APPELLATE CRIMINAL—FULL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Oldfield, Mr. Justice Ramesam, Mr. Justice Devadoss and Mr. Justice Coleridge.

1923, April 23.

PONNUSAMY ODAYAR AND THREE OTHERS (ACCUSED), PETITIONERS,

v.

RAMASAMY THATHAN (COMPLAINANT), RESPONDENT.*

Criminal Procedure Code (Act V of 1898), ss. 342, 242, 256, 289 and 451—Summons cases—Trial—Duty of Court to question accused generally on the case—Provision, whether applicable to summons cases—Calling on the accused for his defence—Entering on his defence—Hearing the accused—Calling on the accused for his defence, found in sections 256 and 289, but not in Chapter XX—Effect of.

The mandatory provisions of section 342 of the Criminal Procedure Code (Act V of 1898), which require the Court to question the accused generally on the case after the examination of the prosecution witnesses, do not apply to trials in summons cases.

The use of the expression "before the accused is called on for his defence," in section 342 itself, as well as in section 256 relating to trials in warrant cases and in section 289 relating to trials in sessions cases, and the absence of such an expression in the sections relating to trials in summons cases under Chapter XX of the Code, show that the provisions of section 342 in question are not intended to apply to summons cases.

PETITION under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of Khan Sahib B. MUHI-UD-DIN KHAN LODI SAHIB BAHADUR, the Subdivisional First-class Magistrate,

* Criminal Revision Case No. 691 of 1922.

Māyavaram, in Criminal Appeal No. 21 of 1922, preferred against the conviction and sentence of T. K. VENKASWAMI RAO, the Stationary Second-class Magistrate, Māyavaram, in Calendar Case No. 275 of 1921.

The petitioners with seven others were charged with rioting under section 143 of the Indian Penal Code, and convicted by the Stationary Second-class Magistrate of Māyavaram and fined Rs. 10 each. The petitioners appealed against their conviction and sentence, but the appellate Magistrate confirmed the same. The petitioners contended, before the Appellate Court, *inter alia*, that their conviction was bad in law on the ground that the trial Court did not question the accused generally on the case after the examination of the witnesses for the prosecution, as required by section 342 of the Criminal Procedure Code, though the trial before him was in a summons case under Chapter XX of the Code. The Appellate Magistrate observed that this was a trial in a summons case, that the trial Magistrate had examined the accused under section 242 at the commencement, that the accused had engaged a pleader throughout the trial and that, as soon as the prosecution witnesses were examined and before proceeding further, the trial Court had "called on the pleader to have his say against the evidence and the pleader had argued upon it," and that it was only thereafter that the accused (appellants) had entered upon their defence. He also found that there was no prejudice to the accused caused by the procedure followed. He therefore declined to quash the conviction on this legal ground and confirmed the conviction and sentence. Against this decision, the accused preferred a Criminal Revision Petition to the High Court. The case came on for hearing before ODGERS, J., who referred the case to a Bench for disposal as the case involved an

PONNUSAMY ODAYAR v. RAMASAMY THATHAN.

important point of law; the case was subsequently ordered by the CHIEF JUSTICE and ODGERS, J., to be posted before a Full Bench.

ON THIS REFERENCE :—

K. Bashyam Ayyangar for petitioners.—Chapter XX, Criminal Procedure Code, deals with procedure in the trial of summons cases, Chapter XXI deals with warrant cases, Chapter XXII with summary trials, Chapter XXIII with sessions trials, and Chapter XXIV with general provisions which are prima facie applicable to all trials. Section 342 is applicable to summons cases, as well as to warrant cases. The very same considerations that apply to warrant cases apply to summons cases, the general provisions of section 342 must be applied if it is not inconsistent with the procedure in summons cases. In summons cases, the accused enters on his defence only when witnesses for defence are called, not when he pleads guilty or not guilty under section 242 of the Code. Pleading is not entering on defence either in summons cases or warrant cases. There is nothing in section 242 and other sections in Chapter XX to prevent the application of section 342. The hearing of the accused provided in section 242 in summons cases is not *exclusive* of the questioning prescribed in section 342 but cumulative. The expression "If he thinks fit" in section 245 only applies to cases of acquittal and does not exclude section 342. Reference was made to *Emperor* v. *Fernandez*(1), *Emperor* v. *Gulabjan*(2), *Gulam Rasul* v. *The King Emperor*(3), *Raghu Bhumij* v. *The King Emperor*(4), *Muhammad Bakhsh* v. *Emperor*(5), *Parmeshwar Lal Mitter* v. *Emperor*(6), *Criminal Revision Petition* No. 492 of 1922 (*per*

(1) (1921) I.L.R., 45 Bom., 672.
(2) (1922) I.L.R., 46 Bom., 441.
(3) (1921) 6 Pat. L.J., 174.
(4) (1920) 5 Pat. L.J., 430.
(5) (1922) 65 I.C., 618.
(6) (1922) 67 I.C., 616.

