

that different considerations apply when he is suing for the ejection of a person in possession of the property which he has bought. In my judgment there is no substance in the last contention advanced on behalf of the appellant.

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For these reasons I would dismiss the appeal with costs.

MOCKETT J.—I agree.

KRISHNASWAMI AYYANGAR J.—I also agree.

N.S.

APPELLATE CIVIL—FULL BENCH.

*Before Sir Lionel Leach, Chief Justice, Mr. Justice King
and Mr. Justice Somayya.*

KATIKINENI VENKATA GOPALA NARASIMHA
RAMA RAO (DEFENDANT), APPELLANT,

1940,
April 26.

v.

CHITLURI VENKATARAMAYYA (PLAINTIFF),
RESPONDENT.*

Indian Income-tax Act (XI of 1922), sec. 22—Profit and loss statement and statement showing details of net income filed by assessee under, in support of his return of income—If public documents within sec. 74 of Indian Evidence Act (I of 1872)—Certified copies of same—If admissible under sec. 65 (e) of Indian Evidence Act.

A profit and loss statement and a statement showing the details of net income, filed by an assessee in support of his return of income furnished under section 22 of the Indian Income-tax Act, are public documents with reference to section 74 of the Indian Evidence Act, of which certified

* Appeals Nos. 234 and 235 of 1937.

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copies would be admissible under section 65 (e) of the Indian Evidence Act.

Mythili v. Janaki(1) overruled.

APPEALS respectively against the decrees of the Court of the Subordinate Judge of Ellore, dated 29th March 1937, in Original Suits Nos. 14 of 1935 and 28 of 1936.

These appeals came on for hearing and WADSWORTH J. on behalf of the Court (WADSWORTH and PATANJALI SASTRI JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH:

These two appeals raise the question of the liability of the appellant on two missing promissory notes, one for Rs. 9,704, dated 16th February 1932 and the other for Rs. 24,400, dated 13th February 1933. The former promissory note formed the subject-matter of Original Suit No. 14 of 1935 against which Appeal Suit No. 234 is preferred. The execution of this promissory note was admitted but the defendant (appellant) pleaded that it was discharged except for a small amount. The second promissory note formed the subject-matter of Original Suit No. 28 of 1936 (against which Appeal Suit No. 235 is filed) and its execution is totally denied by the appellant. The promisee (plaintiff) was a well-to-do Vaisya money-lender and it is common ground that, up to 28th March 1934, he and the defendant, an important mokhasadar, were on very friendly terms and had considerable dealings. On 1st February 1934, the defendant made over the income from some of his lands to his wife for a term of years and it is said that this transaction made the respondent uneasy about his advances to the appellant.

[His Lordship discussed the evidence and proceeded:]

The main question in this case therefore becomes the question whether the existence of this promissory note for Rs. 24,000 before 30th March 1934 has been satisfactorily demonstrated.

Now, the evidence of the earlier existence of this debt, apart from the statements of the plaintiff and witnesses interested in him, on which much reliance cannot be placed,

consists of (i) the respondent's own accounts, (ii) the evidence of the Vakil (P.W. 3) regarding what he saw on 17th February 1934 and (iii) Exhibits H and E certified copies of the profit and loss statement attached to the respondent's income-tax return and the statement on which it was based, which were apparently filed on or before 17th May 1933 before the Income-tax Officer. The accounts show entries corroborating the story of the execution of the promissory note for Rs. 24,400 on 13th February 1933, with corresponding credits in favour of the plaintiff's brother and wife relating to liabilities originally due from the appellant to them which the respondent had taken over in return for the execution of this note.

