

they would have utterly refused to recognize him and would have called Rikhi Lal to account for such an irregularity. Then further, my attention was called to what was argued, how far the sum of Rs. 5-10-0 taken under the circumstances stated would come at all under the crime of embezzlement. It was not property of the East Indian Railway Company; it was repudiated as not being their property, and whatever may have been the offence committed in respect of that Rs. 5-10-0 it was not the offence of embezzlement. The joint trial under the circumstances was illegal. I quash it and set aside the convictions and sentences. Karim-ud-din must be released.

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Conviction set aside.

Before Mr. Justice Piggott.

EMPEROR v. AMIR HASAN KHAN.*

Act (Local) No. II of 1916 (United Provinces Municipalities Act), section 307—Disobedience to notices lawfully issued by a Municipal Board—Recurring fine—Procedure necessary to imposition of daily fine.

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A Magistrate convicting an accused person of an offence under section 307(b) of the United Provinces Municipalities Act, 1916, cannot, by the same order, further sentence him to a recurring fine in the event of non-compliance with the order of the Board.

The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the Municipal Board may consider necessary, by the institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly, the appropriate amount of daily fine to be imposed under the circumstances of the case, subject to the maximum prescribed.

THIS was a reference made by the Sessions Judge of Cawnpore.

The facts of the case are fully set forth in the judgment of the Court.

Babu *Sital Prasad Ghosh*, for the applicant.

The Assistant Government Advocate (*Mr. R. Malcomson*), for the Crown.

PIGGOTT, J.—The learned Sessions Judge of Cawnpore has referred to this Court in revision two orders passed by a Magistrate

* Criminal Reference No. 186 of 1918.

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of the first class subordinate to him in connection with certain prolonged proceedings which have been going on between the Municipal Board of Fatehpur and a gentleman of the name of Munshi Amir Hasan Khan, who, I understand, is a member of the legal profession for something more than one and a half years past. On the 8th of January, 1917, it was proved against the said Amir Hasan Khan that he had failed to comply with a notice directing him to execute a certain work in respect of certain property, namely, a drain, about which there was some contention between him and the Municipal Board. Under section 307, clause (b), of the United Provinces Municipalities Act, which came into force on the 1st of July, 1916, Munshi Amir Hasan Khan was liable to a fine which might extend to Rs. 500, and in case of a continuing breach, he was liable to a further fine which might extend to Rs. 5 for every day after the date of the first conviction during which it might be proved against him that he had persisted in the offence. The trying Magistrate imposed the almost nominal fine of Rs. 5; but instead of contenting himself with warning the accused of the further liability which would attach to him from the date of this conviction, he purported by this very order of the 8th of January, 1917, to direct Munshi Amir Hasan Khan to pay a further fine of Re. 1 per diem from the 9th of January, 1917, until the notice issued by the Municipal Board in respect of the drain in question should be satisfactorily complied with. As the learned Sessions Judge has pointed out, the latter portion of this order is illegal. The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the Municipal Board may consider necessary, by institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly, the appropriate amount of the daily fine to be imposed under the circumstances of the case, subject to the prescribed maximum of Rs. 5 per

diem. To begin with, therefore, I must accept the reference of the learned Sessions Judge with regard to the order of the 8th of January, 1917. The following words will be deleted from the said order, namely, "and also from to-morrow to a further fine of Re. 1 per diem till the arch in question is removed."

The next question which I have to consider is an order passed by the same Magistrate on the 23rd of November, 1917. The matter was laid before this Magistrate in the form of a simple application asking him to enforce that portion of the order of the 8th of January, 1917, which I have felt it my duty to set aside. The Magistrate has as a matter of fact inquired into one of the two questions which I have suggested above as essential in the event of a further prosecution in respect of a continuing breach. He has considered carefully how many days had elapsed since the order of the 8th of January, 1917, during which Munshi Amir Hasan Khan was proved to have persisted in his disobedience to the order of the Municipal Board. He has not, however, made any attempt to form an independent opinion as to the gravity of the offence committed, as to the excuses which might be offered (and which apparently were offered) for the conduct of the accused, and as to the amount of the daily fine the imposition of which would satisfy the ends of justice. I am gratified to find, and it is one of the few circumstances in connection with my examination of this record which is calculated to afford any satisfaction, that the Magistrate has come to the conclusion that compliance has now been made with the notice issued by the Municipal Board: he has held that such compliance was made, according to one part of his order, on the 7th of September, 1917, but according to another part of the same order, on the 17th of September, 1917. Further, I find that Munshi Amir Hasan Khan has admitted liability to a certain extent. He has made practical acknowledgment of his error by paying a sum of Rs. 139 in the way of a fine for his continuing breach of the notice issued to him. It is quite possible that, if the Magistrate who inquired into this matter had felt himself at liberty to exercise his discretion in the same, he might have fixed the amount of the daily fine at a sum which would have made this payment of Rs. 139 sufficient to clear the accused person from liability. While, therefore, I should have been

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reluctant to interfere upon a merely technical ground with the proceedings resulting in the order of the 23rd of November, 1917, had I thought that everything which an accused person in a proceeding taken in respect of a continuing breach under section 307, clause (b), of the Local Municipalities Act, was entitled to have inquired into and considered had been as a matter of fact so inquired into and taken into consideration by the Magistrate, I think that this order of the 23rd of November, 1917 is open to objection in substance as well as in form. I set it aside accordingly. The sum of Rs. 102 required under the terms of this order to be paid by the accused Munshi Amir Hasan Khan, if paid, will be refunded.

It will be observed that, while accepting the rest of the reference made by the learned Sessions Judge, I have passed no order directing any refund in respect of the sum of Rs. 139 paid by Munshi Amir Hasan Khan prior to the order of the 23rd of November, 1917. No doubt that payment was actually made in compliance with that portion of the order of the 8th of January, 1917, which I have set aside as inoperative; but a liability to a fine for a continuing breach attached to Munshi Amir Hasan Khan under the provisions of the statute itself, independently altogether of the above order. He has virtually assessed his own liability at Rs. 139, and I can see no reason why this should not be accepted. At any rate I pass no order of re-payment in respect of this sum of Rs. 139. Let the record be returned.

Record returned.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

CHABRAJ SINGH AND OTHERS (PLAINTIFFS) v. MAHESH NARAIN
SINGH AND OTHERS (DEFENDANTS).*

Pre-emption—Purchases made by vendee on different dates—Suit to pre-empt first sale only—Vendee claiming to be co-sharer in virtue of second purchase—Suit not maintainable.

The defendant purchased shares in a village on two different dates. The plaintiff sued to pre-empt the earlier sale, but no suit was brought

* Second Appeal No. 1629 of 1917, from a decree of Shekhar Nath Banerji, Subordinate Judge of Jaunpur, dated the 31st of July, 1917, confirming a decree of the Munsif of Jaunpur, dated the 28th of April, 1916.

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