

The accused was convicted by the Sessions Judge of the offences charged, and sentenced to one year's rigorous imprisonment under sections 466 and 471 of the Indian Penal Code.

Against this conviction and sentence the accused appealed to the High Court.

There no appearance for the Crown or for the accused.

PER CURIAM:—This case is clearly distinguishable from *Jan Mahomed v. Queen-Empress*⁽¹⁾, where the intention was to produce a false belief that the accused was entitled to a certain dignity only. Neither is it similar to *Imperatrix v. Haradkan*⁽²⁾, where the intention was to be permitted to sit for a certain examination.

In the present case, the document was falsely made and used by the accused with the object of obtaining a situation in the police force at Poona. It was thus made and used with the intent to cause a person to enter into an express contract for service, that is, to engage the accused as a police officer. The act, therefore, of the accused comes within the terms of section 463 of the Indian Penal Code and is indeed the precise illustration (k) given in the Code under section 464.

The act of using such a document is punishable under section 471. This is in accordance with the decision of the Calcutta High Court in the case of *Abdul Hamid v. Empress*⁽³⁾ and of this Court in the case of *Queen-Empress v. Vithal Narayan* referred to with approval in the case of *Queen-Empress v. Ganesh Khanderao*⁽⁴⁾ and reported as a note to that case. In the case of *Queen-Empress v. Soshi Bhushan*⁽⁵⁾ that decision was agreed with.

(1) I. L. R., 10 Cal., 584.

(3) I. L. R., 13 Cal., 349.

(2) I. L. R., 19 Cal., 380.

(4) I. L. R., 13 Bom., 506.

(5) I. L. R., 15 All, 210.

CRIMINAL REFERENCE.

Before Mr. Justice Jardine and Mr. Justice Ranade.

QUEEN-EMPRESS v. BABAJI.*

Forest Act (VII of 1878), Sec. 78 —Refusal to serve as member of a panch—
Indian Penal Code (Act XLV of 1860), Sec. 187.

A person was convicted under section 187 of the Indian Penal Code for refusing, when called on by a forest guard, to serve as one of a panch for

*Criminal Reference, No. 2 of 1897.

1896.

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SINGH.

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the purpose of drawing up a *panchnāma* with reference to certain wood alleged to have been illegally cut in a reserved forest,

Held, that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first three paragraphs of section 78 (1) of the Indian Forest Act (VII of 1878), nor was the purpose for which he was called upon to give his assistance, one of the purposes mentioned in clauses (a) to (d) of the section. He was, therefore, not legally bound to assist the forest guard.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882).

The accused was called on by a forest guard to serve as a member of a *panch* appointed for the purpose of drawing up a *panchnāma* with reference to certain wood alleged to have been illegally cut in the reserved forest at Dhuwalwādi. The accused declined to attend.

Thereupon the forest guard filed a complaint against the accused, under section 187 of the Indian Penal Code (Act XLV of 1860), with having intentionally omitted to assist a public servant in the execution of his public duty when bound by law to give such assistance. Upon this charge the accused was convicted by the

~~10. Act VII of 1878, section 78 :—~~

~~“78. Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce, or to cut and remove timber, or to pasture cattle in such forest, and~~

~~every person who is employed by any such person in such forest, and~~

~~every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,~~

~~shall be bound to furnish without unnecessary delay to the nearest forest officer or police officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall assist any forest officer or police officer demanding his aid—~~

~~(a) in extinguishing any fire occurring in such forest ;~~

~~(b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest ;~~

~~(c) in preventing the commission in such forest of any forest offence ; and~~

~~(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.~~

Second Class Magistrate of Koregaon and sentenced to a fine of Rs. 5.

1897.

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The District Magistrate of Sátára, being of opinion that the conviction was illegal, referred the case to the High Court, observing as follows:—

“The accused in the present case is not shown to be a person contemplated in the provisions of the first three paragraphs of section 78 of Act VII of 1878, and the purpose for which he was called upon to give his assistance is also not one of the purposes mentioned in clauses (a) to (d) of the same section of the Indian Forest Act. Consequently, it is clear that though the guard was a public servant, the accused was not legally bound to assist him, and then even admitting that he intentionally omitted to give assistance, he cannot be convicted under section 187 of the Indian Penal Code.”

The reference came on for hearing before a Division Bench (Jardine and Ranade, JJ.).

There was no appearance for either party.

PER CURIAM:—For the reasons given by the District Magistrate, we set aside the conviction and the sentence passed upon the accused, and direct the return of the fine.

Conviction set aside.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

NANDRAM (ORIGINAL OPPONENT), APPELLANT, v. BABAJI AND ANOTHER
(ORIGINAL PETITIONERS), RESPONDENTS.*

1897.

June 29.

Mortgage—Redemption—Decree for redemption within six months—Expiration of six months without payment—Application after expiration of six months to extend the time for redemption—Practice—Procedure—Transfer of Property Act (IV of 1882), proviso to section 93.

In redemption suits the original decree (passed under section 92 of the Transfer of Property Act, IV of 1882) is only in the nature of a decree *nisi*, and the order passed under section 93 is in the nature of a decree absolute.

Under the proviso to section 93 of that Act, an application to extend the time for redemption fixed by the original decree may be made at any time before the decree absolute is made.

* Second Appeal, No. 337 of 1897.