WALLACE, J.) *Criminal Revision Petition* No. 738 of 1922 (*per* AYLING, J.) PONNUSAMY ODAYAR v. RAMASAMY THATHAN.

Hearing the accused under section 242 is not the same thing as questioning the accused on the case. The object of the legislature is that the Court should have a direct communication with the accused on the case, apart from any argument.

Public Prosecutor (*J. C. Adam*).—There are two points. Firstly section 342 was not intended to apply to summons cases; secondly, if section 342 does apply, it should be made to apply in a workable way. (1) The applicability of section 342 depends upon "the accused being called on for his defence or to enter upon his defence." Section 342 refers to "accused being called on for his defence." Similar language is used in section 289 (sessions trials) and in section 256 (trial in warrant cases). That the Code makes a distinction between the two procedures "hearing the accused" and "entering on defence" is shown by section 451 which draws the contrast between them. Section 451, clauses (1) and (2) shows that section 342 is not applicable to summons cases, where there is no calling upon the accused for, or to enter on, his defence.

Assuming section 342 applied to summons cases, it must be applied in a modified and workable way as may be necessary, i.e., defence should be deemed to begin when the accused is asked to show cause under section 242. In this case the accused was asked what he had to say.

JUDGMENT.

SCHWABE, C.J.—This Criminal Revision Case has been referred to the Full Bench on the question whether in summons cases the provisions of section 342 of the Code of Criminal Procedure are to be applied, SCHWABE, C.J.

PONNUSAMY UDAYAR v. RAMASAMY THATHAN.

that is, is the Court bound, for the purpose of enabling the accused to explain the circumstances appearing in the evidence against him, to question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. The inconvenience of this course is manifest in view of the provisions of section 364 of the Code of Criminal Procedure which require the taking down of any such question in full in the language in which the accused is examined, or, where that is not practicable, in the language of the Court or in English, and that the record shall be shown or read to him and, if necessary, interpreted. The great majority of summons cases are of a petty nature and a strict application of the section must necessarily involve a consumption of a large amount of judicial time. We are reliably informed that it would involve a considerable increase in the Magistracy and that, in fact, the section has in practice in this Presidency not been treated as applying to summons cases. In Madras there is no authority on the point except that in two recent cases single judges have felt themselves bound to hold that the section does apply by reason of the decisions of the Benches of other Courts referred to below. In other Courts there is considerable weight of judicial authority in favour of the application of the section. In *Emperor* v. *Fernandez*(1), SHAH and CRUMP, JJ., gave a direct decision on the point and it was followed in *Emperor* v. *Gulabjan*(2), by MACLEOD, C.J., and SHAH, J., the former pointing out the inconvenience and suggesting legislation as a remedy. In *Raghu Bhumij* v. *The King Emperor*(3), in which the point was unnecessary for decision as it was a sessions case, SULTAN AHMED, J.,

(1) (1921) I.L.R., 45 Bom., 672. (2) (1922) I.L.R., 46 Bom., 441.
(3) (1920) 5 Pat. L.J., 430.

held that the application of section 342 was obligatory in sessions cases and expressed the opinion that it did not apply to summons cases for reasons which I will refer to later. MULLICK, J., holding that the section was not obligatory in sessions cases stated that he failed to see any difference between warrant and summons cases. On this case being referred to JWALA PRASAD, J., he held that it was obligatory in sessions cases and was clearly of opinion that it applied to summons cases. In *Gulam Rasul* v. *The King Emperor*(1), ADAMI and BUCKNILL, JJ., held that the section applied to summons cases. *Emperor* v. *Fernandez*(2), had been reported in the meantime and the Court simply followed that decision. This case has also been followed by single judges in Lahore in *Muhammad Bakhsh* v. *Emperor*(3), and in Patna in *Parmeshwar Lall Mitter* v. *Emperor*(4). It is open to this Bench to take a different view and we have to consider the matter for ourselves, of course, giving due weight to the authorities quoted above. Section 342 is one of the general provisions as to inquiries and trials, contained in Chapter XXIV, and, being a general provision, it must be applied to all cases, unless the special sections dealing with particular cases indicate that it is not intended to apply to them, or unless the words of the section itself give such indication. In my judgment, both these grounds of exception are to be found in respect of summons cases. Looking at section 342 it is a condition that the questioning directed is to take place before the accused is called on for his defence. The calling on the accused for his defence has a definite meaning both in sessions and warrant cases under sections 289 and 256, but when examining Chapter XX containing the provisions

(1) (1921) 6 Pat. L.J., 174.
(2) (1921) I.L.R., 45 Bom., 672.
(3) (1922) 65 I.C., 618.
(4) (1922) 67 I.C., 616.

