

Before Mr. Justice Norman and Mr. Justice Phear.

IN THE MATTER OF SAGAR DUTT.—THE QUEEN v. THE JUSTICES
OF THE PEACE.

1868
Sept. 10th

Writ of Certiorari—Conviction under Act VI. of 1866, B. C.

Sagar Dutt was convicted before a Justice of the Peace, for using a warehouse, &c., in the Town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for his said offence was fined Rupees 300, and adjudged to pay a further fine of Rupees 25 for every day after the conviction, in which the offence was continued. *Held*, that the conviction was bad.

A WRIT of *certiorari* had been granted to remove the proceedings in this case to the High Court, and the rule *nisi* had been obtained by the *Advocate General* calling on Kasiprasad Ghose, one of the Justices of the Peace for the Town of Calcutta, to shew cause, why a conviction and judgment pronounced by him, as such Justice of the Peace, on one Sagar Dutt, should not be quashed. The affidavit of Sagar Dutt's attorney, upon which the rule was granted, stated, that on the 12th of August 1868, the said Sagar Dutt was summoned before Kasiprasad Ghose, one of the Justices of the Peace for the Town of Calcutta, to answer a charge made by A. H. Pereira, Inspector of licenses, for making and storing jute, at 31, Durmahatta Street, without having a license for the same, in violation of section 39 of Act VI. (B. C.) of 1866 (1); and being convicted of such charge, was adjudged by the said Kasiprasad Ghose to pay a fine of Rs. 300, and a further penalty of Rs. 25 for every day the offence should be continued, after the conviction. It was admitted that

(1) Act VI. 1866, s. 39.—“ After the passing of this Act, it shall not be lawful to use any warehouse, store depôt, yard, or other place within the limits of this Act, for the keeping or storing of jute other than jute screwed for shipment, unless before the same is so used, a license for such use be obtained from the Justices. Provided that this section shall not app'y to warehouses, stores depôts, yards, or places already used at the time this Act comes into operation for the keeping or storing of such jute. Provided, nevertheless, if any such last mentioned warehouse, store depôt, or place shall be burnt down

and shall be re-built, it shall not be so used for the keeping or storing of such jute, unless such license as aforesaid be previously obtained. Every person who, without such license, shall so use any warehouse, store depôt, yard, or other place in cases in which a license ought to be obtained, shall be liable to a penalty not exceeding Rs. 500, and to a further penalty not exceeding Rs. 50 for every day during which any such warehouse, store depôt, yard or other place is so used without a license, after a conviction under this section or after written notice from the Justices to discontinue such use.”

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the premises had been used for storing, &c., jute, before the passing of Act VI. of 1866.

The following grounds for quashing the conviction were set forth in the affidavit:—

1. That there was no evidence to shew that the premises had been burnt down, as is contemplated by section 39 of Act VI. of 1866.

2. That there was no evidence to shew that the said premises had been rebuilt as contemplated by the said section.

3. That there was no sufficient evidence that the said Sagar Dutt was not licensed.

4. That there was no evidence of any authority from the Justices of the Peace for Calcutta, for the institution of the prosecution, as is required by section 233 of Act VI. of 1863.

5. That the English witnesses were not sworn, but merely gave their evidence upon solemn affirmation.

6. That improper and illegal evidence was admitted, and proper legal evidence shut out at the trial.

The conviction ran as follows :

“ Be it remembered, that on the 12th day of August, in the year of our Lord 1868, at Calcutta aforesaid, Sagar Dutt is convicted before the undersigned, one of the Justices of the Peace for the Town of Calcutta aforesaid, upon an information and complaint exhibited against him, on the 16th day of July, in the year aforesaid; by order of the said Justices of the Peace for the Town of Calcutta; for that he, the said Sagar Dutt, on the 9th of July, in the year aforesaid, used a certain warehouse, store depot, and yard aforesaid, situate at, and being No. 31, Durmahatta Street, in the Town of Calcutta aforesaid, for the keeping and storing of jute other than jute screwed for shipment, he the said Sagar Dutt not having before such use of the warehouse, store depôt, and yard aforesaid, obtained, in manner provided by law, a license for such use, from the said Justices; and the said warehouse, store depôt, and yard being a place for the keeping and storing of jute, for which previously to such use such license ought to have been obtained under the provisions of Act VI. of 1866 of the Council of the Lieutenant-Governor of Bengal for making laws and Regulations in that behalf made and provided,

