

It is nowhere alleged in the plaint how any of these four was acting, under the alleged circumstances, as servant or agent of the Secretary of State for India in Council, or how the said defendant is liable for damage suffered through the act of any one of them. In short, the plaint discloses no cause of action against the Secretary of State for India in Council. The case is very much on all fours with *The Secretary of State for India in Council v Sukhdeo* (1); indeed the present plaintiff's position is much weaker than that of the plaintiff Sukhdeo.

The courts below have, however, inquired into the facts of this case. It has been proved that Gopal Ram, Court Inspector, obtained possession of the ornaments under a warrant lawfully, and very properly, issued by a court of competent jurisdiction; the plaintiff has no cause of action on this ground. The return of the ornaments to Pashpat Nath was effected under an order improperly passed by the Magistrate who had committed the criminal case for trial: the proper court, that of the Assistant Sessions Judge, did its best to rectify the mistake. These courts are not the servants or agents of the Secretary of State and he is not liable for damages if they make a mistake.

The suit has rightly been dismissed by both the courts below; we dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

GIRWAR LAL v. BANSIDHAR AND ANOTHER.*

Criminal Procedure Code, section 139—Public nuisance—Some of the jurors refusing to return a verdict at all—Procedure.

Where in the matter of an inquiry into an alleged public nuisance three out of the five jurors appointed under section 139 of the Code of Criminal Procedure refused to return any verdict at all, it was held that the Magistrate concerned was not justified in stopping the proceedings entirely, but he should have appointed a fresh jury.

* Criminal Reference No. 168 of 1922.

(1) (1899) I. L. R., 21 All., 341.

1922

PANCHAYATI
AFHARA
MAHA
NIBBANI
THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

1922

April, 12.

1922

GIRWAR LAL
o.
BANSIDHAR.

THIS was a reference made by the Sessions Judge of Aligarh in a case of an inquiry under sections 133 and 138 of the Code of Criminal Procedure into an alleged public nuisance. The facts which gave rise to the reference are thus stated in the Judge's order :

"This is an application in revision against an order of Syed Zain-ud-din, Deputy Magistrate, first class, stopping further proceedings under section 139 (2) of the Criminal Procedure Code.

A jury of five were appointed. Two of these wanted the platforms in dispute to be cut down slightly. The other three refused to return a verdict at all. The lower court has interpreted this as meaning that the three men have not found the order under section 133 of the Code of Criminal Procedure to be a reasonable one nor have they agreed to any modification. I am, however, of the opinion that the three men have deliberately shirked their duty as they have not given any verdict at all, probably because they do not want to offend either party. Under the above circumstances, I am of the opinion that there has been a perverse refusal on the part of the three men to decide, and in accordance with the note in paragraph 9 on page 220 of Sohoni's Criminal Procedure Code, 9th Edition, it was competent on the part of the lower court to appoint a fresh jury.

I, therefore, refer the case to the Hon'ble High Court with the recommendation that the order of the lower court stopping further proceedings be set aside and that the lower court be directed to appoint a fresh jury.

The lower court is asked to submit its explanation to me within a week."

LINDSAY, J.:—I have read the order of the learned Sessions Judge and agree with his view of the case. I, therefore, set aside the order of the Magistrate, as recommended by him, and direct that the case be sent back to the Magistrate, who will proceed to appoint a fresh jury and decide the matter under the provisions of section 139 of the Code of Criminal Procedure.

Reference accepted.