

dent at Barodá is a Justice of the Peace, besides being an officer of considerable trust and responsibility ; and, having regard to the fact that the order or warrant professes to be under Sec. 23, I ought, I think, to consider that this is a proceeding which the Government, in the exercise of the discretionary power given by Sec. 23, has thought fit to adopt "for carrying the treaty into effect, and for the surrender of the prisoner in question, and for making any preliminary inquiry into the charges contained in the requisition." The crime charged having been committed at Barodá, the facilities for making such preliminary inquiry as is contemplated by the Act must be greater than they would be in Bombay.

I should add that, in my opinion, it would be desirable in form, when an order is made under Sec. 23, that any warrant or order for conveying any prisoner out of the British territory, except where a preliminary inquiry had been held there, should state the order (if any) for holding such preliminary inquiry at the place to which the prisoner is to be conveyed, and that the warrant or order is made for the purpose of conveying the prisoner to the place where such preliminary inquiry is to be held. The order for the surrender to the foreign power would, of course, be a separate one. For the above reasons, I remand the prisoner, Rávji bin Keshav, to custody.

Attorneys for the accused : *Leathes & Crawford.*

Attorney for F. H. Souter : *R. V. Hearn*, Government Solicitor.



REG. v. VENKA'JI BHA'SKAR.

April 13.

Maháلكari—Act XI. of 1843, Sec. 8—*Disobedience of Order issued by Maháلكari—Ind. Pen. Code, Sec. 174.*

A Maháلكari invested with the powers of a 2nd Class Subordinate Magistrate cannot issue a summons under Sec. 8 of Act XI. of 1843, nor can a person be convicted under Sec. 174 of the Indian Penal Code for having disobeyed such a summons so issued.

IN this case the accused, Venkáji Bháskar, was convicted by the Second Class Subordinate Magistrate of Dambal,

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in the Dhárwár district, of the offence of intentionally omitting to attend in obedience to a summons under Sec. 174 of the Indian Penal Code, and was fined Rs. 5, which amount the accused paid.

The District Magistrate of Dhárwár (E. P. Robertson), in a letter dated the 17th of March 1871, submitted the proceedings in the case to the High Court for its orders. He observed—

“From the papers it appears that the accused is the Kulkarni of the village of Rati, and he was convicted for non-attendance in obedience to a summons issued by the Subordinate Magistrate in his capacity of a Mahálkari. The summons calls upon the accused to attend to give answer why he had failed to have certain books sealed with the Mahálkari's seal, and thus neglected his duty. The Subordinate Magistrate records his sanction, and tries the case himself. The recorded sanction shows that the Subordinate Magistrate issued the summons under Sec. 8 of Act XI. of 1843 (a). A summons under that section can only be issued by the Collector or controlling officer authorised by Government, with a view to the inquiry to be held under Sec. 7 (b) of the same Act, prior to the dismissal from office of a village officer. The Subordinate Magistrate had no authority to issue such a summons. His proceedings, besides being highly irregular, are illegal.”

PER CURIAM (LLOYD and KEMBALL, JJ.) :—The Court, coinciding in opinion with the Magistrate of the District, annuls the conviction and sentence passed by the Subordinate Magistrate, and directs the fine to be restored.

Conviction and sentence annulled.

(a) Section 8 :—“And it is hereby enacted that in conducting the investigation prescribed in the preceding section, the Collector or Controlling Officer shall have the same authority as a Magistrate in compelling the attendance of parties and witnesses, and the production of papers and in taking evidence.”

(b) Section 7 :—“And it is hereby further enacted that the Collector or Controlling Officer, in cases of misconduct or incompetency on the part of an officiating hereditary officer, shall have power to dismiss such officer from his employment; but no such dismissal shall take place except on an investigation recorded in writing, which shall be submitted for the approval and sanction of the Governor in Council.”