

As to the second point. The mortgage may be of the whole interest of the mortgagor, but we do not see how this can possibly render it legal. The object of the Act is to keep a *bhāg* intact, and with that object it forbids the mortgaging of any portion of any *bhāg*. The mortgagor in the present case was, it is said, at one time the owner of the whole *bhāg*, but he sold a part of it to one Bhagvan in 1873 and he mortgaged the rest to the appellant in 1880. Both of these transactions were illegal under the Act, and the fact of the earlier transaction cannot possibly be held to validate the latter. The true and only test to apply to the case is to see whether what the appellant seeks now to have sold is a portion of a *bhāg* other than a recognised sub-division of such *bhāg*. Both the lower Courts find as a fact that it is, and, therefore, their decision on the law is correct. We confirm the decree with costs.

1897.

NARBHERAM
v.
COLLECTOR
OF BROACH.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

MANOCKJI DADABHAI v. THE BOMBAY TRAMWAY COMPANY.*

1896.

Tramways Act (Bom. Act I of 1874), Sec. 24—"Regulating the travelling"—
Meaning of the words—Regulation made under the section for regulating
the conduct of the Company's servants—Illegality of such regulation.

November 12.

The words "regulating the travelling" in section 24 of the Bombay Tramways Act (Bom. Act I of 1874) mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's servants, prescribing what they shall do, or what they shall not do, in the matter, for instance, of issuing tickets.

Section 24 of Bombay Act I of 1874 authorises the Bombay Tramway Company to make regulations "for regulating the travelling in or upon any carriage belonging to them." Under this section the Company made the following regulation:—

"Any conductor who shall neglect to issue a ticket to a passenger, or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such books, or shall issue a ticket of a lower denomination than the amount of the fare, or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled,—shall for every such offence be liable to a penalty not exceeding Rs. 25."

Held, that the regulation was *ultra vires*.

* Criminal Revision, No. 215 of 1896.

1896.

MAFOCKJI

v.

BOMBAY
TRAMWAY
COMPANY.

APPLICATION under section 439 of the Code of Criminal Procedure (Act X of 1882).

The accused was a tramway conductor in the service of the Bombay Tramway Company.

He was prosecuted by the Company for omitting to issue a half-anna ticket to a passenger after receipt of the fare, as he was bound to do under bye-law 6 framed by the Company under section 24 of the Bombay Tramways Act (Bom. Act I of 1874), which authorises the Company to make regulations "for regulating the travelling in or upon any carriage belonging to them."

The bye-law was as follows :—

"Every person travelling on the tramway will, on payment of his fare, be furnished with a ticket specifying the amount of fare, and shall when required show his ticket to any servant of the Tramway Company.

"Each tramway car shall be in charge of a conductor, and each conductor will be furnished with books, each containing tickets consecutively numbered. Any conductor who shall neglect to issue a ticket to a passenger, or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such books, or shall issue a ticket of a lower denomination than the amount of the fare or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled, shall for every such offence be liable to a penalty not exceeding Rs. 25."

The accused was convicted under the above bye-law and sentenced to pay a fine of Rs. 5 by Khán Bahádur P. H. Dastar, Acting Third Presidency Magistrate.

The accused thereupon moved the High Court under its revisional jurisdiction to set aside the conviction and sentence.

R. B. Paymaster and *Dhunjibhai Jehangir* for the accused.

Jang, Advocate General, (with Messrs. *Roughton and Byrne*) for complainant.

PARSONS, J.:—The applicant has been convicted of the offence of failing to issue an half-anna ticket to a passenger on the Bombay Tramway on receipt of the fare, as he was bound to do under bye-law 6 framed under section 24 of the Bombay Act I of 1874 (The Bombay Tramways Act). The bye-law is as follows :—

"Each tramway car shall be in charge of a conductor, and each conductor will be furnished with books, each containing tickets consecutively numbered. Any conductor who shall neglect to issue a ticket to a passenger, or shall issue

to such passenger a ticket bearing a number other than one of the numbers contained in such books, or shall issue a ticket of a lower denomination than the amount of the fare or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled, shall, for every such offence, be liable to a penalty not exceeding Rs. 25."

The point is, whether this is a bye-law that could legally be made under the said section 24, which allows the grantees to make regulations for regulating the travelling in or upon any carriage belonging to them. It is argued by the Advocate General, for the prosecution, that as the payment of fares and the taking of tickets are essentials of travelling, a regulation as to the issue and grant of the tickets is a regulation of the travelling. We cannot, however, agree with the argument. Sections 16 to 18 of the Act provide for the payment of fares, and give the grantees the power to regulate the place and manner of payment. It may be a preliminary of travelling that a person shall take a ticket, but it is not an essential of travelling that he shall have a ticket, still less a ticket of a consecutive number or of a particular colour. We think the words "regulating the travelling" can only mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's own servants, prescribing what they shall do or what they shall not do, in the matter, for instance, of the issue of tickets, which rules are only framed by the Company for their own protection against the possible fraud or dishonesty of their servants. We are confirmed in this opinion by the fact that an express clause to enable bye-laws to be made for regulating the conduct of railway servants was by Act IV of 1883 inserted in the Railway Act, 1879, and now forms part of the Railway Act, 1890.

We reverse the conviction and sentence.

RANADE, J. :—The question of law to be considered in this case is whether Rule 6 of the rules framed by the Tramway Company for the regulation of the duties of conductors falls within the scope of any of the clauses of section 24 of Bombay Act I of 1874. It was contended by the Advocate General, who appeared on behalf of the Company, that the clause which permitted the

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Company to make rules for the regulation of travelling, included a power to frame rules for the conduct of the Company's servants. I am unable to accept the correctness of this view. The words used in section 24 are similar to those used in the Railway Company's Act, section 47, clause (g) of Act IX of 1890, which section, however, contains a separate clause (e), empowering the Company to make rules for regulating the conduct of its own servants. It is quite clear from this that the words used in section 24 do not imply the power to make rules for the regulation of the conduct of the Company's servants. This becomes still more clear from the fact that section 8 in the old Railways Act IV of 1879 contained a clause (e) similar in its import to the words used in section 24 of the Tramways Act, and that the Legislature deemed it necessary to pass a new Act IV of 1883 by which for the first time power was conferred on railway administration to make rules for regulating the conduct of railway servants. It accordingly appears clear that the words used in section 24, on which the Advocate General relies, cannot be understood as conferring a power on the Tramway Company to frame rules for regulating the conduct of its servants in a way to make the negligent omission of the conductor to issue tickets to passengers an offence under the Tramways Act. The Company has the power to dismiss its servants for neglect of duty, but the negligence or omission cannot be dealt with as an offence criminally punishable. The rule is obviously *ultra vires*, and we must reverse the conviction and sentence passed in this case.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE NAHALCHAND MOTIRAM.*

1896.

November 19.

Police—Bombay District Police Act (Bom. Act VII of 1867), Sec. 33—"Booth"
—Meaning of the word—Structure contemplated by the section must be constructed on a public road and must cause nuisance to the public—Construction.

The accused had a house on each side of a public road. On the occasion of a wedding he put bamboos across the street from the top windows of one

*Criminal Revision, No. 206 of 1896.