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it very clear that I do not agree with this view. Section 8 of the Reformatory Schools Act does not enact that a Magistrate cannot try a juvenile offender. It says that certain Magistrates who are not specially empowered may not exercise the power of sending a juvenile offender to a Reformatory School. Then reference is made to section 29B of the Code of Criminal Procedure. This section, in my opinion, was not intended to take away the jurisdiction already conferred on Magistrates under section 28 and the eighth column of the second schedule of the Code of Criminal Procedure. It was intended to extend to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the court of session.

The second point argued was that the accused were not examined after the evidence for the prosecution was concluded. I do not know on what this allegation is based. The trial was a summary one and the usual form was filled in and it would appear from that form that the accused made statements which appear to be statements made after the evidence had been recorded against the accused. Even if the allegation is true, however, there is no reason for interference in revision. The applicants made their statements to the court and they produced evidence in defence and were obviously not prejudiced in any way. There is no force in this application and I reject it.

*Before Mr. Justice Allsop and Mr. Justice Ganga Nath*

EMPEROR v. VISHWANATH\*

1936  
 July, 17

*Electricity Act (IX of 1910), sections 39, 50—"Theft" of electricity—Offence against Electricity Act—Cognizance—Prosecution "at the instance of" the Electric Company—Prosecution instituted by the police—Jurisdiction.*

It is section 39 of the Electricity Act which makes the dishonest abstraction or consumption of electricity an offence of "theft", punishable under section 379 of the Indian Penal

\*Criminal Revision No. 67 of 1936, from an order of B. R. James, Additional Sessions Judge of Aligarh, dated the 17th of January, 1936.

Code. Theft of electricity, therefore, is an offence against the Electricity Act, and, according to section 50 of the Act, there can be no prosecution except at the instance of the persons mentioned in the section.

The phrase "at the instance of" in section 50 means "at the solicitation of" or "at the request of", and is much wider than "on the complaint of". Where the person aggrieved, namely, the Electric Company, reported the theft to the police and asked the police to investigate, intending that a prosecution should follow according to the result of the investigation, and then the police instituted the prosecution, which was assisted by further reports and evidence given by the Company, it was held that the prosecution was "at the instance of" the person aggrieved within the meaning of section 50, although the Electric Company had not actually made the complaint on which the Magistrate took cognizance of the offence.

Mr. K. D. Malaviya, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

ALLSOP and GANGA NATH, JJ.:—The applicant in this case was sentenced to a fine of Rs.100 under section 379 of the Indian Penal Code read with section 39 of the Indian Electricity Act for the theft of electricity. It was found by the Magistrate that he had interfered with the electric meter and consequently had used electricity with the intention of not paying for it. The facts certainly constitute an offence punishable under the sections. Whether the facts occurred was a question to be decided by the courts below and both the Magistrate and the Sessions Judge in appeal have found against the applicant. The point urged before us is a legal one. It is said that the Magistrate should not have taken cognizance of the case because under section 50 of the Indian Electricity Act no prosecution shall be instituted against any person for an offence against the Act, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same. In this case it was the police who instituted the prosecution. There are really two questions. One is whether an offence of this nature

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can be described as an offence against the Electricity Act and the second is what meaning is to be given to the phrase "at the instance of". The learned Sessions Judge was of opinion that the offence was not an offence against the Act because it was one punishable under the provisions of section 379 of the Indian Penal Code. We think that this would not have been an offence under section 379 of the Indian Penal Code if it had not been for the provisions of section 39 of the Indian Electricity Act. It was therefore an offence which was created by that section and we are of opinion that the legislature intended section 50 to apply to an offence of this nature. We therefore hold that there could be no prosecution except at the instance of the person aggrieved, that is, of the Electric Company.

Upon the other point we think that the phrase "at the instance of" has purposely been introduced so as to make the provision a very general one. If it had been the intention of the legislature that no case should be instituted in court except by the Electric Company itself or the other persons mentioned in section 50 of the Act the legislature would, we think, have used the ordinary phrase "on the complaint of" and the section would have been on the lines that no Magistrate should take cognizance of any offence referred to in section 50 of the Act, except upon the complaint of certain persons. The phrase "at the instance of" means merely at the solicitation of or at the request of, and we think that the legislature meant only that a prosecution should not be instituted by some independent busy-body who had nothing to do with the matter. In this case the police instituted the prosecution in form, but there can be no doubt that the Electric Company desired that the applicant should be prosecuted for the offence. The officers of the Company discovered the theft and they reported it to the police and asked the police to make an investigation. We feel that there can be no real doubt that they intended that a prosecution should follow according to

the result of the investigation. They made further reports to assist the police and their officers came into court and gave evidence. We are satisfied that the prosecution was really at the instance of the Electric Company, although they may not have made the immediate complaint on which the Magistrate took cognizance of the offence. We consider that there is no ground for interference in revision. We reject the application.

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 APPELLATE CIVIL
 

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*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
 and Mr. Justice Bennet*

MAKUNDI LAL AND OTHERS (PLAINTIFFS) v. HASHMAT-  
 UN-NISSA AND OTHERS (DEFENDANTS)\*

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 1936  
 August, 7
 

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*Civil Procedure Code, section 109(c)—Appeal to Privy Council—Two connected appeals by different defendants in same suit—Appeals allowed and suit dismissed on a ground common to all defendants—Valuation test for appeal to Privy Council satisfied by one case, but not by the second—"Otherwise fit" case for appeal—Civil Procedure Code, order XLV, rule 4—Consolidation of appeals to Privy Council—Appeals arising out of same suit—Consolidation for purposes of security for costs—Jurisdiction—Inherent power.*

Two sets of defendants appealed separately to the High Court against the decree in one suit, and the appeals were connected and heard together and disposed of practically by one judgment. The appeals were decreed, and the suit dismissed, on one ground common to all the defendants. The plaintiff applied for leave to appeal to the Privy Council in both appeals. The valuation of one appeal was above Rs.10,000, so that the appeal lay to the Privy Council as of right, but the valuation of the other was less than Rs.10,000:

*Held* that in the circumstances it was a fit case for granting a certificate of fitness for appeal to the Privy Council under section 109(c) of the Civil Procedure Code.

*Held*, also, that the High Court had no power to consolidate the two appeals to the Privy Council, either for the purpose of pecuniary valuation or for the purposes of security for costs

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\*Application No. 48 of 1932, for leave to appeal to His Majesty in Council.