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EMPEROR v. HARIDAS LAKHMIDAS.

That being so, it was, in our opinion, incumbent upon the accused under section 4 of the Act to take out another registration. Since he did not do so, he is liable to the penalty prescribed by section 13 as the punishment for an owner of a harbour-craft who is guilty of this omission. The result is that under that section the accused, who must be convicted of the offence imputed to him, is subject to a fine of Rs. 10, and following the decision in *Empress* v. *Mhasnya Rama*[1] we direct that he pay this fine of Rs. 10.

R. R.

[1] (1883) 7 Bom. 280.

CRIMINAL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Shah.

1913.

August 28.

EMPEROR *v.* NANJI SAMAL.*

Criminal Procedure Code (Act V of 1898), section 213—Committal of a case to the Court of Session—Reasons for committal to be given where the case can be tried by the Magistrate—Indian Registration Act (XVI of 1908), section 83, clause (2)—Irregularity—Illegality.

Where a Magistrate, who could have tried the case himself under clause (2) of section 83 of the Indian Registration Act (XVI of 1908), committed it to the Court of Session without giving any reasons for committal :—

Held, that the reasons for committal must include not merely reasons for not discharging the accused, but reasons for sending him to the Court of Session, as the trial could be had either by the Magistrate himself or by the Court of Session ; and that the omission to give the reasons was an illegality.

THIS was a reference made by E. Clements, Sessions Judge of Ahmedabad.

The accused was charged before the City Magistrate of Ahmedabad with an offence punishable under section 82A of the Indian Registration Act (XVI of 1908). The Magistrate, however, instead of trying the case himself

* Criminal Reference No. 61 of 1913.

as he was competent to do under section 83 (2) of the Act, committed the case to the Court of Session without giving any reasons.

The Sessions Judge referred the case to the High Court for quashing the commitment, on the ground that the Magistrate had given no reasons for committing the case which was triable by himself.

The reference was heard.

G. N. Thakore, for the accused.

No appearance for the Crown.

HEATON, J. :—In this case the Magistrate, as appears quite plainly from clause (2) of section 83 of the Registration Act, could have tried the case himself but he committed it to the Court of Session. He did not however give any reason why he should commit it rather than try it himself. The law requires that reasons for commitment shall be recorded (see section 213 of the Criminal Procedure Code). In a case of this kind where the trial may either be by the Magistrate himself or by the Court of Session, I think that reasons for commitment must include not merely reasons for not discharging the accused, but reasons for sending him before the Court of Session. There has, therefore, been a failure to comply with the law. This no doubt would amount to no more than an irregularity if the case were one which plainly ought to be committed to the Sessions. But where, as appears here, the case is not one which ought to have been committed, then to commit without giving reasons is more than an irregularity. It is, it seems to me, an illegality.

For this reason I would quash the commitment and it follows the case will have to be disposed of by the Magistrate who committed it.

Commitment quashed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1913. *September 3.*

THE DHOLKA TOWN MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT, *v.* PATEL DESAIBHAI KALIDAS AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Irrigation Act (Bom. Act VII of 1879)—District Municipal Act (Bom. Act III of 1901), section 56—Drainage cut—Drainage channel—Neglect of proper repairs by local bodies—Flow of water across the road into plaintiffs' field—Damage—Liability of local bodies—Non-feasance—Neglect of highways.

Where drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flowed across the road into the plaintiffs' field and caused damage to the plaintiffs and the damage was found to be due, not to the authorized drainage work but to the neglect of the drainage channel which the Municipality was bound to repair,

Held, that the Municipality was liable to the plaintiffs in damages.

Per Curiam.—The exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners.

Borough of Bathurst v. *Macpherson*(1), *Municipality of Picton* v. *Geldert*(2), referred to.

SECOND appeal against the decision of B. C. Kennedy, District Judge of Ahmedabad, reversing the decree of Parvatishankar M. Bhat, Subordinate Judge of Dholka.

The plaintiffs sued to recover Rs. 385 from the defendant Municipality alleging *inter alia* that the defendant Municipality constructed the western drainage channel as a sanitary measure for the improvement of the health of the town of Dholka in the year 1900, that the defendant Municipality did not keep the said channel in proper order and hence there was no proper discharge

* Second Appeal No. 455 of 1912.

(1) (1879) 4 App. Cas. 256. (2) [1893] A. C. 524.

of rain water, that their crops were thereby damaged and they suffered loss every year, that the Municipality was served with a notice to keep the channel in good order but they failed to do so and hence the cause of action which was alleged to have accrued on the 26th August 1908. The plaintiffs further prayed that the defendant Municipality be enjoined to keep the channel in good order so that its water may not run into plaintiffs' land.

