

CRIMINAL REVISIONAL.

*Before Sir L. H. Jenkins, Chief Justice, Mr. Justice Candy and
Mr. Justice Ranade.*

*IN RE DADABHAI JAMSEDJI.**

*Indian Railways Act (IX of 1890), Sec. 110—"Compartment"—Meaning
of the word.*

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October 9.

Per JENKINS, C. J., and CANDY, J.:—Good sense requires that to the word "compartment" in certain sections of the Indian Railways Act (IX of 1890) the quality of complete separation should be attributed, and it is with that force that it is used in section 110.

Per RANADE, J.:—The word "compartment" is used in section 110 of Act IX of 1890 in the same sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division.

THIS was an application under section 435 of the Code of Criminal Procedure (Act V of 1898).

A complaint was lodged before S. B. Spencer, Acting Fourth Presidency Magistrate, under section 110⁽¹⁾ of the Indian Railways Act (IX of 1890), charging the accused with smoking in a non-smoking compartment of a second class railway carriage without the consent of the complainant who was a fellow passenger with him in the same compartment.

The accused was further charged with insulting the complainant and hurting his religious feelings under sections 298 and 504 of the Indian Penal Code.

The Magistrate discharged the accused on all the charges, holding that the accused and the complainant, though they were fellow passengers, were not in the same compartment within the meaning of section 110 of the Indian Railways Act (IX of 1890).

Against this order of discharge the complainant applied to the High Court under its criminal revisional jurisdiction.

Macpherson (with him *R. B. Paymaster*) for complainant.

There was no appearance for the accused.

* Criminal Revision, No. 169 of 1899.

(1) Section 110, clause 1 of Act IX of 1890 provides as follows:—"If a person without the consent of his fellow passengers, if any, in the same compartment, smoker in any compartment except a compartment specially provided for the purpose, he shall be punished with fine, which may extend to twenty rupees."

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JENKINS, C. J. :—In this case a rule has been granted calling on the accused to show cause why the order of the Magistrate should not be set aside.

It seems that the complainant and the accused were travelling in the same carriage on the B. B. and C. I. Railway and that the accused smoked without the complainant's consent. For this he has been prosecuted under section 110⁽¹⁾ of the Indian Railways Act, 1890.

That sub-section is in these words :—(His Lordship read the section and continued :—)The case was heard before Mr. Spencer, who held that the complainant and accused, though they may have been fellow passengers, were not in the same compartment and discharged the accused. On this an application was made to this Court, and the rule to which I have referred was granted by Parsons and Ranade, JJ., who at the same time called for a report. In compliance with this Mr. Spencer has furnished us with a very careful and clear statement of the reasons which induced him to decide as he did. From his report and from what has been stated before us it seems that the portion of the carriage in which the complainant and accused were travelling was separated from the rest of the carriage by a complete partition, and that this portion was itself cut off into two sections, the dividing line between them being a partition about three feet high which served as a common back for seats in each section. This is shown by the diagram attached to Mr. Spencer's report. Now this three-foot partition manifestly would not screen passengers in one of these two sections from the sight of those in the other; nor would it in any way interrupt the passage of smoke from the one section to the other. Therefore it is difficult to regard such a division as a compartment that would comply with the provisions of the Legislature requiring the reservation for the exclusive use of females of one compartment at least of the lowest class of carriage forming part of the train and that it should be furnished with a closet. When one bears in mind the customs intended to be respected by this provision it would be impossible to suppose that a section such as I have indicated could be taken to be a compartment within the meaning of section 64.

(1) *Supra* 293.

I now pass to consider whether the complainant can be deemed to have been in different compartments for [the purpose of section 110.

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It appears to me to be obvious that the purpose of the section is to secure that no one shall smoke in a railway carriage so as to be an annoyance to any fellow passenger. But I have already shown that the partition between the two sections of the carriage in question in no manner helped to avert this annoyance.

It requires no great effort of imagination to see that a smoker may cause even greater annoyance to those who may be seated in the adjoining section even than to those travelling in the same one as himself. Under these circumstances is there anything which compels me to ascribe to the word 'compartment' a meaning which would result in my having to hold that the complainant and the accused were in separate compartments?

If I turn to the dictionaries I find myself under no such obligation, but I concede that this can be taken as no way conclusive as to the meaning of the word in this Act or perhaps I should say in this section.

Mr. Spencer has pointed out with perfect truth that the Act contains no definition of the word, but he would find a clue to its meaning in the 63rd section of the Act coupled with the practice of the companies. I allude to their practice of exhibiting inside or outside of each section, though divided from its neighbour only by a partial partition, the maximum number of passengers which may be carried in it.