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[His Lordship discussed the evidence and proceeded :]

The most conclusive piece of evidence on this question of the previous existence of the promissory note for Rs. 24,400 is provided by Exhibits E and H which are certified copies of the income statement and profit and loss statement, the latter purporting to have been signed by the plaintiff on 17th May 1933, the former of which sets forth this debt of Rs. 24,400 as due to the respondent. There is, however, a serious difficulty with reference to the admissibility of this evidence. Objection was taken to it at the time when it was tendered and we deem it necessary to refer to a Full Bench the question of its admissibility in view of the decision of our learned brothers, BURN and STODART JJ., in the case of *Mythili v. Janaki*(1). In our opinion the evidential value of these income-tax documents is such that, if they are admitted, the correctness of the lower Court's conclusion is clear. If they are to be rejected, we shall have to decide hereafter whether the remaining evidence is sufficient to establish the pre-existence of this note for Rs. 24,400 which, if established, seem to us, in view of the defendant's denials and suppressions, to warrant the decree which has been given.

The legal difficulty may be briefly stated. Exhibits E and H are both certified copies. If the original is a public document within the meaning of section 74 of the Evidence Act, then the certified copies are good secondary evidence of that original under section 65 (e). If these statements are

(1) I.L.R. [1940] Mad. 329, 332.

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not public documents, we are unable to see how the certified copies can be admitted in evidence under any other clause of section 65 of the Evidence Act. Section 74 defines public documents as documents forming the acts or records of the acts (i) of the sovereign authority, (ii) of official bodies and tribunals and (iii) of public officers, legislative, judicial and executive, and the term includes also public records kept in British India of private documents. The question is whether an income-tax return and the statements accompanying it form part of the record of the act of the Income-tax Officer who makes the assessment. In the case just referred to, the learned Judges decided, without quoting any authority other than the statutory provisions, that it was the policy of the law that statements made in income-tax returns should not be used in evidence against the person making them or against any one else, that income-tax returns could not be proved by secondary evidence and that the income-tax return was not part of the record of the act of assessment and not a public document as defined in section 74 of the Evidence Act. In coming to this conclusion, the learned Judges appear to have been greatly influenced by the provisions of section 54 of the Indian Income-tax Act which prohibits the disclosure by any public servant of particulars contained in an income-tax return or statement. Now quite clearly this section applies only to disclosures and does not prohibit the Income-tax Officer from giving to the person who made the return a copy of that return. In fact, we are informed that the departmental orders expressly provide for the giving of such a copy to the assessee on application. It seems to us that there is no ground of public policy which would prevent such an assessee from using in evidence such a copy when it has been granted to him. Nor are we convinced that the ground of public policy is a sufficient reason for excluding from evidence any document which is legally admissible under the Evidence Act and is not excluded by any statutory prohibition. This view has been adopted in the case of *Venkataramana v. Varahalu*(1), a decision of VARADACHARIAR and PANDRANG ROW JJ. anterior to the decision of BURN and STODART JJ., but apparently not brought to their notice. VARADACHARIAR and PANDRANG ROW JJ. were actually dealing with a copy of a

(1) (1938) 50 L.W. 681, 687, 680.

statement recorded by the Income-tax Officer which clearly was a public document and they held that certified copies of such a statement were admissible notwithstanding the provisions of section 54 of the Indian Income-tax Act. The learned Judges refer to a decision, *Anwar Ali v. Tafezal Ahmed*(1), wherein a single Judge held that income-tax returns being made confidential by section 54 of the Income-tax Act, certified copies of such a return could not lawfully be given and if given could not be used in evidence. In *Devidatt v. Shriram Narayandas*(2) a Bench of the Bombay High Court held that certified copies of an income-tax return could not be given in evidence because the return is not a public document within the meaning of section 74 of the Evidence Act and that the prohibition in section 54 of the Indian Income-tax Act was sufficient to warrant the view that a certified copy could not be lawfully obtained and would not be admissible in evidence if obtained. It seems to us that these decisions raise a question of far reaching importance. With all respect to the learned Judges who have held otherwise we do not consider that the prohibition against the disclosure of the contents of an income-tax return can have any bearing on the admissibility of the contents of that return filed at the instance of the person who made it. If the income-tax return is a part of the record of the act of the Income-tax Officer making the assessment, a certified copy of that document can lawfully be given, subject to the prohibition against disclosure in section 54 of the Indian Income-tax Act. If it has been so given, then by the terms of section 65 of the Evidence Act it is, no matter who produces it, good evidence of the original, provided that the original is a public document ; and we do not think that considerations of public policy can warrant its exclusion from evidence. If an income-tax return is not a public document, as being part of the record of the act of the assessing officer, it is difficult to see how a plaint or written statement in a civil suit or a complaint in a criminal case can be deemed to be public documents such as can be proved by the production of certified copies. It is almost the universal practice of the Courts to grant certified copies of such documents and to admit them in evidence, though the admissibility of a certified copy of a plaint appears

