

This view of the matter gives a separate and definite meaning to each one of those three things envisaged by section 211 ; and, with respect, if the view taken in *Karim Buksh v. Queen-Empress* (1) is taken, one is left with a kind of uncertainty, as in the judgment only two of the three possibilities are dealt with ; whereas the view which I take seems to me to be clear and defines the three possibilities referred to in the section, each covering a totally different state of affairs.

Taking the view that I take, Ma Ban Gyi only "falsely charged" Tun Gyaw : her offence, therefore, came under the first part of section 211, and she could be legally tried by a Magistrate of the first-class, and the sentence of fine was a legal sentence. There is therefore no need to interfere in these proceedings. With these remarks the record will be returned.

1937
THE KING
v.
MA BAN GYI.
BAGULEY, J.

CIVIL REVISION.

Before Mr. Justice Mosely, and Mr. Justice Dunkley.

MA HLA MRA KHINE

v.

MA HLA KRA PRU.*

1937
Dec. 21.

Income-tax returns and statements, confidential character of—Assessee's right to obtain certified copies—Civil Court's order to assessee to obtain and file copies in Court—Civil Procedure Code, O. 11, r. 14—Inadmissibility of copies in evidence—Burma Income-tax Act, s. 54.

The object of s. 54 of the Burma Income-tax Act is to make the returns furnished by the assessee confidential as between the assessee and the Income-tax Department, and against the whole world except for certain limited purposes provided by the section itself. It may be that the assessee has a right to obtain certified copies of those returns for his own purpose, but a Court of law, purporting to act under Order 11, r. 14 of the Civil Procedure Code, cannot compel the assessee who is a party to a suit before it to apply to the Income-tax Office for certified copies of his returns or of statements before the Income-tax Officer, and to file them in Court. To do so would be an

(1) (1888) I.L.R. 17 Cal. 574.

* Civil Revision No. 142 of 1937 from the order of the Assistant District Court of Akyab in Civil Reg. Suit No. 2 of 1936.

1937

MA HLA
MRA KHINE
v.
MA HLA
KRA PRU.

evasion of the prohibition contained in s. 54 of the Income-tax Act. Any copy so obtained and filed is inadmissible in evidence except with the consent of the assessee.

Anwar Ali v. Tafozal Ahmad, I.L.R. 2 Ran. 391, referred to.

Tun Aung for the applicant. S. 54 of the Income-tax Act treats all returns and statements made in pursuance of that Act as being confidential, and no officer of that department can be compelled to give evidence in respect thereof. The present section is wider in terms than the corresponding provisions both in the Act of 1918 and the previous law. Cases like *Jadobram Dey v. Bulloram Dey* (1) would not be correct law now because s. 54, as it now stands, not only renders any officer of the Income-tax department disclosing any information given to him under the Act liable to a penalty, but also renders the production of such evidence by other means impossible.

In *Anwar Ali v. Tafozal Ahmad* (2) this Court held that certified copies of income-tax returns are not evidence.

Sein Tun Aung for the respondent. S. 54 does not prevent the plaintiff from obtaining certified copies of his own returns and statements made before the Income-tax authorities. That section is only directed against the Department and third parties. The application in this case was made under O. 11, r. 14 of the Civil Procedure Code, and the lower Court granted the application because it was within the "power" of the respondent to produce this evidence, and no one else could have obtained its production. The respondent made this application because she wanted to see how far this suit could be maintained in the present form by reason of her failure in *Maung Tha Nyo & Co. v. Ma Un Ma Pru and others* (3). She might be guilty of an offence under s. 193 of the Penal Code.

(1) I.L.R. 26 Cal. 281.

(2) I.L.R. 2 Ran. 391.

(3) I.L.R. 7 Ran. 296.

