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 OF  
 INCOME-  
 TAX

it is the duty of the Income-tax Officer to decide whether there has been a separation of members and a partition of the property within the meaning of sub-section (1) of that section. If it is found that there has been such separation and partition, an order will be passed to that effect; and if it appears that a firm has been constituted by the separated units which have come into existence, the Income-tax Officer will proceed under section 26 and will then register the firm upon an application under section 26A. In the present case no claim was made under section 25A. Nor could such claim legally be made in view of the fact that there had been a partition of a portion only of the joint property and the status of the family remained undivided. Therefore, under sub-section (3) of section 25A the family will be deemed, for the purposes of the Act, to continue to be a Hindu undivided family and will be assessed as a single unit, and for the constitution of a firm there must be more than one unit. The application for registration under section 26A was rightly disallowed.

Our answer to the question formulated by the learned Commissioner is in the negative. We direct that a copy of our judgment under the seal of the Court and the signature of the Registrar be sent to the Commissioner. The department is entitled to the costs of this reference.

### REVISIONAL CRIMINAL

*Before Mr. Justice Allsop*

EMPEROR v. HIRA LAL\*

1938  
 March, 22

*U. P. Prevention of Adulteration Act (Local Act VI of 1912), sections 12, 15(2)—Summons not specifically setting forth the particulars of the offence charged—"Prosecutor", who is—Whether prejudice to accused or failure of justice—Criminal Procedure Code, section 537.*

A failure to give the particulars in the summons required by section 15(2) of the U. P. Prevention of Adulteration Act does

\*Criminal Revision No. 148 of 1938, from an order of S. M. Mir, Sessions Judge of Fatchpur, dated the 4th of February, 1938.

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not justify an acquittal where it is clear upon the merits that the accused person was guilty of the offence and had a full opportunity of defending himself against the charge. Where there is no reason to suggest that the accused was not aware of the charge against him or that he was in any way prejudiced by any omission or irregularity in the summons and a failure of justice was thereby occasioned, the provisions of section 537 of the Criminal Procedure Code would apply and cure such defect.

The name of the "prosecutor", required by section 15(2) to be mentioned in the summons, is not necessarily the name of the local authority whose sanction is necessary under section 12 of the Act for a prosecution, and the name of the informer, e.g. the sanitary inspector, may rightly be mentioned in the summons as that of the "prosecutor".

Mr. E. V. David, for the applicant.

Application heard *ex parte*.

ALLSOP, J.:—This is an application in revision against a conviction under section 4 of the U. P. Prevention of Adulteration Act.

The point raised against the conviction is that the summons issued to the applicant did not contain the particulars required by section 15 of the Act. Learned counsel maintains that the failure to give these particulars is by itself sufficient to justify the acquittal of the applicant. He has relied upon the cases of *Benarsi Das v. King-Emperor* (1), *Bohra Raghubar Dayal v. King-Emperor* (2) and *Emperor v. Gajraj Singh* (3).

I have examined the judgments delivered in these cases and I am of opinion that they do not justify the wide proposition that an irregularity in a summons issued under the Prevention of Adulteration Act is in itself sufficient to justify an acquittal. The cases of *Benarsi Das* and *Bohra Raghubar Dayal* were cases under the Act, but they were both cases in which the learned Judges were of the opinion that prejudice had been caused to the person accused by the failure of the court

(1) [1930] A.L.J. 911.

(2) [1931] A.L.J. 690.

(3) I.L.R. [1937] All. 130.

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to give the particulars required by section 15 of the Act. In the case of *Benarsi Das* (1) the learned Judge said that the omission to mention the charge in the summons was highly prejudicial to the applicant. It was a case where it was not clear even at the time when the learned Judge of this Court was considering it what the exact charge was against the person accused.

The other case of *Bohra Raghubar Dayal* (2) was one which was again full of irregularities. The learned Judge said that it was uncertain whether the facts which had been proved constituted any offence. There was a misjoinder of charges and the applicant had been prosecuted on the assumption that the article of which a sample had been taken was intended to be ghee, whereas in fact it was found that it was intended to be cocoanut oil used for the manufacture of soap and not as a food.

