

[APPELLATE CRIMINAL JURISDICTION.]

Criminal reference No. 149 of 1874.

1874.

November 12

REG. v. MANIKRAM SURAJRÁM.

Bombay Survey and Settlement Act No. I. of 1865., Sec. 14. Bombay Act IV. of 1868, Sec. 15—Notice to produce evidence—Penalty for disobedience to notice to produce evidence.

To render a person liable for disobedience of a notice under Section 15 of Bombay Act IV. of 1868, it is necessary that the documents required for inspection should be therein specified.

Disobedience of an order to produce evidence under Section 14 of Bombay Act I. of 1865, cl. 1, does not render a person liable to criminal prosecution, but simply to an adjudication in his absence.

THIS was a reference from H. M. Birdwood, Acting Session Judge of Surat, under Section 296 of the Code of Criminal Procedure.

The accused was convicted under Section 174, Indian Penal Code, by the Second Class Magistrate of Chorási, of disobedience to a summons to produce evidence, and sentenced to pay a fine of Rs. 5.

A notice dated 22nd June 1874 was issued by Mr. Enti, Deputy Collector and Inquiry Officer, Surat, requiring the accused person's appearance, either personally or by agent, "with evidence," at his office on a certain day. The accused person not having appeared, Mr. Enti sanctioned a criminal prosecution.

Mr. Birdwood was of opinion that the conviction was illegal, 1st, because there was no evidence to support it; 2ndly, the notice was defective for want of specification of the documents required for inspection, or—If held to have been issued under Section 14 of Bombay Act I. of 1865—the penalty for disobeying it was not a criminal prosecution, but an adjudication *ex parte*; and 3rdly, that there was no evidence to prove that the notice had been duly served.

The reference was heard by WEST and PINNEY, JJ.

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PER CURIAM: If the facts proved and found had shown that the accused was called on to produce specific documents, and had failed to produce them, then the provision of Section 15 of Bombay Act IV. of 1868 would have been applicable; but the Magistrate's proceedings show that no such specific call was made on the accused, and, therefore, the only penalty which he incurred was that of an adjudication in his absence under clause 1 of Section 14 of Bombay Act I. of 1865. Consequently, without considering the question raised by the Sessions Court, viz, whether there was evidence sufficient to warrant a finding that the notice was duly served on the accused person, the conviction and sentence must be reversed.

Conviction and sentence reversed.

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November 16

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 218 of 1874.

NINGANGAVDA PATIL.....*Plaintiff and Appellant.*

SATYANGAVDA PATIL.....*Defendant and Respondent.*

Civil Procedure Code, Sec. 15 Declaratory Decree Consequential relief Act XI. of 1843—Patil—Suit for declaration of plaintiff's eligibility to the office of Patil.

Where a plaintiff sued for a declaration of his eligibility to the office of *Patil*, if elected under the provisions of Act XI. of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendant's persistent denial of the plaintiff's claim to such eligibility, whereby the revenue authorities were induced to refuse to recognise it:

Held, that the suit was cognisable by a Civil Court.

Held also that such a suit would lie, even when the object of it was only to enable the plaintiff to influence the revenue authorities by showing that the Civil Court had declared him eligible for office as *Patil*:

Abaji Sankroji v. Nilaji Baloji (2 Bom. H. C. Rep. 342) and *Yesaji Apoji v. Yesaji Mhalaji* (8 Bom. H. C. Rep. A. C. J. 35) distinguished.

THIS was a special appeal from the decision of N. Daniell, Acting Judge at Dharwar, reversing the decree of Shrinivas Krishná, Subordinate Judge of Gadak.