

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

1868.

REG.

v.

KA'LYA' FAKI'R.

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.*