

1927

THE  
BURMA OIL  
CO., LTD.  
v.  
U PO NAING.

RUTLEDGE,  
C.J., AND  
BROWN, J.

who can make any claim in respect of the natural gas is Government who has not divested itself by grant or otherwise of the ownership.

For the appellants it is urged that by reason of the provisions of section 108 (o) of the transfer of Property Act they can use the gas as a product of the property in the same way as a lessee might use leaves in a garden or a water spring in a mine. It is not necessary for us to express any opinion on this point.

For the reasons already given the appeal must be allowed and the respondent-plaintiff's suit must be dismissed with costs in both Courts.

---

## APPELLATE CRIMINAL.

*Before Mr. Justice Doyle.*

### MAUNG THU DAW.

v.

### U PO NYUN.\*

1927

Jan. 24.

*Criminal Procedure Code (Act V of 1898), sections 252, 253, 259—The State and not a private person is responsible for the conduct or withdrawal of non-compoundable or cognisable warrant cases.*

*Held*, that the principle underlying the provisions dealing with the trial of non-compoundable or cognisable warrant cases is that whether instituted on complaint or otherwise the final responsibility for the conduct of such cases rests with the State and that where there is reasonable ground for believing that an offence has been committed, once the machinery of law has been set in motion the right of arresting its progress rests with the State alone, and not with a private individual.

DOYLE, J.—Maung Po Nyun laid a complaint against Maung Thu Daw in the Court of the Additional District Magistrate, Tharrawaddy, accusing the latter

---

\* Criminal Revision No. 1B of 1927 against the order of the First Additional Magistrate of Tharrawaddy in Criminal Regular Trial No. 124 of 1926.

under section 409 of the Indian Penal Code of fraudulent conversion of certain sums of money—a cognisable non-compoundable offence. The complaint was transferred to the First Additional Magistrate, Tharrawaddy, for disposal. As there was a civil dispute pending between the parties, the case was stayed after the accused and prosecution witnesses had appeared but had not been examined. Later an application was put in to the effect that the parties desired to compound the case as apparently the connected suits had been dismissed for want of prosecution. The First Additional Magistrate noted that as the cases was not compoundable it should proceed as he had already taken cognisance against the accused. The High Court is now asked to revise the order of the First Additional Magistrate on the ground that he ought to have dismissed the complaint under section 203 of the Code of Criminal Procedure, particularly as the civil suits had been compromised, and as it would only be a sheer waste of time if the parties were forced to proceed with the criminal case. This application is resisted by U Po Nyun.

The procedure in warrant cases is laid down in section 252 of the Criminal Procedure Code which provides that the Magistrate shall proceed to hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution, and, after ascertaining the names of any persons likely to be acquainted with the facts of the case, he shall summon such of them to give evidence as he thinks necessary. This section clearly contemplates that once action has been taken against an accused the case will normally proceed. It is nowhere contemplated that a desire on the part of the complainant to refrain from further pursuing the case shall justify

1927

MAUNG  
THU DAW  
v.

U PO NYUN.

DOYLE, J.

1927  
 MAUNG  
 THU DAW  
 v.  
 U PO NYUN.  
 DOYLE, J.

the arrest of further proceedings. The very wording of section 248, Criminal Procedure Code, which occurs in the chapter dealing with summons cases that "if the complainant . . . *in any case under this chapter* . . . satisfies the Magistrate . . . the magistrate may permit him to withdraw . . . and shall . . . acquit the accused," makes it clear that no such action is contemplated in warrant cases while section 259 only gives discretion to a magistrate in a warrant case instituted upon complaint to discharge the accused in the absence of the complainant if the offence may be lawfully compounded or is not a cognisable offence. It is always open to the Magistrate, after hearing whatever evidence he considers necessary (section 252) or even at an earlier stage to discharge the accused (section 253) if for reasons to be recorded by him he considers the charge to be groundless. This course is still open to him although up to the present he has expressed no opinion on the merits. If the trying Magistrate considered that, although the charge was not groundless, there was little likelihood of the case being pursued to a successful issue, he could consult the District Magistrate who would, if advisable, instruct the Public Prosecutor under section 494 of the Criminal Procedure Code to withdraw the case. The complainant or the accused could similarly move the District Magistrate in the matter.

The principle underlying the provisions dealing with the trial of non-compoundable or cognisable warrant cases is that whether instituted on complaint or otherwise the final responsibility for the conduct of such cases rests with the State and that where there is reasonable ground for believing that an offence has been committed, once the machinery of law has

been set in motion the right of arresting its progress rests with the State alone. This application stands dismissed.

1927  
 MAUNG  
 THU DAW  
 v.  
 U PO NYUN.  
 DOYLE, J.

## ORIGINAL CIVIL.

*Before Mr. Justice Chari.*

THE SOORATEE BARA BAZAAR Co., LTD.

v.

HOOSAIN HAMADANEE & Co.\*

1927  
 Jan. 27.

*Effect of expiry of a temporary Act—Suit filed before expiry and coming up for hearing after expiry of Act—Effect of defence raised under the Act—Rangoon Rent Act (Burma Act IX of 1925), section 10.*

Plaintiffs sued defendant for ejection from their premises, when the Rangoon Rent Act was in force. Defendant relied on the protection given to him under the said Act, but the Act expired by the date the suit came on for hearing.

*Held*, that as the Rangoon Rent Act was a temporary Act, on its expiration parties are relegated to the position they held under the general law except in respect of those matters specially provided for in the Act itself. Section 10 of the Act did not alter the law or created any new legal rights but merely placed a restriction on the Court and prevented it from passing a decree which it would otherwise have been bound to pass. Consequently on the expiry of the Act defendant's plea which he could only raise under the Act, had to be disallowed though the suit was instituted prior to the expiry of the Act and was pending when it expired.

*Kishoredas v. Ahmed Suleman*, 49 Bom. 567; *Kundanmal v. Daya*, 52 Cal. 551; *R. K. Modi & Co. v. Mahomed Bhai*, 49 Bom. 724—referred to.

*N. M. Cowasjee and Leach*—for the Plaintiffs.

*Jawad*—for Defendant.

CHARI, J.—This is a suit filed by the plaintiffs to eject the defendant from two rooms Nos. 3 and 4 in house No. 3, Mogul Street, Rangoon. The suit was filed on the 22nd of September 1926 when the Rangoon Rent Act of 1925 was in force. It came up for hearing on the 14th of January 1927 after that Act

\* Civil Regular Suit No. 469 of 1926.