full, as prayed, but had omitted, by an oversight, a certain part thereof both from the final order in the judgment and from the decree. The Court (Additional District Judge of Meerut), without going into the merits, rejected the application for review holding that he had no jurisdiction to entertain it so long as the applicants' appeal to the High Court, in which their position was diametrically opposite to that taken by them on the review, was pending. The applicants applied in review to the High Court.

\* Civil Revision No. 7 of 1909.

(1) (1904) I. L. R., 26 All., 572.

(2) (1907) I. L. R., 29 All., 468.

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