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to have been successfully challenged in one or two cases, not of this High Court. We are inclined to the view that an income-tax return, being the basis of the Income-tax Officer's assessment, must be treated as part of the record of the act of assessment and must therefore be regarded as a public document of which a certified copy can be given in evidence. The matter, however, being the subject of somewhat conflicting rulings of Benches of this High Court, we refer to a Full Bench the following question :

“ Whether a profit and loss statement and a statement showing the details of net income, filed by an assessee in support of his return of income furnished under section 22 of the Indian Income-tax Act, are public documents with reference to section 74 of the Evidence Act, of which certified copies would be admissible under section 65 (e) of the Evidence Act.”

The appeal came on for hearing before the Full Bench constituted as above.

ON THE REFERENCE :

P. V. Rajamannar, K. Subba Rao and D. Suryaprakasa Rao for appellant.—Exhibits E and H are certified copies of the income statement and profit and loss statement which were filed in the income-tax office in connexion with the income-tax return. Exhibit E contains a statement that the disputed amount was due to the respondent. The question for decision is whether the income-tax return and its annexures are public documents within the meaning of section 74 of the Indian Evidence Act, such that their certified copies are good secondary evidence of their originals under section 65 (e) of the Indian Evidence Act. Income-tax returns have been uniformly held not to be public documents.

[Counsel read sections 64 and 74 to 78 of the Indian Evidence Act and section 54 of the Income-tax Act and proceeded :]

Under section 74 (2) the acts and record of acts of an Income-tax Officer will be public records but not the whole record. The materials on which he bases his conclusions are not public records. Income-tax Manual, paragraph 85, clause (2), deals with the practice of giving certified copies to assessees, partners and managers of joint Hindu families. No section gives any person a right to get copies.

[KING J.—No section prevents copies being given to them.]

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Section 76 of the Evidence Act prohibits certified copies being given of only income-tax returns. In *Venkataramana v. Varahalu*(1) VARADACHARIAR and PANDRANG ROW JJ. held that certified copy of a statement on oath of a partner recorded by the Income-tax Officer to be admissible in evidence but they pointed out that the income-tax return would not be a public document. To this extent they follow *Devidatt v. Shriram Narayandas*(2). In *Mythili v. Janaki*(3) BURN and STODART JJ. held that an income-tax return would not be a public document. To the same effect is the decision in *Anwar Ali v. Tafozal Ahmed*(4). The income-tax return is only an act of the assessee. It will only be a private record kept in a public office along with public documents and it cannot become a public record of a private document. In *Ali Khan Bahadur v. Indar Parshad*(5) the Privy Council adopted without any discussion the decision of the Judicial Commissioner who held that income-tax returns were not public documents. The acts contemplated in section 74 of the Evidence Act were final and completed acts and not acts of a preparatory character.

[Counsel also referred to *Sturla v. Freccia*(6).]

Advocate-General (Sir A. Krishnaswami Ayyar), Nugent Grant and V. Suryanarayana for respondent.—Section 74 of the Evidence Act uses the following words, namely, “forming the acts” and “records of the acts”. The proceedings commence with notice under section 22 of the Income-tax Act. If the Income-tax Officer is satisfied, then the assessment proceeds on the basis of the return under section 23. All these steps are proceedings before the Income-tax Officer. The proceedings before him cannot be split up into various stages for holding that a document filed in a particular stage is a private document and that filed in another stage is a public document. Such a truncated scrutiny is not warranted by the provisions of the Income-tax Act. In *Bhagain Megh Ranee Koer v. Gooroo Pershad Singh*(7) a compromise petition which was followed by a decree of Court

(1) (1938) 50 L.W. 681, 687, 689. (2) (1931) I.L.R. 56 Bom. 324.