PONNUSAMY ODAYAR v. RAMASAMY THATHAN.

SCHWABE, C.J.

applying to summons cases, the expression is not used. The prisoner in these cases does not "enter on his defence" but the Magistrate is bound "to hear the accused." That this distinction in phraseology is deliberate is clear from an examination of section 451 relating to the trials of European British subjects which refers, in summons cases, to a time before he is heard in his defence under section 244 and, in warrant cases, to a time before he enters on his defence under section 256. [See on this point the judgment of SULTAN AHMED, J., in *Raghu Bhumij* v. *The King Emperor*(1).] In my judgment, the proper interpretation to be put upon section 342 by reason of these words is that it is to apply only to those cases where under other sections of the Code the prisoner is to be called on for his defence. Again Chapter XX provides a complete procedure for the hearing of summons cases. Under section 242 the accused is asked if he has any cause to show why he should not be convicted; but there is no sort of preliminary inquiry before framing a charge, as is the case in warrant cases, and before a case is committed to Sessions. Then under section 244 the Magistrate must hear the complainant and take all such evidence as may be produced in support of the prosecution and also hear the accused and take all such evidence as he produces in his defence. Under section 245 after taking this evidence and such further evidence (if any) as he may cause to be produced, and (if he thinks fit) examining the accused he must give his decision. It is difficult to see where in these sections a formal examination under section 342 is to come in. It would have to be read in somewhere in section 244 and it would be remarkable that, if section 342 was intended to be

(1) (1920) 5 Pat. L.J., 430.

applied to summons cases, the Legislature should not have said at what stage in the application of sections 242, 244 and 245 this further formal examination is to take place. I do not feel bound to read the provisions of section 342 as intervening in the middle of the operation of these sections, and in my judgment, it has no application to summons cases. It is perhaps worth observing that in summons cases there is no objection to a Magistrate questioning the accused generally for the purpose of enabling him to explain the circumstances appearing in the evidence against him, and in complicated cases especially where the accused is not represented by Counsel, it is a desirable course notwithstanding that it is not obligatory.

As to the other points raised, this Criminal Revision Case with this direction will be referred to the Referring Bench for disposal.

OLDFIELD, J.—I agree. The authorities referred to in the judgment just delivered seem to me to proceed, implicitly or explicitly, on two assumptions, which, with all respect, I cannot follow:—that the entry by the accused on his defence, referred to in section 342 of the Code of Criminal Procedure, is identifiable with the hearing of the accused, referred to in Chapter XX, and that the language used in the section is applicable at all to summons case procedure. With all deference to my Lord, I am not sure that the separate references in section 451 to accused being heard in summons cases and entering on his defence in warrant cases assist the argument. For it is not clear that they correspond with more than the draftsman's adherence in 1884, when that part of the Code was amended, to the wording of the other portions now under construction. It is, however, in my opinion, sufficient that the distinction to be inferred from the different wording used in each of

PONNUSAMY ODAYAR v. RAMASAMY THATHAN.

OLDFIELD, J.

those portions can easily be drawn, the hearing of the accused under section 244 referring to the general hearing, to which he or his vakil on his behalf is entitled in the course of the trial. His entry on his defence under summons case procedure takes place earlier, when under section 242, after the particulars of the offence have been stated to him, he is asked if he has any cause to show why he should not be convicted. But, as the witnesses for the prosecution have not then been examined, there can be no question then or later of the requirements of section 342 having been fulfilled.

RAMESAM, J.

RAMESAM, J.—I agree with the judgment of the learned Chief Justice.

DEVADOSS, J.

DEVADOSS, J.—I agree with the judgment of the learned Chief Justice.

COLERIDGE, J.

COLERIDGE, J.—I agree.

K.R.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Oldfield, Mr. Justice Ramesam, Mr. Justice Devadoss and Mr. Justice Coleridge.

1923, April 24.

DHARMA SINGH (ACCUSED), PETITIONER,

v.

KING-EMPEROR (COMPLAINANT), RESPONDENT.*

Criminal Procedure Code (V of 1898), Chap. XXII—Summary trials of summons cases—Sec. 342, Applicability of, to summary trials of summons cases.

The provisions of section 342, Criminal Procedure Code, requiring the Court to examine the accused generally on the case after the examination of the prosecution witnesses, are as

* Criminal Revision Case No. 894 of 1922.