CRIMINAL REVISION.

Before Henderson and Akram JJ.

CORPORATION OF CALCUTTA

v.

BENGAL DOOARS RAILWAY CO., LTD.*

1940

Feb. 23, 26.

Tax—*Presumption arising from payment in previous year, Effect of—Notification under the Indian Railways Act, Effect of—Principles of interference with an order of acquittal—Calcutta Municipal Act (Ben. III of 1923), ss. 175, 492, and Sch. VI, r. 10—Indian Railways Act (IX of 1890), s. 135.*

Under s. 135 of the Indian Railways Act, a railway company would not be made liable to pay a tax under the Calcutta Municipal Act without a notification by the Governor-General in Council. The tax, however, is not imposed by that notification, but by the taxing statute and if the railway company is not liable under that statute to pay any tax a mere notification under the Indian Railways Act cannot possibly impose any such liability.

The High Court is always reluctant to interfere with an order of acquittal, specially when the real dispute between the parties can be properly decided in a civil action. It is also reluctant to interfere when a Magistrate has wrongly drawn or refused to draw a presumption which is nothing more than evidence.

The High Court refused to interfere with an order of acquittal in a case where the only evidence obtainable was called for by the complainant but was not produced at the trial, even though a presumption under r. 10 of Sch. VI of the Calcutta Municipal Act might be drawn.

CRIMINAL REVISION.

This was an application by the Corporation of Calcutta against an order of acquittal passed by the Municipal Magistrate acquitting the Bengal Dooars Railway Company, Limited, on a prosecution under s. 492 of the Calcutta Municipal Act. The facts of the case were that on August 24, 1911, a notification under s. 135 of the Indian Railways Act was issued by the Governor-General in Council making the Bengal Dooars Railway Company, Limited, liable to

*Criminal Revision, No. 1226 of 1939, against the order of N. C. Ghosh, Municipal Magistrate of Calcutta. Sep. 25, 1939.

1940

Corporation of Calcutta
v.
Bengal Dooars Railway Co., Ltd.

pay the Calcutta Corporation the license tax on profession, trade and calling. The company had accordingly been paying Rs. 500 per annum as license fee up to the year 1936-37. They, however, objected to pay for the year 1937-38 and after some correspondence between the parties, the Calcutta Corporation prosecuted the railway company before the Municipal Magistrate for an offence of carrying on trade or calling of joint stock company through their agents, Messrs. James Finlay & Company, at 1, Clive Street, Calcutta, for the year 1937-38, without a license as required by s. 175 of the Calcutta Municipal Act. It was contended on behalf of the Corporation that so long as the notification under s. 135 of the Indian Railways Act was in force, the railway company was liable to pay the tax and further the railway company having paid such tax in the previous year a presumption of such liability to pay arose under r. 10 of Sch. VI of the Calcutta Municipal Act. The Corporation called for the evidence relating to the matter obtainable in the office of the Agents of the railway company, Messrs. James Finlay & Company, but it was not produced at the actual trial of the case. The learned Municipal Magistrate acquitted the accused company by his order, dated September 27, 1938. Thereupon, the Calcutta Corporation obtained the present Rule.

Narendra Kumar Basu and *Pashupati Ghose* for the petitioner.

S. Choudhuri, *Ambikapada Chaudhury* and *Bhabesh Narayan Bose* for the opposite party.

HENDERSON J. This is a Rule calling upon the opposite party to show cause why an order of the Municipal Magistrate of Calcutta, acquitting them on a prosecution under s. 492 of the Calcutta Municipal Act, should not be set aside. The opposite party are the Bengal Dooars Railway Co., Ltd., and the real dispute between the parties is whether they are liable to take out a licence under s. 175 of the

Calcutta Municipal Act. Licence fees were paid for some time without dispute, but it appears that the opposite party have now been legally advised that they are not liable to pay.

We shall always be reluctant to interfere with an order of acquittal, specially when, as in the present case, the real dispute between the parties can be properly decided in a civil action.

The Rule was pressed on the ground that the learned Magistrate in arriving at his decision committed two errors of law.

Under s. 135 of the Indian Railways Act, the opposite party could not be made liable in spite of the taxing statute without a notification by the Governor-General in Council. Such a notification was made in the year 1911. The contention made by Mr. Basu in support of the Rule was that a liability to pay is imposed by the notification itself even though the Act under which the tax was imposed may be repealed. In our judgment, the learned Magistrate took the right view. The tax was imposed not by the Indian Railways Act, but by the Calcutta Municipal Act. If the opposite party are not liable to pay, a mere notification by the Governor-General cannot possibly impose any such liability. The object of the notification is really exactly the opposite. In the absence of such a notification, the opposite party will be relieved from paying a tax which is imposed by the taxing statute.

It is to be noted that the notification was made in the year 1911 with respect to a tax imposed under the old Act. In the view we take, it is not necessary to consider whether that notification has any effect on the new tax imposed by the new Act.

The second error which it is alleged was committed by the learned Magistrate is that he did not apply the presumption laid down in rule 10 of Sch. VI, although he was bound to do so under the Act itself. The opposite party are not liable to pay unless their

1940

Corporation of Calcutta
v.
Bengal Dooars Railway Co., Ltd.

Henderson J.

trade is carried on in Calcutta. *Prima facie*, it certainly seems improbable that the Bengal Dooars Railway Co., Ltd., carried on trade in Calcutta. Be that as it may; there is no evidence on the record at all. The Corporation attempted to prove that such trade was carried on but miserably failed. The opposite party did not give any evidence at all. Hence, the importance in this case of the presumption referred to in rule 10. The Corporation proved that the tax was paid in the preceding year and it, therefore, cannot be disputed that the presumption, whatever its nature may be, applies to this case.

