VEERAPPA, *In re.*

We were referred to several English cases, but except where the definitions are given of what is "plying for hire" they do not assist us, because we are here dealing with the words of a section, which, in our view, clearly express the intention of the Legislature.

Under these circumstances, we are satisfied that the order of the learned Sessions Judge was quite proper and we agree with the reasons he has given for that order. This Criminal Revision Case is, therefore, dismissed. For the reasons given above, Criminal Revision Case No. 337 of 1929 is also dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Pandalai.

1929, October 30.

PANTAM VENKAYYA (ACCUSED), PETITIONER.*

Indian Penal Code, sec. 171-D—Personation—Ingredients—Proof of corrupt motive.

To constitute the offence of personation under section 171-D of the Indian Penal Code it is necessary to prove that the accused in doing the act with which he is charged was actuated by a corrupt motive.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the Judgment, dated 14th March 1929, of the Court of the Subdivisional Magistrate of Rajahmundry in Calendar Case No. 181 of 1923.

---

* Criminal Revision Case No. 375 of 1929.

VENKAYYA, *In re.*

Nugent Grant (*V. Satyanarayana* with him) for petitioner.

K. N. Ganpati for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

The JUDGMENT of the Court was delivered by

BEASLEY, C.J.

BEASLEY, C.J.—The petitioner was convicted by the Subdivisional Magistrate of Rajahmundry and sentenced under section 171-F, Indian Penal Code, to a fine of Rs. 50 and in default to suffer simple imprisonment for a month.

The offence of which he was convicted was that of personation at an election. Briefly, the facts of the case are that on the 16th April 1928, there was an election to fill vacancies on the Peddapur Taluk Board. There were two vacant seats for Peddapur *firka* and eight candidates and eight polling stations. The petitioner's name was by mistake on the roll of two different villages, namely, Geddanapalli and Bhnpalapatnam. The petitioner voted once in the morning in the polling station for Geddanapalli, and in the afternoon for a second time in the polling station for Bhupalapatnam.

The offence of personation at elections is defined in section 171-D of the Indian Penal Code as follows:—

"Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name; and whoever abets, procures or attempts to procure the voting by any person in any such way commits the offence of personation at an election."

In the Subdivisional Magistrate's Court, evidence was given in support of the complaint against the petitioner by certain witnesses, proving that the accused voted twice, which is not disputed by the petitioner, and that he did so, although this conduct was objected to by P.Ws. 1 and 2. The petitioner filed a written statement

VENKAYYA, *In re.*
—
BEASLEY, C.J.

denying the offence. He, however, admitted that he voted a second time, but stated that he had done so in the *bona fide* belief that he could do so as his name was included in two lists. He also disputed the evidence of the prosecution witnesses as to the objection raised by them at the time of his second voting. Two witnesses were called by the petitioner, who were the Polling Officers, and they deposed that no objection, oral or in writing, was raised at any time to the petitioner voting on the second occasion. On behalf of the petitioner three contentions were raised, namely, (1) that the accused did not specifically apply for the ballot paper and that the second voting was not an offence in the strict letter of the section, (2) that the accused had a right to vote a second time as his name appeared twice in two polling areas in the voters' list, and (3) that *mens rea* is an essential ingredient in this offence and no *mens rea* was proved. The Subdivisional Magistrate decided all the three points against the petitioner, and, since no argument was addressed to us by Mr. Grant, on behalf of the petitioner, that his findings on the first two points are wrong, we have only to consider his finding on the third point, namely, whether *mens rea* is an essential ingredient in this offence. The Subdivisional Magistrate thought that all that it was necessary to prove was the fact that the petitioner had voted twice, and that his motive for doing so, whether corrupt or otherwise, was immaterial. He, therefore, did not come to any finding as to the petitioner's motive or guilty knowledge. He thinks that, however genuine the belief of a person may be that he is entitled to vote twice if his name appears twice upon the electoral roll, he none the less commits an offence under section 171-D, Indian Penal Code. We have been referred by Mr. Grant to the section corresponding to 171-D of the Indian Penal Code in the

English Act, namely, the Ballot Act (35 and 36, Vic., Chapter XXXIII). Section 24 of that Act is section 171-D of the Indian Penal Code. We have compared the two sections and they are clearly the same. That being so, we were referred to an English decision on that section reported in 4 O'Malley and Hardcastle, page 34, namely, the *Stepney Case.* There, in discussing the offence of personation, DENMAN, J., stated on page 46 as follows :—