The defendant Municipality contended that the channel was a sanitary measure and it did not do any wrong to the plaintiffs' fields, that the plaintiffs should have moved the Government and not the Municipality in the matter, that the suit was time-barred, that the defendant Municipality did make repairs in 1907, though it was not the duty of the Municipality to do so, that the plaintiffs had no fields in the immediate vicinity of the channel, and that there was no neglect on the part of the Municipality.

The Subordinate Judge found that his Court had jurisdiction to entertain the suit, that no loss or damage was done to plaintiffs' crops by any wrongful or negligent act or omission on the part of the defendant Municipality and that nothing was due to plaintiffs on account of damages. He, therefore, dismissed the suit.

On appeal by the plaintiffs the District Judge found that the discharge of rain water on to the plantiffs' land came about through the neglect of the defendant Municipality and it did cause damage to plaintiffs and that they were entitled to damages. His reasons were as follows:—

It is quite clear that in whomsoever the actual soil of the water cut may rest, yet the water cut, by which I mean the right of passing water over a particular channel and the preparation of that channel for its special purpose, is vested in the Municipality. Government constructed the work and provided part of the funds, but the work is clearly a municipal work, and it is the business of the Municipality to keep it in good order—though it lies outside the

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Municipal limits. Now the Municipality have a perfect right to drain Dholka, and if the flooding of the plaintiffs' fields was necessary to this end, it would appear that the plaintiffs would have had no cause of complaint, but it is admitted that the breach in the bank is due to the failure of the people responsible to remove bushes and silt. The consequence is that the channel is much silted at this turn and the banks are no longer able to retain flood water, which accordingly has flowed over the banks and breached them. It appears that the drainage water instead of turning west and flowing along the assigned channel now flows on north across the road and plaintiffs' field. The damage then done to the plaintiffs' field is not due to the drainage but to the neglect of the channel, and it is perfectly clear that the Municipality is bound to repair the channel. Government had nothing to do with the cut except to build it for the Municipality. It is noted that the rainfall on the particular occasion of which the plaintiffs complain was not excessive or abnormal, but really trivial. I find then that the discharge of rain water on to the plaintiffs' land came about through the neglect of the defendant Municipality and it did cause damage to plaintiffs.

The District Judge, therefore, remanded the case to the first Court for a finding as to the amount of damages caused to the plaintiffs; and that Court found that Rs. 132-12-0 were due to plaintiffs for damages.

Against the said finding both the parties appealed. The plaintiffs in their appeal urged that the amount of Rs. 132-12-0 was too low and the defendant Municipality objected that the amount was too high. The Judge reversed the finding and decree of the lower Court and directed the plaintiffs to recover Rs. 110 from the defendant Municipality with costs in proportion.

The defendant Municipality preferred a second appeal.

G. S. Rao, for the appellant (defendant Municipality).

N. K. Mehta, for the respondents (plaintiffs).

The following cases were cited in arguments :—

Municipality of Picton v. *Geldert*[1], *Cowley* v. *Newmarket Local Board*[2], *Gibson* v. *Mayor of Preston*[3], *Achratlal* v. *The Ahmedabad Municipality*[4],

[1] [1893] A. C. 524.
[2] [1892] A. C. 345.
[3] (1870) L. R. 5 Q. B. 218.
[4] (1904) 28 Bom. 340.

Borough of Bathurst v. *Macpherson*[1], *Sanitary Commissioners of Gibraltar* v. *Orfila*[2].

SCOTT, C. J. :—Upon the findings of fact of the lower appellate Court we are of opinion that the decision appealed from is right. The drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flows across the road into the plaintiff's field and causes damage to the plaintiff. The damage is found to be due, not to the authorised drainage work, but to the neglect of the drainage channel, which the Municipality is bound to repair. The Government made the cut under their powers under the Irrigation Act, but it was built merely for the convenience of the Municipality, who took it over, and who are authorised under section 56 of the District Municipal Act to expend money on works outside the Municipal district. It is contended on behalf of the appellant that the Municipality are under no liability in respect of the damage caused to the plaintiff, because it is a matter arising from non-feasance and not from mis-feasance. But the exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways, and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners. This appears from the judgments of the Privy Council in *Borough of Bathurst* v. *Macpherson*[1] and *Municipality of Pictou* v. *Geldert*[3]. We, therefore, affirm the decree of the lower appellate Court and dismiss the appeal with costs.

Decree affirmed.

G. B. R.

[1] (1879) 4 App. Cas. 256. [2] (1890) 15 App. Cas. 400.

[3] [1893] A. C. 524 at p. 531.