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THE MUNICIPAL BOARD OF BENARES v. GAJADHAR.

proceeding." Even after the amendment the suit is not a suit in which the only relief claimed is an injunction. Furthermore, from the very nature of the suit and the allegations made by the plaintiff and defendant respectively, it is absolutely clear that the object of the suit would not be defeated either by the giving of the notice or the postponement of the commencement of the suit. The real substance of the suit is the title to the land. Even if the Municipal Board had carried out their alleged threat to demolish the building as it stands, it could very easily be restored after the plaintiff had established his title. The total value placed upon the *chabutra* is the sum of Rs. 25. We think that the decree of the court of first instance is correct and should be restored. We allow the appeal, set aside the order of the lower appellate court and restore the decree of the court of first instance with costs in both courts.

Appeal allowed.

REVISIONAL CRIMINAL.

1918
August, 8.

Before Mr. Justice Piggott.

EMPEROR *v.* MAHADEO SINGH AND OTHERS.*

Act No. IV of 1915 *(Defence of India Act), section* 2—*Defence of India (Consolidation) Rules*, 1915, *rules* 23, 29 *and* 30—*Procedure—Criminal Procedure Code, section* 191.

Upon a statement made to a District Magistrate, not upon oath and not signed by the informant, the magistrate issued warrants against four persons in respect of an offence under rule 23 of the Defence of India (Consolidation) Rules, 1915. These four persons were tried for and convicted of such offence, and were sentenced to twenty months' imprisonment.

Held that the trial was bad. Either the magistrate was acting under section 191 (c) of the Code of Criminal Procedure, in which case he was bound to ask the accused if they objected to being tried by him, and this he did not ask them, or he was acting as on a complaint, in which case he was bound to record the informant's statement upon oath.

Furthermore, with reference to rule 30 of the rules in question, the District Magistrate should have recorded a formal proceeding intimating his opinion that the initiation of a prosecution against the persons implicated by the informant's statement was advisable.

Held also, that the rule under which the conviction had been recorded was inapplicable to the facts of the case, because it is not possible to "dissuade" a person from doing something which he has already done.

* Criminal Revision No. 446 of 1918, from an order of Abdul Halim, Additional Sessions Judge of Allahabad at Mirzapur, dated the 13th of June, 1918.

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THE facts of this case are fully stated in the judgment of the Court.

Mr. *A. P. Dube*, for the applicants.

The Assistant Government Advocate (Mr. *R. Malcomson*) for the Crown.

PIGGOTT, J.:—In this case Mahadeo Singh, Mahabir Singh, Harnarain Singh and Dipnarain Singh, Thakurs, residents of Jhingurpatti in the district of Mirzapur, have been sentenced by the District Magistrate of Mirzapur to undergo imprisonment for a period of twenty months each under Rule 29 of the rules framed under section 2 of the Defence of India Act No. IV of 1915. The rule which they are alleged to have contravened is No. 23, which runs as follows :—"No person shall dissuade, or attempt to dissuade, any person from entering the Military or Police Service of His Majesty." The facts of the case which I find to be established beyond question are that Musai Pasi of Jhingurpatti is a sub-tenant of two of the accused persons, namely, Mahadeo Singh and Harnarain Singh, and that he has also worked as a ploughman for all the accused. On the 4th of March, 1918, Musai was recruited in the Bandel corps for service in Mesopotamia and received an advance of Rs. 25. On the 2nd of April, 1918, Mahadeo Singh and Harnarain Singh sued Musai as their subtenant for arrears of rent for the year 1324 Fasli, amounting to Rs. 30-15-0 plus interest. On the 8th of April, 1918, Musai, having previously made some statement to the Recruiting Officer, Mr. Branford, appeared before the District Magistrate of Mirzapur. The record of this case commences with a statement recorded in English by the District Magistrate as made to him by Musai on that date. The statement is not made on oath and is not signed by Musai. There follows an order in the District Magistrate's hand, and signed by him, directing warrants without bail to issue for the arrest of these four accused persons and an order for the summoning of certain witnesses. The District Magistrate took up the case himself on the 22nd of April, 1918. He framed a charge on the 13th of May, and he convicted and sentenced the accused on the 15th of May, after having heard their defence witnesses. The conviction and sentence have been affirmed by the Additional Sessions Judge on appeal and the

