

CRIMINAL REVISION.

Before Mr. Justice Wilson and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF E. G. BUSKIN.

IN THE MATTER OF THE PETITION OF C. F. THOMAS.

E. W. HART *v.* E. G. BUSKIN.*

E. W. HART *v.* C. F. THOMAS.

Railway Act (IV of 1879), ss. 17, 31—Passenger not producing season ticket when called upon—Travelling without a ticket—Order for recovery of fare.

A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers, and if he does not so produce it, he is liable under ss. 17 and 31 of the Railway Act to pay the fare for the journey between the stations for which his ticket was issued. The order under s. 31, in case of his refusal to pay it, should be one merely for recovery of the amount due as the fare, and not an order to pay such sum or any other sum as if it were a fine.

A passenger who has such a ticket which is still in force and in his possession, cannot be said to be travelling without a ticket within the meaning of s. 31, merely because he does not happen to have the ticket with him, and therefore cannot produce it when called upon to do so.

IN these two cases the petitioners were prosecuted under the Railway Act (IV of 1879) s. 31. Mr. Buskin, the petitioner in the first case, was a monthly ticket-holder on the Eastern Bengal State Railway, his ticket entitling him to travel between Barrackpore and Sealdah stations. He was on 29th June last, when travelling to Sealdah, called upon to produce his ticket, but, having inadvertently left it behind at his house, he was unable to produce it.

The Deputy Magistrate found that he was technically guilty of omitting to show his ticket when called on, and made an order that he should be "fined annas 14, realizable by distress and sale if not paid."

Major C. F. Thomas, the petitioner in the second case, was also a monthly ticket-holder, on the same line, between the same stations, and on the 3rd July was found travelling without a ticket. He had had his ticket when coming to Sealdah in the morning but had left it at his office, and when asked to produce it on the

* Criminal Revision Nos. 324 and 325 of 1885, against the order of Baboo Roy Ram Sunkur Sen, Bahadoor, Deputy Magistrate of Sealdah, dated the 25th July 1885.

return journey could not do so. In this case the Deputy Magistrate inflicted a "nominal fine of one anna."

The defendants in both cases petitioned the High Court to have the order of the Deputy Magistrate set aside.

Mr. *Hill* for the petitioners.

Section 31 of Act IV of 1879 deals with cases of passengers who without desiring to defraud, are found travelling without tickets. Now the wording of the Magistrate's order shows that he treated the matter as a criminal one, inasmuch as the petitioners have been *fined* in one case fourteen annas, and in the other one anna. I submit that the petitioners could not be prosecuted criminally; the matter before the Court was a matter of civil liability with the provision that the debts due from the petitioners might be recovered by distress or warrant. This is clear from s. 32 which differs from s. 31. The case of *Tokee Bibee v. Abdool Khan* (1) points out that a proceeding of the nature of this case is not a criminal one. Under s. 31 there is an implied pre-existing liability that the passenger will pay the fare, but till conviction there is no pre-existing liability to pay a fine. The punishment of fine throughout the Act is kept entirely distinct from the payment of fares.

As to whether a matter is to be considered a criminal or civil proceeding, see *Queen v. Fletcher* (2) and *Mellor v Denham* (3). I submit the proceedings under s. 31 are civil proceedings.

[WILSON, J.—We need not trouble you further on that point].

As regards the demand made to Buskin to pay his fare, that I submit was not enough; a specific amount should have been demanded. Suppose, for instance, Buskin had been unable to prove that he had started from Barrackpore, then if the matter was a civil one, the Railway Company, knowing where the train had started from, would have to make a demand of a specific sum. As to this point see *Brown v. Great Eastern Railway Company* (4). With regard to the reasonableness of a bye-law which requires a passenger to show his ticket when required, see *Saunders v. South Eastern Railway Company* (5). With

(1) I. L. R., 5 Calc., 536.

(3) L. R. 5 Q. B. D., 467.

