APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

1893.
October 27.
November 1.

QUEEN-EMPRESS

v.

MARIAN CHETTI AND ANOTHER.*

Indian Ports Act—Act X of 1889, ss. 6, 8, order purporting to be made under the Act by Conservator of port—Public body authorized by Legislature to make rules, powers of.

The Conservator of the Port of Negapatam, purporting to act under the Indian Ports Act, s. 8, made and published an order that when a certain flag was flying at the signal station, all boats returning from the sea should cast anchor and not come inside the river. The Local Government had made a rule with reference to sec. 6 (*h*) of the above Act requiring boat owners to "carry out at all times all orders issued by the Conservator in connection with the plying of their boats and which are not inconsistent with the regulations issued by Government." A charge was brought against two persons, being the owners and tindals of licensed cargo boats for neglecting to obey the aforesaid order, and they were convicted under Indian Ports Act, s. 8 (2), by the Conservator in his capacity as Special First-class Magistrate:

Held, that the order was *ultra vires* and the conviction was accordingly illegal.

Per cur. A public body, whether the Executive Government or a corporation, being entrusted by the Legislature with the duty of making rules, cannot relieve itself of the responsibility and depute other agencies to discharge the duty.

CASE referred for the orders of the High Court by H. M. Winterbotham, Acting District Magistrate of Tanjore, under Criminal Procedure Code, s. 438.

Together with this case was taken up for disposal a petition preferred by the accused persons under Criminal Procedure Code, ss. 435 and 439, praying for the intervention of the High Court in revision.

The case was referred as follows:—

"The two accused are owners and tindals of two licensed "cargo boats plying at the Negapatam port. They have been con- "victed under section 8 (2) of the Indian Ports Act, 1889, of "wilfully and without lawful excuse neglecting to obey a lawful "direction of the Conservator, and have been fined Rs. 30 and Rs.

* Criminal Revision Cases Nos. 273 and 318 of 1893.

"40 respectively. The facts proved against them are that they "brought their boats from the sea into the river while a certain "flag marked W was flying at the port signal station. On April "23rd, 1891, the Port Officer appears to have published a notice "in Tamil, of which a copy is with the record of the case. I "also enclose a translation. This notice directs that when a flag "marked W is hoisted at the signal station, all boats returning "from the sea should cast anchor and not come inside the river. "The notice purports to lay down a standing rule applicable to "all boats at all times. The object of the rule (apart from the "question of its legality) is not clear, but however laudable its "object may be, it appears obviously improper to apply one and "the same restriction to all boats, whether loaded or unloaded, "and irrespective of the depth of water they draw.

"As to the legality of the rule, the judgment states that it "was framed and published under section 8 of the Indian Ports "Act. There is nothing in this section which confers on the Con-"servator the power to frame rules, and if the Conservator had "the power, it would not be necessary specially to invest the Local "Government therewith as is done in section 6.

"Rule 16 of the boat rules sanctioned by Government em-"powers the registering officer 'to prevent any registered boat "from leaving the shore when in his judgment danger would be "incurred by so doing.' Rule 17 forbids any registered boat to "ply 'in rough weather' if loaded with passengers or cargo "greater in number or quantity than that 'authorized for the "occasion' by the registering officer, but it is, I think, beyond "the Port Officer's authority to lay down a general rule that no "boat shall enter the river when a certain flag is flying, and I "think the punishment of the accused for disobeying the rules is "illegal.

"On general principles it appears objectionable that the special "magistrate should try persons for an offence committed in con-"tempt of his own authority, but in respect of offences punishable "under the Indian Ports Act, there appears to be no legal prohi-"bition similar to that in section 487, Criminal Procedure Code. "The interest of a magistrate in enforcing obedience to an orde "issued by him in another capacity is, I think, not a p "interest within the meaning of section 555, Criminal P "Code.

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"The two accused ought not to have been tried jointly, but "with reference to section 61 of the Indian Ports Act this is not a "material irregularity.

"The special magistrate has not been empowered to try cases "summarily (*vide* notification No. 387, *Fort Saint George Gazette*, "December 16th, 1890, page 1041, Part I). He should, there-"fore, have observed the directions of sections 243 and 364, Crimi-"nal Procedure Code.

Mr. *W. Grant* and *Narayana Ayyangar* for the accused.

The *Acting Public Prosecutor* (*Subramanya Ayyar*) in support of the conviction.

