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SHEO DAYAL,
NIRANJAN
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v.
GREAT
INDIAN
PENINSULA
RAILWAY
COMPANY

alone was liable and not the agent. The case is not covered by section 80 of the Indian Railways Act. In this view the plaintiffs' suit could not be maintained for the refund of the overcharge against the Great Indian Peninsula Railway.

The result is that the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

*Before Sir Cecil Walsh, Acting Chief Justice, and
Mr. Justice Pullan.*

EMPEROR v. BHAIROON AND OTHERS.*

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July 27.

Criminal Procedure Code, section 109, clause (a)—Security for good behaviour—"Person taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction."

It is an entire mistake to read clause (a) of section 109 of the Code of Criminal Procedure as applying to any person who takes steps to conceal himself, in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark, or by a deserted road, or by some other secret means to commit a crime in his own neighbourhood. The offence contemplated is that of a person, probably, though not necessarily, coming from outside the jurisdiction into the Magistrate's jurisdiction, for some nefarious purpose, and taking precautions to conceal the fact that he is present in that jurisdiction.

King-Emperor v. Sharif Ahmad (1), *Emperor v. Lattu* (2), and *Emperor v. Ghulam Jilani* (3), followed.

THIS was an application by the Local Government to revise an order of the Sessions Judge of

* Criminal Revision No. 337 of 1926, by the Local Government, from an order of D. C. Hunter, Sessions Judge of Allahabad.

(1) (1911) 8 A.L.J., 1097.

(2) (1919) 17 A.L.J., 891.

(3) (1918) 17 A.L.J., 432.

Allahabad. The facts of the case, so far as they are material for the purposes of this report, appear from the judgement of the Court.

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The Government Advocate (Mr. *G. W. Dillon*), for the Crown.

Munshi *Hanuman Prasad Agarwala*, for the opposite parties.

WALSH, A. C. J., and PULLAN, J. :—This is a Government revision from a decision of the Sessions Judge of Allahabad, reversing an order made by the Magistrate of Allahabad under section 109 of the Code of Criminal Procedure, directing the persons prosecuted to execute bonds with sureties to be of good behaviour. At the hearing before the Magistrate there was a contest on the facts, but the question comes before us as a question of law and of the true interpretation of the section. The facts are clearly established. The three persons in question are *pasis* by caste, but are not registered members of a criminal tribe. They are residents of a neighbouring village to that in which the incident occurred. They were found together in the dark, late in the evening, outside a house, where they were probably lurking with the intention of committing house trespass. Matches and a house breaking implement, were found upon one of them. When they were challenged by the police they ran away, and when they were caught they are alleged to have given false names. Whether the latter is true or not is immaterial for our purposes, because the allegation by the police is sufficient to show that the police were not acquainted with their true names. The Magistrate made the order complained of under the section, and summed up his findings by holding “that they were about to commit burglary and, when arrested, could not give a satisfactory account of themselves.” That latter expression is one under sub-section (b) of section 109. That

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being the case, it is not surprising, and to our minds not a matter of criticism of the judgement of the learned Sessions Judge, that he should have overruled the Magistrate upon clause (b) and referred to authorities which bear upon that clause, and it is somewhat surprising that the Government should have chosen this case as an appropriate one for revision on the ground that the facts justified a conviction under clause (a), and complaining that the rulings relied upon by the Sessions Judge referred to clause (b) and not to clause (a). Applying to the Government the same rule that we apply to every litigant, we should be bound to hold that, inasmuch as the Sessions Judge had quashed the order of the Magistrate on the ground that it did not come within sub-clause (b), which was the only decision at which the Magistrate arrived, and that he had, therefore, acted strictly within his jurisdiction, there was no ground for interference in revision at all; but we are not content to dispose of the revision on that ground alone, because we recognize that the Government attach importance to the question and desire to get a ruling upon the interpretation of the section.

In our view the ruling of the Sessions Judge is right. It is a little difficult to deal with it concisely, inasmuch as the Sessions Judge, as we have said, concentrated upon the ground upon which the Magistrate had ordered the sureties to be given, and the Government complain that he did not direct his attention to the other sub-clause. But as the application before us is based upon sub-clause (a), it seems better that we should express our opinion of that clause. In our view it is an entire mistake to read that clause as applying to any person who takes steps to conceal himself, in the sense of concealing his presence in the way

in which a criminal conceals his presence when he goes in the dark, or by a deserted road, or by some other secret means to commit a crime in his own neighbourhood. In our view the section does not contemplate such a situation and has no application to it, and was clearly drafted in contemplation of a totally different situation. Clause (a) says that the power is to be exercised in the case of "any person taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction." If it was intended to deal with anybody, either a habitual resident or a person well-known in the neighbourhood, trying to conceal himself, it would have been natural to employ the expression "conceal himself," and it is impossible to attribute to the expression "within the local limits of such Magistrate's jurisdiction" a direction as to the jurisdiction of the Magistrate over the offence, because for that purpose the words would be superfluous, the jurisdiction of the Magistrate for offences committed in his district being clearly established by other provisions of the law. It is an elementary principle of the interpretation of statutes that you must give a reasonable meaning to every expression, and we have, therefore, to interpret the passage "within the local limits of such Magistrate's jurisdiction." In our view it is part of the predicate "to conceal his presence," and the offence contemplated is that of a person, probably, although not necessarily, coming from outside the jurisdiction into the Magistrate's jurisdiction, for some nefarious purpose, and taking precautions to conceal the fact that he is present in that jurisdiction. The words are free from ambiguity. Although the authorities to which we have been referred deal mainly with complaints under sub-clause (b), which was the clause with which the Judge was

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dealing, and although they were sufficient to justify the view which he took, in our view it is difficult to read the judgements delivered, in each case by experienced Judges of long service in this country, without coming to the conclusion that if they had been driven to construe clause (a), they would have taken the view which we have expressed. We refer to the decision of Mr. Justice CHAMIER in the case of *King-Emperor v. Sharif Ahmad* (1), and to the decision of Mr. Justice PIGGOTT in the case of *Emperor v. Lattu* (2), a Judge who was very unlikely to go wrong in a matter of this kind, and who said in broad terms: "I do not think it is possible to apply the provisions of section 109 of the Code of Criminal Procedure to the state of facts above set forth"; that is to say, the conduct of a man endeavouring to conceal his identity and failing to give a satisfactory account of himself. The last case, although earlier in date, is that of *Emperor v. Ghulam Jilani* (3) decided by Mr. Justice TUDBALL, which contains the most valuable dictum of all. Mr. Justice TUDBALL says: "The persons contemplated in the section are persons taking precautions to conceal their presence within the local limits of such Magistrate's jurisdiction, or persons who have no ostensible means of subsistence, and who cannot give a satisfactory account of themselves." Although the learned Judge was only quoting the *ipsissima verba* of the section, read in the context in which that quotation occurs, it appears to us that he dwelt upon the scope and ambit of the section in the sense which we are satisfied that it bears.

The result is that this application must be dismissed. The accused are on bail and their bail bonds must be discharged.

Application dismissed.

(1) (1911) 8 A.L.J., 1097.

(2) (1919) 17 A.L.J., 391.

(3) (1918) 17 A.L.J., 492.