(3) I.L.R. [1940] Mad. 329, 332. (4) (1924) I.L.R. 2 Rang. 391.

(5) (1896) I.L.R. 23 Cal. 950 (P.C.).

(6) (1880) 5 App. Cas. 623, 642. (7) (1876) 25 W.R. 68.

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was held to be parts of records of Court. In *Mangal Sen v. Hira Singh*(1) a copy of an application for compromise on which the order of Court was made was held to be a record of Court and as such held admissible in evidence under sections 61, 62 and 77 of the Evidence Act. The mixing up of the provisions of the Evidence Act and Income-tax Act has been responsible for the confusion.

P. V. Rajamannar in reply.—In the two cases referred to by the Counsel for the respondent the compromise petitions were held to be records of Court since orders of Court were made on them.

Cur. adv. vult.

OPINION.

LEACH C.J.

LEACH C.J.—Before proceeding to examine the provisions of the sections of the Indian Evidence Act mentioned in the question under reference it is desirable to state the effect of section 54 of the Indian Income-tax Act, 1922, as in some cases where certified copies of income-tax documents have been tendered in evidence its provisions have been misunderstood and misapplied. Sub-section (1) of section 54 of the Indian Income-tax Act states that all particulars contained in a statement made, return furnished or accounts or documents produced under the provisions of the Act, or in evidence given in the Court of proceedings under the Act other than proceedings under Chapter VIII (which relates to offences and penalties), or in a record of an assessment proceeding, or a proceeding relating to the recovery of a demand shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to require a public servant to produce a document referred to in the section or to give evidence thereon. Sub-section (2) provides for

(1) (1904) 1 A.L.J.R. 369.

the punishment of a public servant who unlawfully discloses particulars of an income-tax matter. Sub-section (3) sets out the occasions on which disclosure can lawfully be made. It is not necessary to set them out as the provisions of sub-section (3) have no application here and have no bearing on the reported decisions which have relation to the application of section 54.

While section 54 prohibits the disclosure, except on specified occasions of matters connected with an assessment to income-tax and prohibits a Court from requiring a public servant to produce the documents mentioned in the section or to give evidence in respect of them, it does not follow that the Court may not admit in evidence a document which falls within section 54 (1). This will depend on whether the document is admissible under the provisions of the Indian Evidence Act. Paragraph 85 of the notes and instructions compiled by the Income-tax department for the guidance of its officers states that the following persons shall, in practice, be allowed to inspect or to receive copies: (i) In any case the person who actually made the return; (ii) any partner (known to be such) in a firm registered or unregistered to whose income the return relates; and (iii) the manager of a Hindu undivided family to whose income the return relates, or any other adult member of the family who has been treated as representing it. There is nothing in section 54 to prohibit this practice and it is only right that a person who is concerned with an assessment should be allowed to obtain copies of the documents relating to his assessment to income-tax should he so desire, and if copies are supplied he may put them in evidence in a suit if the Evidence Act allows it.

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I will now turn to the relevant provisions of the Indian Evidence Act. Section 74 says that the following documents are public documents :

- (1) documents forming the acts or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of His Majesty's dominions, or of a foreign country ;
- (2) public records kept in British India of private documents.

Section 75 states that all other documents are private. Section 76 provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of the copy that it is a true copy. Section 77 says that certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. Therefore, if a document is a public document it may be proved by means of the production of a certified copy. Private documents must be proved by primary evidence, except in such cases where secondary evidence is permitted under the provisions of section 65. Clause (e) of that section allows secondary evidence to be given when the original is a public document within the meaning of section 74. If an income-tax return or a statement filed in support of it is a public document within the meaning of section 74, certified copies will be admissible under section 65 (e). The answer to the question whether a document of this nature is a public document depends on whether it is a document forming an act or the record of an act or acts of an Income-tax Officer. Before stating my

opinion on the question I will first refer to certain of the cases which have been quoted in argument.

