

of the whole debt, the principal sums and Rs. 50 due as interest thereon being treated as having thereby been repaid and the transferee agreeing upon the due execution of the conveyance to waive or release the balance of the interest.

For these reasons I would answer the first question propounded by saying that the amount of stamp duty leviable in respect of the instrument in question was upon Rs. 445-14-0. The second question does not arise.

MYA BU, J.—I agree.

MOSELY, J.—I agree.

1935
 THE
 FINANCIAL
 COMMISSIONER,
 BURMA
 v.
 C.R.M.M.L.
 A. CHETTIAR
 FIRM.
 PAGE, C.J.

CRIMINAL REVISION.

Before Mr. Justice Dunkley.

ALI BHAI v. MAUNG NYUN.*

Ferry, public—Carriage of passengers "between points within, or within two miles from, the limits of a public ferry"—Sanction of superintendent, or exemption by Government notification necessary—Unauthorized carriage of passengers between landing stage and launch in mid-stream—Landing stage within limits of public ferry—"Points" from bank to bank—Launch, whether a point—Burma Ferries Act (Burma Act II of 1898), ss. 15, 27.

S. 15 of the Burma Ferries Act prohibits a person from conveying for hire any passenger or goods "between points within, or within two miles from, the limits of a public ferry," except with the sanction of the superintendent or of the lessee of such ferry, or unless he is a person exempt from the operation of the section by notification of the Local Government. In contravention of the section the applicant plied his sampan for hire to carry passengers between a certain landing-stage on the Twante Canal and launches stopping in mid-stream for embarkation and disembarkation of passengers. The landing stage was within two miles of the western limit of a public ferry on the canal, and the applicant was fined for his offence under s. 27 of the Act. He contended that the "points" referred to in s. 15 of the Act meant points on either bank of the stream and not launches proceeding down the middle of the stream.

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 June 24.

* Criminal Revision No. 304B of 1935 from the order of the Special Power Headquarters Magistrate of Hanthawaddy in Criminal Regular Trial No. 18 of 1935.

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Held, that the applicant was rightly convicted. The word "ferry" includes the conveyance of passengers or goods from and to any place within the limits prescribed, whether that place be on a bank or in the stream, and is not confined to the conveyance of passengers or goods from one bank to the other. When, therefore, a launch stops in mid-stream for the purpose of setting down or picking up passengers it becomes to all intents and purposes "a point" for the purpose of s. 15 of the Act.

Ba So for the applicant.

M. J. Khan for the respondent.

DUNKLEY, J.—The applicant, Ali Bhai, has been convicted of an offence under section 27 of the Burma Ferries Act. The facts of the case are not in dispute. On the Twante Canal there is a public ferry, established under the provisions of section 4 of the Burma Ferries Act, known as the Kungyan-Madaing Ferry. The superintendence of this ferry is vested in the Hanthawaddy District Council. The lessee of the ferry, who has bought the right to levy the tolls from the District Council, is the respondent, Maung Nyun. There is a landing-stage on the canal at a place called Obo. This is within two miles of the western limit of the Kungyan-Madaing Ferry. Launches of the Irrawaddy Flotilla Company ordinarily stop in the canal as near as possible to this landing-stage. They do not drop anchor, as they are not allowed to do so in the canal, but they merely come to rest and float with the stream so as to allow passengers to embark and disembark. The applicant, Ali Bhai, keeps a sampan at Obo, and he plies his sampan for hire between the Obo landing-stage and the launches waiting in mid-stream. He embarks passengers on these launches and disembarks passengers therefrom, and he charges hire to carry them from and to the shore. On these facts the applicant has been convicted, and

in my opinion rightly convicted, of an offence under section 27 of the Burma Ferries Act.

Section 27 of the Act reads as follows :

“Whoever conveys for hire any passenger, animal, vehicle or goods in contravention of the provisions of section 15, shall be punishable with fine which may extend to fifty rupees.”

