

of the clause enabling him to sue at once for the whole amount due on the failure to pay the particular instalments, and in point of fact, the money did not otherwise become due except on the falling due or arrival of the date of the successive instalments.

1878

KOYLASH
CHUNDER
DAS
v.
BOYKOONTO
NATH
CHUNDER.

APPELLATE CRIMINAL.

Before Mr. Justice Markby and Mr. Justice Mitter.

IN THE MATTER OF BHOOBUNESHWAR DUTT, PETITIONER.*

Refusal to give Receipt for Summons—Indian Penal Code (Act XLV of 1860), s. 173.

1877

Dec. 14.

A refusal to give a receipt for a summons is not an offence under s. 173 of the Indian Penal Code.

Reg. v. Kalya bin Fakir (1) followed.

IN this case the prisoner was charged with refusing to give a receipt for a summons. The prisoner appealed, on the ground that the conviction was not warranted by law, inasmuch as refusing to acknowledge the receipt of a summons, either personally or by another person, does not constitute the offence under s. 173 of the Indian Penal Code.

Baboo *Amarendra Nath Chatterjee* for the petitioner.

MARKBY, J.—It appears to us that this conviction must be set aside. The charge against the petitioner was, that he had refused to give a receipt for a summons. This has been held by the High Court of Bombay in *Reg. v. Kalya bin Fakir* (1) not to be an offence under s. 173 of the Indian Penal Code, which is the section under which this conviction has been made. We concur in that decision.

This conviction will, therefore, be set aside; and the fine, if paid, will be refunded. If the petitioner is in jail, he will be released.

* Criminal Motion, No. 232 of 1877, against the conviction and sentence of H. A. D. Phillips, Esq., Officiating Joint Magistrate of Sub-Division Sewan, Zilla Sarun, dated 18th September 1877.

(1) 5 Bom. H. C. Rep., Cr. Cases, 34.