

*Before Mr. Justice Knox and Mr. Justice Aikman.*

QUEEN-EMPRESS v. GANGA DIN.\*

1899  
November 15.

*Act No. XI of 1878 (Arms Act), sections 13, 27—Exemptions from provisions of Arms Act—Government Notification No. 518 of the 6th March 1879—Government Notification No. 458 of the 18th March, 1898—“Personal use” of Arms—Arms carried and used by servant of exempted person.*

By a notification under section 27 of the Arms Act (Act No. XI of 1879) issued by the Government of India, certain persons, amongst them Rajas and Members of the Legislative Council of the Lieutenant-Governor of the N.-W. P., were exempted from the operation of sections 13 and 16 of the said Act; but with this proviso, that, “except where otherwise expressly stated, the arms or ammunition carried or possessed by such persons shall be for their own personal use, &c., &c.” *Held* that the terms of this proviso would allow of a person exempted under the notification above alluded to sending a servant armed with a gun into a neighbouring district to shoot birds for him, and that a gun so carried and used by the servant of the exempted person was in the “personal use” of the exempted person within the meaning of the notification.

THE facts of this case were as follows:—

One Ganga Din, Pasi, a servant of Raja Rampal Singh, a Member of the Local Legislative Council, was found within the district of Allahabad carrying a gun and ammunition and using the gun for the purpose of shooting game. On being asked by the Police for his license he replied that he had none, but that he was a servant of Raja Rampal Singh, to whom the gun and ammunition belonged, and was out shooting under his master's orders and for his master's benefit. Ganga Din was put upon his trial before a Magistrate of the first class for an offence under section 19 of the Arms Act, 1878, but was acquitted with reference to the ruling of the High Court in *In re Hawkey* (1). Against this order of acquittal an appeal was filed by the Local Government.

Prior to the year 1898, a notification of the Government of India, (No. 518 of the 6th March 1879) was in force, which, so far as the question raised by the present case is concerned, ran as follows:—“The Governor-General in Council is pleased, under section 27, to exempt from the operation of all prohibitions and direction contained in sections 13, 14, 15 and 16 of

\* Criminal Appeal No. 569 of 1899.

(1) Weekly Notes, 1881, p. 7.

the Indian Arms Act, 1878 \* \* \* \* the under-mentioned persons, namely :—

- (1) All Maharajas, Rajas, &c. &c.
- (2) All Members \* \* \* of the Council of the Lieutenant-Governor of the North-Western Provinces and Oudh.
- (3) All Military and Naval officers, \* \* \* \* subject to the proviso that the arms and ammunition carried or possessed by such persons shall be for their own personal use, &c. &c."

By a notification of the Government of India of the year 1898 (No. 458 of the 18th March 1898) the proviso to clause (3) above quoted was removed from its situation at the end of clause (3) and appended to the first paragraph of section I of the Notification preceding clauses (1), (2), (3) &c.

The ground of appeal in the present case was that by reason of the new Notification the proviso above-mentioned applied not only to Military and Naval officers and others mentioned in clause (3), but to the persons designated in clauses (1) and (2) and that it could not be said that a gun in the possession of a servant in another district from that in which the master ordinarily resided was in the personal use of the master within the meaning and intention of Government Notification.

The Government Advocate, (for whom Mr. W. K. Porter) for the appellants.

Pandit Madan Mohan Malaviya (for whom Pandit Tej Bahadur Sapru) for the respondent.

KNOX and AIKMAN, JJ.—This is an appeal preferred by Government from an original order of acquittal passed by a Magistrate of the first class, Allahabad. One Ganga Din, servant of Raja Rampal Singh, a Member of the Legislative Council, N.-W. P. and Oudh, was found within the district of Allahabad carrying a gun and ammunition, and using the gun for the purpose of shooting game. Upon being asked by the Police to show his license he replied that he had no license, but that he was a servant of Raja Rampal Singh, who had ordered him to shoot game for him (the Raja), and that the gun and ammunition belonged to the aforesaid Raja. The Magistrate, we must take it, has found that