JUDGMENT.—The act charged as an offence is the bringing a boat into the Negapatam river in disregard of a general order passed by the Port Conservator to the effect that boats should not be brought in while the flag W is flying. This act is said to be punishable under section 8 of the Ports Act. That section authorizes the Conservator to give directions for carrying into effect any rule passed under section 6 of the same Act, and goes on to make it penal to disobey any such lawful direction. It has therefore to be seen whether the Conservator was carrying into effect any valid rule passed under the Act. The rules to which we have been referred are those numbered V and VIII, being rules passed with reference to clauses (*f*) and (*k*) of section 6 respectively. In our opinion there is clearly no connection between the former of these rules and the direction which in this case has been disobeyed.

Rule VIII is a rule of wider scope, for it requires boat owners to "carry out at all times all orders issued by the Conservator in "connection with the plying of their boats and which are not "inconsistent with the regulations issued by Government."

In order to put an interpretation on the rule VIII, and to see whether it covers the present case, we think that the rule must be read with the clause of the Act under which it is framed and the other clauses specifying the matter in respect of which rules may be made by the Government. It must be presumed that the Government intended to pass a rule which they were authorized pass by the terms of clause (*k*) of the section, and a construc-hich has the effect of extending the operation of the rule not covered by clause (*k*) ought, we think, if possible Now when it is seen that by clause (*a*) of the

section the Government is empowered to make rules for regulating the time at which vessels are to enter or leave any port, it seems tolerably clear that the rules to be framed under clause (*k*) were not intended to regulate the entry or exit of vessels in the matter of time. This being so, we do not think that the rule VIII passed with reference to the latter clause can be taken to refer to such matters. Accordingly the direction of the Conservator not to bring boats into the river when a certain flag is flying cannot be a direction for carrying into effect the rule in question, and therefore no lawful direction was disobeyed. In referring to clause (*a*), we do not overlook the fact that boats may go out of the river without leaving the port. That may be so. We should still be disposed to think that the regulation intended by clause (*k*) was a regulation different in kind from that intended by clause (*a*).

There is however another reason why the conviction cannot be supported. The charge is not based immediately on an alleged breach of rule VIII; indeed no rule at all is mentioned in the charge. The conviction can only be supported on the ground that the direction of the Conservator which was disobeyed was a direction lawfully given in pursuance of an authority lawfully conferred on him by rule VIII or some other rule. To support the conviction it has to be shown that the Government is by section 6 of the Act authorized to empower other persons to make rules such as the one which has been disobeyed in the present case. In our opinion, the contention cannot rightly be maintained, and if rule VIII or any other rule purports to give the Conservator authority to make such rules, that rule is to that extent *ultra vires* and therefore void. In the case of power being by statute given to the Government or other public body to make rules having the force of law, the maxim *delegatus non potest delegare* must, we think, be applied. When the legislature entrusts to some public body, it may be the Executive Government or a corporation, the duty of making rules, such public body cannot, in our judgment, relieve itself of the responsibility and depute other agencies to discharge the duty. The authority to make rules must remain in the hands to which it was entrusted. It is absurd to suppose that the legislature intended this important authority to be exercised by any person whom the Government might choose to select. The rule laid down by the Conservator

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may be a perfectly reasonable one, and it may be one which the Local Government may make under section 6. On this we offer no opinion. At present it is enough to say there is no such rule having the force of law, and therefore the conviction as for breach of it must fall to the ground.

For these reasons we think the conviction should be set aside and the fine, if paid, refunded. We would add that in these cases where the charge in effect relates to an alleged breach of a rule passed under an Act, care ought to be taken to specify the particular rule said to have been infringed.

APPELLATE CIVIL.

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

1893. September 13. October 31.

RAMAYYA AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS,

v.

VENKATARATNAM (PLAINTIFF), RESPONDENT.*

Hindu law—Liability of son for father's debts—Civil Procedure Code—Act XIV of 1882, *ss.* 43, 244—*Suit for money—Non-joinder of plaintiff's undivided brother—Suit against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Limitation Act—Act XV of* 1877, *sch. II, arts.* 120, 122.

A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883 having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons.

The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 and obtained a decree for the payment out of the family property of all the unpaid instalments. A plea of non-joinder was raised, *inter alia*, on the ground that the plaintiff had an undivided brother:

Held, (1) that since the plaint (as amended) showed that the plaintiff sued as

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* Appeal No. 91 of 1892.