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the Magistrate believing this report issued a warrant, could it be said that his reason to believe that the house was used as a common gaming house was not founded on "credible information?" This is in effect what happened in the present case. "Credible information" cannot mean the same thing as "credible evidence." If it did there would be very little necessity for putting into force the provisions of section 5, or occasion to rely on section 6, for actual evidence of persons who had seen the owner of the house taking or receiving money would be forthcoming. I think the Legislature intended by the provisions of section 5 as far as possible to prevent a man's house being raided without due cause, and I think that Magistrates should not lightly issue a warrant, and that if they have the least reason to doubt the source of their information they should make careful inquiry before entering or allowing a person's house to be entered. If before issuing a warrant the Magistrate was to institute in each case an inquiry and wait until the result of that inquiry showed that "there was no reasonable doubt that the house was used as a common gaming house," section 5, if not the whole Act, would be a dead letter; yet this is what the learned Sessions Judge suggests should be done. The Act was passed to meet what was considered a grave public necessity, and so long as it remains law it should be administered, the Magistrates of course taking due precaution that its provisions are not abused. For these reasons I do not think I should interfere with the conviction or sentence. Let the record be returned.

Before Mr. Justice Richards.

EMPEROR v. CHEDI.*

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October 20.

Criminal Procedure Code, sections 191, 537 — Procedure—Omission of Magistrate to inform accused of his right to be tried by another Court—Illegality.

The omission on the part of a Magistrate to inform an accused person to whom the provisions of section 191 of the Code of Criminal Procedure are applicable of his right to have the case tried by another Court amounts to more than a mere irregularity to which section 537 of the Code will apply; but a Magistrate taking cognizance of an offence under section 190, clause (c),

* Criminal Revision No. 520 of 1905.

of the Code is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court.

THE facts of this case are as follows :—

One Chedi was left in possession of certain premises licensed for the sale of liquor, and it is alleged that on the police coming to the premises Chedi refused them admission. The consequence of this was that the employers of Chedi, the licensees of the premises, were charged under section 186 before Mr. Holmes, Joint Magistrate. He acquitted the licensees and forthwith under section 190, sub-section (1), clause (c), took cognizance of an offence against Chedi. As the result of this Chedi was tried by Mr. Holmes, convicted and sentenced to ten days' rigorous imprisonment. Chedi applied in revision against this conviction and sentence to the Sessions Judge, who declined to interfere. He thereupon preferred this present application to the High Court, upon the ground that, under the provisions of section 191 of the Code of Criminal Procedure, the Magistrate was bound to have informed him that he was entitled to be tried by another Court before he took any evidence.

Mr. A. H. C. Hamilton, for the applicant.

The Government Pleader (Maulvi Ghulam Mujtaba), for the Crown.

RICHARDS, J.—This is an application for revision of an order of the Sessions Judge of Cawnpore by which he confirmed an order of the Joint Magistrate of the same place sentencing the applicant to ten days' rigorous imprisonment under section 186 of the Indian Penal Code. It appears that Chedi was left in possession of certain licensed premises, and it is alleged that on the police coming to the premises Chedi refused them admission. The consequence of this was that the employers of Chedi, the licensees of the premises, were charged under section 186 before Mr. Holmes, Joint Magistrate. He acquitted the licensees and forthwith under section 190, sub-section (1), clause (c), took cognizance of an offence against Chedi. As the result of this Chedi was tried by Mr. Holmes, convicted and sentenced to ten days' rigorous imprisonment. The ground upon which revision is sought is that, under the provisions of section 191 of the Code of Criminal Procedure, the Magistrate was bound to have

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informed him that he was entitled to be tried by another Court before he took any evidence. The Government Pleader meets this objection by referring to the provisions of section 537, and says that this Court cannot in revision set aside the conviction, unless it is satisfied that there has been a failure of justice, and that the irregularity has, in fact, occasioned that failure. If failure of justice means that the accused was convicted when he ought to have been acquitted, I should have great difficulty in the present case in arriving at such a conclusion. It would be very difficult, if not impossible, in almost every case for the Court in revision to be satisfied that a wrong acquittal or conviction was in fact occasioned by the omission on the part of the Magistrate to give the information required by section 191. The question for consideration then arises, is the neglect of the Magistrate an error, omission or irregularity within the meaning of section 537, or is it not something more amounting to an illegality, as the Privy Council appear to have held the irregular joining of charges against an accused person—*Subrahmania Ayyar v. King-Emperor* (1). After a good deal of consideration I have come to the conclusion that the omission to inform the accused of his right as directed by section 191 is not a mere irregularity. Section 191 clearly pre-supposes that a Magistrate who takes cognizance of an offence of his own motion must to some extent have formed an opinion adverse to the accused, and for that reason the section gives the accused the right, if he desires, to be tried by a Magistrate who has formed no opinion whatever on the case prior to the trial. I think that the very language of section 537 shows that it was never intended to apply to a case where the Magistrate has neglected to comply with the provisions of section 191., I have already pointed out the difficulty, if not impossibility, of the Court in revision deciding that the failure of justice is occasioned by the Magistrate's neglect. The section provides further that it is the "finding, sentence or order" of a Court of *competent jurisdiction* that is not to be altered or reversed. I think that the meaning of section 191 is that a Magistrate taking cognizance of an offence under section 190, clause (c), is not competent to try the case, unless and until he

(1) (1901) I. L. R., 25 Mad., 61.

has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court. If it is thought desirable to take any further proceedings against the accused, they must be taken in accordance with the law. I set aside the order of the Sessions Judge, dated the 12th August 1905, and also the order of the Joint Magistrate, dated the 27th July, 1905.

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 PRIVY COUNCIL.

SANWAL SINGH v. SATRUPA KUNWAR.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Privy Council—Practice of—Concurrent decisions on fact—Disagreement of lower Courts as to circumstances leading up to conclusions—Appellate Court not affirming decision of first Court on all issues in the case.

Where both Courts below had come to the same conclusion on the two main questions of fact in the case, which were sufficient to dispose of it, but had not agreed on all the circumstances which led up to such conclusion, and the appellate Court had either differed from the first Court on other questions or had not decided them, the Judicial Committee, referring to the case of *Umrao Begam v. Irshad Husain* (1) declined to depart from the general rule as to concurrent findings of fact by the lower Courts.

APPEAL from a judgment and decree (March 2nd, 1900) of the Court of the Judicial Commissioners of Oudh, which affirmed a decree (July 3rd, 1897) of the Additional Civil Judge of Lucknow, dismissing the appellant's suit with costs.

The property in dispute was the taluqdari estate of Katyari in the district of Hardoi in Oudh, and the main question for determination in this appeal was the succession to that estate, and certain non-taluqdari property which had been added to it, on the death of one Hardeo Bakhsh Singh, the recorded taluqdar, whose name had been entered in lists 2 and 5 of the lists prepared in accordance with section 8 of the Oudh Estates Act (I of 1869).

Hardeo Bakhsh Singh died on 6th September 1877 leaving him surviving his daughter, Hulas Kunwar, her son the present appellant, a younger brother Tilak Singh, Sumer Singh the only

Present :—Lord MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

(1) (1894) L. R., 21 I. A., 163 (166); I. L. R., 21 Calc., 997 (1002).