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matter has been brought before this Court in the exercise of its revisional jurisdiction. The proceedings in the court of the District Magistrate were certainly irregular in their initiation. If the Magistrate conceived himself to be taking cognizance of this offence upon information received from Musai within the meaning of section 191 (*c*) of the Criminal Procedure Code, he was bound to offer the accused persons the option of being tried by another court, as provided by section 191 of the same Code. If, on the other hand, the statement of Musai with which this record opens is the complaint in the case, upon which the District Magistrate proceeded to take cognizance, he was bound before issuing warrants, to take from Musai a sworn declaration that he had spoken the truth in the complaint made by him and to have obtained the signature of Musai to that sworn declaration. A further question has been raised as to the application in this case of Rule No. 30 of the rules in question. In view of the exceptional powers conferred upon the authorities by the Statute, and by the rules under consideration, I think that the courts are entitled to require strict compliance with all the provisions introduced into the rules by way of safeguarding the liberty of the subject. The District Magistrate ought, strictly speaking, as soon as he decided that action was called for on the information which Musai had given, to have recorded a formal proceeding, intimating his opinion that the initiation of a prosecution against the persons implicated in Musai's statement was advisable. If he had done this, and had also made up his mind definitely whether he was taking cognizance of the matter upon a complaint, or merely upon information received, he would probably have gone on to consider whether the interests of justice required that he should try the case himself. I do not say that I should necessarily have interfered in this matter if I had no other exception to take to the proceedings in the courts below than the irregularity of their initiation. As a matter of fact, however, it seems to me that these proceedings have been misconceived in essential particulars. The rule under which the applicants have been convicted is not the rule applicable to the facts stated in the charge. Musai had enlisted, that is to say, had entered the Military Service of His Majesty, on the 4th of March, 1918, and all the

facts alleged in the charge are subsequent to that date. It is contrary to the genius of the English language to hold that one person can "dissuade or attempt to dissuade" another from doing something which the latter has already done. It is arguable that the courts below might have acted, or may have conceived themselves to be acting, upon a statement made by Musai, to the effect that threats had been addressed to him prior to his enlistment with a view to dissuading him from taking that course. It also seems to have been present to the mind of the District Magistrate, and of the Additional Sessions Judge, that the accused might be liable to conviction on the ground that they had dealt with Musai in a certain manner with the object, not of dissuading Musai himself from enlisting, but of discouraging other persons from following his example. Finally, it may be argued that the accused specified in the charge might under certain circumstances be held punishable under Rule 24, though not under Rule 23, if the court were satisfied that they had attempted to induce Musai to fail in his duty as a person in the Military Service of His Majesty by refusing to fulfil the engagement which he had taken upon himself at his enlistment. I mention these points to show that they have been considered by me before disposing of the case; but I think it sufficient to say that if the accused had been tried on charges suggested by any one of the three lines of argument above set forth, not only would the charge have required to be differently framed, but also the prosecution would have been faced with other and serious difficulties before any court could have felt justified in holding the suggested offences, or any of them, proved by the evidence on the record. It has of course been necessary for me to subject the entire record to a careful examination before I could form any final opinion about the merits of this application. I cannot help remarking that in the reasoning which has satisfied both the courts below that the evidence on the record, which is certainly scanty and is admittedly discrepant in some important particulars, was, sufficient to prove certain facts against the accused persons, there seems to me one fairly obvious and somewhat serious flaw. Most of the points suggested in favour of the accused persons have been put aside in the courts below with the

