

Privy Council held in the case of *Surajmani v. Rabi Nath Ojha* (1) that the word "*malik*" alone, unless there were something definite to the contrary in the surrounding circumstances to qualify the meaning of the expression, indicates an absolute estate. Here we have the word "*malik*" followed by the word "*mustaqil*" which even makes it stronger. The learned District Judge seems to have treated Dirgaj Singh as if he had been a *parda-nashin* lady. He says that Dirgaj Singh may not have been aware of the meaning of the expression *malik mustaqil*. We cannot agree with this line of reasoning. The grant should be construed rather in favour of the grantee than of the grantor. Admittedly Dirgaj Singh had sufficient estate in him to enable him to make a full grant to the Musammat. There are absolutely no surrounding circumstances to indicate that the donor wished the lady to take mere life-estate. He does not say in the deed that she is to have it only for her life, nor does he even say that she is to have no power of alienation. We think that the learned District Judge was wrong in the view that he took of the construction of the deed of gift. The result is that we allow the appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

REVISIONAL CRIMINAL:

Before Justice Sir George Know.

EMPEROR *v.* SAHDEO RAI.*

Act No. XLV of 1830 (*Indian Penal Code*), section 173—*Summons—Refusal to receive summons when tendered no offence.*

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April, 23.

Under the Code of Criminal Procedure the mere tender to a person of a summons is sufficient, and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under section 173 of the Indian Penal Code.

THE parties were not represented.

The facts of this case are stated as follows in the order of reference by the Sessions Judge :—

"This is an application for revision of an order, dated the 7th of February, 1918, of Maulvi Muhammad Wajib, Magistrate, 1st

* Criminal Reference No. 237 of 1918.

(1) (1907) I. L. R., 30 All., 84.

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class, of Ballia, who convicted Sahdeo Rai under section 173 of the Indian Penal Code, and sentenced him to pay a fine of Rs. 10, on the ground that on the 10th of December, 1917 he had refused to take the notice which Mahadeo Ram constable wanted to serve on him. In the Deputy Magistrate's opinion this act of Sahdeo Rai amounted to intentional prevention of service on himself. It seems to me that this is not the object of section 173, Indian Penal Code. The refusal to receive a summons is not an offence under section 173, if the actual delivery was not legally necessary to complete its service. Under the Criminal Procedure Code the mere tender of a summons is sufficient and a refusal to receive does not expose one to the penalty of section 173; *Queen v. Punamalai Nadan* (1). I cannot agree with the Deputy Magistrate that the accused intentionally prevented the service of the notice on himself by refusing to receive it. The Deputy Magistrate seems to have misconceived the scope of section 173. I would, therefore, report this case under section 438, Criminal Procedure Code, to the Hon'ble High Court with the recommendation that the order of the Deputy Magistrate above referred to be set aside as illegal and that the applicant be acquitted of the offence under section 173. The fine, if already paid, may also be ordered to be refunded to the applicant. Before the record is submitted to the High Court the Magistrate will be asked to furnish an explanation."

KNOX, J.—The reference made has been properly made. No offence under section 173 of the Indian Penal Code has been committed. I set aside the conviction and direct that the fine, or any part of it which has been paid, be refunded. The sentence of imprisonment has been served.

Reference accepted.

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