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the Registrar, on the 30th January, 1925, declined to condone the delay, and therefore refused to accept the document for registration.

In these circumstances, I am of opinion that the suit has been rightly dismissed, and I would, therefore, dismiss this appeal; but, as there has been no appearance on behalf of the respondent, make no order as to costs.

SHADI LAL C.J.

SHADI LAL C.J.—I CONCUR.

N. F. E.

*Appeal dismissed.***MISCELLANEOUS CRIMINAL.***Before Shadi Lal C. J. and Broadway J.*

THE CROWN—Petitioner

versus

SUKH DEV AND OTHERS, RESPONDENTS.

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July 26.

Criminal Miscellaneous No. 185 of 1929.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 353, 540-A—Pleader for one of several accused (during enquiry in Magistrate's Court)—appointment of, by Court, in absence of accused—necessity of accused's consent—Section 561-A: Inherent power—whether section applicable—where Code provides a specific power.

Held, that the "Pleader" contemplated in sub-section (2) of section 540-A of the Criminal Procedure Code (as amended by Act XVIII of 1923) must be one who represents the accused, and not a person who is appointed without his consent.

Held also, that the Court has no inherent power, in the interests of justice, to appoint a Pleader for an accused person without his consent and to treat such Pleader as his representative within the meaning of the section. The inherent jurisdiction of the Court, which receives recognition in section 561-A of the Criminal Procedure Code, cannot be invoked

for the purpose of doing an act which would conflict with any of the provisions of the law or the general principles of criminal jurisprudence. The rule of law is firmly established that, when a statute confers upon the Court a specific power, the Court cannot, by relying upon its inherent jurisdiction, extend the scope of that power.

And that when the Sessions Judge or Magistrate engages a counsel for the defence of an accused, he does so with the express or implied consent of the latter ; and that no Court has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them.

Nor is there anything in the English practice or the directions issued by this Court which can be invoked to support the argument that this Court has the power to engage counsel for an accused person against his wishes.

Reg. v. Yscuado, per Erle J. (1), and Poor Prisoners' Defence Act, 1903, 3 Edward VII, chapter 38, referred to.

Application under section 561-A, Criminal Procedure Code, praying that the High Court appoint counsel for an accused or to authorize the Magistrate to do so at Government expense.

CARDEN-NOAD, Government Advocate, for Petitioner.

Nemo, for Respondents.

SHADI LAL C. J.—The facts relevant to the ques- SHADI LAL C.J.
tion of law arising in this case lie within a narrow compass. A Magistrate is conducting an enquiry into various serious charges under section 302, read with sections 109 and 120-B, Indian Penal Code, and also under sections 121, 121-A, 122 and 123, Indian Penal Code, against sixteen persons. It appears that one of the accused, namely, Bhatkeshwar Dutt, could not attend the Court on the 15th July, 1929, owing to illness; and that the pleader, who had been representing

(1) (1854) 6 Cox's Criminal Cases 356.

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him at the previous hearings, informed the Magistrate, after interviewing the said accused, that he (the accused) did not wish to be represented by him.

The pleader accordingly ceased to represent Bhatkeshwar Dutt, and the Magistrate thereupon adjourned the case. At the next hearing the accused was again unable to attend the Court, and Magistrate, in order to expedite the enquiry, acceded to a request made by the Crown counsel and appointed a pleader to represent him. It appears that a doubt was entertained as to the legality of the proceedings to be taken in the absence of the accused, and the learned Government Advocate has consequently made this application on behalf of the Crown praying that this Court "may, in exercise of the powers conferred by section 561-A of the Criminal Procedure Code and any other powers thereto enabling, appoint counsel to represent the accused Bhatkeshwar Dutt and any other accused from time to time unrepresented before the learned Special Magistrate, or may authorize and empower the Special Magistrate or some other person so to appoint counsel for such accused at Government expense."

The application is admittedly one of a novel character, and Mr. Carden-Noad for the Crown frankly admits that he cannot cite a single decision in support of his contention. Indeed, section 353, Criminal Procedure Code, which deals with the mode of taking and recording evidence in enquiries and trials, makes it clear that, except as otherwise expressly provided, all evidence in an enquiry into a case triable by the Court of Session or High Court shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. The learned counsel, however,

places his reliance upon section 540-A which is in these terms :—

“ (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.”

“ (2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

This section, which was enacted by the Criminal Procedure Code (Amendment) Act, XVIII of 1923, provides for a case in which there are a large number of accused persons, and one or more of them cannot remain before the Court. In such a case the Court, instead of adjourning the enquiry or trial, has the discretion to dispense with the personal attendance of the accused, and proceed with the hearing, provided that such accused is represented by a pleader. But sub-section (2) of this section lays down that, if such accused is not represented by a pleader, the Court cannot proceed with the case, and has either to adjourn it or to direct that his case be heard separately. It is manifest that the pleader contemplated by the section must be one who represents the accused, and not a person who is appointed without his consent.

