CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

THE QUEEN-EMPRESS *v.* KISHUNWA.*

1893 *January* 24.

Arms Act (XI of 1878,) *ss.* 13, 19—*Going armed without license—License to carry arms, production of—Retainer carrying arms.*

A servant of a person who possessed a license for two swords and a gun, which license also covered one retainer, was stopped by the police on the road while carrying a sword. On being asked to produce his license he was unable to do so, it not then being with him. No opportunity was afforded him of producing the license, but he was charged with an offence under section 19 of Act XI of 1878, and on these materials convicted and fined.

Held, that the conviction was wrong. The law does not require a licensee always to have his license with him. If under such circumstances on being required to produced it, he is prepared to do so on a reasonable opportunity being given him to get it, and it exists, he should not be prosecuted; if prosecuted, the production of the license at the trial is a sufficient answer to the charge of infringing the Arms' Act.

Held further, that a license granted to a person to carry arms and including a retainer, authorises any retainer to carry the arms specified with the permission of his master, and does not restrict him merely to carry them while in the actual presence of his master.

THE accused, a servant of one Waris Ali, the manager of the Raja of Makandpore, was charged with an offence under section 219 of Act XI of 1878. It appeared that he was stopped by the police while proceeding along the road carrying a sword, and when asked to produce the license failed to do so. It further appeared that the accused's master had a license which covered one retainer and was a license for two swords and one gun. Three witnesses were called for the prosecution, who merely deposed to the accused being caught with the sword going along the road, and in his examination by the Deputy Magistrate, the

* Criminal Reference No. 4 of 1893, made by A. C. Brett, Esq., Sessions Judge of Gaya, dated the 6th of January 1893, against the order passed by Baboo R. A. N. Singh, Deputy Magistrate of Gaya, dated the 8th of October 1892.

accused stated that the license was not with him at the time, but with another man who was left behind.

The Deputy Magistrate recorded the following judgment:—

"The accused admits not having shown the license of his master to the police when he was caught; his explanation is that the license was with another servant who was behind him. As a retainer he could not go armed without his master. Technically he is guilty, as he did not show his license to the police when he was caught; in fact he had no license at the time. The Court finds the accused guilty of going armed without a license, punishable under section 19, Act XI of 1878, and sentences him to pay a fine of rupee one only."

The Sessions Judge referred the case to the High Court with the following report:—

"A license was granted to one Syed Waris Ali, of which I extract the following relevant entries:—

'License to possess arms and to go armed, &c., granted to Syed Waris Ali. One retainer is covered by the license. License for two swords and one gun.'

"A servant of the licensee was found carrying a sword, and he had not the license in his pocket He has been fined a rupee.

"I have called upon the Deputy Magistrate for an explanation, and this has been sent to me with some covering remarks by the District Magistrate. The arguments used by those officers would make it an offence for a licensee to send a retainer (even though covered by the license) across the road with a sword in his hand unless he gave him the license to put in his pocket. And if the licensee had two retainers (covered by the license) two swords, and (presumably) only one license, he would be placed on the horns of a dilemma.

"I do not think the fine is warranted by law, and I submit the record accordingly."

No one appeard at the hearing of the reference.

The judgment of the High Court (PRINSEP and AMEER ALI, JJ.) was as follows:—

These proceedings were very arbitrary and unjust. It is not denied that the master of the accused has a license sufficient to cover the sword carried by him. He has been convicted simply because he had not the license with him, and he was given no opportunity of producing it before he was prosecuted. The law does not require, nor the license provide, that a license to carry

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arms shall always be on the person of the particular man. If, on being required to show his license, the bearer of arms is prepared to produce it on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge of infringing the Arms' Act and to show that the prosecution was without proper consideration.

It has also been said in support of the order that because the license was given for one retainer to carry arms, the arms could not be carried except in the presence of the master, the actual licensee. This is a very narrow construction of the terms of the license which cannot be reasonably placed upon it. The reasonable construction is that any retainer can carry the particular arms with the permission of his master. We further observe that the award of a portion of the fine to the Police officer who arrested the accused was injudicious as encouraging interference without sufficient cause. When the Police officer required the accused to produce the license for the sword he was carrying, and was told that he had one, not on his person but at home, the Police officer, if he had any doubt on the subject, should have accompanied the accused to his house to satisfy himself by seeing it.

The conviction and sentence must be set aside, and the fine, if paid, refunded.

H. T. H. *Conviction quashed.*

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Macpherson.

1892 *December* 16.

RAM GOPAL BYSACK AND OTHERS (PLAINTIFFS) *v.* NURUMUDDIN *alias* NOOR MAHAMED MUNDUL (DEFENDANT).*

Fishery, right of—Jalkar—Immoveable property—General Clauses Consolidation Act (I of 1868), s. 3—Transfer of Property Act (IV of 1882), s. 106.

A *jalkar*, or right of fishery, as being a benefit arising out of land covered by water, comes within the definition of "immoveable property" set out in

* Appeal from Appellate Decree No. 39 of 1892, against the decree of Baboo Krishto Chunder Dass, Subordinate Judge of Pubna and Bogra, dated the 25th of August 1891, reversing the decree of Baboo Lal Behary Bhaduri, Munsiff of Nowabgunge, dated the 30th of November 1889.