1885.

CHATUR KUSHÁL-CHAND v. MAHÁDU BHAGÁJI.

"In connection with this last application the Subordinate Judge entertained doubts on the following points which he referred for the favour of decision by the High Court :—

"(1). Whether the conciliation-agreement can be regarded as one finally disposing of the matter in dispute?

"(2). Can the two applications for execution presented by the decree-holder be regarded on the date of the presentation of the application of 4th June, 1885, to have kept the conciliation-agreement alive for the purposes of limitation?

"(3). How the assistance sought for in the application of 4th June, 1885, is to be granted to the decree-holder?

"The opinion of the Subordinate Judge on the first two points was in the negative; and as to the third, he was of opinion that the Court would have to follow the provisions of sections 261 and 262, Civil Procedure Code, in granting the assistance called in by the decree-holder by his application of 4th June, 1885."

There was no appearance for the parties.

SARGENT, C. J.—The applications in 1883 for attachment of the defendant's property were not "in accordance with law," being forbidden by section 22 of the Dekkhan Agriculturists' Relief Act XVII of 1879. The present application, therefore, under section 261 of the Code of Civil Procedure (Act XIV of 1882) is too late under clause 179 of Schedule II of the Limitation Act XV of 1877.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice.*

QUEEN-EMPRESS v. KISAN BA'PU.*

1885. *August* 18.

*Indian Penal Code (XLV of 1860), Sec. 174—Summons—Disobedience.*

A man who in obedience to a summons to appear and answer a criminal charge attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under section 174 of the Indian Penal Code.

THIS was an application for the High Court's revisional jurisdiction.

* Criminal Application, No. 242 of 1885.

1885.

QUEEN-EMPRESS v. KISAN BÁPU.

The Second Class Magistrate of Taloda, in the Khándesh District, issued to the accused, who was a constable of police, a summons calling on him to appear at his Court at 10 o'clock on the 2nd of May, 1885, and answer a criminal charge. On that day the Magistrate was required by his official superior to attend to some public business, and was not present in his Court until 11 o'clock. The accused attended the Court at 10 o'clock, and, finding the Magistrate absent, put up a notice on the Court-house, informing the Magistrate of his having been present and of his departure, and left the Court within 2 or 3 minutes of his arrival. Mr. J. Davidson, Magistrate (F. C.) at Dhulia, convicted the accused under section 174 of the Indian Penal Code, and sentenced him to rigorous imprisonment for three months. On appeal to the Sessions Judge of Khándesh, the conviction and sentence were confirmed.

The accused then applied to the High Court to reverse the conviction and sentence under section 439 of the Code of Criminal Procedure (Act X of 1882).

*Dáji Abáji Khare* for the accused.—The summons in the case was issued under section 68 of the Criminal Procedure Code (Act X of 1882) and was in the form No. 1 given in Schedule V of that Code. The summons stated that the attendance of the accused was necessary to answer to a charge of disobedience to an order under the District Police Act, Bombay Act VI of 1863, that he was required to appear in person before the Second Class Magistrate of Taloda at 10 o'clock on the 2nd of May, 1885, and that he was not to fail. There is an essential difference between this and the summons to a witness which is issued under sections 68 and 252 of the Act: see Form No. XXXI, Schedule V. In this latter form the witness is enjoined not to depart from the Court without its leave. If an accused person attends at the time mentioned in his summons, and finds the presiding officer absent, it is lawful for him to depart. He is not obliged to await his arrival.

[NÁNÁBHÁI HARIDA'S, J., referred to *Queen* v. *Sutherland*[1].]

(1) 14 Calc. W. R., 20 Cr. R.

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In that case the summons was to an witness, not to an accused person.

NÁNÁBHÁI HARIDÁS, J.—The applicant, who is a constable of the police, was convicted by Mr. Davidson, First Class Magistrate of Dhulia, under section 174 of the Indian Penal Code, and sentenced to rigorous imprisonment for three months. The Sessions Judge of Khándesh having in appeal confirmed the conviction and sentence, the applicant now prays the High Court to reverse the conviction and sentence in the exercise of its revisional jurisdiction.

It has been found that the Second Class Magistrate of Taloda issued a summons, in the usual form, calling on the accused to appear before him at 10 o'clock on the 2nd of May, 1885; that the accused did appear in the Court-house of the Magistrate at exactly 10 o'clock of the day appointed; and that, finding the Magistrate absent, left the Court-house within two or three minutes, affixing a notice to inform the Magistrate of his having attended the Court, and of his departure on account of the Magistrate's absence.

Upon these facts Mr. Dáji Abáji Khare contends, on behalf of the applicant, that the summons not having directed the applicant to stay for any length of time and not to depart without the leave of the Magistrate, the applicant was not bound to stay in the Court any longer than he did.

We do not think the contention of the applicant is sound, and see no reason to interfere with the conviction. It is true that the summons did not say how long the applicant was to stay in Court, but it did say what its object was, *viz.*, to require the applicant to answer a certain criminal charge, and the purpose of the attendance was not fulfilled until that charge was answered. We think he was bound to wait for a reasonable time in the Court, and we do not think that his staying for two or three minutes only was a compliance with the order. See *Queen* v. *Sutherland* (1). The Magistrate in this case was absent on public business at the time, but was expected to be in Court shortly. At 11 o'clock he did come, and found that the appli-

(1) 14 Calc. W. R., 20 Cr. R.

1885.

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cant had already left, leaving a notice on the walls of the Court-house. Under these circumstances we uphold the conviction, but consider that the imprisonment already suffered is sufficient punishment for the offence. We accordingly remit the remainder of his sentence. A moderate fine would have been a more appropriate sentence.

*Order accordingly.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice.*

1885. *August* 18.

IN RE THE PETITION OF BA'LKRISHNA SHA'LIGRA'M.*

*Act XIII of 1859, Sec. 2—Sub-contractor, liability of, for breach of contract for work undertaken upon an advance—Workman.*

The petitioner, who as sub-contractor had engaged to do certain work for which he was paid an advance, but did not himself work, was convicted by a Magistrate, under section 2 of Act XIII of 1859, of the offence of breach of contract, and sentenced to undergo one month's imprisonment in default of his failure to fulfil the contract.

*Held*, that he was not an artificer, workman or labourer within the meaning of section 2 of Act XIII of 1859. The conviction and sentence were accordingly set aside.

AT a summary trial held on 13th June, 1885, before A. H. Plunkett, City Magistrate at Poona, the petitioner, who was a sub-contractor under one Bejanji Chándabhái, was charged, on a complaint by the said Bejanji, with the offence of abandoning work for which an advance had already been paid to the petitioner, and convicted under section 2 of Act XIII of 1859, and sentenced to undergo one month's imprisonment with hard labour in default of performing the work contracted for within fifteen days from the date of the Magistrate's order.

The petitioner made the present application to the High Court under its revisional jurisdiction, alleging that the Magistrate's order was contrary to law, as the petitioner was not a labourer, artizan or artificer within the meaning of Act XIII of 1859, and praying that the order should be set aside and the conviction and sentence annulled.

*Criminal Review, Petition 186 of 1885.