

REVISIONAL CRIMINAL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

QUEEN-EMPRESS v. RAM CHANDAR.*

1897
May 18.

Evidence—Presumption—Municipal bye-law, presumption as to the validity of—Act No. XV of 1883 (North-Western Provinces and Oudh Municipalities Act) section 55.

Where a person was tried for and convicted of a breach of certain bye-laws purporting to have been duly passed by a Municipal Board, it was held that the presumption was that such bye-laws had been passed with due regard to the necessary procedure and were not illegal, and that it lay upon the accused to object to their validity and was no part of the duty of a Court exercising appellate or revisional jurisdiction to enter of its own motion into the question whether such rules had been properly framed in accordance with the provisions of the law on that subject. *The Municipality of Sholapur v. The Sholapur Spinning and Weaving Company* (1) referred to.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Bareilly. The facts of the case will appear from the order of reference which was as follows:—

“This is an application for revision of an order made by the Joint Magistrate of Bareilly and purporting to have been made under sections 1 and 4 of Act No. XV of 1883. The case was sent back in order that the offence proved might be indicated, as required by section 263(f) of the Code of Criminal Procedure, and it was pointed out that the sections named were not penal sections. On the proceedings received back the authorities quoted are section 1(2), Chapter I, and section 4, Chapter III of the rules passed by the Municipal Board of Bareilly under section 55(3) of Act No. XV of 1883. Upon this the parties were heard and the following order was made:—‘Inasmuch as it appears that the bye-law under which the conviction under revision was made and the punishment inflicted is not forthcoming, it is ordered that a precept issue to the District Magistrate to send to this Court a copy of the rules made under section 55(1) and of any direction made under section 55(2) of Act No. XV of 1883, duly

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certified for the purpose of section 65 of Act No. 1 of 1872, or of the corresponding rules as made, confirmed, and published under sections 22 to 24 of Act XV of 1873.'

"The District Magistrate has now forwarded to this Court a publication (apparently unofficial) entitled—'The Municipal Manual of Bareilly, compiled by Preonath Banerji, Municipal Commissioner and Pleader, High Court.'

"The alleged offences of which the appellant has been convicted are :—(1) constructing a *sandas* (or privy in which night-soil is allowed to accumulate) without the permission of the Municipal Board, and (2) altering a *chabutra* abutting on the street without the previous sanction of the Board.

"I see no reason to doubt that the applicant did the acts alleged to be offences; but I am in doubt whether these acts are offences, and punishable, and for the reasons following :—

"The Bareilly Municipality was, until the 24th January, 1884, a Municipality established under the North-Western Provinces and Oudh Municipalities Act, 1873. On that date the Local Government, acting under section 5 of Act No. XV of 1883, by Notification No. 13, *North-Western Provinces and Oudh Gazette*, dated 26th January, 1884, Part I, p. 40, applied Act No. XV of 1883 to the Bareilly Municipality, and thereupon the former Act (No. XV of 1873) ceased to apply [*Cf.* section 17(1) (a) of Act No. XV of 1883]; but rules made under the old Act are deemed to have been made under Act No. XV of 1883 and continue in force until repealed by new rules so made. It is, however, provided [section 71(2)] that 'the authorities empowered to make such new rules shall, as soon as may be, make them, and take such action as may be necessary for bringing them into force.' No action has been taken under this sub-section, and the rules which the applicant has been convicted of infringing are not 'new rules' within the meaning of section 71 of Act No. XV of 1883. For the two rules now in question to be valid, therefore, they must be rules made under the North-Western Provinces and Oudh Municipal Act, 1873, or any Act repealed thereby (*e.g.* VI

of 1868). The two rules in question are contained in Notification No. 699, dated the 9th October 1879, published at Part III, Municipal Supplement, *North-Western Provinces and Oudh Gazette*, dated the 18th October, 1879; but this notification purports to be a confirmation of rules under section 22 of Act No. XV. of 1873 and a direction that the rules be adopted by all Municipalities. If the notification were a simple confirmation under section 23 and publication under section 24, the ordinary presumption would be that the rules had been duly made under section 22. In that case the direction that they be adopted by all Municipalities would be unnecessary; but from the wording of the notification as it stands, I am in doubt whether it is not intended to express that the Local Government makes the rules under section 22 and directs that they be adopted (*e.g.* by all Municipalities which had not previously made these same rules for themselves under section 22). The Act, however, does not empower the Local Government to make rules, but only to confirm rules made by the Municipal Committee; so that if the rules now in question were not made by the Bareilly Municipality before the notification was issued, the notification itself does not make the rules valid and binding. I am unable to discover that the Bareilly Municipal Committee ever did make these rules under section 22 of Act No. XV of 1873. It is possible that they may be contained in the bye-laws mentioned at p. 291 of Mr. Fraser's book—*Local Rules and Orders made under enactments applying to the North-Western Provinces and Oudh*—but the publication of those bye-laws is not traced, and publication is essential to validity under section 24 of Act No. XV of 1873."

The Sessions Judge then referred the case to the High Court.

The Public Prosecutor (*Mr. E. Chamier*) for the Crown.

The Court passed the following order:—

EDGE, C. J. and BLAIR, J.—In our opinion the presumption was that the rules in question had been duly made, published, and sanctioned. A Court ought to presume, until some evidence is given to destroy the presumption, that a Municipality has used

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the regular and lawful procedure, and that the common course of business has been followed in that procedure. It is for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption. The decision of the High Court at Bombay in *The Municipality of Sholapur v. The Sholapur Spinning and Weaving Company* (1) is an authority on this subject. A point of this kind should have been taken by the party concerned if there was anything in it, and should not have been taken of its own motion by a Court sitting in appeal or revision. We see no ground for interfering: the rule will be discharged.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

ALTAZ ALI KHAN AND OTHERS (DEFENDANTS) v. LALTA PRASAD AND OTHERS (PLAINTIFFS).*

Mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Remedy of mortgagee for non-payment of rent—Jurisdiction—Civil and Revenue Courts.

Certain mortgagees, in whose favour a deed of mortgage providing for possession in lieu of interest had been executed, on the day following the execution of the mortgage granted a lease of the mortgaged premises to the mortgagor. The two documents were registered on the same day. The amount of rent reserved by the lease was exactly equivalent to the amount of interest payable under the mortgage, and the mortgage deed contained a covenant that any arrears due by the lessee should be a charge upon the mortgaged property. In the counter-part of the lease also a similar covenant making the mortgaged property security for the rent payable under the lease was inserted.

Held that under the above circumstances the mortgage and the lease formed merely different parts of the same transaction, and that the mortgagees were entitled to seek their remedy for non-payment of the rent reserved in a Civil Court by means of a suit upon the mortgage and were not obliged to have recourse to a suit for rent in a Court of Revenue. *Baghelin v. Mathura Prasad* (2) followed.

* First Appeal No. 84 of 1896, from a decree of Syed Muhammad Jafar Hussain Khan, Subordinate Judge of Bareilly, dated the 11th December, 1895.

(1) I. L. R., 20 Bom., 732.

(2) I. L. R., 4 All., 430.