

1923.

*Present: Bertram C.J.*KANAGASINGHAM *v.* TAMBYAH.

143—P. C. Trincomalee, 3,958.

Criminal Procedure Code, s. 83—Habitual offenders—Security to be of good behaviour—Summons or warrant must contain a brief statement of information against party summoned, and state under which sub-head of section 83 he comes.

Where proceedings are taken under section 83 of the Criminal Procedure Code against a person, the summons must contain a brief statement of the substance of the information on which such summons is issued. It should state specifically under which of the heads dealt with by section 83 the person summoned is understood to come—whether he is a habitual offender, notorious bad liver, dangerous character, &c.

THE facts appear sufficiently from the judgment.

J. S. Jayawardene, for accused, appellant.

March 15, 1923. BERTRAM C.J.—

There is no doubt that chapter VII of the Criminal Procedure Code, in particular section 83 of that chapter, is capable of the most salutary use, but its provisions are of a very special character, and the precautions which the chapter requires ought to be very carefully observed. I have little doubt that in this case the learned Magistrate, who saw the man before him in the box, rightly considered him to be an insolent and insubordinate person, and one who is to some extent, at any rate, a nuisance in the neighbourhood. It appears to me, however, that there are certain flaws in the proceedings which are of an important character. Section 83 provides that where a Police Magistrate receives information that any person within the local limits of his jurisdiction is, amongst other things, a notorious bad liver or a dangerous character, he may, in manner hereinafter provided, issue a summons or a warrant requiring the person to appear, and section 85 particularly says that every summons or warrant must contain a brief statement of the substance of the information on which such summons or warrant is issued. The Magistrate, therefore, before he acts at all, must receive certain information, and he ought to see that that information is of a very definite character. It may no doubt be of a general character, because if a man is charged with being a bad liver or a dangerous character, and the character he bears has to be proved by evidence of general repute, it would be necessary to state

the characteristics complained of in somewhat general terms. But these characteristics complained of should be precisely stated, and, if possible, defined and described. If it is intended when he comes before the Court to show that he is a notorious drunkard, that he is a bully, that he assails persons and terrifies them so that they are afraid to go into Court, that he interrupts public functions, that he is offensive to respectable people in the streets; these things should be specified. When the man comes into Court, the chapter thinks it necessary that he should understand the nature of the case he is called upon to meet. Now, in this case the summons was precise enough. It charged the man with three offences: one committed on March 1, 1922, the other on June 19, 1922, and the other on August 3, 1922. The summons itself was dated November 7, 1922. A man receiving this summons would suppose that all that he had to do in Court was to defend himself with regard to these three matters mentioned. Further, the summons should state specifically under which of the heads dealt with by section 83 the man is understood to come, that is to say, whether he is a habitual offender, a person who habitually commits extortion, a person who harbours or protects thieves, a person who habitually conceals the disposal of stolen property, or a notorious bad liver or a dangerous character. It should be clearly explained to him what is the character under which he is brought before the Court.

In the present instance the summons, though very precise, was, in this respect, defective. It did not specify that he was a bad liver or a dangerous character. I lay no emphasis on this defect, however, because when he came before the Court he was definitely charged with being a dangerous character or a notorious bad liver. At the trial one of the three offences had to be eliminated, because no evidence was available, so that the case against him was reduced to the two offences specified. The evidence, however, was not confined to the two matters. General evidence was given that he was a habitual drunkard and a notorious bully, and further evidence was given with regard to transactions subsequent to the institution of the proceedings. In point of fact the general evidence and the evidence given with regard to matters occurring after the institution of proceedings was, on the whole, more forcible than the evidence given with regard to the two episodes specified in the summons. It is so important that these proceedings should be regularly conducted, that with some regret I have come to the conclusion that I ought to set aside the order of the learned Magistrate. I would, therefore, direct the learned Magistrate to discharge the accused from the proceedings, but before doing so to inform him that he is discharged simply because of defects in the proceedings, and to warn him that if he continues to behave in a way calculated to cause annoyance and alarm to the people of the district, further proceedings will be instituted against

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him. There is no doubt, as I say, that he is an insolent and insubordinate person, and that he is to a certain extent a nuisance in the neighbourhood. If, after the lapse of, say six months, further complaints are made against him, then no doubt he may be dealt with by proceedings more exactly and regularly framed.

I allow the present appeal.

Appeal allowed.

