

## CRIMINAL REFERENCE.

*Before Mr. Justice Pigot and Mr. Justice Hill.*

CORPORATION OF CALCUTTA *v.* JADUB DOOLEY.\*

1892

December 12.

*The Calcutta Municipal Consolidation Act (Bengal Act II of 1888), ss. 412, 417, 419—Bye-laws (C) 4, 6, 7—Permit for removal of offensive matter or rubbish—Failure to take out permit—Continuation of offence.*

Where a milkman who had been convicted for not taking out before the 1st December 1891 a half-yearly permit for the half-year ending the 31st March 1892, in accordance with bye-laws (C) 4, 6, made by the Municipal Commissioners of Calcutta, under the provisions of section 412 of Bengal Act II of 1888, and was charged with continuing his offence by failing for the space of seven days subsequent to the said conviction to take out the permit whilst still carrying on his business of a milkman, *Held*, that the offence of which he had been convicted of not taking out a permit on or before 1st December 1891, which was complete when that day had passed, could not be continued by his omission to take out a permit.

*Quære.*—Whether it is competent for the Municipal Commissioners, by the bye-laws made under section 412, to create the duty or obligation of taking out a permit, and whether under section 417 disobedience to such bye-laws constitutes a punishable offence.

THIS was a reference made under section 432 of the Code of Criminal Procedure by the Chief Presidency Magistrate of Calcutta.

The defendant, a milkman, having been convicted under section 417 of the Calcutta Municipal Consolidation Act, 1888, for not taking out before 1st December 1891 a half-yearly permit for the half-year ending 31st March 1892, was again charged with continuing his offence by failing for the period of seven days subsequent to the said conviction to take out such permit. The material portion of the letter of reference was in the following terms:—

“What I am called upon to decide in this case is whether the failure on the part of the defendant to take out a permit for the half-year ending 31st March 1892 is a continuation of the offence he was convicted of on the 22nd March last.

“I am inclined to think that not taking out a permit for a particular half-year subsequent to the date of a conviction for the same half-year is not

Criminal Reference No. 2 of 1892, made by T. A. Pearson Esq. Chief Presidency Magistrate, Calcutta, dated the 16th August 1892.

1892  
 CORPORATION OF  
 CALCUTTA  
 v.  
 JADUB  
 DOOLEY.

a continuation of that offence, inasmuch as that conviction and fine cover the offence for the entire half-year, the offence being a single act of not taking out a permit for the removal of the offensive matters during the whole half-year before the 1st December in that half-year. It must be borne in mind that it is incumbent on the defendant to take out the permit once for all before the 1st December 1891, for the half-year ending 31st March 1892, and the offence was complete on the expiration of the 30th November and was neither continued nor repeated, and could not be so within the half-year to which the conviction applied.

“By section 419 of Bengal Act II of 1888, it is provided that failure to take out a license under the Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out. The introduction of the word ‘permit’ in the bye-law leads me to think that a distinction has been drawn between a license and a permit, and the omission in the bye-law to make a provision similar to that applicable to a license emphasises my views.

“As, however, the question has been raised before me by the pleader for the Municipal Corporation that a defendant can be prosecuted repeatedly, and even daily, and convicted over and over again for not taking out a permit after conviction therefor, on the ground that the conviction applied only to the portion of the half-year which preceded it, and that a subsequent prosecution and conviction would apply to the period intervening between the earlier and later convictions, it seems to me that the point is of some importance as well as to the Corporation as to the class of tradesmen affected by it. I beg under section 432 of the Code of Criminal Procedure to submit the following points for the opinion of the High Court:—

1. Whether a failure to take out a permit as and when directed by section C, sub-sections 4, 6 and 7 of the bye-laws, made and confirmed under section 412 of Bengal Act II of 1888, constitutes a complete offence covering the entire half-year in respect of which such failure was committed.

2. Whether, after conviction for failure to take out such permit, a person can again be prosecuted or convicted for omitting to take out a permit for and during the same half-year in respect of which he has been convicted.”

No one appeared on the reference.

The order of the Court (PIGOT and HILL, JJ.) was as follows:—

The defendant in this case having been convicted on March 22nd, 1892, for not taking out before 1st December 1891 a half-yearly permit in accordance with bye-laws (C) 4, 6, made under the provisions of section 412 of Bengal Act II of 1888, by the Municipal Commissioners of Calcutta (and which are in force), was charged with continuing his offence by failing for the space of seven days subsequent to the said conviction to take out the permit

for the half-year ending 31st March 1892, whilst still carrying on his business as a milkman.

1892

CORPORATION OF  
CALCUTTA  
".  
JADUR  
DOOLEY.

The questions referred by the Magistrate are as follows:—

1. "Whether a failure to take out a permit as and when directed by section C, sub-sections 4, 6 and 7 of the bye-laws, made and confirmed under section 412 of Bengal Act II of 1888, constitutes a complete offence covering the entire half-year in respect of which such failure was committed."

2. "Whether, after conviction for failure to take out such permit, a person can again be prosecuted or convicted for omitting to take out a permit for and during the same half-year in respect of which he has been convicted."

