of an omnibus is a "workman" within the meaning of the Act was recently considered by a Bench of the Calcutta High Court and they have taken the same view as we have taken; *Nanda Kumar* v. *Pramatha Nath*(1). As observed in that case, the presence of a conductor is not only desirable but is really necessary and is indeed obligatory for the purpose of the proper working of the bus. We are therefore of the opinion that the respondent is a "workman" within the meaning of the Act.

In the result, the appeal fails and is dismissed with costs.

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

IN RE NEMICHAND PARAKH (ACCUSED), PETITIONER.*

1938, January 26.

Indian Penal Code (Act XLV of 1860), sec. 405—Pledge of jewels—Sub-pledge of the same by pledgee with his financiers to raise capital at a lower rate of interest—Absence of dishonest intention—No express contract not to sub-pledge—Offence of criminal breach of trust, if.

The accused, in the regular course of his money-lending business, effected sub-pledges of the same jewels, for the same amounts and on the same dates as the pledges made to him, with his financiers or *khatadars* to raise capital at a lower rate of interest. There was no express contract taking away the right to make sub-pledges and there was no evidence to show that the sub-pledges were made with a dishonest intention.

Held: (i) The accused was not guilty of the offence of criminal breach of trust. Under section 179 of the Indian

(1) (1937) 42 C.W.N. 123.

* Criminal Revision Case No. 747 of 1937.

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Contract Act the pawnee or pledgee has the right to make a sub-pledge of the goods pawned to him to the extent of his interest.

(ii) Even if the accused had no right to make the sub-pledge, he must be deemed to have acted honestly under a mistaken belief as to the extent of his rights as pledgee, and the sub-pledges of the pledged goods cannot, in the circumstances, be regarded as amounting to criminal breach of trust.

Donald v. *Suckling*(1) followed.

(1871) 6 M.H.C.R. App. p. 28 referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Third Presidency Magistrate of the Court of Presidency Magistrates, Egmore, Madras in Calendar Case No. 565 of 1937.

V. T. Rangaswami Ayyangar and *P. S. Kothandapani* for petitioner.

The Crown Prosecutor (*T. S. Anantaraman*) for the Crown.

ORDER.

The petitioner in this case, Nemichand Parakh, was convicted of criminal breach of trust on three counts and sentenced to undergo rigorous imprisonment for six months on each count, the three sentences to run concurrently. The charge against him was: "That you on or about the undermentioned dates at Madras being entrusted with properties stated below committed criminal breach of trust (i) on or about 4th April 1935 gold chain of the value of Rs. 175 belonging to P.W. 1, (ii) on or about 18th September 1935 ruby necklace of the value of Rs. 50 belonging to P.W. 3 and (iii) on or about 21st March

(1) (1866) 1 Q.B. 585.

1936 ring of the value of Rs. 12-8-0 belonging to P.W. 1". The dates given in the charge are the dates on which the actual pledges were made of these jewels by the prosecution witnesses concerned with the accused. It is not pretended that the receipt of the pledged jewels was itself a criminal breach of trust. Presumably the criminal breaches of trust alleged against the accused were the sub-pledges effected by the accused of the same jewels, for the same amounts, and on the same dates as the pledges with his financiers or *khatadars*, Kanhiyal Lal, P.W. 6 and Amir Chand, P.W. 7. It is unfortunate that the charge should have been so badly drawn up as not to indicate clearly to the accused what it was that was charged against him as criminal breach of trust. It is however now conceded that what was charged against the accused was that the accused's sub-pledging all the jewels on the same dates for the same amounts amounted to criminal breach of trust. This raises a pure question of civil law, i.e., whether such sub-pledging to the same extent, that is to say, for the same amount as the debt for which the original pledge was made, is a wrongful act, for if such sub-pledging was within the rights of the pledgee, that is the petitioner, any sub-pledging by him cannot be regarded as amounting to a criminal offence, as it is obvious that what a man does within the limits of the right given to him by the law cannot amount to a criminal offence. The question was perhaps at one time not entirely free from doubt, but it is clear to me that the authorities on the point are in favour of the petitioner's contention,

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namely, that as pledgee, he had a right to sub-pledge to the extent of his interest in the pledged properties. The law on the subject in this country is to be found in section 179 of the Indian Contract Act (IX of 1872) which runs as follows:—

"Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest."

