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provision clearly inconsistent therewith, unless, indeed, the words as applied to summons cases are insensible, or at least markedly inapt.

In the present case the Rule must be made absolute, and the case must be retried by a Magistrate to be nominated by the Chief Presidency Magistrate. The fine, if paid, will be refunded.

DUVAL J. I agree.

Rule absolute.

E. H. M.

CRIMINAL REVISION.

Before Rankin and Duval J.J.

MOSLEM SIRKAR

v.

EMPEROR.*

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Arrest—Power of forest guards to arrest without a warrant persons cutting reserved trees—Notification reserving certain trees—Omission of date of reservation in the notification—Custody of forest guards, whether legal—Rescuing from their custody—Forest Act (VII of 1878), ss 29 & 32—Penal Code (Act XLV of 1860), ss. 143, 224 & 225.

A notification under s. 29 (a) of the Forest Act (VII of 1878) which omits the date from which any class of trees in a protected forest or any trees in any such forest, is to be reserved, is bad : and a conviction under s. 32 of the Act, for cutting trees described in such notification, is illegal.

A forest officer has no power, under s. 63 of the Act, to arrest without warrant persons committing acts prohibited under s. 29 (a), and his custody is not a lawful one.

The petitioners were tried and convicted, on the 30th April 1926, by U. N. Bose, a Deputy Magistrate

* Criminal Revision Nos. 599 and 600 of 1926, against the order of U.N. Bose, Deputy Magistrate of Tangail, dated April 30, 1926.

at Tangail, and sentenced to various terms of imprisonment. The three petitioners in *Rule No. 600* were convicted under section 224 of the Penal Code, and section 32 of the Forest Act; and the petitioners in *Rule No. 599* under sections 143, 224, 225, 225/114 of the Penal Code.

The facts of the case were as follows. Atia Pargana is a large forest tract in the district of Mymensingh inhabited by about a 100,000 persons, some of whom have acquired lands and rights in trees growing thereon. It appears that the owners of more than two-thirds of the shares in the land applied to the Local Government to constitute the Pargana a reserved forest. By *Notification No. 1878 F.*, dated the 16th February 1925, published in the *Calcutta Gazette*, Part I, page 325 of the 26th February, and cited in the judgment of the High Court, the Governor in Council, acting under section 38 of the Act, applied to the Pargana certain provisions of the Act. Various other notifications relating thereto are published in the *Calcutta Gazette* of the 15th October (page 1641) and 5th November 1925 (page 1741), but it had not, at the time of the High Court's judgment below, been made a reserved forest by any notification finally operative under section 19 of the Act. By *Notification Nos. 1136 F. and 1137 F.*, dated the 5th November 1925, published in the *Calcutta Gazette* of the 12th November 1925, cited in the judgment, the Governor in Council declared *gazari* trees to be reserved; but no date was mentioned from which the reservation was to operate.

The petitioners in *Rule No. 600* were arrested by forest guards while cutting *gazari* trees, and those in *Rule No. 599* came in a body and rescued them. They were convicted as stated above, and their appeals dismissed on the 20th May 1925. They

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then moved the High Court and obtained the present Rules.

Sir P. C. Mitter (Advocate) and *M. Nurul Huq*, for the petitioners.

The Deputy Legal Remembrancer (Mr. Khundkar), for the Crown.

RANKIN J. These are two Rules issued by this Court in a case arising in connection with a forest called the Atia Pargana, a large tract of land in the district of Mymensingh, which is described as interspersed with jungles and trees between cultivations, and inhabited by 100,000 people. The Rule No. 599 is in respect of some seven persons who have been convicted under sections 143, 224, 225 and also 225/114 of the Indian Penal Code, and sentenced to divers terms of imprisonment. These accused have been convicted; to put the matter shortly, for obstructing the forest officer by rescuing from his lawful custody certain persons whom he had apprehended on the ground that they were cutting *gazari* trees in this forest; those trees having been reserved. The second Rule No. 600 deals with three people, the people who were in the custody of the forest officer, and who have been convicted under section 32 of the Indian Forest Act, being Act VII of 1878, for cutting these *gazari* trees. It will be sufficient for the present purpose to take those Rules together.

