

28 C. 399.

## CRIMINAL REVISION.

*Before Mr. Justice Ameer Ali and Mr. Justice Pratt.*DEBI SINGH (*Petitioner*) v. QUEEN-EMPRESS (*Opposite party*)\*  
[8th February, 1901.]

*Warrant—Arrest—Accused, wrong description of—Onus of proof—Resistance to lawful apprehension—Criminal force to deter public servant from discharge of duty—Code of Criminal Procedure (Act V of 1898), s. 75—Penal Code (Act XLV of 1860), ss. 225, B and 353.*

[400] A warrant of arrest which contains a wrong description of the accused is not a valid warrant, and a conviction under ss. 225 B and 353 of the Penal Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal.

In order to have a conviction for an illegal disobedience of a warrant, the *onus* is on the prosecution to show that the accused is the person, against whom the warrant has issued. It is not for the accused to show that he is not the person against whom the warrant was issued.

THE accused owed rent to the Collector of Chupra for a ferry. A warrant was made out against Debi Singh, the son of Gunraj Singh, and handed to one Ram Autor to execute. He proceeded with two peons to the village of the accused Debi Singh, the accused was shown the warrant, and was arrested by the two peons under Ram Autor's orders. Upon being arrested he cried out for help and was forcibly rescued from the custody of the peons.

The accused was tried before the Joint Magistrate of Chapra, and in the course of his trial it appeared upon his examination that his father's name was Rang Lall Singh, and not Gunraj Singh. He was, however, convicted under ss. 225 B and 353 of the Penal Code. He appealed to the Sessions Judge of Saran, who, on the 7th December 1900, dismissed his appeal.

Mr. Hill (with him Babu Dwarkanath Mitter), for the petitioner.

The Deputy Legal Remembrancer (Mr. Leith) for the Crown.

The judgment of the Court (AMEER ALI and PRATT, JJ.) was as follows :—

We issued this Rule upon the District Magistrate to shew cause, why the conviction of, and sentence passed upon, the petitioner by the Joint Magistrate of Chupra should not be set aside on the grounds stated in the petition. One of those grounds is that the warrant of arrest, which the petitioner is alleged to have disobeyed, was not a valid warrant in law, and, therefore, the conviction under s. 225 B. and 353 was illegal. It appears that the warrant was made out against Debi Singh, son of Gunraj Singh, but in the course of the trial, upon the examination of the accused, it was found that his father's name was different. In order to have a conviction for illegal disobedience [401] of the warrant it was for the prosecution to show that the accused was the person, against whom the warrant had issued, or in other words, that he was the son of Gunraj Singh and not of Rang Lall Singh, as he alleged. It was not for the accused to show that he was not the person against whom the warrant was issued. The *onus* lay on the prosecution

\* Criminal Revision No. 998 of 1900, made against the order passed by R. H. Anderson, Esq., Sessions Judge of Saran, dated the 7th of December 1900, affirming the order of J. C. Twidell, Esq., Joint Magistrate of Chapra, dated the 26th of October 1900.

to prove the affirmative, not on the accused to prove the negative. Upon the whole, therefore, we are of opinion that the conviction cannot be sustained and we accordingly set it aside, and direct that the petitioner be discharged from bail.

*Rule made absolute.*

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PRIVY COUNCIL.

PRESENT :

*The Lord Chancellor, and Lords Macnaghten, Robertson, and Lindley.*

THE EAST INDIAN RAILWAY COMPANY (*Defendants*) v. KALIDAS MUKERJI (*Plaintiff*). [20th and 21st February, 1901].

[*On appeal from the High Court at Fort William in Bengal.*]

*Railway Company—Passengers—Responsibility of a Railway Company, in the care of passengers—Injury to the latter by the illegal act of a fellow passenger—Indian Railways' Act (IX of 1900), s. 59—Negligence.*

The legal obligation upon a Railway Company to exercise due care and skill in carrying passengers does not extend so far that the Company can be held responsible under all circumstances, for not carrying them safely. Negligence alleged against them must be proved affirmatively, where denied. It was not the duty of the railway servants to search every parcel that passed the ticket barrier, carried by a passenger.

Words in the judgment of the Chief Justice, Q. B., in *Collett v. The London and North-Western Railway Company* (1), as to the duty to "carry safely," explained.

As no act, or omission, of neglect had been proved against the Company or their servants, the decrees below were recommended for reversal, and the suit for dismissal.

APPEAL from a decree (17th February, 1899) of the Appellate High Court (2) affirming a decree (8th June, 1898) of a Judge of the High Court in the Ordinary Original Civil Jurisdiction.

[402] This suit was brought by the respondent for damages upon the alleged negligence of the defendants, appellants, as having resulted in the death of his son, Atindra Nath Mukerji, who died from injuries received on the 27th April, 1896 from an explosion and a fire, which took place in the Company's train on the railway between Secunderabad and Dadri. The fire was caused by the explosion of fireworks illegally brought into the compartment, in which the deceased was travelling at the Aligarh station.

The plaint charged that the Railway Company undertook to carry Atindra Nath safely, but conducted themselves so negligently in that behalf, that the explosion occurred, in consequence of their servants having allowed fireworks to be brought into the carriage. The defendants denied that the disaster was caused, or contributed to, by any negligent, unskilful or improper conduct on their part, or that of their servants.

The question at issue resolved itself into whether due care had been taken by the defendants for the purpose of preventing fireworks from being taken, as they had been, by two persons, Abed Hossein and Gholam Hossein, both of whom were killed by the explosion, into the compartment.

(1) (1851) 16 Q. B. 984.

(2) (1899) I. L. R. 26 Cal. 465.