"It is thoroughly understood election law that, unless there be corruption, and a bad mind and intention in personating, it is not an offence. If it is done under an honest belief that the man is properly there for the purpose of voting, it is held in these cases and in other cases analogous that no offence has been committed . . . They are enactments which can be really only applicable to an intentionally bad act, because if a man is guilty at all he is guilty of felony, and may be imprisoned as a felon for a considerable time. To suppose that the Legislature ever intended to enact that a man, who with perfect honesty, but from a mere blunder as to his rights, gives a vote, and then (believing that he has a right to do so), gives a second vote he being on the register, on the same day, is to be deemed guilty of felony, is to impute an intention to the Legislature which is absurd, though if it had said so in absolutely plain words, we must have carried it out. I do not think that that is the intention of the Act; I think there is still to be added to the offence of personation a corrupt intention, and where the corrupt intention is absent, the offence of personation cannot have been committed."

The facts in that case were that the man's name had been wrongly included in the register of two divisions. He voted twice, and it was admitted that he was ignorant of the law and had acted conscientiously by mistake, that he had no corrupt intention and that he had not been corruptly influenced.

It was argued by the Public Prosecutor that there is no such thing as *mens rea* in India, that, unless an accused person can bring himself within any of the

VENKAYYA, *In re.*

BEASLEY, C.J.

exceptions in the Indian Penal Code, the offence is committed as soon as the acts set out in the section in the Code which defines the offence have been committed, that it is not stated in section 171-D that the personation must be with a corrupt or any other intention and that therefore intention is immaterial. It was contended that the petitioner's plea amounts to nothing more than the plea that he was ignorant of the law which plea could be of no avail to him. But we find ourselves quite unable to agree with that argument. It does not follow that the petitioner's plea was merely one that he was ignorant of the law. His plea apparently is that, as his name was twice upon the electoral roll, he believed by a mistake of fact, that he was on that account entitled to vote twice. His plea is not that he thought that a voter could vote more than once at an election. We have no doubt whatever that the Subdivisional Magistrate was wrong in not applying his mind to that aspect of the case. He should have seen whether, upon the evidence, the petitioner was able to bring himself within any of the exceptions in the Indian Penal Code. This he has not done. Quite apart from this, we are unable to say that the intention of an offender in the commission of this crime is any different in India to what it is in England. There can be no question whatever that the Legislature in introducing the new chapter, Chapter IX (*a*), into the Code exactly copied the English Statute Law with regard to offences relating to elections, and we see no reason for saying that, whereas in England the corrupt intention of the voter is to be considered, here it is immaterial. We, therefore, set aside the conviction of the petitioner, order the fine inflicted upon him to be refunded, and direct that this complaint be reheard by the District Magistrate, Rajahmundry, or some other Magistrate whom he may direct,

other than this Subdivisional Magistrate. We ourselves are not prepared to decide this matter on the evidence, and we think it is essential that the case should be decided by the Court before which the evidence is presented.

B.C.S.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Pakenham Walsh.

1929, November 28.

SRI RAJAH VYRICHERLA NARAYANA GAJAPATIRAJU BAHADUR GARU (FIRST DEFENDANT), APPELLANT

v.

SRI RANI JANAKI RATNAYAMMAJI GARU (PLAINTIFF), RESPONDENT.*

Indian Easements Act (V of 1882), ss. 5 and 13 (f)—Right of way over a well-formed and metalled road, not a continuous easement—Contrary English rule not applicable where the Act is in force—Easement of necessity—meaning of.

The decisions in England prior to 1881 were not uniform on the question whether a right of way was a continuous easement or not; but the Indian Easements Act (V of 1882) adopted in section 5 the view that it was not. Hence on a partition of two tenements, a right of way even over a well-formed and metalled road does not pass to the grantee as a continuous easement under section 13 (*f*) of the Act. It is this view, as enacted in the Act, that must govern wherever the Act is in force, in preference to the now well-established view to the contrary in England. The way may, however, pass to the grantee if it is an easement of necessity; but an easement of way cannot be

---

* Appeal No. 199 of 1928.