

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR v. BRIJBASI LAL.*

1920
February, 6.

Act No. IX of 1890 (Indian Railways Act), section 109—Power of railway administration to reserve accommodation—Legality of reservation in favour of a particular class of passengers.

Held on a construction of section 109 of the Indian Railways Act, 1890, that the section was wide enough to authorize a railway administration to reserve accommodation for any particular class of passenger by the name of the class. A person entering a carriage so reserved might be required to leave it, and if he refused, might be prosecuted under the provisions of the section.

Sections 42 and 43 of the Act have no application to the case of the reservation of a particular passenger carriage for the use of any particular class of the travelling public.

THE facts of this case were, briefly, as follows :—

One Brijbasi Lal, travelling on the Great Indian Peninsula Railway, wilfully entered a third class compartment which was reserved by the railway authorities for Europeans and Anglo-Indians only. The passengers protested, and, on refusing to leave the compartment, Brijbasi Lal was removed with the help of the police and prosecuted for an offence under section 109 of the Railways Act, and convicted. He applied in revision to the High Court.

Munshi Iswar Saran (for Munshi Bhagwati Shankar), for the applicant :—

Section 109 of the Indian Railways Act (Act IX of 1890) is not applicable. It contemplates two kinds of cases :—

(i) When a railway compartment contains the maximum number of passengers exhibited therein ; or

(ii) When a railway compartment has been reserved by a railway administration for the use of 'another passenger.'

The present case certainly does not come under the first category. The second category contemplates such cases where the compartment has been reserved for the use of a passenger who has entered into a special contract with the Railway Company, that is to say, it refers to a definite and particular individual and not to a vague body of individuals who may or may not

* Criminal Revision No. 787 of 1919, from an order of Mahadeo Prasad, Magistrate, first class, of Muttra, dated the 15th of September, 1919.

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come into existence. The railway administration has no general power of reservation. It can do so only in those cases for which a provision has been made in the Act. Section 64 of the Act is in my favour. There is no specific section in the Act which gives a general power of reservation to the Company. Certain sections speak of reservation in particular cases. This means that power of reservation is given in those cases and in no others. Moreover, if by the words "another passenger" the Legislature had intended to include "a class of persons" it would have clearly said so. The word 'class' has been used in section 43 and it could have been used in section 109 as well. The case of accommodation reserved for marriage parties or Theatrical Companies of which the members are not ascertained is not necessarily destructive of my argument, because in those cases some person representing the marriage party or the manager of the Theatrical Company enters into an agreement with the Company for that reservation. In the present case there is no such agreement. Moreover, the word used in section 109 is 'passenger' and not 'person.' A person does not become a passenger till he buys a ticket, that is to say, enters into an agreement with the Railway company. The exclusive use of a compartment by any person or class of persons is not favoured by the Act except where there is a special provision for it in the Act or a byelaw has been framed for it under section 47 of the Act.

The Assistant Government Advocate (Mr. *R. Malcomson*) for the Crown, submitted that there was no specific section in the Act which gave a railway administration a general power of reservation. Railway administrations have got an inherent power of reservation. Section 23 of the General Clauses Act (Act X of 1897) says that "singular" includes "plural". Section 47 provides for reservation in the case of persons suffering from infectious diseases, section 57 for females; section 109 provides punishment for entering a reserved compartment. This clearly means that the power of a Railway Company is in no way limited by the Statute. When a section prescribes a penalty, it authorizes the act for the breach of which the penalty is provided. Section 109 is not complete by itself.

Munshi *Iswar Saran*, in reply, submitted that if the word "passenger" in section 109 includes a class of individuals, the use of the word passenger in sub-section (2) of section 109 would become entirely inoperative, as the same meaning has to be attached to the same word wherever used in the same Act. Under section 42 reservation in favour of one class and no reservation in favour of another amounts to undue preference.