But there are two objections to this method of reasoning, each of which seems to me to be equally destructive. In the first place it treats the B. B. and C. I. Railway Company as the infallible interpreter of this Act, and next it attributes to the Company an interpretation which does not necessarily follow from the premises.

Because they notify how many can be seated in each section, it by no means follows that they say each section is a compartment, nor would their practice otherwise be a failure to comply with the provisions of the Act, for the maximum permissible for

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the compartment would be the sum of the maximum permissible for each section of the compartment.

It did at one time seem to me that section 109 might support the view that each section though divided by a partial partition was a compartment within the meaning of the Act, but on the whole I think it does not. The truth is that the word 'compartment' is not used throughout the Act with the same precise force, and whereas certain provisions of the Act would be satisfied if there be a partial partition, there are other provisions in which it appears to me that good sense requires that we should attribute to compartment the quality of complete separation, and it is with that force that in my opinion it is used in section 110. It results, then, from this that in my judgment the complainant and accused were in different parts of the same compartment, and that consequently the accused was not entitled to smoke without the complainant's consent.

I pass to consider whether the offence was of so trivial a nature that it falls within section 95 of the Indian Penal Code.

I think it cannot be so treated: to a smoker it may perhaps appear too trivial to be an offence to smoke even in a place where it is forbidden and despite the protest of one whose consent is necessary. Still that is not the view of the Legislature, for it has provided otherwise, and I, therefore, think the case should, in my opinion, go back to the Magistrate to be tried. As to the other charge, I would not disturb the conclusion of the Magistrate, who is eminently qualified to form an opinion on such a subject.

RANADE, J.:—This was an application for the revision of an order of discharge passed by the Fourth Presidency Magistrate in a complaint brought by the applicant under sections 504 and 298 of the Indian Penal Code, 1860. A further charge was added at the instance of the complainant's pleader under section 110 of the Indian Railways Act. The latter charge was dismissed on the ground that the compartment in which the complainant was travelling was not the same as that in which the accused was seated, and that even if accused had smoked in that compartment, he committed no offence, and that under the circumstances no other offence was disclosed. The

applicant seeks a revision of the order of discharge on the ground (1) that the Magistrate was in error in holding that the complainant was sitting in a different compartment and (2) that even if there was no offence under the Railways Act, the Magistrate ought to have inquired into the complaint under sections 504 and 298, in respect of which it was not necessary that the complainant and the accused should be sitting in the same compartment.

It is clear that in so far as the offence under section 110 of the Railways Act is concerned, the question turns upon the definition of the word "compartment". Section 110 provides that if any person, without the consent of his fellow passenger, if any, in the same compartment, smokes in any compartment except a compartment specially provided for that purpose, he shall be punished with fine. The accused must, therefore, be shown to have been sitting in the same compartment when he smoked to the annoyance of the complainant. The Magistrate held, on the evidence, that the accused was sitting in a separate compartment. Mr. Macpherson, who appeared as counsel for the complainant, contended that the Magistrate was in error in his interpretation of the words "same compartment" in section 110. He contended that a compartment implies that the separating partition should be a complete partition, which was admittedly not the case in the division separating the place where the complainant was sitting from the place where the accused is alleged to have been smoking. Section 64 was referred to as showing that under it provision has to be made of one compartment for the exclusive use of females, and it was suggested that for such a purpose, the separating partition must be complete. This is, however, only an inference. In these carriages the height of the half shut-up backs would be about four feet and the protection intended for the females is thus practically ensured in the half shut-up compartment, and such compartments are so used occasionally. The use of the word "compartment" in the other sections shows clearly that the separating partition of compartments might be half as in the present case. Section 63, for instance, requires that the number of passengers to be carried shall be exhibited outside or inside each compartment. The

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words "to seat ten persons" are admittedly written in each of the half of a division which makes a compartment, whether the compartment is shut out completely or otherwise. The word occurs in a similar connection in section 93. Section 95 refers to section 64 noticed above. Section 102 has reference to section 63, and it punishes railway servants who compel passengers to enter compartments in which a maximum number of passengers are seated. This obviously does not refer to completely partitioned divisions only, but intends half shut-out compartments as well. Sections 109 and 119 use the word "compartment" similarly.

Reading all the sections together it is clear that the word "compartment" must be understood as having been used in the same sense throughout, and section 69 does not necessarily suggest the word was used in different senses in different places.

The Magistrate's interpretation of the word "compartment" was, therefore, correct, and though the place in which complainant was sitting was not completely partitioned off from the place where accused was smoking, it cannot be said that they were sitting in the same compartment under section 110. The complaint under the Railway Act was, therefore, very properly dismissed.

