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IN THE MATTER OF CHANDRA SEN JAINI.

proving that he had not made the return. No doubt this illustration is an extravagant one in the sense that it is unlikely to occur, but in a country in which false documents are so common and false charges are so frequently made out of enmity, it may well have been considered quite possible that a discharged servant or some other enemy might deliberately send in a false return purporting to be by an assessee, which would appear to be incomplete or incorrect on the face of it, for the purpose of inducing the Income-tax Officer to give him what is called in this country "Dik". At any rate, if such a case should occur, the language which we have just cited is appropriate thereto. We, therefore, answer the first part of the question in the affirmative and the second in the negative, agreeing with the Commissioner. The assessee must pay the costs. We fix the fee at Rs. 150.

REVISIONAL CRIMINAL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

EMPEROR *v.* KISHAN NARAIN.*

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January, 6.

Criminal Procedure Code, section 107—*Security for keeping the peace—Order passed on the admission of the accused that he is willing to give security.*

Where a person against whom a notice is issued under section 107 of the Code of Civil Procedure consents to give security, there is no reason why the Magistrate concerned should not proceed to pass orders against him without further inquiry, provided that the Magistrate is satisfied that such person fully understood the meaning of the notice and that he was at liberty to show cause against it if he wished to do so. *Emperor* v. *Ghariba* (1), followed. *Palaniappa Asary* v. *Emperor* (2) and *Jagdat Tewari* v. *Emperor* (3), referred to.

*Criminal Revision No. 775 of 1927, by the Local Government, from an order of Shambhu Nath Dube, Sessions Judge of Bareilly, dated the 8th of September, 1927.

(1) (1923) I.L.R., 46 All., 109. (2) (1910) I.L.R., 34 Mad., 139.
(3) (1920) 54 Indian Cases, 784.

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EMPEROR v. KISHAN NARAIN.

THIS was an application in revision preferred on behalf of the Local Government against an order of the Sessions Judge of Bareilly reversing an order of a Magistrate whereby he had directed one Kishan Narain to give security for keeping the peace, the order being based on the accused's own admission. The facts of the case appear from the judgement of the Court.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

Babu *Surendra Nath Gupta*, for the opposite party.

WALSH and BANERJI, JJ. :—This is a Government revision questioning the view which was taken by the Sessions Judge on an appeal from an order made by a Magistrate under section 117, calling upon the party summoned to give security to keep the peace. The matter has been brought before us with the view of settling a point, which is undoubtedly of importance and on which there have been in the past some differences of judicial opinion. It is merely a question of procedure. The facts are that on the 26th of May, the Magistrate received a report from a Sub-Inspector stating that there had been old enmity between one person and the present party and that the enmity was continuing, that the two persons who were concerned in the dispute were preparing to make false charges against one another, that there was an apprehension that there would be a breach of the peace and, more than that, of the commission of a serious offence. Everybody knows the tendency of parties, when they get into this acute condition of quarrel, to take the law into their own hands, and to commit some unfortunate act of violence for which everybody afterwards is sorry, and it was prayed by the Sub-Inspector that proceedings should be taken against both the parties under section 107. The Magistrate thereupon issued a notice to the present party under section

107, dated the 13th of June. No complaint is made of the notice. It set out in substance the fact of the dispute as being the reason for the issue of the notice, and it called upon the present party to appear in court on the 27th of June to show cause why he should not be bound over and execute bonds of the amount of Rs. 200. On the 27th of June, the party appeared. Now, in an ordinary criminal case, to which possibly a charge of murder is the only exception, it is open to an accused person to plead guilty, and it is open to a court to accept and to act upon that plea. It would be contrary to common sense and to the universal practice if a court were not to act upon that plea, and nobody contends that a court is compelled after a plea of guilty, which it is willing to accept, to waste public time by insisting on a quantity of evidence being called, as though a charge had to be proved and a defence had to be heard. We can find nothing in the Statute, independently of any authorities which have been decided by way of interpretation of it, which prevents a court acting in that manner in a summons case. As the Government Advocate pointed out, the procedure prescribed in these cases under section 107 is the procedure prescribed for conducting trials and recording evidence in summons cases. The Magistrate is directed expressly by section 117 to proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. One method of inquiring into the truth of the information is to draw the attention of the person concerned to the matters contained in the notice and to ask him whether he has any cause to show or whether he desires further inquiry, or whether he disputes the allegations, or whether he is willing to be bound over on the strength of such allegations, and it would be a far-fetched and unreasonable interpretation to hold that a Magistrate asking such questions

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and inviting the person summoned to state to the court his attitude with regard to the summons was not taking reasonable steps to inquire into the truth of the information. The direction in the section further calls upon him to take such further evidence as may appear necessary. Courts are bound to give a reasonable interpretation to language of this kind. The language puts upon the Magistrate the duty of making up his mind whether further evidence is necessary or not. It is unreasonable to say that he has a statutory duty to take further evidence, if he does not consider it necessary, and it is equally unreasonable to hold that he is wrong in considering further evidence unnecessary, if the Magistrate has made the person summoned understand what the inquiry is about and has given him an opportunity of showing cause, if he wants to, and on the other hand, has accepted his consent to be bound over as an intimation that he has no complaint to make of the information on which the Magistrate has proceeded. Looking at the matter independently of authorities, we are of opinion that all that is necessary to protect the interests of members of the public, who may be summoned, is to make it clear that the Magistrate must be satisfied that the person summoned understands the proceedings, and that he is at liberty to show any cause if he wishes to do so. In this case it is clear that the Magistrate took every proper precaution and that the cultivator who was summoned understood what he was doing and saying. As a matter of fact, the only reason for his presence in court was to meet this single matter. It was unobscured by any side issue or by the presence of any other person, whose attitude with regard to the question at issue might be different. Having the contents of the notice before him, based upon the information of the Sub-Inspector, which he was at liberty to consider or dispute, he was asked whether he had any objection to