WALSH, J.:—I referred this question, which came before me in revision, because it seemed to me desirable that it should be decided by a Bench of two Judges which might be considered to dispose of the question once and for all so far as this Court was concerned. It seemed to me a question of sufficient public importance and one which might give rise to difficulties of interpretation. The facts are that on the 29th of July of last year, one Brijbasi Lal, travelling on the G. I. P. Railway, wilfully entered a third class compartment in the up express, which compartment had been specially reserved by the railway authorities for Europeans and Anglo-Indians only. There were passengers in the compartment who protested. The Assistant Station Master was referred to. Eventually the aid of the police was called in and Brijbasi Lal was removed. No question as to the legality of the removal has been raised, but the railway authorities prosecuted the accused for an offence under section 109 of the Railways Act, and he was convicted and fined Rs. 10, or to undergo one week's simple imprisonment in default. Now the sub-section of section 109 under which the charge was made and the penalty inflicted, or rather the material parts of it, run as follows:—"If a passenger having entered a compartment which is reserved by a railway administration for the use of another passenger refuses to leave when required to do so by any railway servant he shall be punished with fine."

The question, therefore, is whether section 109 provides a penalty for entering a compartment reserved not merely for the use of a particular person, or particular named individuals, but for a particular class of persons.

It is not contended that it does not provide a penalty for the breach of a reservation in favour of a particular individual, or particular named individuals. The power of the railway

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authorities to reserve compartments is not and cannot be seriously disputed. Section 109 clearly confers it by implication. Section 64 makes it even compulsory up to a certain point, in the case of females for a journey of a specified length and other portions of the Act make the power perfectly clear.

In addition to these sections, our attention has been drawn to a provision in Chapter VI of the Act, dealing with the general working of railways, which enables every railway company, and in the case of a railway administered by the Government, an officer appointed for that purpose, to make general rules, consistent with the Act, for, amongst other purposes, providing for the accommodation and convenience of passengers. A rule under this section is not to take effect until it has received the sanction of the Governor General in Council and been published in the *Gazette of India*. And, although no rules in the case of this particular railway have been put in evidence and therefore the question does not arise for decision by us, it cannot be doubted that a rule lawfully made under that section providing for special accommodation or for the special convenience of a particular individual or a particular class of individuals and for the general convenience of the travelling public, would be within the four corners of the Act.

The main argument against this conviction which has been pressed upon us is that section 109 is limited to the breach of a reservation in favour of a particular individual or particular named individuals. It is faintly suggested, and appears to have been argued before the Magistrate, that in any case a reservation is a "preference" forbidden by sections 42 and 43 of the Act. In our view this contention is hardly worthy of notice. The sections referred to belong to a chapter of the Act which deals with goods traffic and rates charged upon traders, and a special tribunal is appointed for the decision of questions thereunder. None of the ordinary criminal or civil tribunals have any jurisdiction to deal with questions of preference under that portion of Act. "Preference" is a well-known term used in this connection to denote preferential rates or conditions of transit granted to special individuals or particular classes of traders. In our view the contention is untenable

and inconsistent with the admitted power of reservation contained in the Act.

The question therefore is—'Is section 109 limited as suggested by the defendant?' Two difficulties are suggested in the way of holding to the contrary. In the first place, by sub-section (2) of section 109 resistance is by implication allowed in the case of an entry by another passenger, where it is made into a compartment reserved for the use of the person resisting. And the question is asked with some force, can you say that one person occupying quite haphazard a place in a compartment which might contain, but which does not, five or six other Anglo-Indians, for example, together with himself, is a person for whose use the compartment has been reserved? In one sense he is: In another sense he is not. He has not obtained any special reservation from the Railway Company in favour of himself as an individual, but he does occupy the compartment which by the Railway Company's voluntary act, has been reserved for himself amongst others belonging to the description contained in the reservation. But two illustrations have been given in the course of the argument which seem to me conclusive. Take the case of a compartment labelled as reserved for the use of the Second Gurkhas and a civilian entering therein, or a compartment labelled as reserved for the use of members of a touring theatrical company and a member of the ordinary public entering therein. Could it really be argued that in either of those cases the person so entering was not entering a compartment which had been "reserved for the use of another passenger," the words "another passenger" being converted in order to enforce the contention by virtue of section 13 of the General Clauses Act into the words "other passengers."