(2) L. R. 2 Q. B. D., 43.

(4) L. R. 2 Q. B. D., 406.

(5) L. R. 5 Q. B. D., 456 (461).

1885

HART
v.
BUSKIN.

regard to the case of Major Thomas, the Magistrate had no power to fine him one anna ; he might have declared him liable to a payment of fourteen annas, but he has not done so. I submit that the cases have been treated criminally, and for that reason, if for no other, the orders must be quashed. Could the petitioners, however, be charged with offences under s. 31 ? Section 31 refers to s. 17, and that latter section refers to the question of the creation of the contract. I submit the liability of the petitioners is one arising out of the contract created by s. 17.

[WILSON, J.—“ Travelling without a ticket” in s. 31 must mean travelling without having taken a ticket].

Yes ; tickets are taken from the passengers to Calcutta at Barrackpore, and if s. 31 were not read so, those passengers could be proceeded against as having travelled without tickets. There is no such liability arising out of the second part of s. 31 which refers to passengers “ having such a ticket and not showing it,” those words have the meaning of a contumacious refusal to show a ticket. As to this see *Dearden v. Townsend* (1).

Mr. *Bonnerjee*, *contra*, contended that in substance the order of the Magistrate was correct ; and that, although he had under a mistake made use of the word “ fine,” yet it was clear that the matter was intended to be treated civilly.

The following judgment was delivered by the Court (WILSON and GHOSE, JJ.)

WILSON, J.—The facts of this case are these : The petitioner Mr. Buskin was the holder of a monthly ticket entitling him to travel on the Eastern Bengal State Railway between Barrackpore and Sealdah. On the morning of the 29th June last, he travelled by a train from Barrackpore to Sealdah. Being asked while in the train by a ticket-collector in the service of the Railway administration to show his ticket, he was unable to do so, having accidentally left it at his house in Barrackpore. The ticket-collector asked him to pay his fare and he refused. The fare from Barrackpore to Sealdah was fourteen annas. The ticket-collector knew that Mr. Buskin held a monthly ticket.

Application was made to the Police Magistrate of Sealdah by the station master of Sealdah for a summons against Mr.

Buskin, in respect of a charge of having travelled without a ticket, and when asked to pay his fare refusing to do so, ss. 17 and 31 of the Indian Railway Act (IV) of 1879 being referred to. After some intermediate proceedings, on the 3rd July a summons was issued against Mr. Buskin, requiring him to attend on the 15th July, and answer a complaint charging him with having travelled without a ticket and refusing to pay his fare when asked to do so, and further with not showing his ticket and giving it up when demanded. Mr. Buskin appeared, and after some adjournments the matter was finally disposed of on the 25th July. The Magistrate having found that Mr. Buskin was unable to show his ticket on the occasion in question, said: "The defendant is, therefore, technically guilty of the omission as laid down in the Act and is fined annas 14 realizable by distress and sale if not paid."

1885

 HART
 v
 BUSKIN.

We are asked to set aside this order.

Upon the main question, we think the Magistrate is right, that is to say, we think Mr. Buskin was bound to pay the fare from Barrackpore to Sealdah amounting to fourteen annas.

By s. 17 of the Railway Act (IV of 1879): "Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which the fare has been paid, and the amount of such fare; and every passenger shall, when required, show his ticket to any Railway servant duly authorized to examine the same, and shall deliver up the same to any Railway servant duly authorized to collect tickets." By s. 31: "Any passenger travelling on a Railway without a proper ticket, or having such a ticket and not showing or delivering up the same when so required, under s. 17 shall be liable to pay the fare of the class in which he is found travelling from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled. Every such fare shall on application by a Railway servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such

1885

 HART
 v.
 BUSKIN.

person as if it were a fine, and shall, when recovered, be paid to the Railway administration."