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remark that there seems no adequate motive for Musai in bringing this accusation if it is not true, or at least founded on fact. I take it on myself to suggest that a very possible explanation of all the evidence on the record, and one which meets most of the difficulties suggested on both sides, would be that Mahadeo Singh and Harnarain Singh thought themselves justified in bringing pressure to bear upon Musai to pay up his arrears of rent before he left the country, and that Musai strongly resented their doing so. There is only one other point on which I think it fair to say a word or two. Both the courts below have taken it to be proved that the four accused persons first succeeded in obtaining by threats of violence from Musai's wife a sum of Rs. 25 on account of the arrears of rent due to them, and that subsequently Mahadeo Singh and Harnarain Singh sued Musai for arrears of rent without giving him any credit for this payment of Rs. 25. If this were proved by the evidence, the accused, or at least Mahadeo Singh and Harnarain Singh, would deserve to be prosecuted for an offence punishable under section 209 of the Indian Penal Code, and it might be my duty to go further into the matter from this point of view. It seems to me, however, that the evidence on which the courts, below have found that Musai's wife actually handed over Rs. 25 to the accused persons is of the slenderest, and I have ascertained, by going a little outside the record, a fact which the accused persons should have taken the trouble to have brought upon this record, namely, that Musai did not defend the suit for arrears of rent and made no attempt to prove that the major portion of the claim had been satisfied by a payment of Rs. 25 obtained by Mahadeo Singh and Harnarain Singh from his wife. In my opinion, therefore, it is useless to pursue this matter further. The conduct of the accused persons was not particularly creditable to them, and may have been worse than anything that appears to be clearly proved by the record, but they have undergone very nearly three months' rigorous imprisonment in consequence, and the District Magistrate may perhaps feel that, whatever order this court may now pass, the proceedings instituted by him have served a useful purpose. I do not wish to say anything to deprive him of that satisfaction. On the contrary, I think it fair to say that I fully

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recognize the fact that he acted in all good faith in the public interests. The conclusion I come to is that the four applicants have been convicted on a charge which is not supported by the evidence on the record and which is in fact bad in law, inasmuch as the facts alleged therein did not amount to an offence punishable under the rule therein quoted. Any further examination which I have made of the record, and any further comments which I have passed on the evidence, are merely directed towards the question of the propriety or otherwise of ordering further proceedings to be taken after setting aside this conviction. The remarks which I have made are, I think, sufficient to explain my reasons for contenting myself with quashing these proceedings, without passing any further order. The result is that I set aside the conviction and sentence in this case, acquit the four applicants of the offence charged, and direct that they be forthwith released.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1918 *October*, 23.

MAHADEO KORI (DEFENDANT) *v.* SHEORAJ RAM TELI (PLAINTIFF).*

Act No. II of 1899 *(Indian Stamp Act), section* 12; *schedule I, articles* 1 *and* 5—*Stamp—Acknowledgment of a debt*—"Sarkhat"—*Stipulation to pay interest—Agreement—Cancellation of adhesive stamp.*

In support of a claim to recover money lent, with interest, an acknowledgment or *sarkhat*-was produced, which was in the following terms:—"*Sarkhat* executed in favour of Sheoraj Ram Teli . . . by Mahadeo Ram; borrowed Rs. 200, interest rate Re. 1-8-0 per cent. per mensem; date, Baisakh Sudi 1st, Samvat 1971." At the top of the document was affixed a one anna stamp on which there was only one horizontal line drawn across it.

Held that the *sarkhat* was not merely an acknowledgment of a debt but contained a stipulation to pay interest, within the meaning of article 1 of the first schedule to the Indian Stamp Act, 1899, and therefore required to be stamped as an agreement under article 5(*c*) of the same schedule. *Udit Upadhya* v. *Bhawani Din* (1) and *Dulmha Kunwar* v. *Mahadeo Prasad* (2) distinguished. *Laxumibai* v. *Ganesh Raghunath* (3) and *Mulchand Lala* v. *Kashibullav Biswas* (4) referred to.

* First Appeal No. 73 of 1918, from an order of G. C. Badhwar, District Judge of Ghazipur, dated the 10th of April, 1918.

(1) (1904) I. L. R., 27 All., 84.
(2) (1906) I. L. R., 28 All., 436.
(3) (1900) I. L. R., 25 Bom., 373.
(4) (1907) I. L. R., 35 Calc., 111.