SEETHARAMA RAJU v. BAYANNA PANTULU.

his consent. A great deal of argument was expended both in this and in the lower Court as to whether the defendant was or was not estopped under section 116 of the Evidence Act from denying the plaintiff's title. It was contended on the strength of the decision in *Lal Mahomed* v. *Kallanus*(1) that that section applied only to cases in which the tenants had been put into possession of the tenancy by the person to whom they have attorned and not to a case such as this, in which the tenant was previously in possession. We are, however, not called upon to decide the question, which is one not altogether free from difficulty, for we find that as a fact the defendant became the tenant of the plaintiff under the document. So that even if the defendant were allowed to dispute the plaintiff's title, it would be found against him as a matter of fact that the plaintiff was his landlord.

Another objection taken to the suit that it was not brought in the name of the Maharajah of Vizianagram, but of his agent, is frivolous, for we find the plaint is actually signed by the Maharajah. The appeal accordingly fails and it is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1894. January 25.

QUEEN-EMPRESS

v.

FAKRUDEEN.*

Police (Madras) Act XXIV of 1859, *ss.* 10 *and* 44—*Departmental punishment and prosecution under the Act.*

In the absence of any rules framed by Government under section 10 of the Madras Police Act, a departmental punishment inflicted under that section is no bar to a prosecution under section 44 of that Act.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by K. C. Manavedan Raja, Acting District Magistrate of Anantapur.

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(1) I.L.R., 11 Calc., 519.

* Criminal Revision Case No. 614 of 1893.

The case stated was as follows :—

"The accused, a police constable attached to the Guntakul "junction station, was on sentry duty on the night of the 9th July "1893 from 12 to 3 a.m. guarding the road goods consisting of "88 articles received that night into the station at about 9 p.m. "At the end of the period of his watch it was his duty to awake "his successor to get himself relieved and to hand over charge of "the articles to the relieving officer ; but, instead of doing this, he "fell asleep and failed, therefore, to discharge the above duties. "Next morning, on examination of the articles by the road goods "clerk, it was found that a portion of a bag of jaggery had been "extracted. This was alleged to be due to the wilful neglect of "the sentinel. The Taluk Magistrate who tried the case acquitted "the accused under section 245, Criminal Procedure Code, on "the sole ground that the man had already been punished depart-"mentally by the Superintendent of Police by receiving a black "mark.

"Whether he ought to receive double punishment was not the "question for the Magistrate to decide. Having received one pun-"ishment, it may not seem to be necessary that he should be "charged in a Magistrate's Court. But the charge having been "brought, the Sub-Magistrate should have taken evidence and dis-"posed of it on its merits.

"It has been further held by the High Court in its proceedings "No. 1074 of 13th June 1872 that a conviction of a police con-"stable under section 44, Act XXIV of 1859, for going to sleep "on duty is legal on the ground that the violation of duty was of "a class which was not and could not be provided for by rules "framed under section 10 of the Act. (Also High Court's Pro-"ceedings, No. 1601, dated 3rd October 1878)."

Mr. *Wedderburn* for the Crown.

BEST, J.—No rules sanctioned by Government under section 10 of Act XXIV of 1859 have been brought to our notice, and in the absence of such rules the accused is liable to be prosecuted under section 44. The mere fact of a departmental punishment having been awarded is not sufficient to exonerate from liability under section 44, though the circumstance may be taken into consideration in passing sentence. I would set aside the order of acquittal and direct the Magistrate to dispose of the case on its merits.

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MUTTUSAMI AYYAR, J.—I am also of the same opinion. In the absence of any rules framed by Government, the departmental punishment inflicted on the accused under section 10 of Act XXIV of 1859 does not bar his prosecution under section 44 of the same Act, unless the Magistrate thinks that the breach of duty is not grave but trivial. It is a grave violation of duty on the part of a police officer to go to sleep whilst on guard, and I would follow the principle laid down by this Court in its proceedings, dated the 3rd October 1878, No. 1601. Weir, p. 569. I would *also* set aside the order of acquittal and order a re-trial with reference to the foregoing observations.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Shephard, Mr. Justice Best and Mr. Justice Davies.

1894. March 1.

REFERENCE UNDER STAMP ACT, s. 46.*

Stamp Act—Act I of 1879, sched. I, art. 4—'Agreement to lease.'

An agreement by a zamindar to execute a formal deed of lease of his zamindari which is under attachment, after obtaining a certificate from the Court under s. 305 of the Civil Procedure Code, is an 'agreement to lease' under art. 4, sched. I of the Stamp Act.

CASE referred for the decision of the High Court under section 46 of Act I of 1879 by the Board of Revenue, Madras. The case stated was as follows:—

"On the 11th January 1886, the Zamindar of Sivaganga on-
"tered into an agreement (marked A) with the Rajah of Nilambur
"and another to lease the zamindari to the latter in consideration
"of his debts, to the extent of 16 lakhs of rupees, being discharged
"by them. At the time of the agreement the zamindari was
"under attachment and the zamindar undertook to execute a
"formal deed of lease after obtaining a certificate from the Court
"under section 305 of the Civil Procedure Code. The agree-
"ment in question was engrossed on an eight-anna stamp paper,

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* Referred Case No. 4 of 1894.