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Our attention has been invited to the directions issued by this Court to the Sessions Judges requiring them to employ counsel at Government expense for a person charged with an offence punishable with death if he cannot afford to engage counsel himself; and it is urged that a Committing Magistrate should, in similar circumstances, be empowered to assign counsel to an accused person. There is no rule providing for the employment of counsel at the expense of Government in an enquiry before a Magistrate, but, on principle there is no objection to such employment if the Crown is prepared to pay for the services of a legal practitioner. There can, however, be little doubt that, when the Sessions Judge or the Magistrate engages a counsel for the defence of an accused, he does so with the express or implied consent of the latter; and that no Court has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them.

It is to be observed that in England there is a statute of 1903, called the Poor Prisoners' Defence Act, 3, Edward VII, c. 38, which empowers the Committing Magistrates and the Judges to assign, in certain circumstances, solicitor and counsel to a person whose means are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence. The Act was passed in the interests of accused persons, and there is nothing in the English practice or the directions issued by this Court which can be invoked to support the argument that the Court has the power to engage counsel for an accused person against his wishes.

It must be remembered that a pleader is the representative of the person for whom he appears; consequently the acts done by the former are, subject to certain recognised principles, binding upon the

latter. The employment of a counsel places him in a confidential position, but no such relation can be established between a client and a counsel who is neither chosen by him nor given to him with his express or implied consent, but assigned, without his sanction, by the Court at the instance of the prosecution.

The question whether a Court can allow counsel to appear for a prisoner without his consent arose in an English case and was answered in the negative. In *Reg. v. Yscuado* (1), the prisoner, when called upon to plead remained silent, and the jury returned a verdict that he stood mute of malice. The counsel for the prosecution thereupon suggested that under the peculiar circumstances of the case counsel should be assigned to the prisoner, but the latter gave no reply when he was asked whether he wished to have the services of counsel to defend him. Erle J. then made the following observations which are pertinent here:—

“ I do not think that I have any authority to assign counsel to a prisoner without his consent. I should be very glad if I could do so, but by allowing counsel to appear without any communication with the prisoner, and without his sanction, I might be authorising a defence which the prisoner himself would never have made, and yet for which he must be responsible.” It was then suggested that, as the jury had already found that the prisoner stood mute of malice, it was to be presumed that he fully understood the proceedings, and, if on being told that a certain counsel had been assigned by the Court to conduct his defence, he did not repudiate him, it ought to be taken that he assented to such a course. To this suggestion the learned Judge made the following reply: “ He is

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not bound to give any assent to such a proposition, and I do not see how I can infer an assent from his silence. In treason, by a special Act of Parliament, the Court may assign counsel to a prisoner, but then it can only be done at his own request."

Nor am I prepared to accept the argument that this Court has, in the interests of justice, an inherent power to appoint a pleader for an accused person without his consent and to treat such pleader as his representative within the meaning of sections 353 and 540-A of the Criminal Procedure Code. The inherent jurisdiction of the Court, which receives recognition in section 561-A of the Criminal Procedure Code, cannot be invoked for the purpose of doing an act which would conflict with any of the provisions of the law or the general principles of criminal jurisprudence. The rule of law is firmly established that, when a statute confers upon the Court a specific power, the Court cannot, by relying upon its inherent jurisdiction, extend the scope of that power.

The absence of an accused on medical grounds may delay the disposal of the case, when the pleader, who has been appearing for him, ceases to represent him. If this course has, as suggested by the learned counsel, been adopted in order to protract the proceedings, the conduct of the person or persons concerned cannot but be regarded as reprehensible. It is the obvious duty of the members of the Bar to help the Court in administering justice, and a legal practitioner would be guilty of a serious dereliction of duty, if he did anything calculated to obstruct or impede the course of justice. The present application does not, however, disclose the exact circumstances which led the pleader to withdraw

from the case in so far as Bhatkeshwar Dutt was concerned, nor are we concerned in this case with the conduct of the pleader. We cannot, therefore, make any pronouncement upon the question of whether he had any justification for taking the course attributed to him.

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For the foregoing reasons I have no hesitation in holding that the Court has no power to assign counsel to a prisoner without his consent. I would, therefore, dismiss the application.

BROADWAY J.—I concur.

BROADWAY J.

N. F. E.

Petition dismissed.

APPELLATE CIVIL.

Before Shadi Lal C. J. and Tapp J.

SURAJ MAL-CHANDAN MAL (DEFENDANTS)

1929

Appellants

Oct. 17.

versus

FATEH CHAND-JAIMAL RAI (PLAINTIFFS)

Respondents.

Civil Appeal No. 631 of 1925.

Indian Contract Act, IX of 1872, section 212—Agent—negligence of—destruction of goods—measure of damages—Principal and Agent—liability of agent for negligence.

Held, that an agent, who is guilty of negligence, must make compensation to his principal in respect of the direct consequence of his neglect.

Held also, that where, as in this case, the property in the goods sold and despatched (by rail) and subsequently partially destroyed *en route* had passed to the consignee, he was not entitled to refuse to take delivery and to claim the refund of the price thereof; the measure of damages being the difference between the price of the goods in their undamaged condition and the market value at the time of their arrival at the destination.