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costs including the costs in remand be paid by the appellant to the respondent.

We mark our sense of the defendants' dilatory conduct by doubling the ordinary hearing fee and making it two gold mohurs.

S. K. B.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Holmwood and Chapman JJ.

DEPUTY LEGAL REMEMBRANCER

v.

SITAL CHANDRA PAL.*

1914
 June 4.

Provident Insurance—Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—Provident Insurance Societies Act (V of 1912) ss. 2 (s), 6, 7, 21.

A company having a share capital divided into shares must, if it intends to carry on the business of a provident insurance society, be registered under the Provident Insurance Societies Act (V of 1912) before it receives any premium or contribution.

Oriental Government Security Life Assurance Co. v. Oriental Assurance Co. (1) explained.

IN January 1913, a company entitled the "*New King Insurance Co., Ltd.*", with a share capital divided into shares, was started in Calcutta for the purpose of carrying on the business of a provident insurance society, and began to receive premiums without registration under the provisions of the Provident Insurance Societies Act (V of 1912). Two of the directors,

* Government Appeal No. 2 of 1914, against the order of D. Swinhoe, Chief Presidency Magistrate of Calcutta, dated Sept. 20, 1913.

Sital Chandra Pal and Surendra Nath Chowdhry, were thereupon prosecuted before the Chief Presidency Magistrate, under ss. 6 and 21 of the Act, for having failed to apply for registration; and the same persons, with two others, the secretary and the agent of the company, were further charged, under ss. 7 and 21, with having received premiums without registration.

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On the 20th September 1913 the Chief Presidency Magistrate acquitted the accused by an order in the following terms:—

The prosecution admits that the defendant company is a company which has a share capital divided into shares. According to the finding in the *Oriental Government Security Life Assurance Co., Ltd. v. Oriental Assurance Co., Ltd.* (1), the provisions of the Provident Insurance Societies Act of 1912 do not apply to such a Company. Accused who are charged under that Act are, therefore, acquitted."

The Government of Bengal, thereupon, appealed against the above order of acquittal.

Mr. B. C. Mitter, for the Crown. The Magistrate's order is based on a misunderstanding of the decision in the case he cites. It was not held there that a company with a share capital does not require registration under the Provident Insurance Societies Act, 1912, if it carries on business as such. Refers to s. 2(8) of the Act.

Mr. N. C. Sen and *Babu Hem Chandra Sen*, for the respondents, prayed for a nominal sentence only.

HOLMWOOD AND CHAPMAN JJ. This is an appeal preferred by the Government against an order passed by the Chief Presidency Magistrate, Calcutta, on the 20th September 1913, acquitting the respondents Sital Chandra Pal, Surendra Nath Chowdhry, B. P. Ghose and Purna Chandra Ghose of an offence punishable under section 21 of the Provident Insurance Societies

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Act (V of 1912). That section provides that any provident insurance society which makes default in complying with any of the requirements of this Act, and every director, manager or secretary or other officer or agent of the society who is knowingly a party to the default, shall be punished with fine which may extend to five hundred rupees, etc.

The learned Presidency Magistrate on an apparent misreading of the judgment of Mr. Justice Fletcher in the case of *Oriental Government Security Life Assurance Co., Ltd. v. Oriental Assurance Co. Ltd.* (1) thought that the company in question called the "New King Insurance Company, Limited" was not amenable to Act V of 1912, inasmuch as it was a company which had share capital divided into shares. But this is obviously untenable upon the construction of the plain wording of the Act in section 2, sub-clause (8) where it is stated that a provident insurance society means any person or body of persons, whether corporate or unincorporate, which receives premiums or contributions for insuring money etc. That clearly lays down that whether the society already in existence is a corporate company before, or whether its share capital is divided into shares or not, registration under the Provident Insurance Societies Act is necessary before business can be carried on under the conditions laid down in that Act. There is nothing in Mr. Justice Fletcher's judgment to the contrary. It appears that the legal advisers of the company were misled, *first*, by a remark which Fletcher J. made in the course of the argument; and, *secondly*, by a passage in his judgment at page 578. The remark was that the defendant company cannot be a provident insurance society as a provident society is not incorporated

(1) (1913) I L. R. 40 Cal. 570.

under the Companies Act but registered or inscribed under the Provident Insurance Societies Act. That is against the view taken by the Chief Presidency Magistrate, for what Fletcher J. says is that a company incorporated under the Companies Act cannot be a provident insurance society by reason of its registration under the Companies Act, not that any society may not be both a company and a provident insurance society; and again in the passage in his judgment at page 578 what he says is that the company he was dealing with considered that, by issuing policies not exceeding 500 Rupees, they can bring themselves under the heading of a provident insurance company, and were entitled to carry on business untrammelled by the provisions of the law. This is not so, because under the Provident Insurance Societies Act registration has to be made subject to certain conditions which are set out in the Act and which have to be approved of by the Registrar, and these provisions do not apply to a company which has a share capital divided into shares. In saying this he does not say that a company which wishes to carry on the business of a provident insurance company need not be registered under the Act, but he says that the conditions which are set out in the Act obviously do not apply to a company which has already complied with these conditions in its published prospectus under another Act, and what he is referring to is the form of the policy and he holds that, so far from having complied with the law, they have simply tried to avoid the provisions of another Act, namely, the Indian Life Insurance Act of 1912, which were intended to prevent a company from embarking in the business of life insurance unless and until they had the amount of cash that was necessary for them to deposit with the Governor-

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General in Council in order to meet their obligations. So in this case the Act V of 1912 which is before us was intended to prevent the company from embarking in the business of life insurance unless and until it had been registered under the Act. There seems to have been a misunderstanding, and the learned Standing Counsel, who appears for the Government, does not press for anything more than a nominal penalty. But a mistake of law cannot take the defendants out of the word 'knowingly' in the section.

The order of acquittal must, therefore, be set aside, and in lieu thereof the respondents Nos. 1 to 3 will each be fined five Rupees. The respondent No. 4, Purna Chandra Ghose, against whom proceedings do not seem to have been pressed in the Court below, will be exempted from this order.

We understand that the society has already applied for registration but that the Government has not yet made rules necessary to carry out the purposes of the Act, and, in the circumstances, we are of opinion that this conviction should make no difference whatever to the result of any such application.

E. H. M.

Appeal allowed.