CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

RAMNATH PANDIT

v.

EMPEROR.*

1911

Jan. 20.

Embankment—Bengal Embankment Act (II of 1882) s. 76 (a) (b)—"Addition to existing embankment", meaning of—Increasing height of embankment—Essentials of offence under s. 76 (b).

The words "existing embankment" in s. 76 (b) of Beng. Act II of 1882 mean an embankment existing at the time the addition is made.

Ajodhya Nath Koila v. *Raj Krishto Bhar* (1) followed.

Goverdhan Sinha v. *Queen-Empress* (2) explained as overruled.

The only offence constituted by cl. (b), as distinguished from cl. (a) of s. 76, is the omission to obtain the sanction of the Collector to the addition to an existing embankment within a prohibited area, irrespective of the question whether such act is likely to interfere with, counteract, or impede any public embankment and public water course.

UPON the receipt of an information from Lala Triloke Nath, Executive Engineer of the Balasore Division, that the petitioner and five others had raised an embankment, the Collector of Midnapore took cognizance of the case under s. 190 (1) (c) of the Criminal Procedure Code and transferred it to Babu P. K. Ghoshal, Sub-divisional Officer of Contai, for disposal. It appeared at the hearing of the case that, in Baisak last, the petitioner employed five coolies who in his presence and under his orders threw earth on the Kantapukur *chak bundh* belonging to him situated within a mile of Sadarkhal which was included in the list of *khals* and rivers appended to the Bengal Government Notification No. 77, of the 11th March, 1901. The trying Magistrate found that the embankment in question had been increased in height by the deposit of earth by the petitioner and his men, whatever its original

* Criminal Revision, No. 1610 of 1910, against the order of K. P. Ghoshal, Deputy Magistrate of Contai, dated Nov. 18, 1910.

(1) (1902) I. L. R. 30 Calc. 481 (2) (1885) I. L. R. 11 Calc. 570

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height may have been, and he accordingly, on the 18th November 1910, convicted and sentenced them, under s. 76 (b) of the Act, to fines of Rs. 25 and 15 respectively. Ramnath thereupon obtained a Rule from the High Court to set aside the conviction and sentence on the grounds that there was no finding that the embankment had been raised above its authorized height, nor that the addition was likely to interfere with, counteract, or impede any public embankment or public watercourse.

Babu Khirode Narain Bhunia, for the petitioner.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. From the wording of the Rule it appears that it was issued under a misapprehension that s. 76 (a) applies. We find from the explanation of the District Magistrate that the case is under s. 76 (b) and the embankment is within the limits of the tract included in the notice under s. 6, which is Bengal Government Notification No. 77, dated 11th March, 1910. It is, therefore, clear that no addition can be made to the existing embankment without the permission of the Collector.

It is sought to be argued that the ruling in *Goverdhan Sinha* v. *Queen-Empress* (1), has not been overruled by the full Bench case in *Ajodhya Nath Koila* v. *Raj Krishto Bhar* (2). But it is clear from the terms of the reference that that ruling has been distinctly and clearly overruled as far as the interpretation of the words "existing embankments" in both the clauses (b) and (a) are concerned. If, as the Full Bench held, the words "existing embankments" in clause (a) mean embankments existing at the time that the addition is made, then *a fortiori* the words "existing embankments" in clause (b) must have the same interpretation, inasmuch as there is no such proviso attached to clause (b) as is attached to clause (a). The only offence constituted

(1) (1885) I. L. R. 11 Calc. 570. (2) (1902) I. L. R. 30 Calc. 481.

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by clause (b) is that of omitting to obtain the sanction of the Collector to making any addition to an existing embankment within the prohibitory area. We must, therefore, hold that the conviction and sentence in this case are correct, and the Rule must be discharged.

Rule discharged.

E. H. M.

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

1911

Jan. 25

THORNTON

v.

EMPEROR.*

Motor Car—Bengal Motor and Cycle Act (III of 1903), ss. 3 and 4—Use of Motor car with permission of the owner to convey his friends in his absence—Liability of Owner for the acts of his Driver in contravention of the rules framed under the Act—Rules 4, 20.

The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is, if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III of 1903), himself liable therefor under Rule 4 and s. 4 of the Act, though he was not in the car at the time and had given his servant general directions to observe the regulation speed, unless the latter has used it improperly for his own purposes.

Somerset v. *Wade* (1), *Somerset* v. *Hart* (2), *Collman* v. *Mills* (3) and *Commissioners of Police* v. *Cartman* (4) referred to.

THE petitioner, Edward Thorton, was tried before the Chief Presidency Magistrate, on the 5th November, 1910, charged with "driving his motor car, on the 23rd October, so rashly and negligently and at an excessive speed as to endanger human life and property," in violation of Rule 20 framed under the Bengal Motor Car and Cycle Act (III of 1903), and convicted and sentenced to a fine of Rs. 15.

* Criminal Revision, No. 1609 of 1910, against the order of T. Thornhill, Chief Presidency Magistrate of Calcutta, dated Nov. 5, 1910.

(1) [1894] 1 Q. B. 574.
(2) (1884) 12 Q. B. D. 360.
(3) (1896) 66 L. J. Q. B. 170.
(4) [1896] 1 Q. B. 655.