

APPELLATE CRIMINAL.

Before Mr. Justice Dalal and Mr. Justice Boys.

EMPEROR *v.* BHIRGU SINGH.*

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December,
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Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 147—Citation—Failure to attend in accordance therewith—Act No. XLV of 1860, section 174.

The issue of a citation to an alleged defaulter under section 147 of the United Provinces Land Revenue Act, 1901, does not involve him in any legal liability to attend, and non-compliance with it does not render him guilty of an offence under section 174 of the Indian Penal Code.

THIS was an appeal by the Local Government against an order of the Sessions Judge of Azamgarh acquitting one Bhirgu Singh of an offence under section 174 of the Indian Penal Code. The facts of the case are fully stated in the judgement of the High Court.

The Government Advocate (Babu *Lalit Mohan Banerji*), for the Crown.

Pandit *Narmadeshwar Prasad Upadhiya*, for the accused.

DALAL and BOYS, JJ. :—In this case one Bhirgu Singh was tried summarily by a Magistrate of the first class and convicted under section 174 of the Indian Penal Code. The offence alleged against him was that, being legally bound to attend at a certain place and time in obedience to a summons, notice or order from a public servant, he had intentionally omitted to attend. In this case the public servant who issued the direction to attend was a Tahsildar, and the direction purports to have been issued under section 147 of the United Provinces Land Revenue

* Criminal Appeal No. 821 of 1925, by the Local Government, from an order of Kameshwar Nath, Sessions Judge of Azamgarh, dated the 27th of July, 1925.

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Act. That section says that "when an arrear of revenue becomes due, a writ of demand calling on the defaulter to pay the amount within a time therein stated or a citation to appear may issue." It was alleged on behalf of the Crown that a citation had issued. A Tahsildar has power to issue the citation. The only question that arises in the case is whether the power to issue citation connotes a legal liability on the part of the person to whom the citation is issued to attend. The Board of Revenue has framed a form which embodies both the writ of demand and the citation in one document, and the following form was used :—

"Whereas a sum of Rs. _____ on account of arrears of instalment in respect of _____ is due against you, you are hereby directed (*hidayat*) that in case the entire arrears aforesaid and process-fee in respect of this summons are not paid immediately you should appear before this court at _____ on _____."

A foot-note to this document says that "Failure to attend shall be punishable under section 174 of the Indian Penal Code." The document is, further, headed "Summons requiring attendance" (in vernacular "*summon hazri*").

Two things may be noted about this document. The first is that by embodying the writ of demand and the citation in the same form the Board of Revenue in practice deprived themselves of the option of sending either a writ of demand or a citation, but if they have chosen to deprive themselves in practice of that option there is nothing illegal in their so doing.

The second point to be noted is that in two places the vernacular word used is "*summons*" and the foot-note declares omission to comply to be punishable.

under section 174 of the Indian Penal Code. To give full force to the use of the word "summons" and the foot-note would be to beg the question which we have to decide; and if omission to comply is not punishable by law, a mere declaration in the form that it is punishable will clearly be wholly ineffective. The question is whether there is any different effect to be given to the use of the word "citation" in section 147 and to the use of the word "summons." As we have said, the Magistrate found the accused guilty under section 174 of the Indian Penal Code. On appeal he was acquitted by the learned Sessions Judge and from that acquittal the Local Government has filed the present appeal. On behalf of the opposite party it has been pointed out to us that in the North-Western Provinces Act (Act XIX of 1873), section 151, there was only a provision for a writ of demand. There was no power to issue either a citation or a summons. In the Oudh Act (No. XVII of 1876), section 114, there was provision for a writ of demand or a "summons" to appear; while finally in the present Act No. III of 1901, section 147, in which both the previous Acts are combined, there is provision for a writ of demand or a "citation." It is not unreasonably urged that there must have been some good reason for the use of this word "citation" which did not appear in the North-Western Provinces Act or any other word of the like nature and which did not appear in the Oudh Act, in which the word "summons" was used. It can hardly be an accident and we cannot treat it as such. We are urged to give this word its ordinary meaning, that is, that it is rather in the nature of an invitation to appear than of an order to attend. We think that it is reasonably contended that its meaning is analogous to its meaning when used in the Probate and Succession Act where it

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amounts merely to an invitation to come and see the proceedings. Reference may be made to Act V of 1881 (Probate and Administration Act), section 69, and the Succession Act, sections 199 and 250. It is true that in testamentary matters where there are definite proceedings going on, invitation to come and see may well be issued to parties interested, while in the matter before us it might be said that there are no proceedings for anybody to come and see. But it does not appear to us unreasonable that Government should have contemplated the issue of a notice to an apparent defaulter inviting him to come and discuss the matter. There might be some question of dispute or uncertainty in regard to the amount due as shown by the account prepared under section 145 of the United Provinces Land Revenue Act. It might be possible that if the apparent defaulter went to see the Tahsildar some arrangement might be arrived at by which a delay in payment might be accepted. These are only two considerations that occur to us. It is quite possible that Government may have contemplated that in many cases immediate arrest might by negotiations be avoided. We think, therefore, that a meaning can properly be given to the word "citation" without attributing to it the full force of a "summons." It is further clear that if a person has been given an opportunity, even though he is not obliged to take advantage of that opportunity, of going to the authorities and discussing the matter and he refuses to take advantage of that opportunity, he can have nobody to blame but himself if the authorities proceed to the extremity of arresting him. Finally, our attention is drawn to the provisions of section 193 which expressly declare that a person who has received a "summons" to appear "shall be bound to attend." The Legislature can hardly have overlooked the fact

that section 147 provided for a citation to appear and if it had intended that an unnatural construction should be put upon the word "citation," namely that it involved legal liability to attend, it would naturally have inserted also the word "citation" in section 193.

For these reasons we hold 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, that the opposite party here was, therefore, not guilty of an offence punishable under section 174 of the Indian Penal Code and was rightly acquitted by the learned Sessions Judge. The appeal is, therefore, dismissed.

Appeal dismissed.

Before Mr. Justice Banerji.

EMPEROR *v.* ENAYAT HUSAIN.*

Criminal Procedure Code, section 297—Charge to jury—Misdirection—Appeal.

An Assistant Sessions Judge in trying a case under section 377 of the Indian Penal Code with a jury, when he came to sum up, apparently did not give a summary of the evidence, but only told the jury that there were discrepancies in the evidence, without pointing out what these discrepancies were. Further, the Judge in charging the jury more than once used the expression: "If you are morally convinced, your verdict should be that of guilty."

Held, that this amounted to a misdirection, and that the conviction should be set aside.

This was an appeal from a conviction and sentence which had been passed by the Assistant Sessions Judge of Bareilly in a case under section 377 of the Indian Penal Code, tried with a jury. The facts of the case, so far as they are necessary for the purposes

* Criminal Appeal No. 325 of 1926, from an order of C. Deb Banerji, Assistant Sessions Judge of Bareilly, dated the 7th of April, 1926.

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