

Counsel for the appellants has asked permission in this Court to amend the application for reference by the Collector to the District Judge at this late date. This request is one which for obvious reasons it is impossible for this Court to grant. Both these appeals are, therefore, dismissed with costs.

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OF STATE  
FOR INDIA  
IN COUNCIL.

*Appeals dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Sulaiman.*

EMPEROR v. BANWARI LAL.\*

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July, 12.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 147—Citation—Act No. XLV of 1860 (Indian Penal Code), section 174.

*Held*, that a defaulter to whom a citation has been issued under section 147 of the United Provinces Land Revenue Act, 1901, does not render himself liable to prosecution under section 174 of the Indian Penal Code if he fails to appear in obedience thereto. *Emperor v. Bhirgu Singh* (1), followed. *Ram Bali Singh v. King-Emperor* (2), referred to.

THIS was a reference from the Sessions Judge of Mainpuri. The facts of the case were as follows:—The Government revenue due from one Banwari Lal was in arrears. A citation to the defaulter to appear on the 2nd of January, 1926, in case the arrears of Government revenue were not paid soon, was issued by the Tahsildar under section 147 of the United Provinces Land Revenue Act. Banwari Lal neither paid the revenue nor appeared on the date fixed. He was in consequence prosecuted and convicted by a first class Magistrate under section 174 of the Indian Penal Code and sentenced to pay a fine of Rs. 10 and in default to undergo ten days' simple imprisonment. Against this order Banwari Lal

\* Criminal Reference No. 403 of 1926.

(1) (1925) I.L.R., 49 All., 205.

(2) (1910) 13 Oudh Cases, 55.

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applied in revision to the Sessions Judge who referred the case to the High Court, being of opinion that the non-attendance before the Tahsildar after service of the citation did not make the applicant liable for criminal prosecution under section 174 of the Indian Penal Code. The parties were not represented in the High Court.

The judgement of the Court (SULAIMAN, J.), after stating the facts as above, thus continued :—

Section 146 of the United Provinces Land Revenue Act provides for the recovery of an arrear of revenue by serving on the defaulter a writ of demand or citation to appear. Section 147 of the Act authorizes the issue of a writ of demand or a citation to appear when an arrear of revenue becomes due. Section 174 of the Indian Penal Code makes the intentional omission to attend in obedience to a summons, notice, order or proclamation, proceeding from any public servant legally competent to issue the same, a punishable offence. The question is whether the citation to appear does not come within the expression “summons, notice, order or proclamation.” If the matter were entirely *res integra* I would have been inclined to hold that the citation was at any rate a notice, if not a summons or order, and that, therefore, its disobedience was covered by section 174 of the Indian Penal Code. I might have sought support from the case of *Ram Babi Singh v. King-Emperor* (1), if the matter were not concluded by a recent pronouncement of a Division Bench in *Emperor v. Bhirgu Singh* (2), which is binding on me as a single Judge.

The difficulty is created by the use of the word “citation” in sections 146 and 147 in distinct

(1) (1910) 13 Oudh Cases, 55.

(2) (1925) I.L.R., 49 All., 205.

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contrast with the use of the words "summons, notice and proclamation" in chapter IX of the Act. The Bench thought that the form framed by the Board of Revenue embodies both the writ of demand and the citation in one document. The form before me, however, does not appear to be strictly a writ of demand. It merely says that if the arrears of revenue mentioned therein are not paid soon, then the defaulter should appear on the date fixed. There is no time specifically stated within which the revenue is to be paid, as is required by section 147. But undoubtedly the way in which the form has been prepared gives to the defaulter the option of either paying the arrears or appearing. It is not an unconditional notice or order to appear without fail. The form is called "summons to appear," but that, of course, would not make it a summons, if a citation is not a summons. The learned Judges laid stress on the fact that in the North-Western Provinces Act No. XIX of 1873, section 151, there was only a provision for the writ of demand and there was no power to issue either a citation or a summons; and in the Oudh Act (No. XVII of 1876), section 114, there was a provision for a writ of demand or a summons to appear, but the word "citation" was not used; whereas in the present Act in which both the previous Acts are combined there is a provision for a writ of demand or a citation. After coming to the conclusion that the word "citation" has been introduced advisedly, and giving to it its ordinary meaning, they held that it was rather in the nature of an invitation to appear than of an order to attend and that its meaning was analogous to the meaning of that word in the Probate and Administration Act (No. V. of 1881), section 69, and Succession Act, sections 199 and 250. They concluded that a suitable meaning

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could be properly given to the word "citation" without attributing to it the full force of a summons. In this view the learned Judges were strengthened by the use of the word "summons" and not "citation" in section 193 of the Act. They accordingly held that the issue of a citation to an alleged defaulter under section 147 of the United Provinces Land Revenue Act does not involve him in any legal liability to attend and that no offence under section 174 is committed by non-appearance.

The view taken by the Bench certainly prevents the abuse of the power to issue a citation to appear and then to arrest the defaulter, which may be an intolerable hardship. A citation may be issued to the defaulter to appear. If the defaulter does not appear he is prosecuted for non-appearance and convicted. If he does appear but is not in a position to pay the entire arrears at once, he may be arrested and detained. The result is that if the defaulter is not in a position to pay the arrears immediately, he is given the option of not appearing and being convicted and sentenced or of appearing and being arrested and detained. It may be doubtful whether such a procedure was contemplated by the Legislature when the Act was passed.

However that may be, I am bound by the ruling in the above mentioned case, which must be deemed to be authoritative as the Government chose to appeal on a question of principle, and their appeal was dismissed.

I accordingly accept this reference, and, setting aside the order of conviction and sentence, acquit the accused of the offence with which he is charged and direct that the fine, if paid, be refunded.

*Reference accepted.  
 Conviction quashed.*