

CRIMINAL REVISION.

Before C. C. Ghose and Pearson J.J.

THE CHAIRMAN OF THE SIRAJGANJ
LOCAL BOARD

v.

BUDHISWAR PATNI.*

1929

Nov. 26;

1930

Jan. 17.

Ferry—"Distance"—Distance, how to be measured—Ferry, if a franchise—
Remedy against interference, how obtainable—Bengal Ferries Act (Beng. I
of 1885), s. 16.

A ferry is a franchise, that no one can erect without a license from the Crown. It is *publici juris* and when a ferry is erected, another cannot be erected without a license; the Crown has a remedy *a quo warranto* and the former grantee has a remedy by action.

"Distance," referred to in section 16 of the Bengal Ferries Act, must be measured by reference to the water frontage and not by land.

Blisset v. Hart (1), *Huzzey v. Field* (2) and *Anderson v. Jellett* (3) referred to.

CRIMINAL RULE obtained by the complainant.

The facts briefly were that on the complaint of the Local Board, Serajganj, the four accused persons were put upon their trial on charges under section 16, read with section 28 of the Bengal Ferries Act. The offence complained of was that the accused persons were plying a private ferry without the sanction of the District Magistrate at a place called Simla, within two miles of the public ferry, at a place called Dhangora, against the express provision of the Act. The prosecution adduced evidence to show that, at the place, where the offending ferry was being plied, there had previously been a ferry, subsidiary to the public ferry, at Dhangora. The trial court found that the distance between the offending ferry and public ferry was $1\frac{1}{2}$ miles by the land route and $3\frac{17}{80}$ miles by

*Criminal Revision, No. 752 of 1929, against the order of J. M. Chowdhury, Deputy Magistrate, Serajganj, dated March 23, 1929.

(1) (1744) Willes 508; 125 E. R. 1293. (2) (1835) 2 Cr. M. & R. 432; 150 E. R. 186.

(3) (1883) 9 S. C. R. 1.

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the river route, the river having many windings at that place. The trial court acquitted the accused, holding that "distance" in section 16 of the Bengal Ferries Act means distance by the water route and not by the land route and hence the accused had not contravened the provisions of law.

Mr. Anilchandra Ray Chaudhuri, for the petitioner. The learned magistrate has misconstrued section 16 of the Bengal Ferries Act. According to an ancient and well recognised rule of construction, when no particular mode of measurement is prescribed by the Act itself, "distance" should be measured in "a straight line on a horizontal plane." *Lake v. Butler* (1), *Jewell v. Stead* (2), Stroud's Judicial Dictionary, 2nd Edition, Vol. I, pp. 552-3. This rule of construction found expression in section 13 of the Bengal General Clauses Act (Beng. I of 1899) and section 11 of the General Clauses Act (X of 1897). Although these Acts were enacted later than the Bengal Ferries Act and, as such, do not legally control its construction, yet the rule, being an old one and the sections of the General Clauses Act being the recognition thereof, should apply in the present case also. Moreover, if we come to the question of convenience, the land route should be the measure of distance and not the river route, inasmuch as one has to go by land if one desires to cross the river by any ferry other than the public ferry.

Mr. Mrityunjay Chattopadhyaya (with him *Mr. Manindranath Banerji*), for the opposite parties. In construing these Acts, the primary thing to consider is the convenience of the people concerned. That principle is well illustrated in this case. The learned magistrate here has pointed out the inconveniences that would result if the distance be measured by the land route instead of the river route. His interpretation of the section was the correct one and the acquittal should not be set aside.

Cur. adv. vult.

(1) (1855) 24 L. J. Q. B. 273.

(2) (1856) 25 L. J. Q. B. 294.

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GHOSE J. The facts involved in this case, shortly stated, are as follows:—The accused, who are four in number, were put on their trial before the Deputy Magistrate of Pabna on charges under section 16, read with section 28 of the Bengal Ferries Act, on the allegation that they were plying a private ferry at a place called Simla or Sakha, without the sanction of the District Magistrate, within two miles of the public ferry at Dhangora. The accused pleaded not guilty. Evidence was adduced on the point whether the offending ferry was within two miles of the public ferry at Dhangora. The magistrate found, on the record before him, that the distance between the two places by river was $3 \frac{17}{80}$ miles, whereas by land it was $1 \frac{1}{2}$ miles and he, accordingly, acquitted the accused, holding that the distance contemplated by section 16 of the Bengal Ferries Act was the distance by river and not by land. It is against this order of acquittal that the present Rule has been obtained, and the point for consideration is whether the word “distance” in section 16 of the Act means distance by river or by land.