The bye-laws (C) 4, 6, under which the taking out the permit is prescribed, are as follows:—

"4. Every person who shall exercise in Calcutta any of the professions, trades or callings prescribed in the following schedule (Rule 7) shall take out a half-yearly permit and pay to the Commissioners such sum as may be due by him according to the rates mentioned in the said schedule for the removal and carrying away of offensive matter or rubbish resulting from such business, trade, profession or calling.

"6. Such permit shall be for a period of six months commencing in April and October in each year, and shall be taken out not later than the 1st of June and the 1st of December in that year."

Section 417 of the Act provides that—

"Whoever infringes any bye-law made and confirmed, or any rule made and sanctioned under this Act, shall be liable to a fine not exceeding Rs. 20 and to a further fine not exceeding Rs. 10 for each day during which the offence is continued after he has been convicted of such offence."

The question is whether this section applies to the present case.

It is to be observed that the bye-laws (C) 4, 6, prescribe the taking out of a permit; they do not prohibit the carrying on of the trade without such permit. Whether such a bye-law could be made under the Act by the Commissioners need not be considered here.

1892

CORPORATION OF  
CALCUTTA  
v.  
JADUB  
DOOLEY.

The violation of the bye-laws consists in the not taking out the permit on or before the 1st December 1891 whilst still carrying on his business as a milkman. For this offence of not taking out a permit for the half-year the defendant has been already convicted, and we agree with the Magistrate in thinking, as we gather that he does, that the offence of not taking out a permit on or before December 1st, 1891, which was complete when that day had passed and for which he has been so punished, cannot be continued by his omission to take out a permit.

We do not think that the first question put by the Magistrate need be answered; it is not so expressed as to admit of a satisfactory answer. The second question put disposes of such matter as arises in this case.

We answer the second question in the negative.

We have answered the second question submitted to us upon the assumption made in the reference to us that it was competent for the Municipal Commissioners by the bye-laws made under section 412 to create the duty or obligation of taking out a permit, and that under section 417 disobedience to such bye-law would constitute a punishable offence. We regret that Counsel did not appear for the defendant, so that we had not the advantage of hearing arguments in the case; we shall therefore limit ourselves to intimating the doubt which seems to us to exist on this point.

Under section 412 (C) the Commissioners may make bye-laws with regard to—

“(C) the deposit, whether in the public streets or otherwise, of rubbish and offensive matter, the removing and carrying away of the same and charging the person responsible for such deposit with the expenses of removing it.”

It may be assumed that under the provision a bye-law making due regulations with respect to the recovery of expenses incurred in removing any rubbish and offensive matter deposited by the defendant in the carrying on of his trade might well be made.

There is a long way, however, between a bye-law such as this and one which creates the obligation of taking out a permit, and paying a sum fixed beforehand, on taking out the permit. The Act does not itself provide for this, and it is, we think, open to

serious question whether the not taking out such a permit is within section 417 at all.

1892

As to section 419, it is enough to say that we are clearly of opinion that the permit required by these bye-laws is not such a license as is contemplated by that section.

CORPORATION OF  
CALCUTTA  
v.  
JADUB  
DOOLRY.

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## APPELLATE CIVIL.

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*Before Mr. Justice Pigot and Mr. Justice Banerjee.*

KAMESHAR PRASAD (PLAINTIFF) v. BHIKHAN NARAIN  
SINGH AND ANOTHER (DEFENDANTS).\*

1893  
March 8.

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BHIKHAN NARAIN SINGH AND ANOTHER (DEFENDANTS) v.  
KAMESHAR PRASAD (PLAINTIFF).\*

*Chota Nagpur Encumbered Estates Acts (VI of 1876), ss. 3-7 and (V of 1884)  
—Deo Estate Act (IX of 1886), s. 1, ol. 4—“Debts and liabilities,”  
meaning of—Process including summons—Marginal notes to Acts—  
Interpretation of Acts.*

The Chota Nagpur Encumbered Estates Act (VI of 1876), as amended by Act V of 1884 (which by Act IX of 1886 is applied to the Deo estate in the district of Gaya subject to certain modifications), is intended to afford relief to holders of land in Chota Nagpur (and in the Deo estate) in respect of all debts and liabilities to which they were (immediately before the publication of the vesting order) subject, or with which their property was (at the time of the publication of the vesting order) charged, other than debts due or liabilities incurred to Government.

The effect of the second portion of section 3 is to bar all suits instituted after the vesting order is made and whilst it is in force.

Section 7 of the Act applies *mutatis mutandis* to create a bar in respect of the debts dealt within in section 1, clause 4 of the Deo Estates Act, 1886.

The result of sections 3 and 7 of Act VI of 1876, when read with regard to the whole scope of the Act, is that suits or proceedings to enforce such debts or liabilities as are contemplated by the Act, that is, other than debts due or liabilities incurred to Government, are, if pending

\* Appeals from Original Decree Nos. 244 and 300 of 1891, against the decision of Baboo Sham Chand Dhur, Subordinate Judge of Gaya, dated the 9th June 1891.