MOSELY, J.—This is an application in revision by the plaintiff in Suit No. 2 of 1936 of the Assistant District Court of Akyab, Ma Hla Mra Khine, trading under the name of U Maung Tha Nyo and Company, against an order of the Court made on the application of the 9th defendant-respondent, Ma Hla Kra Pru, that the plaintiff be ordered, under the provisions of Order XI rule 14 of the Code of Civil Procedure, to obtain certified copies from the Income-tax Officer of an assessment of U Maung Tha Nyo and Company for the years 1927-28 and 1928-29, and also of the statement of the plaintiff's agent made before the Income-tax Officer for the assessment of 1927-28.

The present suit is one by the plaintiff on a mortgage bond in favour of U Maung Tha Nyo and Company executed by defendants 1 and 2 the mortgagors. Defendants 3 to 8 are the legal representatives of a person who bought the mortgaged properties in execution of a simple money decree obtained by him against the mortgagors, and the 9th defendant and present respondent is added as a subsequent purchaser of the properties in suit from defendants 3 to 8.

The application by the respondent was made on the ground mentioned in her written statement as well as in the application that the plaintiff was not the sole proprietress of the firm of U Maung Tha Nyo and Company, that it was a partnership firm, consisting of the plaintiff and ten other partners (her children), and that the plaintiff had not the sole right to sue.

There was a previous suit between the parties in 1927 (it would not appear from the records in this Court that the present respondent was a party there), the appeal from which to this Court is reported in *Maung Tha Nyo & Co. v. Ma Un Ma Pru and others* (1).

1937

MA HLA
MRA KHINE
v.
MA HLA
KRA PRU.

1937

MA HLA
MRA KHINEv.
MA HLA
KRA PRU.

MOSELY, J.

It appears from the judgment in that case that the plaintiff had registered the business under the Burma Registration of Business Names Act erroneously under the names of her children as well as herself. She then sued the respondents in the name of the business, and her suit was dismissed on a technical ground that she had furnished wrong particulars in registration and, therefore, could not enforce her rights by suit under section 5 of the Act. It was there said that she had, before judgment was passed in that appeal, effected a new registration of the business showing herself as the sole proprietress, and this is apparent from exhibit M in the present suit, which is a certified copy of the new registration which was effected on the 29th of March, 1928. That being so I totally fail to see how the information required by the respondent could be in any way relevant for the purposes of this suit. It is naively explained by the learned advocate for the respondent that the information in question might be available for the purpose of prosecuting the plaintiff under section 193 of the Penal Code [*vide* section 54, proviso (a), of the Income-tax Act, XI of 1922]. It may be remarked here that this application was made, and granted, before any evidence whatever had been taken in the suit. The plaintiff had not been asked any questions on this subject, even had it been relevant, and so the respondent's argument is that this was a fishing application to supply materials to prosecute the plaintiff in case she might subsequently commit perjury.

The learned Assistant District Judge remarked in his order that the only authority on this subject was *Jakaria v. Haji Casim* (1). The most cursory search in any commentary under the relevant provisions of the Evidence Act, sections 123 and 126, would have

revealed at least three later authorities—*Jadobram Dey v. Bulloram Dey* (1); *Venkatachella Chettiar and others v. Sampathu Chettiar and another* (2); and *The Collector of Jaunpur v. Jamna Prasad* (3). These cases were decided under the Income-tax Act of 1886, where rule 16 issued under section 38 of that Act was as follows :

“ All public servants are forbidden to make public or disclose except for the purpose of the working of Act II of 1886, any information contained in documents delivered or produced with respect to assessments under Part IV of the said Act, and any public servant committing a breach of this rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code.”

It was held there that the object of that provision was to secure the interests of those making the returns under the Act, and that that rule was not directed against their production in a Court of Law.

Section 54 of the Income-tax Act of 1922 is totally differently framed, and for a different purpose. It says that all particulars contained in any statement made, return furnished, or accounts or documents produced under the provisions of this Act, or in any evidence given in the course of any proceedings under this Act, (other than proceedings under Chapter VIII, which refers to prosecutions for offences), or in any record of any assessment proceeding, etc., shall be treated as confidential, and, *notwithstanding anything contained in the Evidence Act*, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents, etc., or to give evidence before it in respect thereof.