In *Anwar Ali v. Tafozal Ahmed*(1) a single Judge of the Rangoon High Court held that income-tax returns being made confidential by reason of section 54 of the Income-tax Act, and the disclosure of their contents being a punishable offence, certified copies cannot be admitted in evidence. The Court did not consider the effect of section 74 of the Indian Evidence Act and decided against the admissibility of the certified copies submitted on the ground that section 54 of the Indian Income-tax Act made the issue of copies unlawful and made the disclosure of the particular contents in the return an offence punishable with imprisonment. In my opinion there is here a misconception. Section 54 does not make the issue of a certified copy of an income-tax return to an assessee unlawful. The return is a confidential document and cannot be disclosed to a third party, but there can be no objection to the maker of the return having a copy for his own purposes if he so desires. So far as the assessee is concerned he is not bound to treat the document as confidential.

A Bench of the Bombay High Court considered the question of the admission of certified copies of income-tax returns in *Devidatt v. Shriram Narayandas*(2) and held that they were not admissible, but the decision was based on a different ground from that given by the Rangoon High Court in *Anwar Ali v. Tafozal Ahmed*(1). The reason given here was that the assessee had no right to inspect the original documents in the custody of the Income-tax Officer and the latter was not bound to give certified copies to the assessee

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on demand. It was considered that the words "right to inspect" in section 76 of the Evidence Act exclude all such documents as a government officer has a right to refuse to show "on the ground of state policy or privilege, etc." But an Income-tax Officer would not be fulfilling his duty if he refused to allow an assessee to inspect his own return. If he did so, he might be placing an assessee at a disadvantage when the assessee was objecting to an improper assessment. The Bombay High Court, however, considered that there was nothing in the terms of section 54 of the Income-tax Act and the intention of the Legislature underlying it, prohibiting an assessee from giving secondary evidence of the contents of the return made by him or on his behalf or of the assessment order made upon him or his firm on that return, where such secondary evidence would be admissible under the Indian Evidence Act. Where the original cannot be produced the best secondary evidence must be a true copy.

A Bench of this Court (VARADACHARIAR and PANDRANG ROW JJ.) held in *Venkataramana v. Varahalu*(1) that a certified copy granted to an assessee of a statement made by him on oath before an Income-tax Officer is admissible in evidence and there is nothing in section 54 of the Income-tax Act or any of the provisions of the Evidence Act which precludes its admissibility. The statement was regarded as being a public document because it was a statement recorded by the Income-tax Officer and therefore a document forming a record of his act. Though they did not accept the Bombay interpretation of section 76 of the Evidence Act the learned Judges concurred in the opinion expressed by the Bombay High Court in

(1) (1938) 50 L.W. 681.

Devidatt v. Shriram Narayandas(1) that an income-tax return is not a public document. They did not say so, but it is to be gathered from their judgment that they did not regard an income-tax return as a public document because it is prepared by the assessee.

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The question whether an income-tax return is a public document was discussed at some length by a Bench of this Court (BURN and STODART JJ.) in *Mythili v. Janaki*(2) and the conclusion arrived at was that it is not a public document within the meaning of section 74 of the Indian Evidence Act. The learned Judges considered that it was impossible to infer from the wording of the Act that a return made by an assessee is either part of the act of the Income-tax Officer or part of the record of the act of that Officer. In their opinion to allow a person who comes into possession of a certified copy of a return to produce it in Court and so prove the contents of the return would be defeating the express provisions of section 54. I have said sufficient to indicate that in my opinion there is nothing in section 54 which prohibits a party from putting in evidence a certified copy of an income-tax return if that return is a public document and that the learned Judges misunderstood the effect of that section. It only remains to be considered whether the opinion that an income-tax return is outside section 74 of the Evidence Act is correct.

