

REVISIONAL CRIMINAL.

1911
November, 16.

Before Mr. Justice Tudball.

EMPEROR v. BEHARI LAL AND ANOTHER.*

Act No. XVII of 1878 (Northern India Ferries Act), section 22—Ferry—Illegal toll taken by servants of lessee—Lessee himself not responsible.

Held that the lessees of a ferry could not be held responsible under section 22 of the Northern India Ferries Act, 1878, for the taking of unauthorized tolls by their servants when they were not present and took no part in the extortion. *Queen-Empress v. Tyab Ali* (1) distinguished.

BEHARI LAL and Bashir-ud-din, lessees of a ferry, employed certain persons to attend to the ferry and to collect tolls. These servants in contravention of the law extorted unauthorized and excessive tolls from certain passengers, thereby committing an offence under section 22 of the Northern India Ferries Act, 1878. For this the lessees, who apparently were not present and took no part in the extortion, were prosecuted, convicted and fined. They applied to the Sessions Judge of Farrukhabad in revision, and the Sessions Judge referred the case to the High Court under section 438 of the Code of Criminal Procedure recommending that the convictions and sentences should be set aside.

The applicants were not represented.

The Government Advocate (Mr. A. E. Ryves), for the Crown.

TUDBALL, J.—This is a reference by the Sessions Judge of Farrukhabad. The facts of the case are as follows:—The applicants for revision in the court below, Behari Lal and Bashir-ud-din are the lessees of Singhi Rampur Ferry. As such lessees, they employed certain persons to attend to the ferry and collect the tolls. These servants in contravention of the law extorted unauthorized and excessive tolls from certain passengers, thereby committing an offence under section 22 of the Ferries Act. The lessees, who apparently were not present and took no part in the extortion, have been prosecuted for this offence and have been convicted and fined, apparently on the ground that whatever the servants have done in the course of their employment, that act is the act of the masters. The learned Government Advocate has called my attention to a ruling in

* Criminal Reference No. 598 of 1911.

(1) (1900) I. L. R., 24 Bom., 423.

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Queen-Empress v. Tyab Ali (1). That is a case under the Arms Act. The accused therein was a licensed vendor of arms and ammunitions and he employed a certain man as a salesman. The latter sold certain military ammunition to certain persons without previously ascertaining that such persons were legally authorized to possess the same. It was pointed out in the judgment of that case that the question for decision was whether the accused had or had not "*delivered*" the stores as section 22 of the Indian Arms Act, 1878, makes penal a "*delivery*" of military stores, *et cetera*. The learned Judges who decided the case remarked as follows:—"We fail to see how it can be contended that under these circumstances a delivery of goods by the man in charge would not be a delivery by the owner of the shop. It is not a question of intention, *mens rea*, or of knowledge; it is the delivery which the Act makes penal, and the delivery by the manager is clearly in this case a delivery by the licensee." The rule laid down in *Attorney-General v. Siddon* runs as follows:—"Whatever a servant does in the course of his employment with which he is entrusted and as a part of it is the master's act." The offence in the present case is a very different one. It consists of extortion of unauthorized tolls from passengers. The servants in doing this act did something which was outside the scope of their employment. In this very offence there is decidedly a *mens rea*, a criminal intent. If it were an act done by the servants within the scope of their employment, then the conviction of the master would in the present case be a good one. But in my opinion the principle laid down in *Attorney-General v. Siddon* does not apply to the present offence. The conviction of the lessees is bad in law. I accept the reference and set aside the conviction and sentence. The fine, if paid, must be refunded.

Conviction set aside.

(1) (1900) I. L. R., 24 Bom., 432.