The words "a person" found in this section would certainly include a pledgee, if it can be said that he has a limited interest in the goods pledged with him. The leading English case on the point is *Donald* v. *Suckling*(1). In that case the following passage from Story on Bailments is quoted without dissent, namely:

"The pawnee may, by the common law, deliver over the pawn into the hands of a stranger for safe custody without consideration; or he may sell or assign all his interest in the pawn; or he may convey the same conditionally by way of pawn to another person, without in either case destroying or invalidating his security. But if the pawnee should undertake to pledge the property for a debt beyond his own . . . . it is clear that in such a case he would be guilty of a breach of trust; and his creditor would acquire no title beyond that held by the pawnee."

This statement of the law in Story on Bailments and *Donald* v. *Suckling*(1) which was a case of 1866 was in all probability the source from which the rule laid down in section 179 of the Indian Contract Act of 1872 was taken. In any case it is not contended that the Indian law on the subject is different from the English law. In *Donald* v. *Suckling*(1) it is clearly laid down that the pawnee has a special property in the pawned

(1) (1866) 1 Q.B. 585.

goods, that is, he is invested with a right which is something more than the mere right of possession as in the case of a lien. COCKBURN C.J. describes it as a right to deal with the thing pledged as his own, if the debt be not paid and the thing redeemed at the appointed time; it is also described as an inchoate right of property conferred upon him by the contract. In Halsbury's Laws of England, Vol. XXV, Hailsham's edition, it is stated that

> "the pawnee's special property in the thing pledged may be assigned to a third party by way of assignment of the pawnee's interest or of a sub-pledge by him. Such a transfer is not inconsistent with the contract of pawn so long as it purports to transfer no more than the pawnee's interest against the pawner, the pawnee in the meantime being responsible for due care being taken for the custody of the property".

It is unnecessary in my opinion to go further into the matter as the authorities already quoted are sufficient to show that the pawnee or pledgee has the right to make a sub-pledge of the goods pawned to him to the extent of his interest, and that is exactly what the petitioner did in the present case. My attention has been called by the Crown Prosecutor to the proceedings of the High Court in 1871 reported in 6 M.H.C.R. Appendix, page 28, in which it is stated that a person who pledges what is pledged to him may be guilty of criminal breach of trust where the disposal is in violation of any direction of law or contract, express or implied, prescribing the mode in which the trust ought to be discharged and when such disposal is done with a dishonest intention. There is nothing in the present case to show that there was any express contract taking away the

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right given by the ordinary law to make a sub-pledge and there is certainly no other evidence to show that the sub-pledges were made with a dishonest intention. On the other hand, there is no reason to suppose that the defence of the petitioner on this point, namely, that he was doing this in the regular course of business, is not true. Apparently the petitioner is not a man with a large capital and he carries on his money-lending business by lending money on pledge of jewels and getting the capital necessary for the purpose by sub-pledging the same jewels with his financiers for the same amounts at a lower rate of interest. There is nothing to show that this course of business was followed with any dishonest intention. The High Court in the proceedings mentioned above also stated that great caution ought to be used in drawing the inference of dishonest intention from a breach of duty imposed by civil law and that whether it should be drawn or not is a question to be decided in each particular case. The High Court also added that

> "when the law bearing upon the case is doubtful, *Donald* v. *Suckling*(1), it would be most indiscreet to raise the inference of dishonesty against a man who has mistaken it, simply because he has mistaken it".

It would therefore follow that even if the view that I have taken of the rights of the petitioner in this case is not correct, still the petitioner must be deemed to have acted honestly under a mistaken belief as to the extent of his rights as pledgee, and the sub-pledges of the pledged goods cannot be regarded as amounting to criminal breach of trust. It is unfortunate that this aspect of the

(1) (1866) 1 Q.B. 585.

case was not dealt with by the learned Magistrate but it is quite possible that this omission is due to the fact that that aspect was not brought to his notice either by the prosecution or by the accused. In any case, the unfortunate result is the conviction of a man in respect of acts done by him within the exercise of his rights, and the only consolation is that he was let on bail very soon after he was committed to jail as a result of the conviction. In my opinion, he ought never to have been prosecuted. If the prosecution had informed itself of the law on the subject, as it ought to have done, there would have been no prosecution at all, as it would have then been found that, according to the case for the prosecution itself, no offence had been committed. The conviction and sentence are set aside, the petitioner is acquitted honourably. His bail bond is cancelled.

V.V.C.