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the pleas raised by Ganga Din are all true, that he is the servant of a master exempted from the operations of sections 13 and 16 of Act No. XI of 1878. Following a precedent of this Court, *In re Hurley*, decided on the 12th January, 1880, and to be found at page 7 of the Weekly Notes for 1881, the Magistrate found the accused not guilty of any offence under section 19 of the Arms Act, and acquitted him. It was contended by the Government in this appeal that the accused is guilty, and that the Magistrate has overlooked the fact that the rules in force, when the ruling cited by him was pronounced, have been amended by the Government Notification No. 458 of the 18th March, 1898. The last named notification is a notification amending a prior notification No. 518 of the 6th March, 1879. So far as this case is concerned, the amendment is one which purports to impose a limit or qualification upon the general exemption which under the notification of 1879 was conferred upon all Rajas. The general exemption thus conferred is now controlled by the proviso that the arms or ammunition carried or possessed by such Rajas shall be, except when otherwise expressly stated, for their own personal use. The learned counsel for the Crown contends that the use by Ganga Din, under the circumstances we have set out above, cannot be deemed the personal use of the Raja. We have considered his argument very carefully in view of the serious results which will follow from so literal an interpretation of these words. We are unable to construe, and have been shown no authority for construing, these words in the strict sense contended for. We are unable to hold, as the learned counsel desires us to, that the meaning is that only the Raja who may be exempted under the above notification, can carry on his own person the arms which he may happen to possess. It was allowed in the argument that personal use might extend to a case where the Raja might be intending to use the arms personally, and such arms were in the meantime being carried for the Raja by some servant or retainer. We cannot believe that the intention of the Government, when they granted the exemption, was that the privilege of the exemption should only extend to personal use by the Raja in the narrow sense contended for. Take, for instance, the case of the Raja's residence being attacked by dacoits; it surely never could be contended

that personal use extended only to the use of arms repelling the attack by the Raja, and that the use by any of the Raja's retainers for such purpose was not equally within the intention and scope of the exemption. If the Government did intend to limit the exemption to the extent now contended for, we should expect words of a far more stringent and limiting nature. In the present case we hold that Ganga Din has established to the satisfaction of the Court that he was using the arms he carried for what may fairly be termed the "personal use" of the Raja. We accordingly dismiss the appeal. Let the record be returned.

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*Appeal dismissed.*

## APPELLATE CIVIL.

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November 21.

*Before Mr Justice Blair and Mr. Justice Burkitt.*

JHAMMAN LAL AND ANOTHER (PLAINTIFF) v. KEWAL RAM  
(DEFENDANT).\*

*Execution of decree—Civil Procedure Code, section 244—Suit brought under circumstances where the proper remedy was by application under section 244—Discretion of Court to treat the plaint as an application under section 244.*

Where certain judgment-debtors, whose property had been sold in execution of a decree, brought a suit to have the sale in execution set aside under circumstances in which their proper remedy in law, if any, was by means of an application under section 244 of the Code of Civil Procedure, it was held that it was not an improper exercise of the discretion of the Court in which such suit was brought to treat the plaint as an application under section 244 of the Code. *Biru Mahata v. Shyuma Churn Khawas* (1) followed. *Mayan Pathubi v. Pakuran* (2) referred to.

THE facts of this case, as stated in the judgment of the lower appellate Court, were as follows:—

"Khushwakt Rai, the father of the plaintiffs, owed a debt to Data Ram and others under a hypothecation bond dated the 11th August, 1875. Data Ram and others brought a suit for the debt, and on the 25th August, 1887, obtained a decree against the plaintiffs and Chunni Ram, their nephew (brother's son). In execution of this decree the hypothecated and unhypothecated

\* Second Appeal No. 419 of 1897 from a decree of Rai Anant Ram, Subordinate Judge of Aligarh, dated the 8th April 1897, reversing the decree of Maulvi Muhammad Azim-ud-din, Munsif of Aligarh, dated the 1st June 1896.

(1) (1895) I. L. R., 22 Cal., 483. (2) (1898) I. L. R., 22 Mad., 347.