Section 15 is as follows :

“No person shall . . . convey for hire any passenger, animal, vehicle or goods, between points within, or within two miles from, the limits of a public ferry, except with the sanction of the superintendent or of the lessee of such public ferry :

Provided that the Local Government may, by notification, exempt any persons or classes of persons from the operation of this section.”

Now, it is admitted that the applicant has never obtained the sanction of the District Council or of the respondent, as lessee of the ferry, to his conveying passengers for hire between the Obo landing-stage and the launches waiting in mid-stream. It is also admitted that the Local Government has not issued any notification under section 15 of the Act, exempting any persons or classes of persons from the operation of the section. Consequently, it is clear that the applicant, by so conveying persons between the launches and the landing-stage, has committed an offence under section 27.

The argument which has been addressed to me is that a launch proceeding down the middle of the stream cannot be held to be “a point within, or within two miles from, the limits of the ferry” and that the points referred to in section 15 mean points on either bank of the stream. No authority for this argument has been quoted, and it seems

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to me to be clearly untenable. "Ferry" is not defined in the Burma Ferries Act, but in Murray's dictionary it is defined as "a passage or place where boats pass over a river, etc., to transport passengers and goods," and in law as "the right of ferrying men and animals across a river, etc., and of levying toll for so doing." There is nothing in these definitions which would suggest that the word "ferry" means only the conveyance of passengers, etc., from one bank to the other, and, in fact, to my mind it is clear that it includes conveyance of passengers from and to any place within the limits prescribed, whether that place be on a bank or in the stream. The illustration in the Magistrate's judgment of an island in the stream is extremely apposite. When a launch halts in the stream for the purpose of setting down or picking up passengers it becomes to all intents and purposes such "an island," and is without doubt "a point" for the purpose of section 15 of the Ferries Act. That it was the intention of the Legislature that the conveyance of passengers from a launch halting in the stream to the bank should fall within the provisions of section 15 is conclusively shown by the fact that originally a notification was issued by the Local Government, under the powers conferred by section 16 (3) of the Act, exempting from the operation of that section "boats engaged in carrying passengers, animals or goods between the shore and steamers under weigh or at anchor in the stream." Section 16 (2) confers upon the Local Government authority to declare what persons, animals, vehicles or goods shall be exempt from the payment of ferry tolls, and under this particular notification persons like the present applicant, who used their boats for the conveyance of passengers, etc., between a launch

waiting in the stream and the shore, were exempt from the payment of tolls. Unless, in the absence of such exemption, these persons come within the provisions of section 15 of the Act, the necessity for the issue of such a notification would never have existed. Now, this notification was cancelled by Financial Department Notification No. 26, dated the 1st March 1917, and, consequently, since that date persons engaged in this kind of traffic come within the provisions of section 15, and in the absence of any notification by the Local Government under the proviso of that section, they commit an offence under section 27 of the Act unless they have obtained the sanction of the District Council or of the lessee of the ferry. The applicant has therefore been rightly convicted, and this application in revision is dismissed.

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APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

P. M. HAMID

v.

P. K. MOHAMED SHERIFF.*

1935

July 2.

Insolvency—Adjudication—Immunity from arrest not automatic—Application for protection against execution upon the person necessary—Policy of the Legislature—Honest debtors—Protection order when withdrawn—Presidency-Towns Insolvency Act (III of 1909), ss. 17, 25—Provincial Insolvency Act (V of 1920), ss. 23, 28, 31—Civil Procedure Code (Act V of 1908), O. 21, rr. 37, 40.

An order of adjudication does not operate automatically as a protection against execution upon the person of an insolvent. He must apply to the Court to grant him the privilege of protection against arrest which the Court will do only if the circumstances of the case justify it.

Neither in s. 17 of the Presidency-Towns Insolvency Act nor in s. 28 of the Provincial Insolvency Act is any mention made of leave being necessary in respect of remedies against the person of the insolvent, both these sections referring not to the person but to the property of the insolvent.

* Civil Miscellaneous Appeal No. 17 of 1935 from the order of this Court Original Side in Insolvency Case No. 188 of 1933.