

We now order that he be retried by the Court of Session on an amended charge for the dishonest retention, the previous convictions being also set forth in the charge.

Conviction and sentence annulled, and retrial ordered on an amended charge.

1885:

QUEEN-
EMPRESSv.
ABDUL LATIF
VALAD ABDUL
RAHIMAN.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

JOTIRA'M MA'NIRA'M, APPLICANT, v. DEVBA' ISHWARA'PA',
OPPONENT.*

1885.
December 3.

Conciliation-agreement, notice of, to parties thereto—Service of such notice through a Subordinate Judge—Dekkhan Agriculturists' Relief Act XVII of 1879, Sec. 49, rule framed under—Ultra vires—Procedure.

The rule⁽¹⁾, that a notice to parties to a conciliation-agreement should be served through a Subordinate Judge, framed by the Local Government under section 49 of the Dekkhan Agriculturists' Relief Act XVII of 1879, and published at page 682, Part I, of the *Bombay Government Gazette*, is not *ultra vires*, and a notice so served was held to be a good notice.

THIS was a reference by Dr. A. D. Pollen, Special Judge under Act XVII of 1879.

In this case notice to show cause why the conciliation-agreement should not be filed, was drawn up by a conciliator, signed, and sent to the Court to be served upon the parties to the said agreement. The serving officer returned it served upon the parties, accompanied by his affidavit to that effect. The Subordinate Judge of Bārsi refused to file the agreement on the ground that notice had not been legally served upon the parties as contemplated in section 44 of Act XVII of 1879.

* Civil Reference, No. 39 of 1885.

(1) The rule runs as follows:—"The delivery of the written notice referred to in section 44 of the Act shall be effected through the Subordinate Judge, to whom it should be sent for service by the conciliator at the same time that he forwards the agreement. The Subordinate Judge, immediately on receipt of the agreement and of the written notice, shall cause the latter to be duly served on the party named therein, and the date of such service shall be endorsed by the Subordinate Judge upon the agreement."

1885.

JOTIRAM
MANIRAM
v.
DEVBA
ISHWARAPA.

The question referred for decision was:—Whether the rule at page 682, Part I, of the *Bombay Government Gazette* of 1882 is legal, and whether the service of notice, in accordance therewith, is good service?

There was no appearance for the parties.

SARGENT, C. J.—We do not think that the rule at page 682 of the *Government Gazette* of 1882 is *ultra vires*. The effect of it is that the conciliator “delivers the notice” by means of the Subordinate Judge. It could not have been intended that he should necessarily deliver it in person.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. DA'LA' JIVA.*

1885.
December 10,

Criminal Procedure Code (Act X of 1882), Secs. 195, 337 and 339—Indian Penal Code (Act XLV of 1860), Secs. 193, 457—Sanction—Evidence of accused illegally pardoned.

In cases not of the kind contemplated in section 337 of the Criminal Procedure Code (X of 1882) it is not competent to a Magistrate holding a preliminary inquiry to tender a pardon to the accused, or to examine him as a witness.

Statements made by the accused in the course of such examination are irrelevant; and if subsequently retracted, they cannot be used against him, or subject him to a prosecution for giving false evidence, under section 193 of the Indian Penal Code (XLV of 1860).

Reg. v. Hanmantá⁽¹⁾ followed.

When a pardon is legally tendered to the accused under section 357 of the Criminal Procedure Code (X of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges.

In re Baidji Sitáram⁽²⁾ followed.

Such sanction can only be granted before, and not after, the commencement of the prosecution.

THIS was an appeal by Government from an order of acquittal made by A. Shewan, Assistant Sessions Judge of Ahmedábád.

* No. 130 of 1885.

(1) I. L., R., 1 Bom., 610.

(2) 11 Bom. H. C. Rep., 34.