It appears that this forest has not yet been made a reserved forest by any notification finally operative under section 19 of the Act. The notifications with which we are concerned are notifications in respect of protected forests, and they are two in number. The first is dated the 16th February 1925. It recites that owners of more than two-thirds of the shares of the land had represented in writing their desire that

the said lands be managed on their behalf by the Government forest officer and so on. It goes on to say :—“ In the exercise of the power conferred by the penultimate paragraph of section 38 of the Indian Forest Act, the Governor-in-Council is pleased to apply to the said land the provisions of section 2 and sections 28 to 33 both inclusive of the said Act.” The penultimate paragraph referred to in section 38 is this :—“ In either case the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants,” and under that power what is applied is section 2 and 28 to 33. The notification goes on :—“ In the exercise of the powers conferred by the proviso of section 28 of the said Act, the Governor-in-Council is further pleased to declare the said land to be protected forest, but not so as to abridge or affect any existing rights of any individual or community, which rights will be inquired into and recorded in such manner as the Governor-in-Council may think sufficient”. Upon reference to section 28, which is the first section in Chapter IV, it appears that in the ordinary way the Act does not authorize a notification declaring a land to be a protected forest, except there has first been an inquiry and settlement regarding the rights of persons in the land. But the notification with which I am now concerned takes advantage of the special provision contained in the proviso to that section, which says that if the Local Government thinks that the inquiry and record will occupy such length of time that the rights of Government will be in the meantime endangered, the Local Government may, pending the inquiry and record, declare such land to be protected forest, but so as not to abridge or affect any existing rights

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of individuals or communities. Now following upon that notification there was another notification, dated the 5th November, 1925, and this was, so far as ~~Law~~ concerned with it, under section 29 clause (a) :—“ In “ the exercise of the power conferred by clause (a) of “ section 29 of the Indian Forest Act, the Governor-in- “ Council is pleased to declare the following species “ of trees to be reserved in the Atia protected forest, “ in the districts of Dacca and Mymensingh,” and then come (1) *gazari* trees. Clause (a) of section 29 is in the following terms: “ The Local Government may, “ from time to time, by notification in the local official “ Gazette (a) declare any class of trees in a protected “ forest, or any trees in any such forest, to be reserved “ from a date fixed by such notification”.

So far as the accused persons in *Revision No. 600* of 1926 are concerned, the charge against them is that under section 32 of the Act they have committed an offence against the notification of the 5th November, 1925. So far as the accused in *Revision No. 599* are concerned, the charge against them is to the effect that the forest officer was, under section 63 of the Forest Act, entitled without warrant to arrest any person against whom a reasonable suspicion existed of his having been concerned in any forest offence punishable with imprisonment for one month or upwards. But it has to be observed in connection with the lawful powers of the forest officer that section 63 also provides that nothing in this section shall be deemed to authorize such an arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (c). These are, I think, the relevant sections for the purpose of these two Rules.

It turns out that there are two contentions which have to be considered. The first contention is, that

under the proviso to section 28, the notification must be one which does not abridge or affect any existing rights of any individual, and the point can, therefore, be taken whether, under such notification, it is possible by another notification under Section 29 (a) to prevent individuals cutting *gazari* trees in which they have any proprietary right. That question does not require to be decided for the purpose of either of the present Rules.

The second question is whether the notification in this case under section 29 (a) is not a bad notification altogether for the simple reason that the person who drafted it did not follow out the clause which he was supposed to apply. The words are :—“ Declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification”. The notification which is before us fixes no date whatsoever. It is quite clear from the Forest Act that the intention is that the notification shall be made in the local official Gazette nominating a future date, and that, under section 30, the intermediate time shall be spent in causing translations into the language of the district of this notification to be affixed in a conspicuous place in the neighbourhood of the forest with the result that some attempt should be made to give the cultivators, the tenants or the inhabitants of the locality information of the prohibition contained in the notification before it comes into effect. It turns out that whoever had the management of this matter made no attempt to apply the plain words of the clause. Under these circumstances, I cannot entertain a doubt that the notification is bad altogether, and that, if it is desired to affect people's rights by means of such notification, the sooner the Act is properly complied with the better it will be.

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That being so, I am not of opinion that the accused in *Rule No. 600* have been guilty of any offence under the Forest Act at all, because it is reasonably clear that there is no notification which will base an offence under section 32. With regard to the persons who have been found guilty of rescuing from lawful custody of the Forest Officer, it appears that under section 63 no arrest is authorised for any act which is an offence under Chapter IV of this Act, and this offence is a breach of section 29 (a) which is made an offence by section 32, which is part of Chapter IV. There was no valid notification under section 29 (c), and what was done was not within that clause. It is not possible to say that the custody was lawful custody under section 63. The notification being bad, it was not an offence at all. But in any case the custody cannot be asserted under section 63 of this particular Act.

In these circumstances, it does not appear to me that any of the offences of which the petitioners in *Rule No. 599* have been convicted can be sustained. In my judgment both these Rules must be made absolute. The convictions and sentences should be set aside, and the petitioners in both these Rules, if they are on bail, will be discharged from their bail bonds.

DUVAL J. I agree.

E. H. M.

Rule absolute.