

1868.  
REG.  
v.  
PURSHOTAM  
VA'LI.

tain Municipal road. The Chairman of a Municipality is not, I consider, a public servant, as contemplated by Sec. 174 of the Indian Penal Code, competent to issue a summons, or an order for attendance. The summons issued by him, directing the appearance of the accused under the section referred to, was not, it appears to me, legally binding, and the sentence passed is, therefore, contrary to law."

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :—The Court considers that the Chairman of the Commissioners appointed, under Act XXVI. of 1850, for the Town of Bassein, is a public servant. But the accused has not been shown to be guilty of non-attendance in obedience to any order issued by a public servant, which the Chairman, as such public servant, was legally competent to issue. The Court, therefore, reverses the conviction and sentence.

*Conviction and sentence reversed.*

April 15.

REG. v. KA'LYA' bin FAKI'R.

*Service of Summons—Refusal to sign a Summons—Ind. Pen. Code, Sec. 173.*

Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself, under Sec. 173 of the Indian Penal Code.

THE records and proceedings in this case were called for, under Sec. 404 of the Code of Criminal Procedure.

The facts were as follow :—

A summons was issued requiring the accused to appear in person, on the 14th of December 1867, in the Magistrate's Court at Tháná, to answer a complaint preferred against him. The summons was taken to the house of the accused, and was read over and explained to him, and he was asked to acknowledge service by signing the summons, but he declined to do so. For this he was convicted by I. Drúcup, Magistrate F. P. at Tháná, "of having intentionally refused to sign, and so prevented the service on himself of the summons," and sentenced, on the 16th of December 1867, under

Sec. 173 of the Indian Penal Code, to pay a fine of ten rupees.

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PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :— Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself. The Court, therefore, reverses the conviction and sentence, and directs the fine, if paid, to be restored.

*Conviction and sentence reversed.*

REG. V. KA'SYA' bin RA'VJI *et al.*

May 20.

*Ind. Pen. Code, Sec. 95—Theft—Valueless Produce.*

Conviction and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of Sec. 95 of the Ind. Pen. Code, and did not, therefore, amount to an offence.

THIS case was referred for the orders of the High Court by J. Elphinston, Acting Magistrate of Canará, under Sec. 434 of the Code of Criminal Procedure.

The accused were sentenced by A'zam Mangesh Shripat, Subordinate Magistrate, Second Class, at Yellápúr, to seven days' imprisonment, for picking pods (value three pies) off a Moringa tree standing in a waste piece of Government ground in the village of Yellápúr. The Magistrate of the District observed that it seemed exceedingly doubtful whether, in taking such valueless produce, any theft was committed, and that it was quite certain that the punishment inflicted was excessive.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :—As the pods were taken from a tree on Government ground, and were of no value to Government, not being made use of, the Court considers that the case comes within Sec. 95 of the Indian Penal Code, and reverses the conviction and sentence.

The Court considers the conviction and sentence very discreditable to the Second Class Subordinate Magistrate who tried the case.

*Conviction and sentence reversed.*