

APPELLATE CRIMINAL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

1912.

EMPEROR v. BANUBHAI HADUBHAI.^o

November 14.

Public Conveyances Act (Bombay Act VI of 1863), section 1†—Public Conveyance—Hand-drawn lorry is a public conveyance.

A hand-drawn lorry plied for the conveyance of goods is a public conveyance within the meaning of the expression as defined in the Public Conveyances Act (Bombay Act VI of 1863).

THIS was an appeal by the Government of Bombay from an order of acquittal passed by E. Byramsha, First Class Magistrate of Ahmedabad.

The accused owned two hand-drawn lorries which he plied for conveyance of goods in the City of Ahmedabad. No license was taken out for these lorries under the Public Conveyances Act, 1863. The accused was on these facts placed for trial before the First Class Magistrate of Ahmedabad, in that he plied the lorries without a license. The trying Magistrate acquitted the accused on the ground that the lorries did not fall within the definition of a public conveyance as given in the Public Conveyances Act, 1863.

The Government of Bombay appealed to the High Court against this order of acquittal.

L. A. Shah, acting Government Pleader, for the Crown.

^o Criminal Appeal No. 380 of 1912.

† The material portion of the section runs as follows :—

Every carriage with two or more wheels which shall be used for the purpose of plying for hire . . . of whatever form or construction, or by whatever number of horses or other animals the same shall be drawn, and every paliki which shall be let for hire, shall be deemed and taken to be a public land-conveyance.

No appearance for the accused.

BATCHELOR, J. :—This is an appeal by the Government of Bombay against an acquittal. Notice has been served upon the accused person, but there is no appearance on his behalf. The point, however, involved in the appeal is, it seems to us, a very simple one.

The facts are that the accused without having taken out a license for that purpose plied for hire a hand-lorry in the City of Ahmedabad to which the provisions of Bombay Public Conveyances Act VI of 1863 have been extended. The learned Magistrate was of opinion that hand-drawn lorries were not conveyances within the meaning of the Act, and upon that ground alone directed the accused's acquittal. We have, therefore, to see whether this view of the Magistrate's is the right view under the Statute.

We begin with this consideration that there would appear to be no reason in the nature of things why hand-drawn lorries should be excluded from the operation of the Act. So far as regards the objects which an Act of this character is intended to serve, such, for instance, as the supervision imposed over public carriers plying for hire, it clearly makes no difference whether a particular conveyance plying for hire is drawn by horses or by men. Coming to the actual words of the Act, we do not think that they bear out the rather fine distinction which the learned Magistrate desired to import. The defining section is section 1, which enacts that "every carriage with two or more wheels which shall be used for the purpose of plying for hire . . . of whatever form or construction, or by whatever number of horses or other animals the same shall be drawn, and every Palki, which shall be let for hire, shall be deemed and taken to be a public land-conveyance." We observe upon that, that the occurrence of

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the Palkhi in this definition is adverse to the theory that a public conveyance must necessarily be a conveyance drawn by horses or other animals. Next, we are of opinion that the words "or by whatever number of horses or other animals the same shall be drawn," are not intended to restrict, but rather to expand, the scope of the defining words already used. This opinion derives countenance from one of the clauses in section 7 of the Act. That section deals with the fees to be levied for licenses in accordance with the various classes of conveyances licensed; and one of those classes is described as being labour-carts to carry goods only. There is no condition expressed or implied that such labour-carts shall be drawn by horses or shall not be drawn by human agency.

On these grounds we think that the learned Magistrate's view of the Act is incorrect. We must, therefore, reverse the learned Magistrate's order and convict the accused under section 2 of the Act. As the case comes before us merely in order to get a decision upon the point of law we award a nominal sentence of one rupee, or in default simple imprisonment for one day.

Order reversed.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

In re GOPALA BHAI CHAUGULA.*

1912.

November 15.

Criminal Procedure Code (Act V of 1898), section 250—False charge—Vexatious charge—Compensation awarded to accused from complainant—Order sanctioning prosecution of complainant for false charge under section 211 of the Indian Penal Code (Act XLV of 1860).

Section 250 of the Criminal Procedure Code (Act V of 1898) applies to a charge which is false and also to a charge which is frivolous or vexatious.

* Criminal Application for Revision, No. 284 of 1912.