

he actually remonstrated with Maung Pu. The Sub-divisional Magistrate who tried the case, has believed the evidence of Maung Chit Pyu, which is in accordance with the probabilities suggested by the circumstantial evidence.

Under these circumstances, this Court, in revision, does not consider that there are sufficient grounds for dissenting from his finding of fact.

The proceedings will be returned with these remarks.

1927
 MAUNG PU
 v.
 MAUNG
 CHIT PYU.
 DOYLE, J.

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.

THE BURMA OIL Co., LTD.

v.

U PO NAING.*

1927
 Jan. 18.

"Oil" whether includes "oil-gas" in Government grant—Ownership in oil-gas—Indian Petroleum Act (VIII of 1899), section 2—Upper Burma Oil Fields Regulation No. VI of 1910—Burma Oil Fields Act (Burma Act I of 1910), section 2.

Held, that a grant from Government to win, get and dispose of earth-oil from a well site does not entitle the grantee to the natural gases exuding from the well and they remain the property of Government. The grantee cannot therefore claim any compensation from his lessee of the oil-well site for the use by the lessee of them oil-gas which the grantee does not own. "Oil" as defined in the Indian Petroleum Act and in the Upper Burma Oil Fields Regulation No. VI of 1910 does not include oil-gas; and whilst the definition of "oil" includes "oil-gas" in the Burma Oil Fields Act, 1918, that Act does not purport to enlarge any grant made by Government previous to the date of the Act.

Burnard, Argue-Roth-Stearn's Oil and Gas Company, Limited and others v. A. Farquharson. [1912] A.C. 2 *referred to.*

McDonald an *rajet*—for the Appellants.

Kyaw Din—for the Respondent.

RUTLEDGE, C.J. AND BROWN, J.—This is an appeal from the judgment of this Court on the Original Side

* Civil First Appeal No. 209 of 1926 from the judgment of the Original Side in Civil Regular Suit No. 75 of 1926.

1927

THE
BURMA OIL
CO., LTD.
U PO NAING.
RUTLEDGE,
C.J., AND
BROWN, J.

giving the respondent a decree for compensation for the use of oil-gas derived from an oil-well site leased by the respondent to the appellants.

We may note that the learned trial Judge seems to take for granted that the respondent is the absolute owner of the oil-well site in question, and he does not seem to have examined the extent of the interest which he had in this site. This in our opinion is the deciding factor of the case. Respondent's interest is set out in the grant by Government, Exhibit 1, dated 25th April 1912 whereby the Secretary of State for India in Council granted to the respondent and his heirs, representatives and assigns in perpetuity the right to win and get earth-oil from the well site in question and to dispose of all earth-oil to be gotten therefrom on certain conditions. The only one that we may mention is the second which prescribes a royalty of eight annas for every 100 viss of crude oil gotten to be paid to Government. We have been referred to the definition of petroleum in the Indian Petroleum Act, 1899 and to the definition of "oil" in the Upper Burma Oil Fields Regulation No. VI of 1910. In section 2 (c) of the latter "oil" means petroleum oil and includes crude oil, refined oil, oil partially refined and any of the products of petroleum. In none of these definitions is there any suggestion of "gas." Earth-oil as used in the grant to respondent seems to mean the crude or unrefined oil as it emerges from the soil. The learned trial Judge observes "It is clear that oil includes gas." In our opinion it is tolerably clear that it does not. And Lord Atkinson's judgment in the *Burnard-Argue-Roth-Stearn's Oil and Gas Company v. Farquharson* (1) though on different and more ample evidence than we have in this case, is of great value upon this question. But the only

(1) L.R. [1912] A.C. 864.

evidence that we have in this case shows that the "natural gas" emitted from the drill hole here differs widely from the gas obtained from converting crude oil. We are consequently of opinion that the respondent did not by his grant obtain any right to win, get or dispose of gas.

This has in fact been admitted by the learned advocate for the respondent. He argues that although he was not the owner of the gas at the time of the grant in 1912 or at the time of the lease to the appellants (5th June 1918) by virtue of the Oil Fields Act, 1918 and Rules thereunder which came into force on 1st January 1919 his grant was enlarged and he became owner of the gas as well ; that that Act saddled the respondent with liabilities regarding gas and that it would be inequitable to so saddle him if he was not the owner. By section 2 (a) of that Act "oil" means petroleum oil and includes crude oil, oil-gas, refined oil, oil partially refined and any of the products of petroleum. An examination however of the provisions of the Act suggests that its main object was to give the Local Government power to provide for the safety of the oil-fields and their better regulation. Incidentally we may notice in the rule making section 13 (2) (w) "provide for the disposal of inflammable gases." Nowhere are these words which enlarge either expressly or by necessary inference grants previously made by Government. Failing such words we must hold that the ownership of natural gases so far as they are capable of ownership remained with Government and did not pass either in 1912 or in 1919, to the respondent. That being so he could not either pass on any rights to the appellants which he had not himself and *á fortiori* he cannot ask the appellants to pay him compensation for the use of a commodity which he did not own. It seems to us that the only person

1927

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

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

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.