

In Re: Premchand Dowlatram

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Court : Mumbai

Decided On : Feb-09-1887

Reported in : (1888)ILR12Bom63

Judge : West and ;Birdwood, JJ.

Appellant : In Re: Premchand Dowlatram

Judgement :

West, J.

1. In this case the Judge of the Small Cause Court at Ahmedabad has fined the applicant Rs. 75 for not producing a document which he had been summoned to produce. The applicant came to the Court, but then stated on oath that he had not the document, and could not produce it. Thereupon the Judge disbelieving this statement fined him ostensibly under the provisions of Section 174 of the Code of Civil Procedure. A careful perusal of that section, however, shows that the present case did not fall within it. The jurisdiction to punish under the enactment exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who, having a document, will not produce it, is provided for by Section 175 of the Indian Penal Code, and a limited summary jurisdiction is given to the Court in such a case by Section 480 of the Code of Criminal Procedure (X of 1882). The mere provision of this mode of procedure by the Legislature implies that another and different one is

not intended to be followed; and if the Judge of the Small Cause Court could fine a witness attending his Court under Section 174 of the Code of Civil procedure, he would deprive him of the appeal given by the law against a similar decision under section. 480 of the Code of Criminal Procedure. Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

2. We reverse the order as made without jurisdiction, and direct that the fine paid by the applicant be restored to him.

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