

## REVISIONAL CRIMINAL.

Before Jwala Prasad, J.

JEOBARAN SINGH

v.

RAMKISHUN LAL.\*

1925.

Feb., 2.

*Bengal Ferries Act, 1885 (Bengal Act I of 1885). sections 16 and 28—unauthorized ferry, several trips performed by—separate trial for each trip, legality of.*

A person who maintains an unauthorized ferry contrary to the provisions of section 16 of the Bengal Ferries Act, 1885, and conveys passengers thereby for hire is criminally liable in respect of each trip. Each trip is a separate transaction and may be tried separately.

Where, however, several trips were made and passengers were conveyed for hire during four consecutive days, *held*, that the accused should be tried in respect of only three trips and that the remaining trips should be used as evidence for the purpose of determining the amount of punishment.

The petitioners were summoned to stand on their trial with respect to 24 complaints filed against them on behalf of a ferry contractor, Chandraketu Singh, by his servant Ramkishun Lal, in the Court of the City Magistrate of Patna under sections 16 and 28 of the Ferry Act (Act I of 1885).

The following are the material provisions of sections 16 and 28 :

16. No person shall, except with the sanction of the Magistrate of the district, maintain a ferry to or from any point within a distance of two miles of a public ferry :

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28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section 16 shall be punished with fine which may extend to Rs. 50.

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\* Criminal Revision no. 725 of 1924, from an order of J. A. Sweeney, Esq., I.C.S., Sessions Judge of Patna, dated the 16th December, 1924, upholding the order of B. Ranjit Prasad, City Magistrate, Patna City, dated the 2nd December, 1924.

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The case of the complainant in short was that the petitioners were conveying passengers, etc., for hire in contravention of the provisions of section 16 of the Ferry Act by maintaining a ferry between the 9th and 12th November, 1924. There were 24 complaints arising out of as many trips from Marufganj in Patna City across the river Ganges to Sabalpur Diara in the Saran district.

The petitioners' main objection was that all these 24 trips did not constitute as many separate offences under section 16, but that they together constituted one offence and therefore they should be tried at one trial with respect to all these trips

*Manuk* (with him *S. P. Varma* and *Nirsu Narain Sinha*), for the petitioners.

*Sir Ali Imam* (with him *H. L. Nandkeolyar*, Assistant Government Advocate and *Girendra Nath Mukherjee*), for the opposite party.

JWALA PRASAD, J. (after stating the facts set out above, proceeded as follows): *Mr. Manuk* on behalf of the petitioners contends that in order to sustain a charge under section 28 it is essential to show in the first instance that the petitioners maintained a ferry to or from any point within a distance of two miles from the limits of a public ferry which is prohibited by section 16 of the Act. That section only makes the maintaining of a ferry within the prohibited degrees an unauthorized act but is not in itself penal. It may give rise to an action for damages, but is not punishable under the criminal law. Section 28 is a penal provision which makes the maintenance of an unauthorized ferry under section 16 an offence when the ferry is used for conveying any passenger, animal, vehicle or other thing for hire. Accordingly, it is contended that the ferry in question was used for four days, namely, from 9th to 12th November, during the Sonepur Fair, for the purpose of carrying passengers, etc., for hire and thus the ferry was maintained for the aforesaid four days for the purpose of making

profit by realizing tolls from passengers. The act of realizing tolls during the four days must be deemed to be one continuous act as implying the maintaining of the ferry under section 16 of the Act. Therefore, each time the toll was realized during those four days would not constitute a separate transaction and would not form the subject of a separate charge or trial against the petitioners.

The word "ferry" has not been defined in the Act. Section 5 simply says :

" 'ferry' includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge, a temporary bridge, and a landing stage."

The word must therefore be taken in its ordinary accepted legal significance. Literally it has been defined in Bouvier's Law Dictionary as :

" a liberty to have a boat upon a river for the transportation of men, horses, and carriages with their contents, for a reasonable toll. The term is used also to designate the place where such liberty is exercised. In law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from one township or vill to another."

