

sively the interests of the old and new agents, and with little or no regard to the real interests of the company and behind the backs of the shareholders. The rule must, therefore, be discharged, but without costs, as I consider the directors to blame in acting, as they did, without first calling a general meeting to decide upon a matter which was provided for by the articles of association. The three first defendants must pay the costs of the company.

1881

NUSSERWANJI
MERWANJI
PANDAY
v.
GORDON.

Rule discharged.

Attorneys for plaintiffs.—Messrs. *Crawford and Boevey.*

Attorneys for the first three defendants.—Messrs. *Hearn, Cleveland, and Little.*

Attorneys for the fourth defendant.—Messrs. *Craigie, Lynch, and Owen.*

CRIMINAL JURISDICTION.

Before Sir Charles Sargent Kt., Justice.

EMPRESS v. BAL GANGADHAR TILAK.

1882
March 9.

Commission—Criminal trial—Evidence of Government servant ordered on service taken by commission previously to departure—High Court Criminal Procedure Act X of 1875, Section 76.

Where a Government servant who had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place in the High Court of Bombay was subsequently ordered to a distant station on the public service, and could not, with due regard to the public interests, return to Bombay in time for the trial.

Held, on the application of Government, that his evidence might be taken by commission before his departure from Bombay, under the provisions of section 76 of the High Court Criminal Procedure Act X of 1875.

THE accused was charged by Rao Bahadur Mahadev Wasudev Barve with defamation.

One of the witnesses for the prosecution was Brigade Surgeon Joynt. He was examined on the 22nd February at the preliminary inquiry in the Police Court, but counsel for the defence declined then to cross-examine him, wishing to reserve the cross-examination until the case came on for trial at the Sessions.

1882

EMPRESS
v.
BAL
GANGADHAR
TILAK.

On the 1st March, 1882, the accused was committed for trial at the Sessions of the High Court fixed to commence on the 10th April, 1882, and Dr. Joynt duly executed his recognizance to appear at the said Sessions when called upon to give evidence.

Early in March, Dr. Joynt received orders from the Military authorities to proceed at once to Quetta, and it became necessary to apply to the Court for an order dispensing with his attendance at the Sessions. A notice was served upon the attorneys for the accused, informing them that an application would be made to the Court "for an order that the personal attendance of Dr. Joynt as a witness at the next Criminal Sessions be dispensed with."

Hon. *F. L. Latham* (Acting Advocate-General), on behalf of Government, applied for an order in the terms of the above notice, and read an affidavit by the Government Solicitor, in which he stated that he was informed by Government that Dr. Joynt's services were urgently required at a distant station, and that he (Dr. Joynt) could not, therefore, with due regard to the interests of the public service, be detained in Bombay longer than was absolutely necessary, and that he (the Government Solicitor) had received instructions from Government to take proceedings on their behalf for an order dispensing with the personal attendance of Dr. Joynt at the said Sessions so as to render his services available for public duty elsewhere without returning to Bombay in April next.

Inverarity, for the prosecution, did not object. Dr. Joynt's evidence might be taken by commission under section 76 of Act X of 1875.

P. M. Mehta for the accused.—I object to the order now applied for. It is important for the defence that Dr. Joynt should be examined and cross-examined before the jury at the Sessions. I submit that the Government has no *locus standi* to make this application. This is a private prosecution, and the Government is not a party. Section 76 does not contemplate an application by a third party.

[SARGENT, J.—The Government applies on behalf of its servant Dr. Joynt.]

[*Latham*.—It is to the Government that Dr. Joynt is bound over by his recognizance to attend the Sessions.]

Again, the section clearly does not apply to a case where the witness is within the jurisdiction. The duty of examining a witness would not be imposed on a Magistrate where it might be performed by the High Court itself.

The application, of which notice was given to us, was only for an order dispensing with Dr. Joynt's attendance. Section 76 only provides for taking evidence by commission, but no application for a commission is now before the Court.

The affidavit in this application made is insufficient. No case of urgency is shown.

SARGENT, J.—I think a commission to take Dr. Joynt's evidence must be allowed. It appears that Dr. Joynt has received orders from Government to proceed at once to a distant station where his services are urgently required, and that it is important that he should not be required to return to Bombay early in the month of April. Under these circumstances I think the order, now applied for, should be granted, unless, indeed, there was something very special in the criminal case to be tried at the Sessions which rendered it necessary, in the interests of justice, that Dr. Joynt should be personally present. There is nothing suggested here to lead to any such conclusion; and it appears to me that his evidence, both in examination and cross-examination, will be just as effective if taken on commission as it would be if he were to appear in Court. It has been argued by the counsel for the defence that the Court is not authorized to grant a commission to examine a witness who is within its own jurisdiction. There is, however, nothing in the language of section 76 in support of this contention, and I think I may make the order now applied for, and direct Dr. Joynt's evidence in this case to be taken on Monday next before the Chief Presidency Magistrate.

Solicitor to Government.—*Mr. H. Cleveland.*

Attorneys for the prosecution.—*Messrs. Hearn, Cleveland, and Little.*

Attorneys for the accused.—*Messrs. Shapurji and Thakurdas.*

1882

EMPRESS
v.
BAL
GANGADHAR
TILAK.