The view which the learned Magistrate took was that the presumption only refers to the liability to be taxed in a particular class. Altogether there are nine classes in the schedule. On the interpretation given by the Magistrate, there would be a presumption that the opposite party are liable to pay a fee imposed under class 1, but that this presumption will only arise when it is proved that they were liable under the terms of s. 175. The contention of the Corporation is that this is a most strange and unnatural interpretation to place upon the rule and that the plain meaning is that there is a presumption that the opposite party are liable to pay under class 1 in the present year.

It is always very difficult to interfere with an order of acquittal merely because the Magistrate has wrongly drawn or wrongly refused to draw a presumption. That is nothing more than a matter of evidence. If the view contended for by the Corporation is the correct view, the opposite party would have been able to rebut the presumption by calling evidence. We asked Mr. Choudhuri to explain why this was not done. The answer is plain. The only evidence which would have been of use was the evidence obtainable in the office of Messrs James Finlay & Co., Ltd., the agents. That evidence was called for by the petitioner, but was not produced at the hearing.

1940

Corporation of Calcutta
v.
Bengal Dooars Railway Co., Ltd.

Henderson J.

The Magistrate said that he would infer from that that this evidence would not support the Corporation's case. There is very little difference between his saying that and saying that the presumption had been rebutted. We should certainly not allow this matter to be re-heard without allowing the opposite party to produce evidence. When we find that evidence had already been called by the petitioner, we are certainly not prepared to have the matter investigated again.

The Rule is accordingly discharged.

AKRAM J. I agree.

A. C. R. C.

Rule discharged.

CRIMINAL REVISION.

Before Henderson and Akram JJ.

1940
Feb. 27.

LEGAL REMEMBRANCER, BENGAL

v.

JADU NATH RAY.*

Sanction—*Sanction, if required for prosecution of a Government servant for perjury—Code of Criminal Procedure (Act V of 1898), s. 197.*

No sanction of the Local Government under s. 197 of the Code of Criminal Procedure is necessary for the prosecution of a public servant for giving false evidence before a Court.

CRIMINAL REVISION.

The material facts of the case and the arguments in the Rule appear sufficiently from the judgment.

The Officiating Deputy Legal Remembrancer, Debendra Narain Bhattacherjee, for the petitioner.

S. K. Sen and *Bireswar Chatterjee* for the opposite party.

HENDERSON J. This is a Rule, obtained by the Superintendent and Remembrancer of Legal Affairs, Bengal, calling upon the opposite party, Jadu Nath Ray, to show cause why the order of discharge made in his favour by the Additional District Magistrate of Tippera should not be set aside. Jadu Nath Ray is a Government officer, serving under the Communications and Works Department of the Government of Bengal. A commission was appointed under Act XXXVII of 1850 to investigate certain charges against an officer in the department. Jadu Nath Ray was summoned to give evidence. The Commissioners were satisfied that he gave deliberately false

*Criminal Revision, No. 1162 of 1939, against the order of A. S. Ray, Additional Sessions Judge of Tippera, dated Oct. 11, 1939, confirming the order of F. A. Karim, Additional District Magistrate of Tippera, dated July 29, 1939.

1940

Legal Remembrancer, Bengal
v.
Jadu Nath Ray

Henderson J.

evidence in various matters and made a complaint. The District Magistrate took cognizance of the case on the complaint and made it over to the Additional District Magistrate for disposal. The Additional District Magistrate discharged the accused on the ground that the sanction of the Local Government was necessary under s. 197 of the Code of Criminal Procedure. The Public Prosecutor then moved the Court of Sessions without success. The petitioner then obtained this Rule.

The conclusion reached by the learned Magistrate was that, in giving evidence before the Commissioners, Jadu Nath Ray was purporting to act in the discharge of his official duty. If the Magistrate was right in his conclusion, then, in the case of Government officers who commit perjury, two bars will have to be removed before they can be prosecuted. In the first place, there must be a complaint by a Court. In the second place, there must be a sanction by the Local Government. The learned Deputy Legal Remembrancer pointed out to us that the proviso to s. 196A of the Code suggests that it is not the policy of the legislature to have more than one sanction.

The objection of the opposite party can in our judgment, only prevail if it can be said that any public servant giving evidence in any Court is thereby purporting to act in the discharge of his official duty. This extreme proposition was not put forward. The test suggested was that the evidence which the man gave was to be examined in order that it might be ascertained whether he was deposing to facts which he had acquired in connection with the discharge of his duties, or whether he was giving evidence with regard to other matters. From this point of view a most curious distinction was drawn in the lower Court. It was apparently suggested that sanction would be required to prosecute the opposite party with respect to some matters only. It this test were applied we would certainly say that it could not

1940

Legal Remembrancer, Bengal
v.
Jadu Nath Ray.

Henderson J.

possibly be said that any of the statements of which a complaint has been made had anything to do with the public duty of the opposite party. The result would be that if we were to adopt the test proposed in order to determine whether the evidence was given with regard to official matters, so far as this complaint is concerned, we could only say that it was not.

We are, however, not prepared to place such an interpretation upon the section. In our judgment, to say that a public officer, when giving evidence in a Court, purports to be acting in the discharge of his official duty would be straining the language used. The opposite party in giving this evidence was not performing any official duty in connection with the Department of Communications and Works. He was giving evidence, because he had received a summons to do so and he was obliged to obey that summons, even though such obedience entailed actual neglect of his official duties.

We, accordingly, make the Rule absolute, set aside the order of discharge and direct the Magistrate to hear and dispose of the case in accordance with law.

AKRAM J. I agree.

A. C. R. C. *Rule absolute.*