This section, of course, in terms prohibits any Court from requiring such evidence to be given by the Income-tax Officer.

1937
MA HLA
MRA KHINE
v.
MA HLA
KRA PRU.
MOSELY, J.

(1) (1899) I.L.R. 26 Cal. 281. (2) (1908) I.L.R. 32 Mad. 62.

(3) (1922) I.L.R. 44 All. 360.

1937

MA HLA
MRA KHINE

v.

MA HLA
KRA PRU.

MOSELY, J.

So far from no authority being available, there is a ruling of this Court published in 1924, *Anwar Ali v. Tafozal Ahmad* (1), where it was explicitly held that Income-tax returns, being made confidential by section 54 of the Income-tax Act and the disclosure of their contents (by the public servant), being a punishable offence, certified copies of such returns do not come within the meaning of sections 65, 74, 76 and 77 of the Evidence Act and are therefore not admissible in evidence.

That was a case where the defendant (not the plaintiff), obtained from the Income-tax Officer copies of Income-tax returns made by the plaintiff. It was held that section 76 of the Evidence Act itself did not authorize the issue of certified copies of Income-tax returns to the defendant, as no private person (presumably other than the plaintiff), had the right to inspect them, and issue of those copies was clearly unlawful under section 54 of the Income-tax Act.

In the present case it is the defendant who seeks to obtain disclosure of these returns through the medium of the plaintiff, and, of course, exactly the same principle applies. It may be that the plaintiff has the right to obtain certified copies of these returns for her own purposes, but the object of section 54 clearly was to make these returns confidential as between the assessee and the Income-tax department, and against the whole world, except for certain limited purposes provided by the section itself. It would clearly be an evasion of the prohibition contained in the section were the defendant in a Court of Law entitled to force the plaintiff to obtain and furnish any information from the Income-tax office against her interest which the defendant was unable to obtain for herself.

For these reasons it is clear that this application must be allowed.

I note that the respondent has already been successful in obtaining one document,—a copy of an order of the Assistant Commissioner of Income-tax in appeal, dated the 25th of April, 1927, marked exhibit 3. That document is inadmissible in evidence unless the plaintiff desires its retention.

This application will be allowed, and the order of the Assistant District Court set aside with costs, which, in view of the nature of the application sought to be revised I assess at ten gold mohurs.

DUNKLEY, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Mosely, and Mr. Justice Dunkley.

SHWE KHOON v. MA SEIN NU.*

Letters of administration—Deceased a Chinese—Rival applicants, widow and son—Succession governed by Chinese customary law or Succession Act—Question unnecessary to decide—Widow entitled to administer.

In case of contested applications for letters of administration to the estate of a deceased Chinaman, when the applicants are a widow and a son, it does not matter whether the deceased was a Buddhist or a non-Buddhist or whether the succession to his estate is governed by Chinese customary law or the Succession Act, for in either case the proper person to obtain letters of administration to his estate is his widow, and other persons having claims to the estate must, if necessary, prosecute those claims in the form of a separate suit against the widow, either for their share or for the administration of the estate by the Court.

Maung Po Maung v. Ma Pyi Ya, I.L.R. 1 Ran. 161, approved.

U Kyaw (1) for the appellant.

Kyaw Myint for the respondent.

DUNKLEY, J.—These two appeals arise out of opposing applications for letters of administration to

* Civil First Appeals Nos. 106 and 110 of 1937 from the judgments of the District Court of Bassein in Civil Regular Suits Nos. 3 of 1937 and 8 of 1936.

1937

MA HLA
MRA KHINE
v.

MA HLA
KRA PRU.

MOSELY, J.

1937

Dec. 21.