Continuing, the dictionary says :

" In a strict sense a ferry is a continuation of a highway from one side of the water to the other and is for the transportation of passengers, vehicles and other property."

In order to constitute a ferry such as is contemplated by the Act in this country it is necessary that there should be two points on both sides of the river so that people and property may be conveyed from one side of the river across the other. It must be connected on both sides with land on the bank of the river. In order to give full significance to this meaning of the term the Act has included in it "any other appliance by which the water is connected with the land." This purpose may be served by a bridge of boats, pontoons or rafts, etc. In this sense the public ferry is created and leased on behalf of the authorities, and to protect the rights granted under the lease with respect to a public ferry the Act has made it illegal to maintain a regular ferry on a river within two miles of a public ferry so as not to interfere with or

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affect the peaceful working of and making profit out of the public ferry leased to the contractor. It seems that the idea is similar to that in England where, the aforesaid dictionary notes :

“ ferries are established by royal grant or by prescription, which is an implied grant: in the United States, by legislative authority, exercised either directly or by a delegation of powers to courts, commissioners, or municipalities.”

Wherever such public ferries have been created provision has always been made to protect the interest of the public ferry by forbidding individuals erecting a competition ferry near about. One provision referred to in the dictionary is :

“ if an individual, without authority from the State, erect a new ferry so near an older ferry, lawfully established, as to draw away the custom of the latter, such individual will be liable to an action on the case for damages, or to a suit in equity for an injunction in favour of the owner of the latter.”

This seems to have been the object with which section 16 has been enacted. The maintenance, if any, of a private ferry by the petitioners was in contravention of section 16 of the Act for which they may be liable for damages and also an injunction may issue against them. If, in addition to maintaining such a prohibited private ferry, they carried passengers and property for hire they are liable criminally under section 23 of the Act, and each time they did convey for hire they became liable

It seems that each trip was a separate transaction and can be tried separately. The question, however, is whether the petitioners should be tried simultaneously for all the offences committed by them between the 9th and the 12th November, 1924.

The offences were committed within a space of one year and the principles underlying sections 234 and 240 of the Code of Criminal Procedure may usefully be availed of. The Magistrate should try at one time only three of these transactions and use the remaining transactions as evidence in the case for the purpose of determining the amount of punishment and damages payable under the Ferry Act. If conviction

is obtained on such a trial, the Court should stay the inquiry into or trial of the other charges which will have the effect of an acquittal of the accused on those charges subject to the event of the conviction being set aside by higher authorities. If the conviction is set aside the Magistrate may proceed with the trial or inquiry of the other charges

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**PRIVY COUNCIL.**

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KEDARNATH GOENKA

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ANANT PRASAD SINGH AND OTHERS

1925.

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Feb., 9.

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXII, rules 3, 12—Abatement—Enquiry as to Mense Profits—Execution Proceedings—Suit under Code of 1882.*

A Subordinate Judge in 1905 made a decree for possession and mense profits. Appeals to the High Court and to the Privy Council were dismissed, the latter in 1913. An inquiry as to the mense profits recoverable was held subsequently, and during it two of the plaintiffs died. Their representatives not having been substituted within six months, the defendant contended that there had been an abatement under Order XXII, rule 3, of the Code of Civil Procedure, 1908.

*Held*, that under the Code of Civil Procedure 1882, the proceedings to determine the mense profits under the decree of 1905 were "proceedings in execution," and consequently they were excluded by Order XXII, rule 12, of the Code of 1908 from the operation of rule 3 of that Order as to abatement.

Judgment of the High Court in *Kedarnath Goenka v. Tarini Prasad Singh* (1), affirmed.

Appeal (no. 101 of 1923) from a decree of the High Court (March 10th, 1921) rejecting an application for the revision of an order of the Subordinate Judge of Monghyr (April 9th, 1920).

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\* PRESENT: Lord Shaw, Lord Carson, Lord Blanesburgh, Sir John Edge and Mr. Ameer Ali.

(1) (1921) 61 Ind. Cas. 4; 2 Pat. L. T. 245; (1921) Cal. W. N. (Pat.) 158.