

1927.

MAHARAJA  
OF  
DUMRAON  
v.  
SECRETARY  
OF STATE  
FOR INDIA IN  
COUNCIL.

Though not agreeing, as already stated, with some of the grounds of the High Court's judgment, their Lordships are of opinion that the decree of the learned District Judge was correct, and that the Maharaja's appeal to the High Court was rightly dismissed.

They will, therefore, humbly advise His Majesty that this appeal should be dismissed, and that the appellant should pay the costs of the appeal.

Solicitors for appellant: *Watkins and Hunter.*  
Solicitor for respondent: *Solicitor, India Office.*

### REVISIONAL CRIMINAL.

*Before Kulwant Sahay and Allanson, JJ.*

1927.

Feb., 1.

PARSOTIM DAS

v.

KING-EMPEROR.\*

*Code of Criminal Procedure, 1898 (Act V of 1898), sections 263(g), 342 and 364—Summary trial—examination of accused—questions and answers need not be recorded.*

Although section 342, which requires the court trying an offence to examine the accused person after the witnesses for the prosecution have been examined, applies to the summary trial of a warrant case, it is not necessary, in such a trial, for the court to record the questions put to the accused person or his answers. *Balkeshwar Singh v. Emperor*(1), referred to.

The facts of the case material to this case are stated in the judgment of Kulwant Sahay, J.

*S. Sinha* (with him *D. L. Nandkeolyar*), for the petitioner.

**KULWANT SAHAY, J.**—The petitioners were convicted of an offence punishable under section 121 of the Indian Railways Act. The petitioner no. 1 was sentenced to pay a fine of Rs. 60 and the petitioner no. 2 to pay a fine of Rs. 30.

\* Criminal Revision no. 378 of 1926, from an order of F. F. Madan, Esq., L.C.S., Sessions Judge of Shahabad, dated the 4th October, 1926, affirming a decision of S. Chandra, Esq., Magistrate, 1st Class, Sasaram, dated the 15th September, 1926.

(1) (1922) 8 Pat. L. T. 322.

The only question raised in the present application for revision is that the provisions of section 342 of the Code of Criminal Procedure have not been complied with. The trial in this case was a summary trial under the provisions of Chapter XXII of the Code. Section 263 of the Code prescribes the form in which certain particulars have to be recorded and clause (g) of section 263 provides that the plea of the accused and his examination (if any) are to be recorded in the form prescribed. Section 364 of the Code prescribes the mode in which an accused person ought to be examined by a magistrate or by any court other than a High Court. Clause (4) of section 364, however, says :

“ Nothing in this section shall be deemed to apply to the examination of an accused person under section 263 (or in the course of a trial held by a Presidency Magistrate). ”

The case made is that the examination of the accused persons by the Magistrate was not in compliance with the provisions of section 364. inasmuch as the proper questions to be put to the accused under section 342 were not put to him. It appears from the ordersheet of the Magistrate that the examination of the prosecution witnesses was finished on the 10th August, 1926, and thereafter the accused were told what the charge against them was and they pleaded not guilty to the charge. Thereafter on the 20th August, 1926, one prosecution witness was recalled and examined. Thereafter as appears from the ordersheet of that date, the accused persons were examined and then a date was fixed for defence witnesses. The record in the form prescribed under section 263 of the Code shows in the column prescribed for recording the plea of the accused and his examination if any, the accused pleaded not guilty, and it is stated that they would file a written statement. Therefore on a reference to the ordersheet of the 20th August, 1926, and to the form prescribed under section 263 of the Code, it is clear that the accused were examined under the provisions of section 342. What the nature of the examination was is not stated; but in a summary trial, under the provisions of section 364, it is not necessary for the Magistrate to take down the questions and answers in detail and there is nothing in this case to show that the

1927.

PARSOTIM  
DAS  
v.  
KING-  
EMPEROR.

KELWANT  
SAHAY, J.

1927.

PARSOTIM  
DASv.  
KING-  
EMPEROR.KULWANT  
SAHAY, J.

examination of the accused persons in this case was not a proper examination as prescribed by section 342 of the Code.

Reliance has been placed by learned Counsel for the petitioners upon the decision in *Balkeshwar Singh v. Emperor*<sup>(1)</sup> where it was held that a written statement filed by an accused person cannot take the place of his examination under section 342 and that the procedure laid down for warrant cases applies although the trial is a summary one under section 262 and that it is therefore mandatory upon the Magistrate to examine the accused under section 342 even in a summary trial of warrant cases. The correctness of this proposition is not challenged and nobody denies that even in a summary trial the Magistrate is bound to examine the accused under section 342. The question is whether he is bound to record the examination as provided for in section 364 of the Code. That section itself says that it is not necessary for the Magistrate in a summary trial to record the examination in detail. Nothing has been shown in this case that the examination was not a proper examination.

This application is dismissed.

ALLANSON, J.—I agree.

## APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, JJ.

ISHWARI PRASAD

v.

RAI HARI PRASHAD LAL.\*

1926.

Feb., 4, 5,  
8, 9, 10,  
15, 16, 17,  
18, 19, 22,  
25.

*Hindu Law—Kayasthas of Bihar, whether belong to regenerate class—daughter's son, sister's son, mother's, sister's son, adoption of, whether valid—factum valet, applicability of—plaintiff, whether can rely on general principle of prohibition, when point not specifically raised in pleadings—mere declaration, whether sufficient to create valid adoption—“giving and taking” essential—partition, claim for, after questioning an apparent adoption—limitation.*

\* Appeal from Original Decree no. 207 of 1922, from a decision of Babu Raj Narayan, Additional Subordinate Judge of Gaya, dated the 30th June 1922.