

REVISIONAL CRIMINAL.

1897
August 2.*Before Mr. Justice Knox*

QUEEN-EMPRESS v. RAM PAL.*

Act No. IX of 1890 (Indian Railways Act) sections 113, 132—Act No. XLV of 1860, sections 40, 64—Criminal Procedure Code, section 33—“Offence”—Travelling on a Railway without a proper ticket—Punishment.

A passenger who travels in a train without having a proper pass or ticket with him has not committed an “offence.” He cannot therefore be legally sentenced to imprisonment in default of payment of the excess charge and fare which may be recovered under the provisions of section 113 cl. (4) of Act No. IX of 1890.

IN this case the Joint Magistrate of Allahabad tried one Ram Pal summarily under section 113 of the Indian Railways Act, 1890, and ordered him under that section to pay a certain excess fare together with a penalty, and further sentenced him to ten days’ simple imprisonment in default of payment of the amount. The Magistrate of the District being of opinion that the sentence of imprisonment in default was illegal, the act of the accused not amounting to an “offence” within the meaning of the Indian Penal Code, referred the case to the High Court for orders under section 438 of the Code of Criminal Procedure.

The following order was passed :—

KNOX, J.—Travelling in a train by a passenger without having a proper ticket with him is not an offence under the Railway Act of 1890. It is true that section 113 together with section 106 and the sections which follow up to as far as section 130 are all placed under a heading of “Other offences.” The classification is unfortunate, for several of these sections cannot possibly relate to an offence at all, and section 132 shows clearly that acts committed under section 113 are not deemed offences within the technical meaning of that word. All the proceedings taken by the Assistant Magistrate are set aside and the record will be returned.

* Criminal Revision, No. 408 of 1897.