

1868
Feb. 22.

REG. v. KARSANLA'L DA'NATRA'M.

Summons—Service of Summons—Crim. Proc. Code, Secs. 186 and 187.

The mere showing to a witness of a summons issued under Sec. 186 of the Crim. Proc. Code is not sufficient service. Either the original should be left with the witness, or should be exhibited to him and a copy of it delivered or tendered.

THE accused was convicted, by W. Woodward, Magistrate F. P. in the Ahmedábád District, under Sec. 174 of the Indian Penal Code, of disobeying a summons of the said Magistrate F. P. calling upon him to attend his court as a witness on the 20th of December 1867 at ten A.M., and sentenced to pay a fine of Rs. 50, which in default of payment was ordered to be recovered by distress and sale of the moveable property of the accused.

The case was referred for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure, by Baron Arthur J. de H. Larpent, Acting Session Judge of Ahmedábád, with the following remarks:—

“The appellant and four others each moved the Court to call for the proceedings of the Magistrate F. P. of Khedá in cases where they had each been fined for not having attended punctually to the time mentioned in certain summonses.

“They urged that the summonses had not been legally served on them.

“Having called for the proceedings, and subsequently for a report from the Magistrate, it appears that the parties were not given a copy of the summons, but that they were only shown the summonses and told to sign them, which they appear to have done.

“The time of attendance stated in the summons is ten A.M. on the 20th of December 1867, and the appellants say that they did attend on that day, but not at the exact hour, and they accounted for their unpunctuality to the Magistrate by stating that they had been at a breakfast party.

“I am of opinion that in none of the cases has the summons been legally served. I think that the inference to be

drawn from Sec. 187 is that every summons must be in duplicate, and that a copy is to be left with the party on whom the service is made.

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“It appears to me but just towards the parties, who are liable to such heavy fines for not being punctual to time, that they should have left with them a summons which indicates the day and hour, and which they can refer to.

“The Magistrate states that the mode of service in these cases is the same as obtains in every zillá, and I am informed that, as regards the Ahmedábád zillá, this is so.”

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Court is of opinion that the mere showing the summons to the accused was not sufficient service. Either the original summons should have been left with the accused, or should have been exhibited to them and a copy delivered or tendered. We, therefore, reverse the conviction and sentence.

Conviction and sentence reversed.

REG. v. KHANDOJI BII TA'NA'JI.

March 10.

Mámlatdár—Illegal Order—Act V. of 1864 (Bombay).

Conviction and sentence for disobeying an order made by a Mámlatdár, under Bombay Act V. of 1864, directing the accused to keep a gateway open, reversed, as the Mámlatdár was not empowered under that Act to make the order.

IN this case one Bápú Sakháram having complained to the Mámlatdár of the City of Puná that the accused was preventing his right of way through his (the accused's) own compound gateway, the Mámlatdár made an inquiry under Act V. of 1864 (Bombay), and, finding the complainant's right of way proved, ordered the accused not to obstruct the complainant in going and coming by his gateway, and to keep it open. The accused disobeyed this order, by keeping the gate still locked.

E. T. Richardson, Magistrate F. P. at Puná, thereupon convicted the accused under Sec. 188 of the Penal Code,