execute a bond in accordance with the notice for keeping the peace for one year. No man in his sound senses could possibly misunderstand that invitation. The party's answer shows that he fully understood it. He said, "I have no surety", meaning no independent person other than himself, which is what the notice and the question required him to produce, and he asked that a bond by himself only should be accepted, but that the amount of it should be reduced. The Magistrate thereupon recorded an order that the accused agreed to be bound down, which is inconsistent with anything but an acknowledgement that the information which was the root of the proceedings was correct, and he went on to accept the offer of the party summoned to give one personal bond in a reduced amount. The result was that no order was made against him for the provision of an independent surety and that his own personal bond in the reduced sum of Rs. 50 was ordered. Nobody can doubt, under such circumstances, that the party fully understood what he was doing, and that the court took a reasonable view of the matter and really accepted the offer of the party himself. What possible objection, statutory or in common sense, can seriously be made to such a proceeding, it is difficult to understand. The cases which have been decided in the past appear to us on the whole to contain *dicta* which go rather father than is justified by anything in the Statute, but they are not in all instances on all fours with the present case. The decision in Madras, *Palaniappa Asary* v. *Emperor* (1), was passed upon a proceeding from which it was not clear that the person summoned was agreeing to give security against a possible breach of the peace. All he was asked was whether he was willing to execute bonds or whether he desired further inquiry—a somewhat vague invitation—which may have justified the decision in that particular case. In a

(1) (1910) I.L.R., 34 Mad., 139.

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more recent case, decided by a member of this Bench, the facts were somewhat different from the case now before us. That was a case under section 110, in which the procedure is somewhat different, although we are not prepared to say that the principles applicable are necessarily different, but there the Magistrate had taken evidence, and after the evidence three of the persons summoned had expressed their willingness to produce security for good behaviour and had tendered no evidence, and the Sessions Judge in appeal, not unreasonably, held that as regards those three persons, as they had expressed their willingness after evidence had been taken, there was nothing to consider in the appeal. The learned Judge in that case went, as it seems to us, rather far in holding that an appellate court could not act upon the admission of the persons summoned, although they had made such admission after the evidence had been called against them and they had had every opportunity of calling evidence, if they wished, on their own behalf. But he based himself on reported decisions by single Judges in cases under section 107, holding that there was no distinction in principle between the two classes of cases. There are two cases in which a member of this Bench dealt with the matter in each case on a different footing. Both were cases under section 107. The first, *Jagdat Tewari* v. *Emperor* (1), appears to decide that there ought to be some evidence on the record, and that if a Magistrate is going to act upon a consent, he should obtain a full admission from each person called upon that he is likely to commit a breach of the peace and an admission of the reasons why he is likely so to do. The judgement goes on to say that an admission of that kind clearly made by a person who is to show cause, becomes evidence in the case. The somewhat burdensome duty imposed upon the Magistrate by the *dicta*

(1) (1920) 54 Indian Cases, 784.

contained in that judgement may possibly be explained by the fact that there were several persons summoned and that a general admission by all the persons summoned may be misleading, and that where there are several persons against whom obviously the information must involve different sets of allegation, it is better, in their own protection, that each should be required to state precisely his own position and should not be, so to speak, swept into the net by a general admission of willingness to give security. But the same Judge in a later case saw reason to consider that the *dicta* in that case had gone too far. In *Emperor* v. *Ghariba* (1) he said that he was inclined to think that he had gone too far in holding that there must be some evidence upon the record beyond a full consent given by the person summoned. In the case which he was then deciding it appeared that each of the persons had had the notice read out to him and in answer to the notice expressed his willingness to execute a bond to keep the peace, and the Judge deciding that case went on to say that that itself was evidence upon which a Magistrate could act. It was really a plea of guilty, assuming that the person summoned understood what he was doing, and that in such cases the person summoned might waive the formal production of evidence. That case seems to us on all fours with the present case and we agree with what was there held, that under section 107 a court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. It is not without importance to observe that in taking the view which we take in this case, we do not think that we are departing from any established practice of the court. The judgement in the case last referred to mentions that the learned Judge, before deciding the matter, consulted with Mr. Justice RYVES and with another Judge of the

(1) (1923) I.L.R., 46 All., 109.

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Court and that they both agreed with the view which he took. We think that the Sessions Judge in this case went too far, that he really had no right to entertain the point in appeal and that the revision must be accepted and the order of the Magistrate restored.

Revision accepted.

Magistrate's order restored.

REVISIONAL CIVIL.

Before Mr. Justice Dalal.

1928

January, 10

GANGADHAR (DEFENDANT) *v.* KANHAI (PLAINTIFF).*

Act No. V of 1920 (*Provincial Insolvency Act*), *sections* 41, 44 *and* 34—*Insolvency—Surety—Effect of order of discharge on the claim of a person who had gone surety for the insolvent and had been compelled to pay.*

K was surety for the payment of a debt due by G to D. G applied to be declared insolvent and in due course G was discharged. D then sued K and got a decree against him. Thereafter K sued G for recovery of the amount which he had been compelled to pay.

Held that the order of discharge was a bar to the suit. *In re Blackpool Motor Car Company, Ltd.* (1), followed.

THIS was an application in revision against a decree of the Court of Small Causes at Jhansi. The facts of the case sufficiently appear from the judgement of the Court.

Pandit *K. N. Laghate*, for the applicant.

Dr. *N. C. Vaish*, for the opposite party.

DALAL, J.—In my opinion the Court of Small Causes has gone wrong on a point of law and this Court

*Civil Revision No. 195 of 1927.

(1) (1901) 1 Ch., 77.