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the Indian Penal Code, but active disloyalty and rebellion amongst his Muhammadan fellow-subjects. The criminal offence which Amba Prasad committed is an exceedingly grave one. That offence he committed regardless of the ruin, misery, and punishment which would have fallen on any of his fellow-countrymen who might have been so ignorant as to believe that the statements which he published were true, and who, acting on such belief, might have entered upon a course of active disloyalty to the Government. Amba Prasad is not a Muhammadan; he is a Kayesth. It may be assumed, from the fact that Amba Prasad was not for some considerable time to be found to meet this criminal charge, that, if his Muhammadan fellow-subjects had been induced by what he published to enter upon a course of active disloyalty, Amba Prasad would have been at a safe distance from the place of danger.

Amba Prasad alleges in his grounds of appeal that his plea of guilty and an apology, which he tendered after he had been committed for trial, entitled him to have only a nominal punishment inflicted upon him. His conviction was inevitable. An apology, particularly made after commitment, in such a case as this, need not be considered. Having regard to the gravity of the offence which Amba Prasad committed and to the misery, ruin and punishment which he might have brought upon ignorant people, the sentence which was passed upon him was entirely inadequate. We dismiss this appeal.

REVISIONAL CRIMINAL.

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July 8.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

QUEEN-EMPRESS v. MAKUNDA AND ANOTHER.

Act No. XXII of 1881 (Excise Act) sections 27, 28, 29, 30, 34 and 47—Act No. XII of 1896, sections 36, 37, 38, 41, 57—Excise Officer—Jurisdiction.

Held that an officer invested with powers under sections 27, 28 and 29 of Act No. XXII of 1881, who had power in certain events to take the case before a Magistrate under section 32, was an "excise officer" within the meaning of section 47 of the Act. *Queen-Empress v. Ram Charan* (1) overruled.

(1) Weekly Notes, 1896, p. 105.

Makunda and Badam were convicted of an offence under sections 12 and 39 of Act No. XXII of 1881 (Excise Act), and sentenced to fines. They were arrested and challaned by a Police officer who had been invested with powers to act as an Excise officer under sections 27, 28 and 29 of Act No. XXII of 1881. Against this conviction an application in revision was made to the Sessions Judge, in which it was objected, *inter alia*, that the convictions were bad unless the Police officer concerned had been authorized as an Excise officer under section 33 of Act No. XII of 1896, and that no proceedings were taken by the Police under sections 39, 41 and 42 of Act No. XII of 1896. With reference to these grounds and to the ruling of the High Court in *Queen-Empress v. Ram Charan* (1) the Sessions Judge referred the case to the High Court under section 438 of the Code of Criminal Procedure.

The Government Advocate (Mr. E. Chamier) for the Crown.

EDGE, C. J. and BLAIR, J.—This reference by the Sessions Judge of Saharanpur raises the question whether Muhammad Khan, a Sub-Inspector, was, on the 1st of November, 1896, an excise officer within the meaning of section 57 of Act No. XII of 1896. He was, before the coming into force of Act No. XII of 1896, one of the class of officers on whom had been conferred powers to act as excise officers under sections 27, 28 and 29 of Act No. XXII of 1881. By section 2 of Act No. XII of 1896 powers conferred under any of the repealed Acts were to be deemed to have been conferred by and granted under that Act. Now Act No. XXII of 1881 had been amended by Act No. VI of 1885, which had introduced section 34A into the Act, a section which does not appear to have been brought to the attention of Mr. Justice Blennerhassett in the case of *Queen-Empress v. Ram Charan* (1). Section 47 of Act No. XXII of 1881 had also been amended by Act No. VI of 1885. Under section 27 of Act No. XXII of 1881 an excise officer under

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(1) *Weekly Notes 1896*, p. 105.

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certain circumstances had power to arrest. Under section 28 an excise officer receiving a certain monthly salary had also power to arrest. Under section 29 certain excise officers had power to arrest. Turning to section 32 of Act No. XXII of 1881 we find that whenever an excise officer arrests any person "he shall within twenty-four hours thereafter make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication."

It appears to us that that section contemplated that the excise officer who arrested under section 27, section 28 or section 29 could, unless he was acting under the warrant of the Collector, give the Magistrate jurisdiction to act, and that section can only be read in harmony with section 47 by treating the excise officer who had power in certain events to take the case before a Magistrate under section 32 as an excise officer within the meaning of section 47. Sections 36, 37 and 38 of Act No. XII of 1896, correspond generally with sections 27, 28 and 29 of Act No. XXII of 1881, and section 41 of Act No. XII of 1896 corresponds with section 32 of Act No. XXII of 1881. Section 57 of Act No. XII of 1896 corresponds with section 47 of Act No. XXII of 1881. If the attention of Mr. Justice Blennerhassett had been drawn to these sections, we think his opinion might have been otherwise.

We hold that the Magistrate had jurisdiction to act, and we send the case back to the Sessions Judge with directions to reinstate the case on his file and to dispose of it.