

Before Mr. Justice McDonell and Mr. Justice Tottenham.

OHUNDI CHURN MOOKERJEE AND OTHERS v. THE EMPRESS.*

*Master and Servant—Criminal Act of Servant—Non-liability of Master
—Indian Ports' Act (XII of 1875), s. 22.*

1888
March 7.

The servants of a contractor who had engaged to discharge ballast from a ship lying in the port of Calcutta, threw the ballast into the river within the limits of the port, and thus committed an offence under s. 22 of the Indian Ports' Act (Act XII of 1875). It did not appear that the contractor had abetted the offence.

Held, that he was not, in the absence of proof of abetment, liable for the acts of his servants.

Baboo Umbica Churn Bose for the appellant.

The *Standing Counsel* (Mr. Phillips) and Mr. Adkin for the Crown.

THE facts of this case sufficiently appear from the judgment of the Court, (McDONELL and TOTTENHAM, JJ.) which was delivered by

McDONELL, J.—The appellant has been convicted before the Chief Presidency Magistrate of an offence against s. 22 of Act XII of 1875, by improperly discharging ballast from the ship *Ben Nevis*, by the boats of Bishto Manjhi and Nufur Manjhi, by throwing it into the river within the Port of Calcutta, and has been sentenced to pay a fine of Rs. 250. The amount of the fine entitles the accused to appeal to this Court.

In our opinion the conviction is bad in law, for the facts proved or admitted do not establish any offence under the Act against the appellant. The first clause of s. 22 prohibits the casting of ballast or rubbish in the port without lawful excuse.

The next clause prescribes a penalty for whoever by himself or another so casts or throws the same, and for the master of any vessel from which the same is cast or thrown. It seems to us that to warrant the conviction under this section of a person, not being master of a vessel from which ballast is thrown, it must be shewn that the accused person, if he did not himself throw the ballast or

* Criminal Appeal No. 155 of 1883 against the order of F. J. Marsden, Esq., Chief Presidency Magistrate of Calcutta, dated the 21st February 1883.

1888

CHUNDI
CHURN
MOOKERJEE
v.
THE
EMPRESS.

rubbish into the port, intentionally caused somebody else to commit that offence.

In this case all that is proved or admitted against the appellant is that he made an agreement to remove the ballast from the ship *Ben Nevis*; that he engaged boats for that purpose; and that the ballast was removed from the ship in those boats. The boatmen, instead of landing the ballast at the proper place, threw it into the river within the limits of the port. They were arrested, convicted, and fined. Proceedings were subsequently taken against the appellant under the same section, when the Magistrate held him "liable for his servant's act," and accordingly convicted and sentenced him. We cannot bring ourselves to accept this doctrine as admissible in dealing with a person accused of an offence, unless his liability for the acts of another is specifically declared by statute. The learned Standing Counsel who has supported the conviction admits that in a criminal trial the doctrine laid down by the Magistrate in this case would not be applicable, but he endeavours to distinguish this case from a criminal matter by describing it as *quasi-criminal*, or as one relating not to an "offence" but to a mere breach of rule. And in such a case he submits that knowledge or intention on the part of the person who is accused in respect of something done by other persons is not essential.

We cannot, however, apprehend the distinction so suggested as entitling a Criminal Court to place a person accused of what is described as a *quasi-criminal* act at a disadvantage from which one charged with serious crime would be protected, *viz.*, being held responsible for the acts of another without any proof of abetment or connivance on his part, and, in the absence of any statutory provision, fixing him with such responsibility. We observe that Act XII of 1875 in Chapter VIII refers to breaches of it as "offences" makes them triable by a Magistrate, and provides for the enforcement of penalties on conviction. The trial then is, we apprehend, a criminal trial, and the same principles will apply to it as to other criminal trials.

If the Legislature had intended to make persons in the appellant's position criminally liable for acts done by persons employed

by them without proof of connivance, it would surely have provided for this in the Act. The very section (22) and following sections do enact that the master of any vessel shall be liable to be punished for acts done on board in breach of the rules laid down, though they may possibly be done without his knowledge, or even against his orders. This specific creation of criminal liability as against the master shews that without it he would not be liable for an act not done, or expressly permitted by himself.

We find nothing in the Act which renders the appellant liable to punishment for the acts done by others not proved to have been by his abetment or connivance. We therefore set aside the conviction and direct that the fine, if paid, be refunded.

For these reasons we set aside the convictions and sentences in appeals Nos. 156 and 157.

Convictions set aside.

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

LAKHIMONI CHOWDHRAIN (DEFENDANT) *v.* AKROOMONI
CHOWDHRAIN (PLAINTIFF). *

Registration Act (III of 1877), ss. 74, 77—Refusal to execute deed—Suit to compel registration.

If the non-registration of a deed has resulted from the refusal of one of the parties to it, to execute it, that matter must be enquired into by the Registrar, as directed by s. 74 of the Registration Act, before any right to sue under s. 77 can arise, and unless the requirements of the Act have been complied within, no cause of action arises under s. 77.

Edun v. Mahomed Siddik (1) followed.

THIS was a suit under s. 77 of the Registration Act (III of 1877) to enforce registration of a kobala. The defendant denied execution. An attempt had been made to register the deed before the Sub-Registrar who refused to register it upon the ground

*Appeal from Appellate Decree No. 238 of 1882, against the decree of Baboo Nobin Chunder Gangooli, Second Sub-Judge of Dacca, dated the 9th December 1881, reversing the decree of Baboo Kalidhun Chatterjee, Second Munsiff of Moonshigunge, dated the 7th February 1881.

(1) *Ante*, p. 150.

1883

CHUNDI
CHURN
MOOKERJEE
v.
THE
EMPRESS.

1883
May 9.