

REVISIONAL CRIMINAL.*Before Madan, J.*

1937.

August, 6.

RIVERS STEAM NAVIGATION COMPANY, LTD.,

v.

KING-EMPEROR.*

Inland Steam-Vessels Act, 1917 (Act I of 1917), section 58—mens rea, element of, whether necessary for conviction—certificate, whether required to be in force—contravention of certificate last issued—offence committed when certificate under renewal—conviction, whether bad.

Section 58 of the Inland Steam-Vessels Act, 1917, provides:—

“If an inland steam-vessel has on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and the master shall each be punishable with fine which may extend to ten rupees for every passenger over and above that number.”

Held, (i) that the language of the section gives no option to the Magistrate but to hold the owner and master liable if the section is contravened; the question of mens rea does not arise.

Williamson v. Norris(1), referred to.

(ii) that section 58 does not contemplate that the certificate must be in force; for the purpose of this section the certificate intended is the certificate last issued for the steamer, and it is immaterial that the certificate was under renewal at the time the offence was committed.

Applications in revision.

The facts of the case material to this report are set out in the judgment of Madan, J.

A. C. Chatterji, for the petitioners.

* Criminal Revision no. 225 of 1937 and no. 223 of 1937, against an order of S. K. Das, Esq., I.C.S., Sessions Judge of Saran, dated the 26th February, 1937, affirming an order of H. S. C. Martin, Esq., Subdivisional Magistrate of Siwan, dated the 7th October, 1936.

(1) (1899) 1 Q. B. 7.

The Advocate-General, for the Crown.

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MADAN, J.—These are applications by the Rivers Steam Navigation Company, Ltd., and by Irshad Ali, who have been fined the sum of Rs. 1,000 and Rs. 300, respectively, under section 58 of the Inland Steam-Vessels Act of 1917. On the 11th November, 1935, the S. S. Cherra belonging to the Company was plying on the river Gogra in charge of the other petitioner as master or sarang. There was a mela at a place called Bhagrasan on that date with the result that at Tikaulia or Maniar Ghat, a calling place of the steamer, a large number of persons crowded on board. The steamer crossed to Pattar Ghat and was on the way to Darauli, the next calling place, when it struck a submerged obstacle, probably the stump of a tree, and sank. Fortunately the upper deck remained above water, but some passengers were carried away in the stream and were drowned, while others managed to swim to shore. Both courts have found that the vessel was carrying more than 700 passengers, whereas according to the last issued certificate of survey it was licensed to carry a maximum of 328. The Company and the sarang have therefore been convicted under section 58 of the Act, which prohibits the carrying of a larger number of passengers than that entered in the certificate as being in the judgment of the official surveyor the number which the vessel is fit to carry. This Court is being asked to set aside the convictions of the petitioners under this section.

It was argued that the Company is not liable as it has not been shown to have been directly responsible for the overloading, or, in other words, on the ground that the element of mens rea, which is required for conviction under a criminal charge, has not been established. Mr. Chatterjee, who appeared for the Company, referred to *Williamson v. Norris*(¹) where it is stated as a general rule of English law that no crime can be committed unless there is a mens rea.

 (1) (1899) 1 Q. B. 7.

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The same authority allows that there are exceptional cases where a man is treated as guilty even though he had no guilty mind. We must therefore look to the wording of the section itself, which gives no option to the Magistrate but to hold the owner and master liable, if the section is contravened. The question of mens rea does not, therefore, arise; nor does it appear to be unjust that the Company should be made liable since it may be presumed that it has profited by reason of the passengers carried in excess.

It was next argued that the certificate of survey in this case was issued incomplete, and that it admits of the interpretation that not less than 656 passengers could have been carried. There are three schedules on the certificate showing the number of passengers allowed to be carried, namely schedules *A*, *B* and *C*. Schedule *A* shows 218 passengers and schedule *B*, which is said to apply to this case, shows 328. Schedule *C* is blank, but it is suggested that according to the usual calculation it should show double the number given in schedule *B*, namely 656. Schedule *C* applies to voyages of not more than six hours, and it is argued that in this case the passengers carried in excess were travelling for a shorter distance than six hours. For the purpose of the schedule the voyage of the steamer has to be considered and not that of the passengers, and it was not suggested, and could not be suggested, that the voyage of the steamer, plying in regular service on the river Gogra, did not exceed six hours. In such cases schedule *B* applied and the maximum number of passengers to be carried was 328, which number has been found to have been greatly exceeded.

The main argument for the petitioners was that section 58 itself does not apply to the case. According to section 3(1) of the Act an inland steam-vessel shall not proceed on any voyage, or be used for any service unless it has a certificate of survey in force and applicable to such voyage or service. Under section 55 the owner and the master of an inland steam-vessel proceeding on a voyage in contravention of section 3 are

liable to fine. In this case the certificate had expired on the 8th June, and thereafter a fresh survey was required by the Act to be made, and a fresh certificate to be issued. This certificate was not issued till the 15th December, whereas the accident took place on the 11th November. Section 3(2) of the Act provides that a steamer may ply without a certificate during such time as may reasonably be required for obtaining a new one. In the present case the petitioners were at first charged under section 55 for using the vessel without a proper certificate. The prosecution under this section was withdrawn presumably because the authorities concerned were satisfied that the petitioners were not responsible for the delay in issuing the certificate. It is now argued that section 58 can no longer apply to the case. This section runs as follows:—

"If an inland steam-vessel has on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and the master shall each be punishable with fine which may extend to ten rupees for every passenger over and above that number."

It is argued that as no certificate was in force at the time of the accident there can be no conviction for carrying passengers in excess of the certificated number. Now it is obviously part of the scheme of the Act that a steamer shall not be allowed to carry a larger number of passengers than that which it has been certified as able to carry within the limits of safety. If, as the Act now stands, the petitioners are not liable to conviction under section 58 merely because their certificate was under renewal at that time, the Act ought forthwith to be amended. Section 58, however, does not say that the certificate must be in force, but that the steamer must not carry more than the number which, according to the judgment of the surveyor, as entered in the certificate, it is fit to carry. In my opinion for the purpose of this section the certificate intended is the certificate last issued for the steamer, and it is immaterial that that certificate

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was under renewal at the time, and the petitioners have been rightly convicted.

Lastly it was suggested that the sentences are excessive on the ground that the accident was not due to any fault of the sarang. The regulations, however, had been framed under the Act as a safeguard against accidents such as happened in this case. Had the steamer not been overloaded it is probable that most or all of the passengers would have been able to reach the upper deck, and the loss of life might have been avoided. I do not consider that the sentences on either petitioner are excessive, and I dismiss the applications.

S. A. K.

Rule discharged.

APPELLATE CIVIL.

Before Courtney Terrell, C.J., and Manohar Lal, J.

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August, 17.

BENGAL AND NORTH-WESTERN RAILWAY CO.,
LTD.

v.

MATUKDHARI SINGH.*

Railway Company—suit for damages—negligence, what constitutes—duty to guard and shut gates at level crossing—contributory negligence—plaintiff, when entitled to damages.

Where there is a level-crossing in the neighbourhood of a place where a considerable population assembles from time to time, the duty to guard that level-crossing by means of gates and the duty of closing gates in sufficient time before the approach of a train is cast on the Railway Company, and if the Railway Company leave the gates open, it is an invitation on their part for passengers and traffic to approach the line.

* Appeal from Original Decree no. 133 of 1934, from a decision of Babu Gopal Chandra De, Subordinate Judge of Chapra, dated the 14th August, 1934.