As regards the offence under the Indian Penal Code, the Magistrate's report shows that he dismissed that complaint under section 95 of the Code, as the matter complained of was too trivial to constitute an offence.

I would dismiss the application, as also the companion case No. 168.

The Judges having differed, the case was by order of the Chief Justice referred to Mr. Justice Candy for opinion under section 429 of the Criminal Procedure Code (Act V of 1898), who recorded the following judgment:—

9th October, 1899. CANDY, J.:—This case has been referred to me under section 429 of the Criminal Procedure Code (Act V of 1898). I have not thought it fit to direct any further hearing.

On the case as laid before me I deliver my opinion that the view taken by the learned Chief Justice is correct, and that the

complainant and the accused were "in the same compartment" as provided by section 110 of the Indian Railways Act, 1890.

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There is no definition in the Act of the word "compartment". It is possible that it may be used in different senses in various sections of the Act. In the Oxford New Dictionary "compartment" is "a division separated by partitions: a part partitioned off". In each of the second class carriages of the B. B. and C. I. Railway used between Bandora and Bombay there are (as shown in the plan attached to Mr. Spencer's report) three main compartments. They are divisions separated from each other by partitions right up to the roof of the carriage. Each division is thus completely screened off from its adjoining division. Each division is thus a compartment. But each of such divisions is further sub-divided by a partition which is about three feet high. Each sub-division or section is in itself a compartment, for it is a part of the original compartment, which is partitioned off and it has its own door for entrance and egress. For the purpose of exhibiting the maximum number of passengers for each compartment (sections 63, 93, 102 and 109) the Railway administration treat each section or sub-division as a "compartment". They may be perfectly right in so doing: it is not inconsistent with the language of the section. But if they follow the same line with regard to sections 64, 95 and 119 (reservation of compartments for females) or 110 (smoking), then their action is not consistent with the intention of the Legislature. A thing is not within the statute unless it is within the intention of the statute. Obviously the intention of the Legislature is that in certain cases there shall be a compartment reserved for the exclusive use of females, so that they may have privacy and be unmolested by males. A section or sub-division of a compartment, as I have described above, is certainly not such a compartment. So, too, with smoking: it is obvious that in a full compartment of twenty persons, if one or more of the passengers in section or sub-division A can smoke without regard to the assent or dissent of the passengers in section or sub-division B, then the provisions of section 110 are a farce. We are not compelled so to read the statute. The case will accordingly go back to the Magistrate with the direction set out by the Chief Justice, *viz.*, that the order

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of the Magistrate be reversed, and the case sent back for trial on the charge under section 110 of the Railways Act of 1890. The finding of the Magistrate on the charges under sections 504 and 298 of the Indian Penal Code in Application No. 169 of 1899, and under sections 298 and 109 of the Indian Penal Code in Application No. 168 of 1899 is not disturbed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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November 14.

TANIRAM (ORIGINAL PLAINTIFF), APPELLANT, v. GAJANAN (ORIGINAL DEFENDANT NO. 3), RESPONDENT.*

Transfer of Property Act (IV of 1882), Secs. 87, 88, 89 and 93—Mortgage—Decree for sale of mortgaged property—Default in payment on the date fixed in the decree—Redemption—Power to enlarge the time.

In a suit brought by a mortgagee for sale of the mortgaged property, a decree was passed on 27th July, 1895, directing that the mortgagor should pay the mortgage debt within six months, and that in default his right of redemption should be foreclosed and the mortgagee should be at liberty to sell the property.

On the 27th July, 1898, the mortgagee applied for an order absolute for sale.

On the 11th October, 1898, the mortgagor applied for permission to pay into Court the amount of the decree.

Held, that the application could not be granted. The case fell within sections 88 and 89, and not within sections 87 or 93, of the Transfer of Property Act (IV of 1882). The money not having been paid within the appointed time, the Court was bound to pass an order absolute for sale; it had no power to enlarge the time for payment.

SECOND appeal from the decision of R. S. Tipnis, District Judge of Khândesh.

On the 7th July, 1893, one Taniram sued Dhaklu and Khandu to recover Rs. 706 as the amount due under a mortgage by sale of the mortgaged property.

Gajanan was made as a party defendant, on the ground that he had purchased the equity of redemption.

On 27th July, 1895, a decree was passed directing that Gajanan should pay to the (plaintiff) mortgagee Rs. 92 and interest at 12 per cent. per annum from the date of the mortgage till the date

* Second Appeal, No. 500 of 1899.