thereupon," that is, upon the recorded evidence, "instead of directing a fresh enquiry, order him to be committed for trial upon the matter, of which he has been in the opinion of the District Magistrate improperly discharged." In other words the District Magistrate may either direct a fresh enquiry by the inferior Court, which has improperly discharged the accused, or he may, in his discretion, order the commitment of the accused for trial before the Court of Session. This meaning is made clear by the proviso which follows :—

"Provided that the accused has had an opportunity of showing cause to such Magistrate, why the commitment should not be made"; not to be made by anybody else, but by the Magistrate himself. The second proviso declares :—"If such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to enquire into such offence." Proviso (*a*) taken in connection with proviso (*b*) cannot leave any reasonable doubt that the commitment there intended is a commitment upon the record by the Sessions Judge or the District Magistrate, who, upon a perusal of the evidence, is of opinion that the accused has been improperly discharged. This view is in accord with that expressed in the case of *Queen-Empress* v. *Krishna Bhat* (2) and no authority to the contrary has been laid before us. We, therefore, overrule the objection.

D. S.

CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

DEBI SINGH (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

1901 *Feb.* 8.

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.

* 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.

(2) (1885) I. L. R., 10 Bom., 319.

1901

DEBI SINGH. v. QUEEN-EMPRESS.

A warrant of arrest which contains a wrong description of the accused is not a valid warrant, and a conviction under ss. 225B 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. 225B 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 show 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 section 225B. 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

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DEBI SINGH *v.* QUEEN-EMPRESS.

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 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.

D. S. *Rule made absolute.*

PRIVY COUNCIL.

P. C.* 1901 *Feb.* 20, 21.

THE EAST INDIAN RAILWAY COMPANY (DEFENDANTS) *v.* KALIDAS MUKERJI (PLAINTIFF).

[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 1890), 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.

* *Present:* THE LORD CHANCELLOR, and LORDS MACNAGHTEN, ROBERTSON, and LINDLEY.

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

(2) (1899) I. L. R., 26 Calc., 465.