The second difficulty is this. It was really put by my brother in the course of the argument. Section 119 undoubtedly makes special provision in the case of a person committing a breach of the reservation for the protection of females, and the argument is that if section 109 is to be interpreted in the way suggested by the railway authorities, provision had already been made in the Act for such a case, and section 119 would be superfluous. This undoubtedly is a formidable argument. I think the answer

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to it is this, that section 119 is super-imposed in the case of females upon the provision already made by section 109. It was considered so important to provide, not only a penalty, but an instant preventive measure in the case of a person entering a carriage for females, that not only is an additional penalty provided in the amount of the fine and in the forfeiture of the fare and of the ticket (which means to say that the man is prevented from travelling by that train if the Station Master does not choose to issue another ticket to him) but forcible removal by a railway servant from the railway altogether may be used, a provision which is absent from section 109. I think both the difficulties I have mentioned are satisfactorily answered. On the other hand, it would be strange indeed if, while there was a general power of reservation vested in a railway administration, an obviously necessary power and one which would be almost useless unless elastic, the Legislature should have provided a penalty for a breach of such a reservation in the case of a particular individual or named individuals, a penalty for a breach of the reservation in the case of females, and no penalty for a breach of any other reservation at all. I think the language of section 109 is apt to cover the case of a reservation in favour of any number of passengers of a particular class or classes and that a penalty is provided for the case of anybody who seeks to use it other than the particular passenger or kind of passengers for whom it has been reserved.

I would merely observe for my own part that in my opinion this question is not a race question at all. Nor is it a question even in the colloquial sense of the word of "preference" or "oppression." It is merely a case of providing for the general convenience of the travelling public which has been left by the Legislature in India, as it has always been left by the Legislature in England, from which this legislation is very largely adopted, to the discretion of experienced railway administrators. It operates, as I have pointed out in the course of my judgment, upon Europeans as between themselves. It operates also upon Indians as between themselves. And unless some penalty existed, provision for such events as special marriage parties, or military or theatrical parties or large bodies of persons travelling

on occasions for special objects, could not be satisfactorily made. In my view the conviction was right and no ground for interference has been shown.

PIGGOTT, J.:—Although I was considerably impressed at one stage of the argument by the case in favour of the applicant, as based upon the wording of section 109 of the Indian Railways Act (No. IX of 1890), I have come to the conclusion that the conviction on the facts found and admitted before us is valid in law. The point of the offence of which the applicant has been found guilty lies in his refusal to leave a particular compartment when required to do so by a railway servant. That compartment had been reserved by the railway administration for the use of passengers other than the applicant, and this is in my opinion sufficient to bring the case within the purview of section 109(1). As regards the argument addressed to us based upon the wording of section 42(2) of the same Act, I think it is to be noted that this section occurs in a chapter specially devoted to the question of the duties imposed upon railway companies and the nature of the control to be exercised over such companies by the Government of the country. I have no doubt that in framing the regulation which authorizes the reservation of one third-class compartment of a particular train for the use of European and Anglo-Indian passengers only the railway company believed themselves to be providing for the accommodation and convenience of their passengers generally, taking a broad view of the practical effect of such a reservation. If any citizen of the country finds matter for objection in the rule under which such a reservation is made, his remedy seems to lie through the authority of the Governor General in Council and the Railway Commission, referred to in Chapter V of the Act, and he has certainly not been left to work out a remedy for himself by a deliberate breach of the rule such as to bring his action within the scope of section 109 (1) of the Act. For these reasons I concur in the order dismissing the application.

BY THE COURT.—The application is dismissed.

Application dismissed.

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