and I adjudge the said Sagar Dutt, for his said offence, to forfeit and pay the sum of Rupees 300, as a penalty, and to forfeit and pay a further sum of Rupees 25 for every day, after the date of this conviction, during which the said warehouse, store depôt, and yard shall be used for the keeping and storing of jute other than jute screwed for shipment by the said Sagar Dutt, without his having previously to each and every day's such use daily obtained a license from the said Justices in that behalf to be paid and applied according to law; and if the said penalty of Rupees 300 be not paid forthwith, I order that the same be levied under the warrant of the said undersigned by distress and sale of the goods of the said Sagar Dutt, according to law; and if the said further penalty of Rs. 25, for every day, after the date of this conviction, during which the said warehouse, store depôt, and yard shall be used, without such license, as aforesaid, be not paid forthwith, on the same becoming due and payable, I order that then and so often as the said further penalty shall not be paid, that the same be levied in like manner under the warrant of the undersigned by distress and sale of the goods of the said Sagar Dutt according to law, given under my hand and seal the day and year first above-mentioned, at Calcutta aforesaid."

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The *Advocate General* (Mr. Ingram with him)—There are two defects on the face of the conviction. The conviction says, that Sagar Dutt was using warehouses, &c., for storing jute, without taking out a license for so doing, and it avers that such license is necessary. But this is not sufficient, for the 39th section of Act VI. of 1866 excepts warehouses in existence at the time of the passing of the Act. A license would not be required, unless such warehouses had been burnt down and re-built, and it is not shown, in the conviction, that this warehouse did not come under that exception. It should appear, on the face of it, that it had been burnt down and re-built. The second defect is that besides a fine of Rs. 300, there has been imposed on Sagar Dutt a fine of Rs. 25 for every day after the conviction, during which he should use the warehouse for storing jute without a license. This is fining him for an offence which has not been committed, and it makes the conviction bad.

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On the *Advocate General* proceeding to show grounds for quashing the conviction other than those appearing on the face of the conviction, Mr. *Woodroffe* objected, referring to *Paley on Convictions*, 231; *Burn's Justice of the Peace*, 558, 574, 575; and the case of *The Queen v. Bolton* (1). Anything not appearing on the face of the conviction must be brought forward, if at all, by affidavit: *The Queen v. Siddulph* (2). Want of jurisdiction might be shown by affidavit, but not that the Justices have come to a wrong conclusion on the merits. *Paley on Convictions*, 246, and cases there cited. [NORMAN, J.—We think it should be done by affidavit, *In re Baker* (3).] There is nothing to shew that the prosecution took place by order of the Justices. This order is made necessary by section 233 of Act VI. of 1863 (B. C.) A conviction must be wholly good or wholly bad, though it is otherwise as to an order. *The King v. Solomons* (4). *Paley on Convictions* 46, 167, 233, ed. of 1814. [NORMAN, J., referred to *The King v. Patchett* (5).]

Mr. *Woodroffe contra* submitted that the conviction might be amended.

The judgment of the Court was delivered by

NORMAN, J.—We are of opinion that the conviction is bad, on the second ground stated by the *Advocate General*. In addition to the fine of Rs. 300, the Judge imposed a further fine of Rs. 25 for every day during which the warehouse was kept for storing jute, after the date of the conviction. It was in fact an adjudication in respect of an offence which had not then been committed. The conviction cannot be amended; a conviction must either be wholly good or wholly bad. Part of it being bad, it is bad altogether, and must be set aside.

Attorneys for Sagar Dutt: Messrs. *Carruthers, Pittar, and Dignam*.

Attorney for the defendant: Messrs. *Berners, Sanderson, Upton, and Co.*

(1) 1 Q. B., 66.

(2) 1 Tay & Bell, 507.

(3) 3 N., 219.

(4) 1 T. R., 251.

(5) 5 East, 339.

SHORT NOTES OF CASES.