Section 16 of the Bengal Ferries Act runs as follows:—

No person shall, except with the sanction of the magistrate of the district, maintain a ferry to or from any point within a distance of two miles from the limits of a public ferry:

Provided that, in the case of any specified public ferry, the Lieutenant-Governor may, by notification, reduce or increase the said distance of two miles to such extent as he thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such places is not less than three miles, or shall apply to boats which the magistrate of the district expressly exempts from the operation of this section.

A ferry is a franchise that no one can erect without a license from the Crown. It is in the nature of a highway and is the exclusive right to carry passengers across a river or stream or arm of the sea. It is *publici juris* and when a ferry is erected, another cannot be erected without a *ad quod damnum*. If a second ferry is erected without a license, the Crown has a remedy by a *quo warranto*, and the former

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grantee has a remedy by action. See *Blissett v. Hart* (1). The franchise of a ferry is not a grant of an exclusive right to carry across a stream by any means whatever, but only a grant of the exclusive right to carry across by means of a ferry. If, therefore, a person has a grant of a ferry, another may not erect a second ferry upon the same river near to it, by which the former ferry is impaired. The erection of the second ferry in such circumstances will amount to a nuisance and an action will lie. What, however, amounts to a disturbance of a ferry must, in each case, be a question of fact; in other words, the court has got to determine what amounts to what is called "sufficient proximity." See *Huzzey v. Field* (2). This question is determined by measurement of the distance from one terminus to another of the water frontage. An instructive case on this point is to be found in one of the Canadian reports. See *Anderson v. Jellett* (3). In that case, under a Crown license, the town of B. executed a lease to plaintiff granting the franchise "to ferry to and from the town of B to A," a township having a water frontage of about ten or twelve miles, directly opposite to B, such lease providing only for one landing place on each side, and a ferry was established within the limits of B on the one side, to a point across the bay of Q., in the township of A., within an extension of the east and west limits of B. Defendants established another ferry across another part of the bay of Q. between the township of A. and a place in the township of S., which adjoins B, the *termini* being on the one side two miles from the western limits of B and on the *A shore, about two miles from the landing place of plaintiff's ferry*: It was held that the establishment and use of plaintiff's ferry within the limits aforesaid for many years and had fixed the *termini* of the ferry and defendants' ferry was no infringement of plaintiff's right. The above propositions are deducible from the cases in:

(1) (1744) Willes 508; 125 E. R. (2) (1835) 2 Cr. M. & R. 432; 150 E. R. 186.
 1293.

(3) (1883) 9 S. C. R. 1.

England and elsewhere where English law prevails. They are of some assistance in determining the precise meaning of section 16 of the Bengal Ferries Act.

In India, legislation was first had with respect to ferries in 1816 and Regulation XIX of that year laid down rules for the better management of ferries. Only authorised persons could erect ferries and unauthorised persons plying a ferry were liable to payment of fines not exceeding Rs. 100 or, in default of payment of fine, to confinement with hard labour not exceeding three months. Regulation XIX of 1816 was replaced by Regulation VI of 1819 and, by section 6 of that Regulation, the exclusive right to public ferries was first declared to belong to Government and all private ferries in their vicinity were prohibited or suppressed, the language used being "immediate vicinity." (See Clarke's Bengal Regulations, Vol. II, p. 544). The expression "immediate vicinity" would, in this context, certainly connote neighbourhood on the river frontage. With the passage of time, it became necessary to define the limit or limits of the vicinity and it is thus that we finally arrive at section 16 of the Bengal Ferries Act, where the vicinity is limited to two miles. I am, therefore, of opinion that the distance must be measured by reference to the water frontage and not by land. The magistrate has pointed out certain considerations which cannot be overlooked. I would, therefore, discharge the Rule and refuse to interfere.

PEARSON J. I agree.

Rule discharged.

A. C. R. C.

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