The third case, *Emperor v. Gajraj Singh* (3), was not one under the Act but it is perhaps a parallel case, because the person accused was acquitted upon the ground that the summons issued did not specify the exact nature of the charge which was one under the Motor Vehicles Act. The learned Judge however clearly said that the court would not normally interfere in revision if it was satisfied upon the merits that the accused was guilty of the offence charged and that justice had been done even though there had been a material irregularity in the proceedings in that no notice of the charge was contained in the summons.

There is nothing in the Act which justifies the conclusion that it was the intention of the legislature that a failure to give the particulars in the summons required by section 15 of the Act would justify an acquittal even if it were perfectly clear that the person charged had been guilty of an offence and had had a full opportunity of defending his conduct. The provisions of section 537 of the Criminal Procedure Code are perfectly clear. They are that no finding, sentence or order passed by a

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court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the summons, unless such error, omission or irregularity has in fact occasioned a failure of justice. There is no reason why this piece of legislation should be ignored any more than any other.

In the present case, there is no reason to suggest that the applicant was unaware of the charge against him or that he was in any way hampered by any omission or irregularity in the summons. As a matter of fact, I have examined the summons and it seems to me hardly possible to say that it does not contain all the particulars required by section 15 of the Act. The applicant was charged with exposing adulterated ghee for sale in his shop. The summons states that a sample of ghee was taken from his shop and that he was being prosecuted under section 4 of the Act. Section 4 says that any person who exposes for sale any article of food which is not of the nature, substance or quality which it purports to be shall be punished. It is a fundamental principle that every person is presumed to know the law and therefore it must be presumed that the applicant knew that he was being prosecuted for exposing for sale an article which was not of the quality which it was supposed to be. He was told in the summons that that article was ghee and that it was found at his shop by the sanitary inspector. Section 15 also requires that the name of the prosecutor should be mentioned in the summons. The summons says that the sanitary inspector has prosecuted the applicant.

It has been urged that section 12 requires the sanction of the local authority for a prosecution and therefore the prosecutor must always be the local authority. If that were so, it would be unnecessary to mention the prosecutor, and no useful purpose could be served by doing so because everybody would know who the prosecutor was. It is clear that the intention of section 15 is that the person charged should obtain information

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about the informer against him. In this case the informer was the sanitary inspector and his name was rightly mentioned in the summons as the prosecutor. Even if it can be urged that the summons should state in so many words that the applicant was being prosecuted for exposing for sale adulterated ghee, that in itself would be no reason for acquitting him. The legislature which enacted section 537 of the Criminal Procedure Code clearly intended that no mere quibbles on the subject of errors, irregularities and omissions in procedure should interfere with substantial justice.

There is no force in this application and I reject it.

### APPELLATE CIVIL

*Before Mr. Justice Collister and Mr. Justice Bajpai*

1938  
 March, 22

PATIALA DARBAR (APPLICANT) *v.* NARAIN DAS GULAB SINGH (OPPOSITE PARTY)\*

*U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7, 13—Execution of decree, passed by court outside United Provinces, against property situate outside these Provinces—Stay of such execution—Injunction against such execution—Jurisdiction of Special Judge to order such stay or grant injunction—Civil Procedure Code, section 151—Inherent powers—Civil Procedure Code, order XXXIX, rule 1.*

The U. P. Encumbered Estates Act is concerned exclusively with the protection of land in the United Provinces, and there is no provision in it for issuing a stay order or an injunction where creditors of another province have taken out execution of decrees, passed by courts of that province, against property situate in that province of a landlord who has applied for the benefits of the Act. Nor does section 151 or order XXXIX, rule 1 of the Civil Procedure Code empower or justify a court in the United Provinces to issue a stay order or an injunction in such cases.

On the question whether such creditors must file their claims before the Special Judge in these provinces, and in

\*First Appeal No. 248 of 1936, from an order of N. L. Singh, Special Judge first class, of Saharanpur, dated the 15th of November, 1935.