

cannot be carried into operation. If this construction of section 345 is not correct, it may be that there is no limit of time to the orders and the mode of assessment. As the rules and the Act stand, there can be no doubt that the amendment of an assessment can be made at any time within three years so as to operate retrospectively. As to the inconvenience to big concerns like Railway Companies which have to produce a balance sheet and declare dividends, inconvenience may exist; but, in the face of the section and the rules, the inconvenience cannot prevent the operation of the Act and the rules thereunder. We, therefore, allow the appeal and dismiss the suit with costs throughout.

King & Partridge—attorneys for respondent.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

KING-EMPEROR (COMPLAINANT IN BOTH), PETITIONER,

v.

ABDUL MALIK (FIRST ACCUSED IN BOTH), RESPONDENT.*

Accused—Old offender—No proof or admission as such—Enhanced sentence—If legal—Certificate of Police—Practice relating to—If proper.

An accused person cannot be sentenced to enhanced punishment as an old offender, until there is some proof or admission by him before the Court that he is the person who committed the previous offences.

The practice of accepting a mere certificate by the Police as proof that an accused is an old offender, without the particulars of previous convictions either being entered in the statement of charge, or read out to him, is improper.

* Criminal Revision Cases Nos. 107 and 108 of 1929.

KING-
EMPEROR
v.
ABDUL
MALIK.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the orders of the Chief Presidency Magistrate, Egmore, Madras, in Calendar Cases Nos. 15013 and 15014 of 1928.

P. Govinda Menon for Crown Prosecutor for the Crown.

No one appeared for the accused.

JUDGMENT.

Accused does not appear. I am asked to enhance the sentence of imprisonment passed on accused, on the ground that it is much too light for an old offender. I agree that it is much too light if accused is an old offender. The difficulty is that I find no proof of that. I am told that the practice in the Presidency Magistrate's Courts is to accept a mere certificate by the Police as proof that an accused is an old offender, and that the particulars of previous convictions are neither entered in the statement of charge nor read out to him. All the information given to accused is that he is charged under section 75, Indian Penal Code, which of course conveys nothing to him. He is clearly entitled to challenge the fact of the various previous convictions made matter of charge against him, and if he challenges these, then proof of these convictions and of his identity with the person previously convicted must be given. If the present practice is as I am now informed, then the sooner it is altered the better. An accused person cannot be sentenced to enhanced punishment as an old offender, until there is some proof or admission by him before the Court that he is the person who committed the previous offence. I am therefore unable to enhance the sentence on the ground of accused being an old offender, as there is no proof that he is.

Apart from that, it appears to me that the Chief Presidency Magistrate was unduly lenient in making the sentences in these two cases run concurrently. There were two distinct house-breakings and it is a mistake to treat such offences leniently. I direct that the sentence in C.C. No. 15013 do come into force on the expiry of the sentence in C.C. No. 15014 of 1928.

B.C.S.

KING-
EMPEROR
v.
ABUUL
MAJID.

PRIVY COUNCIL.*

BOMMADEVARA NAGANNA NAIDU (SINCE
STRUCK OUT) AND ANOTHER (PLAINTIFFS), APPELLANTS,

1929,
July 1.

v.

YELAMANCHILI PITCHAYYA AND OTHERS
(DEFENDANTS)—RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Estates Land Act, Madras (I of 1908), ss. 3 (16), 12—Lease before Act—Reservation of trees—Effect and duration of reservation—Dry pasturage waste—Covenant to pay increased rent on cultivation—Right to inclusion in patta.

Where land subject to the Madras Estates Land Act, 1908, was leased before the Act to a ryot who executed a contract by which all rights in trees on the land were reserved to the land-holder, the effect of section 12 of the Act is that the reservation continues as to trees on the land at the passing of the Act during the occupancy rendered permanent by the Act, and not merely during the term of the lease, the ryot having the right to use, enjoy and cut down only trees which after the passing of the Act are planted by him or grow naturally.

There is no provision in the Act enabling a land-holder to claim an enhancement of rent or any additional payment for trees, the right to which he has lost by the operation of the Act.

* Present :—Lord BLANESBURGH, Lord TOMLIN and Sir BINOD MITTAL.