Under these sections the Railway administration is to furnish every passenger with a proper ticket; no passenger is to travel without such a ticket; every passenger is to show or deliver up his ticket when called upon; and any passenger who fails in either of these points is liable to pay the ordinary fare for his journey, or if he cannot show where he got into the train, the ordinary fare from the starting point of the train.

We do not think Mr. Buskin's case falls within the provision as to travelling without a ticket. We do not think that a passenger who has been duly furnished with a proper ticket, which is still in force and still in his possession, can be said to be travelling without a ticket, while making a journey covered by that ticket. But Mr. Buskin does seem to us to have failed to show his ticket within the meaning of the Act. There is no distinction drawn between one kind of ticket and another. Every passenger, whether a season ticket-holder or not, may be called upon to show his ticket, and if he is so called upon, and has not got his ticket with him to show, he may be required to pay the ordinary fare. We are of opinion that, having regard to the language and extent of s. 17 of the Act, s. 31 should be read thus: Any passenger travelling on a Railway without being furnished with a proper ticket, or having been furnished with such a ticket and not showing or delivering up the same when so required under s. 17, shall be liable, &c., &c. The Magistrate was therefore right in holding that Mr. Buskin was liable to pay fourteen annas, the fare from Barrackpore to Sealdah.

But the form of the order as described in the judgment by which Mr. Buskin is to be "fined fourteen annas" is wholly wrong. Many sections of the Railway Act deal with frauds by passengers and other acts of wilful wrong, and these sections say that the offender is to be punished with a fine. But s. 31, dealing with innocent persons who may, like Mr. Buskin, find themselves in the wrong by mere accident, has nothing to do with punishment or penalty or fine. It simply makes a fare recoverable and recoverable in a summary way. If any final order is drawn up in this case it must order payment of fourteen annas

as the fare from Barrackpore to Sealdah. In substance, however, the order of the Magistrate is correct.

The case of *Hart v. Thomas* is similar to Mr. Buskin's in every respect except one ; but that one is very material. The Magistrate has not awarded the amount of the fare, which alone he could do under the section ; but has imposed an arbitrary fine of one anna. The order is therefore wrong in substance and must be set aside.

1885

HART
v.
BUSKIN.

APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice Agnew.

RAM PROSAD JANNA AND ANOTHER (DEFENDANTS) v. LAKHI NABAIN PRADHAN (PLAINTIFF.)*

1885
July 29.

Limitation Act (Act XV of 1877, Sch. II, Arts. 136 and 144)—Suit to obtain possession of land from vendor who has been dispossessed and subsequently recovered possession—Possession, Suit for.

A vendor who was at the time out of possession of certain immoveable property sold a share in it to a purchaser by a *kobala*. After the date of the sale the vendor recovered possession, and the purchaser, within 12 years of the vendors having so recovered possession but more than 12 years after he had been originally dispossessed, instituted a suit to obtain possession of the share covered by the *kobala*.

Held, that the suit was governed by Art. 144 and not Art. 136 of Sch. II of the Limitation Act (XV of 1877) and was not barred by limitation.

Art. 136 does not apply to a suit brought against a vendor himself when he recovers possession.

In this case the plaintiff sought to obtain possession of a one anna five gundas share in a certain mehal. He alleged that a two annas ten gundas share belonged to the defendants, and that in the year 1278 (1871-72) they being out of possession and anxious to recover it, sold a one anna five gundas share to the plaintiff for the sum of Rs. 140, in order to meet the expenses necessary to recover their share. The sale took place under a *kobala* on the 25th Joisto 1278 (7th June 1871). The plaintiff further alleged that it had been agreed between him and the defendants,

* Appeal from Appellate Decree No. 461 of 1885, against the decree of Baboo Girish Chandra Chowdhuri, First Subordinate Judge of Midnapore, dated the 20th of December 1884, reversing the decree of Baboo Atul Chandra Ghose, Munsiff of Datun, dated the 10th of December 1883.