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EMPEROR v. YASHPAL

under section 19(*f*) read with section 20 of the Indian Arms Act. We consider that, as a matter of fact, the ingredients of section 20 are proved in the present case. The accused person had this revolver in his possession and when the police appeared he attempted to run away with his revolver and he also attempted to shoot Mr. Pilditch with his revolver. His intention therefore was that his possession of the revolver might not be known to the police, that is, that he might make his escape with the revolver. Accordingly we convict the accused Yashpal under section 19(*f*) read with section 20 of the Indian Arms Act and sentence him to seven years' rigorous imprisonment. This sentence will be consecutive with the sentence passed under section 307 of the Indian Penal Code.

REVISIONAL CIVIL

Before Mr. Justice Young

MOOL CHAND (DEFENDANT) *v.* GANGA SAHAI (PLAINTIFF)*

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April, 13

Civil Procedure Code, order IX, rules 3, 4—*Suit restored after dismissal for default—Notice of date of hearing of restored suit not given to defendant*—Ex parte *decree set aside for want of notice.*

A suit was dismissed for default of appearance of both parties. Notice of the plaintiff's application for restoration was served on the defendant but he did not appear at the hearing of the application. The application was granted and a date was fixed for hearing of the suit. The defendant had no knowledge of this date and did not appear, and the suit was decreed *ex parte*. *Held*, setting aside the *ex parte* decree, that the defendant was of right entitled to notice of the date of hearing of the suit after restoration, and the necessity to serve such notice was not obviated by the fact that the defendant had knowledge of the original hearing and of the application for restoration.

*Civil Revision No. 498 of 1932.

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MOOL CHAND v. GANGA SAHAI

Mr. *G. S. Pathak*, for the applicant.

Mr. *S. B. L. Gaur*, for the opposite party.

YOUNG, J. :—This is an application in revision from the decision of the learned Subordinate Judge of Aligarh. The plaintiff brought a suit for salary, and notice was served on the defendant. On the 20th of April the case was fixed for hearing further evidence. Neither the plaintiff nor the defendant appeared, and the suit was dismissed for default. On the 27th of June an application by the plaintiff was heard asking for restoration. Notice of that application was served on the defendant. On the 27th of June, however, the defendant did not appear. The application for restoration was allowed and the 29th of June was fixed for the hearing. Of this date, the 29th of June, the defendant had no notice. The case was decided in favour of the plaintiff on the 29th of June, and the defendant applied on the 12th of August for restoration of the case. He filed an affidavit saying that he had no knowledge whatever of the case, until the 5th of August. The learned Judge, however, decided that as the defendant had knowledge of the original hearing and of the application for restoration, it was unnecessary that he should have notice of the date, the 29th of June, when the actual hearing took place. The defendant has applied in revision against this order dismissing his application for restoration.

The sole point in this case is whether the learned Judge was right in deciding that it was not necessary to serve notice on the defendant of the date of hearing of the case after restoration. Counsel for the respondent here has relied upon the case of *Birj Lal* v. *Bua Ram* (1). In that case a learned Judge of this Court decided that where neither the plaintiff nor the defendant had appeared on the date fixed originally for the hearing of the case, the defendant was not entitled to notice of the date fixed for hearing the application for restoration by the plaintiff.

(1) (1912) 10 A.L.J., 399.

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This case is no authority for the proposition that no notice is necessary for the hearing of the case itself after restoration.

It appears to me that apart from authority, I cannot possibly decide that a defendant is not entitled to notice of the hearing of the case against him. In this case both the plaintiff and the defendant were absent on the original hearing. When the plaintiff is allowed a second chance by having the application for restoration granted, it appears to me inequitable that the defendant should not have notice of the date fixed for the hearing. Apart from authority, therefore, I decide that in any such case the defendant is of right entitled to notice of the hearing of the suit. In this case the learned Judge came to the conclusion that the defendant did have notice in fact of the hearing, although no notice had been served on him, on the bare statement of the plaintiff in an application that the defendant's man had been watching the proceedings on all the dates. The defendant has stated on oath that he had no knowledge. It is impossible to take a mere statement in an application against an oath. I therefore hold that the defendant did not have knowledge of the proceedings on the 29th of June, and accepting the application in revision, set aside the order of the learned Judge of the small cause court and direct that the suit be restored and decided according to law. Costs will abide the event.