The judgments in *Venkataramana v. Varahalu*(3) and *Mythili v. Janaki*(2) indicate that in the opinion of the learned Judges who decided those cases a document on the record of an assessment proceeding cannot be deemed to be a public document within the

(1) (1931) I.L.R. 56 Bom. 324.

(2) I.L.R. [1940] Mad. 329.

(3) (1938) 50 L.W. 681.

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meaning of section 74 of the Evidence Act, unless it be a statement recorded by the Income-tax Officer himself or an order passed by him, and therefore does not include a document drawn up by the assessee or under the assessee's directions. In my opinion this interpretation of section 74 of the Evidence Act is too limited. Section 22 of the Income-tax Act empowers the Income-tax Officer to call upon a person to submit a return of his income. Section 23 states that if the Income-tax Officer is satisfied that a return made under section 22 is correct and complete he shall assess the total income of the assessee and shall determine the sum payable by him on the basis of the return. The submission of the return constitutes the fulfilment of a requirement of the Income-tax Officer ; in other words, it is a document which he has caused to be prepared. Can it then be dissociated from his action in calling for the return ? If the Income-tax Officer is not satisfied with the return he can call upon the assessee to produce evidence in support of it. If the assessee produces evidence the Income-tax Officer must consider it in determining the sum to be paid by the assessee. A profit and loss statement filed by the assessee is evidence in the matter and the Income-tax Officer may draw it up himself, if he thinks it expedient to do so. It is common ground that an order of assessment is a public document within the meaning of section 74 and the decision in *Venkataramana v. Varahalu*(1) that a statement recorded by an Income-tax Officer falls in the same category has not been questioned. Now, if a statement recorded by an Income-tax Officer in the course of his examination of the assessee is a public document

it is difficult to see why a statement handed in by the assessee disclosing the basis of the return called for should not be similarly regarded. Surely, the test cannot be whether the profit and loss statement is actually drawn up by the Income-tax Officer.

As the learned Judges who have made this reference have pointed out, a plaint or a written statement has always been regarded by this Court as forming part of the record of a case and a public document of which an interested party may obtain a certified copy. If the argument, that an income-tax return is not a public document but that the order passed thereon is, were carried to its logical conclusion, it would mean that no part of the record of a civil suit could be regarded as constituting a public document, except evidence recorded by the Court or summonses or notices or interlocutory orders or the judgment in the case. In *Bhagain Megh Ranee Koer v. Gooroo Pershad Singh*(1) GARTH C.J. and BIRCH J. expressly held that a petition which was the subject-matter of an order passed was part of the record in the suit, and I do not think that this can reasonably be doubted. In my judgment it would be putting an unwarranted restriction on the words "documents forming the acts or records of the acts" to say that they should be confined to those parts of an income-tax record which the Income-tax Officer has himself prepared and to exclude documents which he has himself called for or which have been admitted to the record for the purposes of the assessment. I consider that the record of an income-tax case must be regarded as the record of the acts of the Income-tax Officer in making his assessment and therefore that any document properly

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on the record is just as much a public document as the final order of assessment. For these reasons I would answer the question propounded in the affirmative.

I would make the costs of this reference costs in the cause.

KING J.—I agree.

SOMAYYA J.—I agree.

These appeals came on for final hearing on 30th April 1940, after the expression of the opinion by the Full Bench on the question referred to them, and WADSWORTH J., on behalf of the Court (WADSWORTH and PATANJALI SASTRI JJ.), delivered the following Judgment :—

The Full Bench have decided that the certified copies, Exhibits E and H, are admissible in evidence of the contents of the original statements. These statements are relevant both as corroborating the evidence of the plaintiff himself and as rebutting the contention that the promissory note was fabricated at a date subsequent to that on which the statements were made. They are not being used to impose a liability on the defendant but to rebut a contention of fabrication which is inconsistent with the existence of these statements. The appeals are therefore dismissed with costs, including costs of the reference to the Full Bench—Advocate's fee for the reference Rs. 150. The petitions under Madras Agriculturists Relief Act (IV of 1938) are remitted to the trial Court for disposal.

G.R.
