

APPELLATE CRIMINAL.

Before Mr. Justice Melvill, Mr. Justice Kemball, and Mr. Justice Pinhey.

EMPRESS v. MHASNYA RAMA.*

1883
March 8.

Act XIX of 1838, Sec. 13—Owner of harbour craft—Omission to produce certificate of registry—Fine—Amount of fine not discretionary—Full fine obligatory.

The Legislature when it enacted in section 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the fee", or "subject to a fine of ten rupees", intended that the penalties so specified should be inflicted in full.

The owner of a harbour craft having been fined Rs. 2 for omission to produce a certificate of registry when demanded by the customs authorities, the High Court annulled the sentence as being illegal, and inflicted the full penalty of ten rupees.

THIS was a reference by R. E. Candy, Magistrate of the District of North Kanara, under section 296 of Act X of 1872.

The circumstances of the case are as follows :—

The accused, being the owner of a harbour craft duly registered at the Honavar port, was found plying on the creek between Gersappa and Honavar by the customs officers who demanded from him the certificate of registry of his vessel, which he failed to produce. On a complaint being lodged, the accused was tried by the Subordinate Magistrate of Honavar, and sentenced, under section 13 of Act XIX of 1838(1), to pay a fine of Rs. 2, or, in de-

* Criminal Reference, No. 111 of 1882.

(1) 13.—In case any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be so marked or branded in all respects as hereinbefore directed, or in case the name and number of any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be so painted, or shall not continue so painted on such vessel employed as aforesaid, fishing vessel, or harbour craft, in all respects as hereinbefore directed; or in case any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be furnished with such certificate as hereinbefore specified; or in case the owner or owners or commander of any such vessel employed as aforesaid, fishing vessel, or harbour craft shall not produce such certificate on demand thereof, as hereinbefore directed, the owner or owners of every such vessel employed as aforesaid shall be subject to a fine of ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable, and the owner or owners of any such fishing vessel or harbour craft shall be subject to a fine of ten rupees, which fine may be recovered on conviction before any Magistrate having jurisdiction within the said territories, by sale of such vessel, fishing vessel, or harbour craft, her furniture, ammunition, tackle, and apparel, and such fines shall be payable as often as the owner or owners or commander of

fault, to have the same levied by distraint and sale of the boat. The District Magistrate was of opinion that the sentence was illegal. He thought that the wording of section 13 left to the Magistrate no discretion to inflict any other or lesser fine than that expressly provided.

January 16, 1883.—The reference was heard by *Melville* and *Pinhey*, JJ.

Nanabhai Haridas, Government Pleader, supported the reference.

Shivram Vithal Bhandarkar, as *amicus curiæ*, argued on behalf of the accused.—The language of section 13 is ambiguous, and should, therefore, this being a penal statute, be construed in favour of the subject; *The Empress v. Kola Lalang* (1). To construe the section as the District Magistrate did, would be to impute to the Legislature the intention of inflicting punishment without any regard to circumstances of aggravation or mitigation; *Mahadoo bin Gopala* (2). The Court in that case was speaking of this very section, and it is clear that the Sadar Adalat considered the fine to be varying. In section 50 of the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), which corresponds with the section on which the conviction has been based, the penal clause is thus worded:—"the offender shall incur a penalty not exceeding £100." The fine of Rs. 2 was, therefore, legal.

MELVILL, J.—We think, as at present advised, that the Legislature, when it enacted in section 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the amount of fees", or "subject to a fine of ten rupees" intended that the penalties specified should be inflicted in full. Had the penalties so specified been intended as a maximum, with a discretion to the Magistrate to inflict a smaller fine, we think that the phraseology would have been different; and that it would have been enacted that the offender should be subject, not to a fine of a specified amount, but to a fine *not exceeding* such any such vessel employed as aforesaid, fishing vessel, or harbour craft shall make such default as aforesaid: provided every such subsequent default be made after the expiration of one month from the date of the last conviction.

(1) I. L. R., 8 Calc., 214.

(2) 7 Sad. Fouz. Ad., 340.

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specified amount. Such is the phraseology of contemporaneous enactments, e.g., Act XXVII of 1837, sections 10 and 11, and Act XXXI of 1838, section 29. Moreover, we should expect that a penalty imposed for the omission to take out a certificate and pay the proper fee thereon, would amount to a specified multiple of such fee, as in the case of the omission to pay stamp duties; and if the phrase "subject to" be rightly construed in this manner in this one place, the same interpretation must be put upon the same words, wherever they appear in the section. Upon the whole, therefore, we are of opinion, as at present advised, that the view taken by the District Magistrate is correct, and we, accordingly, direct notice to issue to Mhasnya bin Rama to show cause why the fine imposed by the Subordinate Magistrate should not be enhanced to ten rupees.

The notice having been served, the case was heard by *Kemball* and *Pinhey*, JJ., on the 8th of March, 1883, when the Government Pleader appeared for the Crown and no one for the accused.

KEMBALL, J.—We agree in the judgment passed on the 19th of January last, and enhance the fine to ten rupees.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

1883
 April 11.

DALSUKHRAM MAHASUKHRAM AND OTHERS (ORIGINAL DEFENDANTS),
 APPELLANTS, v. LALLUBHAI MOTICHAND (ORIGINAL PLAINTIFF),
 RESPONDENT.*

Hindu law—Widow—Maintenance—Family house—Residence—Purchaser from the heir with knowledge—Widow's right of residence a charge on the property.

Where a purchaser purchases a house, the property of a Hindu family, from the heir, with full knowledge that the widow is residing and being maintained in it, such purchaser cannot ask for the summary eviction of the widow from the house, even though there may be other property in the hands of the heir out of which her maintenance could be derived; but the purchaser takes the house subject to the right of the widow to continue to reside therein.

Lakshman Ramchandra Joshi v. Satyabhamabai (1) distinguished.

THIS was a second appeal from the decision of S. H. Phillpotts, Judge of the district of Ahmedabad, reversing the decree of Rav

* Second Appeal, No. 191 of 1882.

(1) I. L. R., 2 Bom., 494.